Cross Telephone Company, L.L.C.

Audit Appeal to FCC

Exhibit 1

USAC Appeal, Attachment B

Cross Telephone Company, L.L.C.

ATTACHMENT B

Declaration of Warren Fischer

DECLARATION OF

WARREN R. FISCHER, C.P.A.

In Support of Cross Telephone Company, L.L.C's Request for Review of Decision of

The Universal Service Administrative Company

USAC Audit ID: HC2016BE031

SAC No. 431985

January 4, 2019

CONFIDENTIAL AND PROPRIETARY

Confidential Treatment Requested Pursuant to 47 C.F.R. 54.711(b)

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LIST OF EXHIBITS

I, Warren R. Fischer, C.P.A., hereby state the following:

I. INTRODUCTION

A. Qualifications and Purpose

1. I am a certified public accountant ("C.P.A.") and Chartered Global Management Accountant ("C.G.M.A.") currently serving as Partner and Chief Financial Officer of QSI Consulting, Inc. (hereafter "QSI"). I have particular experience and expertise in analyzing telecommunications cost-of-service issues, including the application of federal rules concerning the calculation of disbursements from the Universal Service High Cost Program as set forth in 47 C.F.R. § 54, the Federal Communications Commission's ("FCC") rules governing the Uniform System of Accounts in 47 C.F.R § 32, and the FCC's jurisdictional separations procedures in 47 C.F.R § 36. I received a Bachelor of Science Degree in Business Administration with an emphasis in Accounting from the University of Colorado at Boulder. I have active licenses as a C.P.A. in the States of Colorado and California. My professional experience as a C.P.A. includes two years in public practice with Deloitte LLP and many years managing financial analysis, reporting, and forecasting processes for various multi-national corporations. The most recent 23 years of my professional career has been spent in the telecommunications industry, first as a manager and accountant with AT&T from 1995 to 2000 and then as a consultant with QSI from 2000 through today. I have served as an expert witness on telecommunications cost and pricing issues on more than 60 occasions in proceedings before 35 state utility commissions, state and federal courts, and other administrative agencies, including the FCC. Exhibit 1 contains my curriculum vitae detailing my work experience and matters in

which I have provided expert opinions over the last four years including cases involving the application of 47 C.F.R. §§ 32 and 36 rules to state universal service fund support eligibility.

2. This Declaration was prepared on behalf of Beneficiary Cross Telephone Company, L.L.C. ("Cross Telephone"), Study Area Code ("SAC") No. 431985. I have been asked by Cross Telephone to evaluate Finding #1 in *Performance Audit on Compliance with the Federal Universal Service High Cost Support Mechanism Rules, USAC Audit ID: HC2016BE031* (hereafter "Audit Report") prepared by Moss-Adams LLP. Finding #1 references 47 C.F.R. § 36.2(c)(2) and states that "[t]he Beneficiary incorrectly included … rent expense paid to an affiliate in its … HCP [High Cost Program] filings instead of properly removing the rent expense and including the rented plant and associated expenses."[1]

B. Summary

3. I disagree with Finding #1 and, instead, conclude that Cross Telephone's treatment of the cost in question as "expense" was consistent with the FCC's jurisdictional separations procedures and the rules governing Federal Universal Service Fund ("USF") reporting procedures.

4. The expenses in question relate to DS1 circuits used to interconnect Cross Telephone's network and its customers with other telecommunications networks. More specifically, the circuits in question transport traffic from/to Cross Telephone's switch in Warner, Oklahoma to Tulsa, Oklahoma. What Cross Telephone purchases

[1] Audit Report, p. 3.

in relation to the DS1 circuits is a service, **not** property. The payments Cross Telephone makes in relation to the DS1 circuits are service charges, **not** rent. Furthermore, Moss-Adams failed to show that the DS1-related expenses is "substantial in amount."

5. While Cross Telephone currently obtains this DS1 transport service from its affiliate, MBO Video, L.L.C. ("MBO Video")[2], Cross Telephone previously purchased a comparable transport service from Southwestern Bell Telephone Company ("SWBT"), an unaffiliated service provider. At no time did Cross Telephone use its own facilities to transport traffic to the meet point required to exchange traffic with other telecommunications carriers in Tulsa.[3] This history demonstrates that Cross Telephone's situation is not comparable to the facts and circumstances surrounding the *Moultrie* case,[4] the case on which Moss-Adams relies for its proposed reclassification of Cross Telephone's DS1 transport expenses. These facts individually, and certainly in combination, demonstrate that 47 C.F.R § 36.2(c)(2) of the Commission's rules do not apply to Cross Telephone's DS1-related expenses, and that Finding #1 of the Audit Report should be rejected.

[2] Cross Telephone Company, L.L.C. and MBO Video, L.L.C. share common ownership through NBVDS Investments, L.L.C. MBO Video, L.L.C. is a regional facilities-based telecommunications service provider to wireline and wireless carriers, government and enterprise customers, Internet Service Providers, and education and healthcare institutions. *See* Exhibit 2 (NBVDS Investments, L.L.C.'s February 2018 "FCC Ownership Disclosure Information for the Wireless Telecommunications Services" filing with the FCC). *See also* description of MBO Video, L.L.C at http://mbonetworks.com/about-us/.

[3] Cross Telephone's response to QSI Consulting, Inc.'s Second Set of Information Requests, No. 2. Available upon request.

[4] *See, e.g., In the Matter of Moultrie Independent Telephone Company et al.*, CC Docket No. 96-45, Order, 16 FCC Rcd 18242, rel. October 5, 2001 ("Moultrie Order").

II. ANALYSIS

A. Jurisdictional Separations Process and Cost Classification Requirements

6. The FCC rules at issue in this matter are those governing an incumbent local exchange carrier's ("ILEC") division or separation of its regulated costs and revenues between the interstate (FCC regulated) and intrastate (state regulated) jurisdictions of telecommunications services. Codified in 47 C.F.R § 36, the FCC's jurisdictional separations rules are prescribed to prevent the double recovery of a rate-of-return incumbent LEC's costs of providing telecommunications services in both jurisdictions.[5]

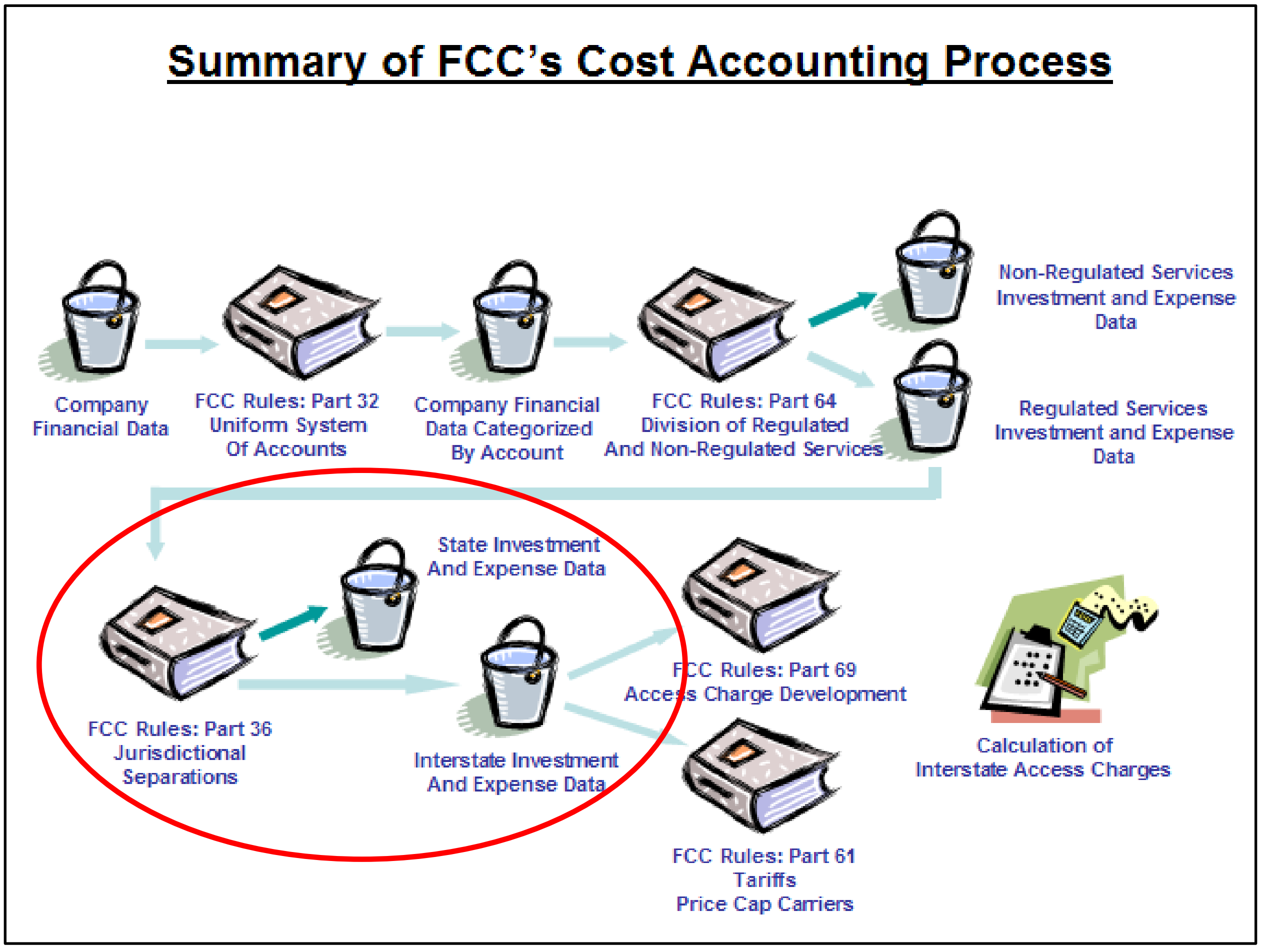
7. Jurisdictional separations are the third step in a four-step regulatory process:

    1. Costs and revenues are recorded according to the Uniform System of Accounts prescribed in 47 C.F.R. § 32.
    2. Costs and revenues are divided between regulated and nonregulated activities in accordance with 47 C.F.R. § 64.
    3. Regulated costs and revenues are separated between the interstate and intrastate jurisdictions under 47 C.F.R § 36.
    4. Interstate regulated costs are apportioned among the interexchange services and rate elements that comprise exchange access services under 47 C.F.R § 69.[6]

8. The regulatory process described above is illustrated in the diagram below.

[5] *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board,* CC Docket No. 80-286, Further Notice of Proposed Rulemaking, rel. July 18, 2018, ¶ 3.

[6] *Id.*, ¶ 4.



9. Section 36.2(c) is one of five sections within 47 C.F.R § 36.2 containing the FCC's fundamental principles underlying its separations procedures. This section prescribes special treatment of property rented to or from an ILEC's affiliates for cost separations purposes if the property rented is substantial in amount. Under this special treatment, property rented from affiliates is reported as owned property rather than rent expense. It is important to note that this special treatment applies only if both conditions hold – (1) the cost at issue is "rent" and (2) it is "substantial." Because I demonstrate below that the expense at issue is "not rent," it immediately follows that 47 C.F.R § 36.2(c) does not apply to this expense. Nevertheless, I also address the topic of "substantial" expense in the last section of my report.

10. The Audit Report classifies DS1 transport services purchased by Cross Telephone (discussed in detail below) as property rented from an affiliate that meets the "substantial" threshold of 47 C.F.R § 36.2(c)(2).[7] As a result, the Audit Report reclassified Cross Telephone's DS1 transport service ***expenses*** as ***investment*** following NECA Cost issue 2.19 as summarized in the flow chart below.[8]

[7] 47 C.F.R. §36.2(c) states: "Property rented to affiliates, if not substantial in amount, is included as used property of the owning company with the associated revenues and expenses treated consistently: Also such property rented from affiliates is not included with the used property of the company making the separations; the rent paid is included in its expenses. If substantial in amount, the following treatment is applied: (1) In the case of property rented to affiliates, the property and related expenses and rent revenues are excluded from the telephone operations of the owning company, and (2) In the case of property rented from affiliates, the property and related expenses are included with, and the rent expenses are excluded from, the telephone operations of the company making the separation.

[8] 2.19 Separations Treatment of Operating Lease Expenses and Capital Leases, NECA Cost Issue at Section 2: Expenses, Issue number 2.19, page 9 of 9 (2007).

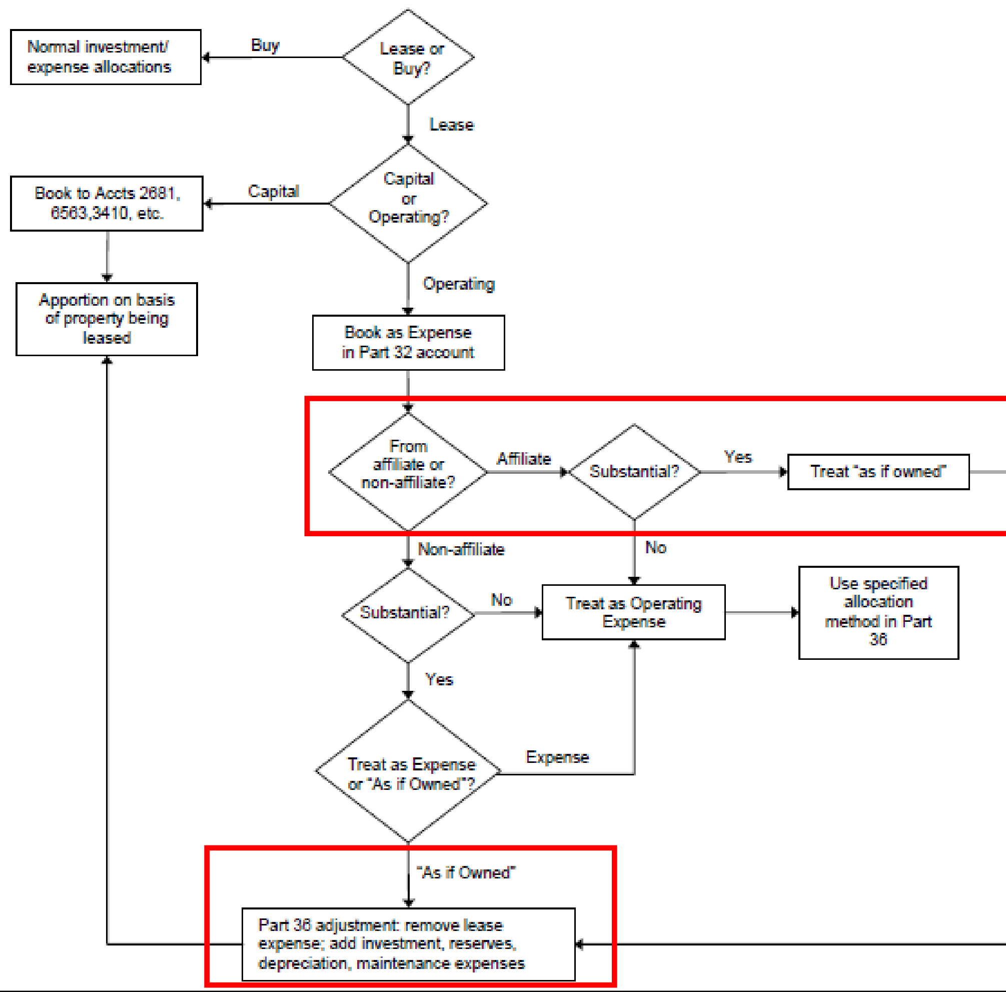
SEPARATIONS COST ISSUE

Issue Number: **2.19** **SEPARATIONS TREATMENT OF OPERATING LEASE EXPENSES AND CAPITAL LEASES**

Issue Date: **3/02 (Revised 10/03, 3/07)**

ATTACHMENT A

TREATMENT OF LEASES



11. It is important to note that the NECA Separations Cost Issue relied upon by Moss-Adams in the Audit Report focuses solely on the separations treatment of expenses incurred under leases. As discussed below, the expenses at issue in the cost studies

filed by Cross Telephone with NECA are for services rendered by MBO Video, not for the rental of property or equipment.

B. Expense at Issue is Payment for Service, Not Rent of Property

i. Expense at Issue

12. The expense at issue consists of payments for transport services provided to Cross Telephone by its non-regulated affiliate, MBO Video. The Audit Report describes this arrangement as follows:

> Transport services – MBO Video provides transport services to the Beneficiary for the use of plant facilities owned by MBO Video. Transactions occur at rates based on historical tariffed rates from other interexchange carriers.[9]

The Audit Report further describes the expense at issue as "…the DS1 circuit charges and the plant is the interexchange fiber owned by the Beneficiary's affiliate."[10] Cross Telephone explained that it has purchased "DS1 transport services" from MBO since the late 1990s (including during the time period of the audit), and before that purchased the DS1 transport services from SWBT pursuant to SWBT's tariff.[11] The company indicated to me that they have been purchasing this service from SWBT from at least mid-1970s.[12]

13. The DS1 transport services Cross Telephone has purchased over the years – currently from MBO and from SWBT before that – connects Cross Telephone's switch in

[9] Audit Report, p. 11.

[10] Audit Report, p. 24.

[11] Declaration of V. David Miller in Support of Cross Telephone Company, L.L.C., pp. 1-2, Attachment 3 to Audit Report.

[12] Per December 21, 2018 from Jake Baldwin, counsel for Cross Telephone.

Warner, Oklahoma to a meet point with AT&T (a/k/a SWBT) in Tulsa, Oklahoma. Cross has never owned facilities that provide the function served by the DS1 transport service in question.[13] It has always purchased the DS1 transport service that serves this function from another provider.

ii. Payments for DS1 Transport Services are not "Rent" Under FCC Rules

14. The current version of the FCC's rules does not define the subcategory "rent" within various expense accounts. However, up until 2000,[14] the Commission's rules contained an explicit definition of the subcategory "rent" because incumbent local exchange carrier ("ILECs") were required to report this expense (called "subsidiary record") along with four other subsidiary records described in then-current rule 47 CFR § 32.5999(f) "Expense matrix." More specifically, up until the year 2000, 47 CFR § 32.5999(f) mandated that five subsidiary record categories be maintained, including: (1) Salaries and wages; (2) Benefits; (3) Rents; (4) Other expenses and (5) Clearances. Until September 2000, Sub-part 47 CFR § 32.5999(f)(3) read as follows:

> (3) Rents. (i) This subsidiary record category shall include amounts paid for the use of real and personal operating property. Amounts paid for real property shall be included in Account 6121, Land and Buildings Expense. This category includes payments for operating leases but does not include payments for capital leases. (ii) This subsidiary record category is applicable only to the Plant Specific Operations Expense accounts. Incidental rents, e.g., short-term rental car expense, shall be categorized as Other Expenses (see paragraph (f)(4) of this section) under the account which reflects the function for which the incidental rent was incurred. (emphasis added)

In addition, sub-part 47 CFR § 32.5999(f)(4) defined "Other expenses" as follows:

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13 Cross Telephone's response to QSI Consulting, Inc.'s Second Set of Information Requests, No. 2. Available upon request.

14 See 47 C.F.R § 32.5999, (10-1-98 Edition).

> … costs which cannot be classified to the other subsidiary record categories. Included are material and supplies, including provisioning (note also Account 6512, Provisioning Expense); contracted services; accident and damage payments, insurance premiums; traveling expenses and other miscellaneous costs. (emphasis added)

15. Rule 47 CFR § 32.5999(f) "Expense matrix" and the associated above cited definition of the "rent" subsidiary record were eliminated by an FCC Report and Order issued on September 28, 2000[15] that streamlined 47 C.F.R § 32 reporting requirements. However, the *2000 Report and Order* did *not* make these definitions invalid – instead, the *2000 Report and Order* indicated that the companies were expected to continue collecting these data as follows:

> … the changing telecommunications marketplace and regulatory framework have led us to rely on this data less frequently in our deliberations. We recognize that there remains a need for certain information provided by the expense matrix; we find, however, that the information can be provided to the Commission on an as-needed basis. We expect companies to keep such data available and be prepared to provide it to the Commission should the Commission make such a request.[16]

16. As cited above, the pre-2000 rule 47 C.F.R. § 32.5999(f) defined "rents" as amounts paid for the use of real and personal operating property. One example of "rents" that the *2000 Report and Order* discussed was "pole attachment rates."[17] Pole attachments are clearly an example of the use of personal operating property because physical space is directly rented here – *e.g.*, pole line space, as well as space in other

15 *In the Matter of Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1.* Report and Order adopted on March 2, 2000 in docket CC No. 99-253 ("*2000 Report and Order*"). Rule modifications adopted in this Report and Order became effective on September 28, 2000 (see Federal Register, Vol. 65, No. 60 dated Tuesday, March 28, 2000).

16 *2000 Report and Order*, ¶ 7 (emphasis added).

17 *2000 Report and Order*, ¶¶ 6 and 10.

right-of-way structures such as ducts and conduits.[18] In contrast, DS1 transport service is not a physical object or property that is provided in a DS1 transport contract or tariff. Instead, it is an offering of telecommunications which "means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[19]

17. DS1 transport service relies on not one, but many types of "operating properties," including cable and wire facilities, transmission equipment, as well as "general support" and "corporate operations" properties used to repair and bill for this service (for example, trucks and general purpose computers). However, just because a service relies on certain operating properties, it does not follow that payments for service are payments for "the use of property." For example, it is unreasonable to consider payments for DS1 transport service as "rents from leasing motor vehicles." Further, taken separately, each one of these "properties" would fail to deliver DS1 transport – they have to be combined and "lit" (powered) in order to produce DS1 transport service (which is currently done by MBO Video, and by SWBT before that).

18. Finally, the DS1 transport service that Cross Telephone obtains from MBO Video is not tied to specific DS1 "properties." Instead, it rides on a much higher capacity fiber-based system, which serves not only Cross Telephone, but also other customers

[18] See also 47 U.S.C. 224(a), which defines pole attachment as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." See also 47 U.S.C. 224(d), which talks about pole attachment rates in relation to "usable space," which is "the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment."

[19] 47 U.S.C. 153 (Definitions) (44), definition of "telecommunications." (emphasis added)

of MBO Video.[20] In fact, only 23% of MBO Video's circuits were providing service to Cross Telephone (averaged over the time period in the Audit)[21], and there are no specific fiber strands assigned to Cross Telephone's use (as may happen in "true lease" arrangements, including dark fiber obtained under an IRU[22]). There is no single asset involved – in fact, specific circuit equipment or other parts of telecommunications "properties" associated with this service route may be replaced during the service period.

19. The exact number of DS1 transport circuits fluctuate over time based on demand from Cross Telephone's "retail" customers (which may include residential and business subscribers of telephone service, interexchange and other carriers, as well as government and enterprise customers) that, in turn, create Cross Telephone's demand for DS1 transport service. To illustrate this observation, I requested from Cross Telephone monthly data on DS1 circuits during the period covered by the Audit Report. The data provided to me spanned 67 months (from November 2010 to May 2016) and contained information on 262 distinct customer-ordered DS1 circuits.[23]

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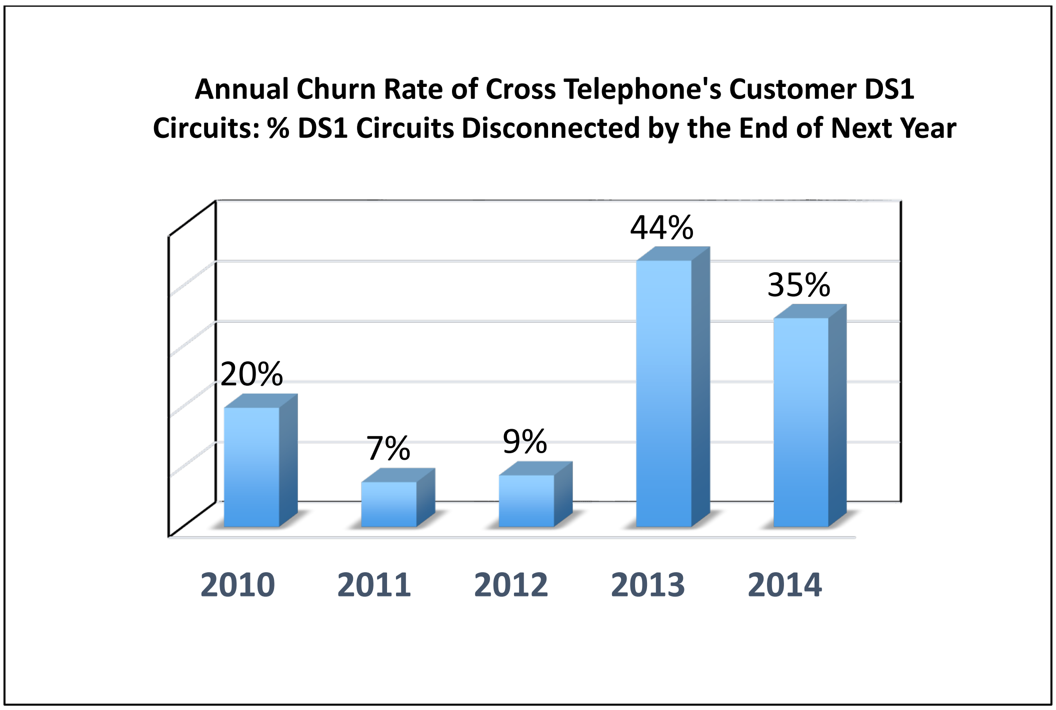
20 See Exhibit 3 for a diagram of MBO Video's DWDM (Dense Wavelength Division Multiplexing) and the OC-192 ring which interconnects with smaller capacity DS-3 facilities that place call traffic on the MBO Video ring. Only 9.72% of the route served by MBO Video is in Cross Telephone's exchange area. Per Cross Telephone's response to QSI Consulting, Inc.'s First Set of Information Requests, No. 16. Available upon request.

21 Per analysis prepared by Cross Telephone to implement Audit Report Finding #1: *Cross - Moss Adams - Circuit Expense Affiliate #s 2010-2014.xlsx*. Available upon request.

22 "An IRU is an indefeasible right to use facilities for a certain period of time that is commensurate with the remaining useful life of the asset, generally 20 years. An IRU confers on the grantee the vestiges of ownership, and is customarily used in the telecommunications industry. It normally involves a substantial sum paid up front, generally priced as a certain amount (depending on market rates) per mile or per fiber mile…" .*In the Matter of Rural Health Care Support Mechanism, Notice of Proposed Rulemaking*, WC Docket No. 02-60, 25 FCC Rcd 9371, rel. July 15, 2010, ¶¶ 56-57.

23 See Exhibit 4. This source also contained monthly counts of toll circuits that were not specific to customers and therefore, were not used in my "churn" analysis. These additional non-customer specific "toll circuits" ranged from 10 to 14 depending on the months.

Monthly counts of circuits varied from 77 to 180 circuits. Only 32 circuits out of 262 were present in each and every month, while 62 circuits were present in only 12 or fewer months. Using circuit counts in December of each year, I determined the number of circuits in each year that were disconnected by the end of next year. I then derived churn rates calculated as follows: churn rate in Year T is equal to "the number of circuits in year T that were disconnected by the end of Year T+1" divided by "the number of circuits in year T"). The following chart depicts the resulting churn rates for the time period covered by the Audit:[24]



As shown in this chart, a large number of customer-ordered circuits (up to 44% in 2013) may be disconnected each year (causing Cross Telephone to disconnect its wholesale DS1 transport service circuits ordered from MBO Video). These

[24] See Exhibit 4.

fluctuations in customer demand support Cross Telephone's business decision (made long ago) to obtain DS1 transport service from another party rather than construct its own assets. Ordering service as needed from another party provides Cross Telephone the financial and operating flexibility of incurring costs only when the capacity is needed. Owning or leasing the transport facility, as the Audit Report's recommendation to impute rate base in Cross Telephone's HCP filings implies,[25] would require Cross Telephone to incur fixed costs to own the transport facilities whether there is customer demand for transport services or not. This results in stranded capacity.

20. Federal rules typically recognize that services may be provided with the use of property, but treat "service revenue" differently from "pure rent" revenue. For example, 47 C.F.R. § 32.5200 "Miscellaneous revenue" states that this account shall include:

> (a) Rental or subrental to others of telecommunications plant <u>furnished apart from telecommunications services</u> rendered by the company…. . It includes revenue from the rent of such items as space in conduit, pole line space for attachments, and any allowance for return on property used in joint operations and shared facilities agreements." (emphasis added)

Prior to 2002[26] the above cited description appeared under rent-specific sub-account (47 CFR § 32.5240 "Rent revenue"). In contrast, service revenue is booked to service-specific accounts. For example, private line service revenue is booked to its own account 47 C.F.R § 32.5040 as "revenue derived from local services that involve

[25] Audit Report, p. 12.

[26] *In the Matter of 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements, et. al.*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, rel. November 5, 2001, ¶ 36.

dedicated circuits, private switching arrangements, and/or predefined transmission paths." A similar distinction is present in the FCC Form 499 "Telecommunications Reporting Worksheet," the form on which providers report revenue subject to USF contribution assessments. Specifically, instructions to this form explain that Line 418 "Other revenues that should not be reported in the contribution bases" include revenue "from the sale or lease of transmission facilities, such as dark fiber or bare transponder capacity, that are not provided as part of a telecommunications service or as a UNE."[27] At the same time, local private line and special access service revenue should be included on Lines 305 (carrier's carrier revenue) and 406 (end-user revenue).[28] MBO Video reports the revenue it receives from Cross Telephone for DS1 circuits at issue on Form 499-A within the "Line 305 category" under Line 305.1,[29] which is private line "revenues for service provided to contributing resellers for resale as telecommunications."[30] The fact that MBO Video reports revenue from DS1 circuits at issue under private line revenue rather than "lease of transmission facilities that are not provided as part of telecommunications service" further re-enforces my opinion that payments at issue in this case are payments for service, rather than rent of property.

27 2014 Instructions to the Telecommunications Reporting Worksheet, Form 499-A, p. 21.

28 2014 Instructions to the Telecommunications Reporting Worksheet, Form 499-A, p. 17.

29 Cross Telephone's response to QSI Consulting, Inc.'s First Set of Information Requests. Available upon request.

30 2014 Instructions to the Telecommunications Reporting Worksheet, Form 499-A, p. 17.

iii. Provisions in Cross/MBO Video Contracts Further Demonstrate That Payments for DS1 Transport Services Are Not "Rent"

21. The fact that the DS1 transport service is just that – a service – and not leased property is evident in the way in which the offering is detailed in contracts and tariffs. Cross Telephone currently purchases the DS1 transport service via the "MBO Master Service Agreement" (hereafter "MSA"). The MSA refers to the offering Cross Telephone purchases from MBO Video as "Services" many times (*e.g.*, "1.1 Services", "3.3 Service Acceptance", "5.7 Charges for Service", "6.1 Suspension of Service", "6.2 Termination of Service", "8.7a Use of Services").

22. Section 5 describes the payment terms for the DS1 transport service between Cross Telephone and MBO Video. That section explains that "MBO provides and charges for Services on a monthly basis" one month in advance, and charges for installation and other non-recurring activities in the next billing cycle. These payment terms are very typical and customary in the telecommunications industry for telecommunications services. Furthermore, Cross Telephone pays for the DS1 transport service based on a flat monthly fee per DS1 on a month-to-month basis, and based on the demand Cross Telephone requires in a particular month. In other words, Cross Telephone is not "locked in" for a particular quantity of DS1s or for a particular term commitment, and its total monthly invoices vary based on demand for DS1 circuits. By contrast, lease payments oftentimes involve term commitments (*e.g.*, one year) at least at the outset, and payments for month-to-month leases do not typically vary based on demand for the rented property. Furthermore, the non-recurring charges associated with DS1 transport service are for specific activities that occur one time, such as installation and service ordering. These charges are to

compensate the service provider for work undertaken to make the service available to the customer, and are not refundable. By contrast, to the extent that leases involve a non-recurring payment, the payment typically is treated as a deposit that is potentially refundable depending on the condition of the rental property at the conclusion of the lease.

23. Other sections of the MSA make clear that Cross is purchasing a service, and is not assuming any possession or control of property that is commonplace when property is rented. For example, MSA Section 8.8 states:

> Title to Equipment This Agreement shall not, and shall not be deemed to, convey to Customer title of any kind to any MBO owned or leased transmission facilities, digital encoder/decoders, telephone lines, microwave facilities or other facilities utilized in connection with the Services.

Likewise, MSA Section 8.26 states:

> Intellectual Property Rights Unless otherwise specifically agreed in writing by the parties, each party shall retain all right, title and interest in and to any intellectual property associated with the provision of Services.

Similarly, Section 8.28 states:

> This Agreement constitutes the complete and exclusive statement of the understanding between the parties and supersedes all proposals and prior agreements (oral or written) between the parties relating to Services provided hereunder.

24. The following two examples of other contracts between the parties, one a lease contract, and another a service contract, further illustrate the differences between the two types of contracts. Specifically, the June 1, 1998 "Equipment Lease" between Cross

Telephone (Lessor) and MBO Video (Lessee) contain the following key provisions that differentiate it from the MSA between Cross Telephone and MBO Video:[31]

- It applies to four (4) dark fibers owned by Cross Telephone.
- The Lessee assumes all risks or loss or damage to the equipment.
- The Lessee shall maintain the equipment, but the Lessor shall pay all costs required to maintain the equipment.
- At the end of the Lease term, the Lessee shall be obligated to return the equipment to the Lessor
- The equipment will be deemed personal property, and the Lessor shall be deemed to have retained title to the equipment.

25. In contrast, the June 1, 1998 "General Contract for Services" between Cross Telephone and MBO Video contains references to the provision of services only and none of the terms and conditions present in the Equipment Lease.[32]

- The preamble states that Cross Telephone is the party who is contracting to receive services and MBO Video is the party who will be providing the services.
- **Section 1. Description of Services** refers to 7 DS1 circuits.
- **Section 2. Payment for Services** refers to a rate of $550 per DS1 per month with no defined duration as there would be in a lease.
- **Section 7. Warranty** states that, "MBO Video shall provide its *services* and meet its obligations under this Contract in a timely and workmanlike manner. The quality of <u>service</u> provided shall equal or exceed applicable Bellcore established standards." [emphasis added]

26. The Audit Report states that the rates for the DS1 transport "occur at rates based on historical tariffed rates from other interexchange carriers."[33] Cross Telephone produced a 2008 memorandum prepared by its regulatory consultant entitled

[31] See Exhibit 5 for June 1, 1998 Equipment Lease.

[32] The General Contract for Services is the predecessor agreement to the MSA governing the DS1 transport services purchased by Cross Telephone from MBO Video. Prior to the General Contract for Services, Cross purchased the DS1 transport services from SWBT, as unaffiliated ILEC.

[33] Audit Report, p. 11.

"Reasonableness Testing from Cross Circuits Utilizing MBO Facilities." I am including this document here as Exhibit 6. This document describes and includes a 1998 calculation that MBO Video made when setting the rate for its DS1 transport service from Warner to Tulsa. It implies that the rate, which is $1,100 per DS1 per month, was set at the level that the previous provider, SWBT would be charging in 1998. This document also discusses and includes a then-recent (2008) quote from SWBT. Based on that quote, SWBT would have charged a much higher rate ($1,710.33 per DS1 per month) in 2008 than the MBO Video rate (which is $1,100).[34] In other words, the fact that Cross Telephone switched from SWBT to MBO Video as the DS1 transport service provider created overall cost savings for both Cross Telephone and contributors to the FCC's High Cost Programs, since Cross Telephone's cost submission to the National Exchange Carrier Association ("NECA") was lower than if its costs were comprised of charges paid to SWBT.

27. The overall cost savings achieved by Cross Telephone purchasing the DS1 transport services from MBO Video instead of SWBT underscores the unreasonableness of the Audit Report's recommendation to apply 47 C.F.R. §36.2(c)(2) to Cross Telephone's purchase of DS1 transport services from MBO Video. The fact that section 36.2(c)(2) did not apply to Cross Telephone's purchase of DS1 transport services when Cross purchased those services from SWBT is undisputed. That is because section 36.2(c) applies to transactions between affiliates, and Cross Telephone and

[34] I have reviewed a sample of MBO Video's invoices to Cross Telephone for the transport services and noted that the price per DS1 circuit has remained the same since 1998 as the amount stipulated in the General Contract for Services.

SWBT are *not* affiliates.[35] However, simply because Cross Telephone decided to switch DS1 transport service providers (from SWBT to MBO Video) – a change that created overall cost savings for Cross Telephone and USF contributors – the Audit Report recommends implementing a drastic change to the application of section 36.2(c) that, if adopted, could require Cross Telephone to refund more than $8.2 million. In other words, application of section 36.2(c) and a potential $8.2 million claw-back payment hinges solely on which service provider Cross Telephone chose for DS1 transport services – regardless of the fact that the chosen provider was cheaper to the USF program. This is an unreasonable outcome. Furthermore, going forward, Cross Telephone could avoid this issue entirely by switching back to SWBT (or another unaffiliated service provider) for DS1 transport service, but that change would increase costs to Cross Telephone and USF contributors. Creation of incentives for inefficient business decisions is another nonsensical consequence of applying section 36.2(c) to Cross Telephone's purchase of DS1 transport services.

C. Distinction between Asset Leases and Contracts for Services in General Accounting and Tax Practice

28. The fact that the DS1 transport services provided to Cross Telephone by MBO Video are properly considered as purchases of telecommunications services and *not* property rental (or asset lease) is further buttressed by: (1) the Internal Revenue Code ("IRC"), (2) previous rulings by the Internal Revenue Service ("IRS"), (3) Generally Accepted Accounting Principles ("GAAP"), and (4) international accounting standards.

[35] The Auditor states: "Part 36.2(c) sets two conditional requirements for its application by referencing 1) affiliate related and 2) substantial [in nature]." Audit Report, p. 23. Therefore, when Cross Telephone purchased DS1 transport services from SWBT, at least one of the "two conditional requirements" did not apply.

29. At the request of Cross Telephone, its legal counsel, Bennet & Bennet PLLC, reviewed a draft of Finding #1 and provided an opinion about Finding #1's treatment of the DS1 transport expenses in question. I have reviewed the Bennet Memo, and I agree with its analysis and conclusions. The *Bennet Memo* opinion found that:

> … the Auditor incorrectly treated the purchase of DS1 transport services as an asset lease arrangement, rather than as the purchase of services and, in doing so, ignored the contractual agreements and arrangements between the parties as well as the guiding principles established by the International Accounting Standards Board ("IASB") and embodied in the Internal Revenue Code ("IRC").[36]

30. The *Bennet Memo* first analyzed the Audit Report's Finding #1 in relation to Section 7701(e) of the IRC, which spells out six specific criteria to distinguish between a service contract and a lease. More specifically, 7701(e) states that a "contract which purports to be a service contract shall be treated as a lease of property if such contract is properly treated as a lease of property, taking into account all relevant factors" including the six enumerated factors. The criteria from Section 7701(e) along with the *Bennet Memo*'s analysis of them are summarized below:

[36] *Bennet & Bennet Memorandum* from Carri Bennet and Howard Shapiro to Jake Baldwin, dated October 18, 2017, p. 1 (hereafter "*Bennet Memo*").

IRC 7701(e) Criterion		***Bennet Memo***
Criterion 1	"the service recipient is in physical possession of the property"	"Under the terms of this [Master Services Agreement] arrangement, MBO retains control of the facilities used to provide the DS1 circuits."
Criterion 2	"the service recipient controls the property"	"Indeed the fact that the agreement allows MBO at its discretion to utilize the facilities of third party providers in addition to or in lieu of its own facilities for any part of the communications pathway clearly indicates that Cross has been given neither physical possession of the facilities used to provide the DS1 circuits nor the right to control those facilities."
Criterion 3	"the service recipient has a significant economic or possessory interest in the property"	"Similarly, Cross retains no economic or possessory interest in the facilities…"
Criterion 4	"the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract"	"MBO bears the risk of all losses or damages to the facilities upon the occurrence of any catastrophic incident as well as the risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract."
Criterion 5	"the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient"	"the facilities utilized by MBO to provide the DS1 service to Cross are part of an integrated communications platform owned and operated by MBO…it is also significant that MBO's service platform is used not only to provide DS1 services to Cross but also to provide telecommunications services to other unaffiliated carriers as well…"

IRC 7701(e) Criterion		*Bennet Memo*
Criterion 6	"the total contract price does not substantially exceed the rental value of the property for the contract period."	While the *Bennet Memo* did not address this criteria, I have independently reviewed the price Cross pays for the DS1 transport and determined that the price is based on the price Cross paid for DS1 transport service when Cross previously purchased DS1 service from SWBT. The price per DS1 circuit has not changed from inception of the General Contract for Services in 1998 through 2014. As noted above, in 2008 SWBT quoted a higher rate. It is reasonable to conclude the contract rate meets this criterion.

31. The *Bennet Memo* also discusses IRS ruling 2011-24, 2011-41 I.R.B. 485,[37] which applies the criteria from 7701(e) to three hypothetical scenarios to distinguish telecommunications service contracts from leases. The three hypothetical scenarios are described as follows:

> [1] the first where a telecommunications carrier provided dedicated circuits to a business customer using its own SONET platform; [2] a second where the carrier utilized a combination of dedicated circuits and the public switched telephone network ("PSTN") to provide services to its business customer; and [3] a third where the telecommunications carrier provided dedicated circuits to its business customer to provide the telecommunications service, but also leased customer premises equipment to the customer.[38]

As the *Bennet Memo* explains: "[i]n all three cases, the IRS ruled that the service contracts were not leases, and that the presence of a separate equipment lease did not covert the service agreement into a lease. The cases described in the Revenue

37 See, IRS Bulletin Number 2011-41 (October 11, 2011) ("Rev. Rul. 2011-24, page 485. Telecommunications services under section 199. This ruling determines in certain situations whether a taxpayer providing telecommunications services is deriving gross receipts from services, leasing or renting property, or some combination thereof for purposes of the domestic production activities deduction under section 199 of the Code.")

38 *Bennet Memo*, pp. 2-3.

Ruling are not significantly distinguishable from the service contract arrangement in place between MBO and Cross Telephone."[39]

32. The *Bennet Memo* explains that the Audit Report's Finding #1, which treats the MSA as a lease agreement, is inconsistent with GAAP.[40] The rationale for this conclusion is as follows: (i) the separations process utilized by the Audit Report is grounded in Part 36 of the FCC's rules, (ii) Part 36 requires consistency with Part 32 USOA rules (citing section 47 CFR §36.1(f))[41], (iii) Part 32 rules incorporate GAAP (citing sections 47 CFR §§32.1 and 32.12),[42] and (iv) GAAP defines a lease as "an agreement conveying the right to use property, plant, or equipment (land and/or depreciable assets) usually for a stated period of time" (citing U.S. GAAP Accounting Standards ASC 840-10-20).

33. The *Bennet Memo* explains that the Audit Report's Finding #1 is also inconsistent with IASB's International Financial Reporting Standard 16 ("IFRS 16"), which states that a contract is a "lease if it *conveys the right to control the use of an identified asset* for a period of time in exchange for consideration" *and* "control is conveyed where the customer has both the right to direct the identified asset's use and to obtain

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39 *Bennet Memo*, p. 3.

40 *Bennet Memo*, p. 3.

41 47 CFR § 36.1(f) ("The classification to accounts of telecommunications property, revenues, expenses, etc., set forth in this manual is that prescribed by the Federal Communications Commission's Uniform System of Accounts for Telecommunications Companies.")

42 47 CFR § 32.1 ("The revised Uniform System of Accounts (USOA) is a historical financial accounting system which reports the results of operational and financial events in a manner which enables both management and regulators to assess these results within a specified accounting period…Accordingly, the USOA has been designed to reflect stable, recurring financial data based to the extent regulatory considerations permit upon the consistency of the well-established body of accounting theories and principles commonly referred to as generally accepted accounting principles (GAAP).") 47 CFR § 32.12(a) ("The company's financial records shall be kept in accordance with generally accepted accounting principles to the extent permitted by this system of accounts.")

substantially all the economic benefits from that use."[43] The *Bennet Memo* observed that Cross Telephone does not have the right to use an identified asset, nor does the capacity provided by MBO Video to Cross Telephone (via the DS1 transport service) represent an identified asset.[44]

34. I have reviewed the *Bennet Memo*, as well as the multiple sources discussed therein, including Section 7701(e) of the IRC, IRS ruling 2011-24, 2011-41 I.R.B. 485, the relevant sections of the FCC's rules and GAAP Accounting Standards, and IFRS 16. My agreement with the *Bennet Memo* is based on my 33 years of experience as a Certified Public Accountant, and 23 years working in the telecommunications industry, during most of which I was providing expert consulting and witness services.

D. Expense at Issue is Not a "Sale and Lease-Back" Arrangement; Moultrie Decision Is Not Comparable

35. The Audit Report relies heavily on the *Moultrie Case* for its proposed treatment of Cross Telephone's DS1 expenses.[45] As discussed below, the facts and circumstances surrounding *Moultrie* are not comparable to those of Cross Telephone's situation. Therefore, *Moultrie* should not be used as guidance, much less precedent, for resolving Finding #1.

36. The FCC (and its Common Carrier Bureau) examined the following issue in *Moultrie*: "Moultrie's treatment of costs related to the **<u>sale/lease back of assets to and from an</u>**

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43 *Bennet Memo*, p. 3 (emphasis in original).
44 *Bennet Memo*, pp. 3-4.
45 Audit Report, pp. 22-23.

affiliated company…"[46] The FCC explained that "Moultrie [Independent Telephone Company, Inc.] transferred ownership of certain non-loop-related assets to an affiliate and leased them back" and described that transaction as "designed to maximize Moultrie's USF support recovery."[47] The FCC rationale for reclassifying an ILEC's lease expenses as investment in a sale / leaseback situation was stated as follows:

> Under the Commission's Part 36 rules, each of a carrier's basic components of plant, such as Central Office Equipment (COE) or Cable and Wire Facilities (C&WF), is allocated (i.e., separated) between the intrastate and interstate jurisdictions based either on a fixed allocation or results of studies made on the usage of the plant. Once separated, these basic plant costs provide a foundation upon which most other plant, reserve, and expense accounts are allocated between the jurisdictions. If a company were to sell and lease back one of these "foundation blocks" of plant, and were allowed to exclude the sold investment from its cost study, but include the lease payments as an expense, distortions to the separations results would occur. This is because the annual lease payment (which acts as a substitute for the "sold" investment) would be jurisdictionally allocated based on some or all of the remaining basic components of plant, whose usage would not be representative of the plant leased. This would, in turn, alter the separations results between jurisdictions in a manner not anticipated by the Part 36 rules … .[48] (emphasis added)

37. As noted in the emphasized section of the *Moultrie Order* cited above, the FCC was concerned with ILECs who (1) owned basic plant facilities such as Central Office Equipment and Cable and Wire Facilities, (2) sold those facilities, and (3) then leased back those same facilities. As described below, Cross Telephone has never owned

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46 *In the Matter of 2001 Annual Access Tariff Filings,* Order Designating Issues for Investigation, CC Docket No. 01-206, DA 01-2033, rel. August 29, 2001, ¶ 1 ("Order Designating Issues for Investigation") (emphasis added).

47 Order Designating Issues for Investigation, ¶ 3. See also, *In the Matter of 2001 Annual Access Tariff Filings,* Memorandum Opinion and Order, CC Docket No. 01-206, FCC 01-352, rel. December 3, 2001, ¶ 4 ("December 2001 Order").

48 Moultrie Order, ¶ 12.

the transport facilities at issue in the Audit Report. Consequently, there is no distortion of the separations results as described by the FCC in the Moultrie scenario.

38. Ultimately, "NECA asked Moultrie to file amended costs studies reflecting the sale/lease-back arrangements in accordance with section 36.2(c)(2)[,]" "Moultrie refused to do so[,]" the Universal Service Administrative Company…determined that it could no longer rely on the cost data submitted by Moultrie[,]" and the "Competitive Pricing Division suspended and set this rate for investigation…"[49] The FCC explained that the issue to decide in the case of *Moultrie* was "the increase in Moultrie's traffic sensitive rates, particularly of its local switching per minute rate."[50]

39. None of the facts or circumstances described immediately above regarding Moultrie apply to Cross Telephone. First and foremost, Cross Telephone has never owned facilities that would be sufficient to provide DS1 transport service for the route in question (Warner to Tulsa). Cross Telephone currently purchases DS1 transport services from an affiliated company, MBO Video. Before that, Cross Telephone purchased the same type of DS1 service from SWBT. Cross Telephone *never* owned (or operated) these DS1 facilities – not when they were owned and provided by SWBT, and not now that they are owned and provided by MBO Video.

40. MBO Video provides "… integrated and customized solutions to consumers and network providers of voice, data, long distance, video, Internet, cable and wireless services."[51] MBO Video's network, "… has currently over fifty Points of Presence

[49] Order Designating Issues for Investigation, ¶ 6. *See also,* December 2001 Order, ¶ 5.
[50] Order Designating Issues for Investigation, ¶ 7.
[51] MBO Networks website accessed on December 13, 2018 at http://mbonetworks.com/who-we-serve/.

(POP) sites throughout Oklahoma and Arkansas connecting our customers to strategic partner networks at multiple locations throughout our hub cities of Tulsa, Fort Smith, Bentonville, Oklahoma City and Kansas City via our 1,900 miles of resilient high speed fiber optic network."[52] Approximately 75% of MBO Video's sales are to non-affiliates.[53] The MBO Video network constructed its routes independent of Cross Telephone's network and the majority of its footprint is outside of Cross Telephone's service territory.[54]

41. Cross Telephone purchased transport services from SWBT at least since the 1970s.[55] In comparison, Part 36 of the FCC's rules was implemented on May 1, 1987.[56] The High Cost Loop Support algorithm used in the cost studies filed with NECA was implemented in 1997.[57] The NECA Cost Issues Manual, Section 2.19 relied upon by Moss-Adams to support Audit Finding #1 was first published in March 2002. MBO's transport facility extends beyond the Cross Telephone's service area, and Cross is only one of the many customers over which MBO provides service using this facility. Consequently, Cross Telephone's decision to purchase, rather than own, transport services before the implementation of the FCC's High Cost Loop Support mechanism

52 MBO Networks website accessed on December 13, 2018 at http://mbonetworks.com/about-us/unique-footprint/.

53 Telephonic interview with Cross Telephone and MBO Video personnel, December 4, 2018.

54 *Id*.

55 Per December 21, 2018 e-mail from Jake Baldwin, counsel for Cross Telephone.

56 *In the Matter of MTS and WATS Market Structure; Amendments of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board*, Docket No. 78-72; CC Docket No. 80-286; CC Docket No. 86-297, rel. May 1, 1987, 2 2 FCC Rcd 2639 *; 1987 FCC LEXIS 3970 **; 62 Rad. Reg. 2d (P & F) 1336.

57 Appendix B to the *National Exchange Carrier Association, Inc. Overview and Analysis of 2015 USF Data Submission*.

demonstrates that it was made based on operational need and was not a form of regulatory arbitrage.

42. Unlike Moultrie, Cross Telephone *never* sold and leased back the DS1 transport facilities in question to/from an affiliate (or any non-affiliated company). The Audit Report admits this very point: "[w]e recognize the transaction in Finding #1 is not necessarily a sale and lease-back of interexchange plant."[58] The undisputed fact that there is no sale-and-lease-back of assets in the case of Cross Telephone is a critical point. The Order Designating Issues for Investigation in the *Moultrie Case* describes the purpose of section 36.2(c)(2) of the Commission's rules as follows:

> NECA…questioned whether Moultrie should have applied section 36.2(c)(2) of the Commission's rules, which applies to property rental that is substantial in amount. Section 36.2(c)(2) applies to affiliate sale/lease-back arrangements for cost separation purposes, and requires the seller/transferor to include the property and related expenses and exclude rent expenses form its own account.[59]

As stated above, section 47 C.F.R. § 36.2(c)(2) of the FCC's rules: (1) applies to property rental (substantial in amount), (2) applies to affiliate sale/lease-back arrangements, and (3) requires the seller/transferor to impute property and related expenses. In the case of Cross Telephone: (1) there is **no** property rental, (2) there is **no** sale/lease-back arrangement, and (3) there is **no** seller/transferor. In other words, the express purposes for applying section 47 C.F.R. § 36.2(c)(2) do not exist in the case of Cross Telephone. Therefore, it is inappropriate to apply section 36.2(c)(2) as the Audit Report recommends.

58 Audit Report, p. 23.

59 Order Designating Issues for Investigation, ¶ 4.

43. There are other important reasons why the *Moultrie Case* is not comparable to Cross Telephone. For example, as indicated above, the Moultrie sale/lease-back transaction was "designed to maximize Moultrie's USF support recovery." In other words, the transaction was intended to "game the system." There has been no such gaming involved in the case of Cross Telephone because it never owned (or controlled) the DS1 transport facilities in question, and never undertook any type of transaction to maximize USF support recovery. Indeed, as discussed above, Cross Telephone's decision to switch from SWBT to MBO Video as the DS1 transport service provider created overall cost savings for both Cross Telephone and contributors to the FCC's High Cost Programs.

44. In addition, NECA took issue with Moultrie's treatment of the sale/lease-back arrangements, requesting that Moultrie file amended cost studies – Moultrie refused. In contrast, NECA has not objected to Cross Telephone Telephone's treatment of its DS1 purchases and has not requested that Cross Telephone file amended cost studies. Furthermore, unlike Moultrie, the Competitive Pricing Division has not suspended/investigated Cross Telephone's rates due to its treatment of DS1 transport expenses. Therefore, as an issue of fundamental fairness, equity, and proper public policy, Cross Telephone should not be compared to, nor treated the same, as Moultrie.

45. Despite admitting that there is no sale and lease-back involved in the case of Cross Telephone, the Audit Report nevertheless recommends pretending like one does exist:

> We recognize the transaction in Finding #1 is not necessarily a sale and lease-back of interexchange plant. However, we believe the same principles discussed in the *Moultrie Order* apply to the Beneficiary. The

> Beneficiary incurred substantial interexchange expenses, and without associated or representative interexchange plant included in its cost studies, the interexchange expenses were improperly assigned to jurisdictions and Part 69 access elements based on the Beneficiary's existing plant categories, which is largely loop or subscriber plant in nature. We believe this results in grossly overstated loop costs recovered from HCLS and ICLS and grossly understates interexchange costs recovered from LSS and CAF.[60]

If Cross Telephone had invested the capital necessary to own the transport facilities or executed a lease of some fixed term and number of circuits, its ratepayers would have had to bear the risk of fluctuating demand not allowing the company to recover its investment. As discussed above, Exhibit 4 shows that Cross Telephone's monthly counts of circuits varied from 77 to 180 for the 67 month period November 2010 through May 2016.[61] The highest circuit count of 180 occurred in June 2013. Cross Telephone would have had to invest in sufficient capacity to handle peak traffic loads reflected by the need for the 180 circuits it was required to purchase from MBO Video to handle its call demand. After June 2013, the number of circuits purchased from MBO Video declined steadily in the next 36 months through May 2016 to a low point of 77. Consequently, Cross Telephone ratepayers would have borne the cost of the excess capacity. By purchasing services instead of leasing facilities, the risk of under recovery shifted to MBO Video. Consequently, Cross Telephone bore virtually no risk.

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60 Audit Report, p. 23.

61 As explained above, these counts (used in my "churn" analysis) do not include data on non-customer specific "toll circuits" contained in the data source, which ranged from 10 to 14 depending on the months.

E. The Undefined Threshold for "Substantial"

46. Neither sub-section 47 C.F.R § 36.2(c), nor other parts of the FCC's rules define how an amount is deemed to be substantial in the context of a USF cost study. Is it determined by comparing the book cost of the asset(s) rented to the total book cost of plant in service? Should the net book value (cost net of accumulated depreciation) be used instead of book cost for this comparison? Is the amount of rental expense a better metric? If so, what is the rental expense compared to in order to determine whether it is substantial? What should be the numerical threshold for "substantial" versus "non-substantial" – 5%, 50%, 75% or something else? NECA Cost Issues Manual, Section 2.19, "Separations Treatment of Operating Lease Expenses and Capital Leases," that Moss-Adams relied upon for its determination of whether expenses governed by 47 C.F.R § 36.2(c) are "substantial" does not really provide much guidance on this issue:

> The term "substantial" cannot be simply defined and quantified. Rather, "substantial" is dependent on the size and nature of the item and the particular circumstances in which it arises. When a lease of property is substantial in nature, the corresponding jurisdictional allocation of the lease payment and associated separations results of the study area would tend to be skewed or distorted if assets were not included in the appropriate separations category and apportioned based on the prescribed investment allocation methodologies. …[62]

47. In its defense of Audit Report Finding #1, Moss-Adams asserted that 47 C.F.R. § 36.2(c)(2) must be applied in this case, "because of the mechanics of the Part 36 jurisdictional cost allocation process and the resulting impacts to the Part 36 cost study and HCP support results when large interexchange expenses are included in lieu

[62] Audit Report, pp. 23-24.

of the related interexchange plant facilities."[63] While Moss-Adams concurred that Finding #1 was not necessarily a sale and lease-back of interexchange plant (as was the issue in the Moultrie case), it concluded the same principles of the Moultrie case applied in this case because it opined that "Cross Telephone incurred substantial interexchange expenses."[64]

48. To support its position that the amount of Cross Telephone's interexchange expenses met the "substantial" criterion articulated in 47 C.F.R. § 36.2(c), Moss-Adams referenced the above-cited guidance of NECA in its Cost Issue 2.19. But NECA only cautioned that *if* an amount is considered substantial, the separations results from using that amount are skewed or distorted – which does not help determine whether the amount is substantial.[65] Moss-Adams concluded that the substantial test in 47 C.F.R. § 36.2(c) was met based on two observations: (1) transport expense at issue ranged from 13% - 23% of total operating expenses included in the cost study filings during the periods under audit and (2) the monetary impact of reclassifying transport expense at issue according to Moss-Adams' recommendation is large in absolute terms, which it alleges "significantly skewed" the cost study results.[66]

49. The flaws in Moss-Adams' interpretation of "substantial" are threefold. First, Moss-Adams provides no support to its numerical determination that "13-23% of operating

63 Audit Report, p. 22.
64 Id., p. 23.
65 Id., p. 24.
66 Id., p. 24.

expense"[67] is "substantial." As noted above, the FCC rules do not spell out a particular numerical threshold for rule 47 C.F.R. §36.2(c). However, the FCC defines the term "substantial" at a significantly higher threshold in another context -- its rules on capital leases. In 47 C.F.R. § 32.2681, the FCC lists four criteria that a lease should be evaluated against to determine if it qualifies as a capital lease (i.e. where the asset is considered owned by the lessee). One of the criteria, 47 C.F.R. § 32.2681(a)(4), states that a lease qualifies as a capital lease if, "The lease term is substantially (75% or more) equal to the estimated useful life of the leased property. …" Cross Telephone's transport expense falls below the 75% threshold of "substantial" articulated in the FCC rule on capital leases. Second, the NECA Cost Issue notes that the determination "substantial" is dependent not only on the size, but also "nature of the item and the particular circumstances in which it arises." As noted above, Cross Telephone has never self-provided transport service on the route at issue. Instead, it obtained it from another provider – first, SWBT and then, its affiliate (a move that resulted in lower overall cost for the USF program). These circumstances are very different from the Moultrie arrangement, which a 1999 NECA Ex Parte Letter characterized as selling "substantially all of its non-loop investment,"[68] including "motor vehicles, other work equipment, land and buildings, furniture, office equipment, general purpose computers, circuit equipment, and buried cable (non-loop related), and then leas[ing] back all of this property from the

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[67] The affiliate transport service expense measured as percent in the total operating expense was as follows: 2010: 12.2%; 2011: 15.8%; 2012: 13.6%; 2013: 22.1% and 2014: 17.4%. These percentage measures are calculated from Trial Balance data provided by Cross Telephone as expense in subaccount 6332.2110.30 divided by the sum of expenses in all 6XXX accounts. Available on request.

[68] Letter from Gina Harrison, Senior Counsel and Director, NECA Washington Office, to Magalie Roman Salas, Secretary, Federal Communications Commission, March 10, 1999 (*1999 NECA Ex Parte Letter*), p. 2.

affiliate."[69] In other words, the *1999 NECA Ex Parte Letter* explained that "virtually all" of Moultrie's non-loop plant was sold and leased back to an affiliate, in which case the cost allocation factors "are significantly altered."[70] So reducing non-loop investment to zero would be substantial. In contrast to Moultrie, Cross Telephone is only purchasing a narrow list of the affiliate's services. Third, any change in cost study inputs will affect the output of the study. A change alone does not make the amount substantial and the results "skewed." As I explain below, Cross Telephone's cost study parameters are in line with similarly situated companies.

50. A better metric for determining whether Cross Telephone's cost study results are skewed by its decision to purchase transport services rather than to own the transport facilities is to compare the factors calculated in the cost studies filed by Cross Telephone with those of rural ILECs of similar size in terms of total loops. In the High Cost Loop Study algorithm, there are four ratios or cost allocation factors that are used to allocate Cable & Wire and Central Office Equipment cost categories within 47 C.F.R. § 36.

- "A" Factor Cable & Wire Facilities. C&WF Category 1 divided by Total C&WF.
- "B" Factor Central Office Equipment. COE Category 4.13 divided by Total COE.
- "C" Factor Cable & Wire Facilities (Gross Allocator) C&WF Category 1 divided by Total Plant in Service.

[69] *1999 NECA Ex Parte Letter*, p. 1.
[70] *1999 NECA Ex Parte Letter*, p. 1.

- D" Factor Central Office Equipment (Gross Allocator) COE Category 4.13 divided by Total Plant In Service.[71]

51. The FCC publishes annual NECA high cost loop cost study data on its web site,[72] and starting with the 2013 filing, these data include the calculated A, B, C and F cost allocation factors (Algorithm Lines 3 through 6). I compared Cross Telephone's cost study factors for the 2013 – 2015 filing years with the average cost study factors of "similarly sized" study area companies – companies with which Cross Telephone is grouped for purposes of calculating the Corporate Operations Expense Limit (with between 6,000 and 17,887 total loops) in the same years. Cross Telephone's loop count was 7,069 in its 2013 filing and 6,342 in its 2015 filing.[73] The table below shows that Cross Telephone's factors were virtually in lock-step with those of its peers.[74]

[71] See, for example, *National Exchange Carrier Association, Inc. Overview and Analysis of 2015 USF Data Submission*, Appendix B, *Universal Service Fund Loop Cost and Expense Adjustment Algorithms, Cost Company Loop Cost Algorithm for 1997 and Subsequent Years*, p. 1.

[72] Available at https://www.fcc.gov/general/universal-service-fund-data-neca-study-results.

[73] See NECA USF cost study filings at https://www.fcc.gov/general/universal-service-fund-data-neca-study-results.

[74] See Exhibit 7 to this declaration.

Filing Year	For Year	Cost Company Loop Cost Algorithm Line	AL3	AL4	AL5	AL6
		Entity	"A" Factor Cable & Wire Facilities. C&WF Category 1 divided by Total C&WF	"B" Factor Central Office Equipment. COE Category 4.13 divided by Total COE	"C" Factor Cable & Wire Facilities (Gross Allocator) C&WF Category 1 divided by Total Plant in Service	Central Office Equipment (Gross Allocator) COE Category 4.13 divided by Total Plant In Service
2013	2012	Average for SACs with 6,000-17,887 Loops	0.90	0.42	0.54	0.12
		Cross Telephone	**0.91**	**0.41**	**0.54**	**0.11**
2014	2013	Average for SACs with 6,000-17,887 Loops	0.90	0.43	0.55	0.12
		Cross Telephone	**0.91**	**0.40**	**0.54**	**0.10**
2015	2014	Average for SACs with 6,000-17,887 Loops	0.91	0.47	0.56	0.12
		Cross Telephone	**0.91**	**0.40**	**0.55**	**0.10**

If Cross Telephone's business decision to purchase its transport service rather than self-provision it with its own facilities distorted its cost study results, I would expect to see a significant variance in its cost study factors compared to its peers. The above table demonstrates that this was not the case – that Cross Telephone's cost factors are in line with other company cost allocation factors despite its decision to purchase some of its transport services rather than own those facilities. Consequently, this analysis further supports my opinion that the circumstances of this case do not warrant treatment of Cross Telephone's transport expense as "substantial" (even if ignoring my other point that this transport expense is "not rent).

I hereby declare under penalty of perjury that the foregoing declaration is true and correct to the best of my knowledge and belief.

Dated this 4th day of January, 2019.

Warren R. Fischer

Warren R. Fischer, C.P.A.

DECLARATION OF

WARREN R. FISCHER, C.P.A.

In Support of Cross Telephone Company, L.L.C's Request for Review of Decision of The Universal Service Administrative Company

USAC Audit ID: HC2016BE031

SAC No. 431985

January 4, 2019

EXHIBIT 1: Curriculum Vitae

Warren R. Fischer, C.P.A., C.G.M.A

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Biography

Mr. Fischer is a QSI partner and currently serves as Chief Financial Officer. Mr. Fischer has over 20 years of experience in the telecommunications industry and joined QSI after five years of service within AT&T's Local Service & Access Management and Wireless Services divisions. During his career, Mr. Fischer has focused his attention on external financial statement and internal management reporting analyses, forecasting, historical and forward-looking economic cost methodologies, operational cost analyses, merger reviews, multi-state tax sourcing of income through cost of performance determination, financial and management audits, Telecommunications Act policy and compliance issues, universal service fund administration and policy issues, billing disputes, forensic accounting analyses, and damages assessment.

Mr. Fischer is an experienced and effective expert witness who has provided expert testimony and reports in over 60 proceedings before 35 state utility commissions, state and federal courts, and other administrative agencies. The most recent four years of cases that Mr. Fischer testified in is listed here. Mr. Fischer is an active Certified Public Accountant who is licensed in the States of Colorado and California. Mr. Fischer is also certified as a Chartered Global Management Accountant. Mr. Fischer's professional experience as a C.P.A. includes two years in public practice with Deloitte LLP and over 20 years of managing financial analysis, reporting and forecasting processes for various multi-national corporations.

Educational Background

Bachelor of Science, Business Administration (emphasis in Accounting)
University of Colorado at Boulder, Boulder, Colorado 1984

Certifications / Memberships

Certified Public Account in the States of Colorado and California
Chartered Global Management Accountant
Member of the AICPA
Member of the Forensic and Valuation Services Section of the AICPA

QSI consulting, inc.

Professional Experience

QSI Consulting, Inc.
2000 - Current
Chief Financial Officer

AT&T Corp.
1997 - 2000
Financial Manager
1996 - 1997
Supervisor
Network Services Division

AT&T Wireless Services
1995 - 1996
Marketing Analyst / Planner
Cellular Division

E. & J. Gallo Winery
1994 - 1995
Senior Financial Analyst
1991 - 1994
Operations Accountant

Century 21 Real Estate Corporation
1987 - 1991
Financial Analyst

Deloitte LLP
1985 - 1987
Audit-in-Charge

Expert Testimony – Profile

The information below is Mr. Fischer's best effort to identify all proceedings wherein he has either provided pre-filed written testimony, an expert report or provided live testimony in the last four years.

In the Matter of an Arbitration Under the Arbitration Rules of the ADR Institute of Canada Inc.
Between Zayo Canada Inc. and Zayo Group LLC, Claimants, and Bell Canada and Manitoba Telecom Services Inc., Respondents
On behalf of Claimants
Expert Report July 28, 2017

In the United States District Court of the Western District of Arkansas
Civil Action No. 5:14-cv-5275-TLB
*In Re Global Tel*Link Corporation ICS Litigation*
On behalf of Plaintiffs
Expert Report June 26, 2017
Deposition December 20, 2017

In the United States Bankruptcy Court, District of Nevada
Bankruptcy Case Number: 15-11680-ABL
Adversary Proceeding Number: 16-01003-ABL
Qwest Communications Company, LLC, Plaintiff v. MegaMedia, LLC; Warren Jason; Ted Shpack; David Goodale; David Glickman; Cliff Kaylin; Off The Hook Productions; Syncronet, Inc.; Stock Management Group, LP; Joy Enterprises, Inc; (JEI); Glickman Capital, Inc.; Does 1-10; and Roe Corporations 11 -20, Inclusive, Defendants
On behalf of Defendants
Expert Report January 20, 2017
Rebuttal Expert Report February 17, 2017
Deposition April 6, 2017

In the Circuit Court, Fifth Judicial Circuit, State of South Dakota, County of Brown
Case Number: 06CIV15-000134
James Valley Cooperative Telephone Company, et. al. Plaintiffs vs. South Dakota Network, LLC, et. al., Defendants
On behalf of Plaintiff

Expert Report	January 11, 2017
Deposition	March 3, 2017

In the United States District Court for the Southern District of New York
Civil Action No. 15-CV-870-(VM) (DF)
Peerless Network, Inc., et. al., Plaintiffs / Counter-claim Defendants, vs. AT&T Corp., Defendant
On behalf of Plaintiffs

Expert Report	August 26, 2016
Rebuttal Expert Report	November 23, 2016
Deposition	January 31, 2017

In the United States District Court for the District of South Dakota, Northern Division
Case Number: 1:14-CV-01018-RAL
Northern Valley Communications, L.L.C., a South Dakota Limited Liability Company; Plaintiff, vs. AT&T Corp., a New York Corporation; Defendant
On behalf of Plaintiff

Expert Report	August 3, 2015
Supplemental Expert Report	January 8, 2016
Rebuttal Expert Report	March 4, 2016
First Supplemental Rebuttal Expert Report	May 11, 2016
Deposition	May 26, 2016
Affidavit	June 15, 2017

In the United States District Court for The Middle District of Florida, Jacksonville Division
Civil Action No. 3:13-CV-29-J-32JRK
James D. Hinson Electrical Contracting Co., Inc.; Blythe Development Company; and Calloway Grading, Inc.; Individually and On Behalf Of All Others Similarly Situated; and National Utility Contractors Association, Plaintiffs v. AT&T Services, Inc. and BellSouth Telecommunications, LLC
On behalf of Plaintiffs

Declaration (summary of data within AT&T's CAMS database)	February 13, 2015
Declaration (analysis of claims within AT&T's CAMS database)	July 10, 2015

In the United States District Court for the Northern District of Iowa
Case Number: 5:13-cv-4117
Great Lakes Communication Corporation, an Iowa corporation, Plaintiff, v. AT&T Corp., a New York corporation, Defendant
On behalf of Plaintiff

Expert Report	August 18, 2014
Rebuttal Expert Report	November 5, 2014
Deposition	November 17, 2014

In the United States District Court for the District of Minnesota
Case No. 10-cv-00490-MJD-SER
Qwest Communications Company, LLC, Plaintiff, v. Free Conferencing Corp.; Audiocom, LLC; Global Conference Partners; Basement Ventures, LLC; Vast Communications, LLC; Ripple Communications, Inc., Defendants
On behalf of Defendants

Expert Report	June 26, 2014
Deposition	September 12, 2014
Supplemental Expert Report	October 19, 2015
Deposition	February 5, 2016
Trial	August 2, 2016

In the United States District Court for the Southern District of Iowa
Case Number: 4:07-cv-00078-JEG-RAW
Qwest Communications, Corporation, Plaintiff, v. Superior Telephone Cooperative, et al., Defendants
On behalf of Defendants

Expert Report	August 30, 2013
Damages Phase On behalf of Free Conferencing Corp.	
Expert Report	September 21, 2015

In the District Court of the Fourth Judicial District of the State of Idaho, County of Ada
Case No. CV OC 1103406
Cable One, Inc. v. Idaho State Tax Commission
On behalf of Defendant

Expert Report	September 23, 2011
Trial	February 25-27, 2013

Before the New Mexico Public Regulation Commission
Case No. 15-00058-UT
In the Matter of the Petition of Sacred Wind Communications, Inc. for Support from the New Mexico Rural Universal Service Fund
On behalf of The New Mexico Attorney General's Office

Direct	June 12, 2015
Rebuttal	June 30, 2015

Before the Maine Public Utilities Commission
Docket No. 2013-00340
NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC d/b/a FAIRPOINT COMMUNICATIONS-NNE, Request for Increase in Rates and for Maine Universal Service Fund Support for Provider of Last Resort Service
Advisor to the Maine Public Utilities Commission

Examiner's Bench Analysis	May 13, 2014

Selected Reports, Presentations and Publications

"The Efficiency and Effectiveness of the Kansas Universal Service Fund"
Management audit report prepared on behalf of the Kansas Legislature addressing: (1) the adequacy of state statutes and administrative rules governing the operation of the Kansas Universal Service Fund ("KUSF"), (2) a detailed analysis of how monies distributed from the KUSF have been used by the telecommunications carriers for capital investment and operating expenses over a 17-year period, and (3) a detailed assessment of the economic benefit the KUSF has provided to the State of Kansas.
October 2014

"Assessment of the Vermont Universal Service Fund"
Management audit report on the administration of the Vermont Universal Service Fund prepared on behalf of the Vermont Department of Public Service.
May 2013

"Telecommunications Cooperatives: Cost of Capital Issues"
Whitepaper prepared on behalf of the Utah Office of Consumer Services to identify cost of capital and patronage capital issues that are unique to cooperative rural local exchange carriers and the impact of these issues on state universal service fund support requests made by these carriers.
April 2013

"Weighted Average Cost of Capital Issues and Recommendations"
Whitepaper prepared on behalf of the Utah Office of Consumer Services to examine Utah telecom cost of capital issues and to prepare a confidential white paper on the recommended cost of capital and capital structure for the rural incumbent local exchange carriers operating in Utah.
April 2013

"Status of Competition in CenturyLink QC's Certificated Areas in New Mexico"
Expert report prepared on behalf of the New Mexico Attorney General's Office evaluating the status of competition within CenturyLink QC's certificated area in New Mexico. The report was filed along with expert testimony in Case No. 11-00340-UT.
August 2012

"Chicago Clean Energy Coke/Coal Gasification to SNG Project - Analysis of Return on Equity per Section 9-220(h-3)(1)(B) of Public Act 97-96"
Whitepaper prepared on behalf of the Illinois Power Agency to recommend an appropriate return on equity for the Chicago clean energy coke/coal gasification to synthetic natural gas project proposed by Chicago Clean Energy, a subsidiary of Leucadia National Corporation.
October 2011

"In-Band Auction Cap: Promoting Sustainable Competition in the Canadian Mobile Wireless Industry Through An Equitable Auction Design."
Expert Report filed in Canada Gazette Notice No. SMSE-018-10 Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum, in support of the Comments of Videotron G.P., a wholly-owned subsidiary of Quebecor Media Inc. and Shaw Communications (filed April 6, 2011).
On behalf of Videotron G.P. and Shaw Communications
April 2011.

"Management Audit of the Connecticut Light & Power Company"
Audit Report prepared by Blue Ridge Consulting Services, Inc. (with QSI serving as independent contractors) on behalf of the Connecticut Department of Public Utility Control to (1) investigate and assess the utility's business processes, procedures, and policies relating to management operations and system of internal controls in place, and (2) an identification of areas of the utility that might require further investigation.
May 2009

QSI Final Report to the District of Columbia Public Service Commission. "Confidential Analysis and Recommendations Related to Case No. 1040."
In the Matter of the Investigation of Verizon Washington DC, Inc.'s Universal Emergency 911 Service Rates in the District of Columbia
March 2009

Report and Conclusions and Recommendations on the Financial Audit of the Columbia Gas of Ohio, Inc. in Regard to Case No. 08-0074-GA-AIR.
Audit Report prepared by Blue Ridge Consulting Services, Inc. (with QSI serving as independent contractors) in relation to Public Utilities Commission of Ohio Case No. 08-0074-GA-AIR In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service.
August 2008

Report and Conclusions and Recommendations on the Financial Audit of the East Ohio Gas Company d/b/a Dominion East Ohio in Regard to Case No. 07-0829-GA-AIR.
Audit Report prepared by Blue Ridge Consulting Services, Inc. (with QSI serving as independent contractors) in relation to Public Utilities Commission of Ohio Case No. 07-0829-GA-AIR In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service
April 2008

Report of Conclusions and Recommendations on the Financial Audit of Duke Energy Ohio, Inc. in Regard to Case No. 07-0589-GA-AIR.
Audit Report prepared by Blue Ridge Consulting Services, Inc. (with QSI serving as independent contractors) in relation to Public Utilities Commission of Ohio Case No. 07-589-GA-AIR In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates.
November 2007

QSI Technical Report No. 052507A "The State of Wireless Technologies in Canada: A Comparison of Wireless Technologies in Canada and the United States of America."
Expert Report filed in Canada Gazette Notice No. DGTP-002-07 Consultation on a Framework to Auction Spectrum in the 2GHz Rage including Advanced Wireless Services, in support of Bell Canada's Reply Comments (filed June 27, 2007).
On behalf of Bell Canada Enterprises.
May 2007.

"Blue Ridge Consulting Services, Inc. Examination of NW Natural's Rate Base and Affiliated Interests Issues In Support of Oregon Public Utilities Commission Docket UM 1148"
Audit Report prepared by Blue Ridge Consulting Services, Inc. (with QSI serving as independent contractors) to assess the utility's rate base treatment and affiliated interest transactions to ensure they comply with orders, rules, and regulations of the Commission, with the utility's policies, and with Generally Accepted Accounting Principles.
December 2005.

QSI Final Report to the Hawaii Public Utilities Commission "Analysis and Recommendations Related to Docket No. 04-0140 *Merger Application Of Paradise Mergersub, Inc. (n/k/a Hawaiian telecom Mergersub, Inc.), Verizon Hawaii, Inc. and Related Companies*"
February 7, 2005

QSI Technical Report No. 012605A "IP-Enabled Voice Services: Impact of Applying Switched Access Charges to IP-PSTN Voice Services"
Ex Parte filing in FCC dockets WC Dockets No. 04-36 ***(****In the Matter of IP-Enabled Services****)****, 03-266* ***(****In the Matter of Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b); IP Enabled Services)*
Washington DC, January 27, 2005

QSI Report to the Wyoming Legislature "The Wyoming Universal Service Fund. *An Evaluation of the Basis and Qualifications for Funding*" December 3, 2004

QSI Management Audit Reports to the Wyoming Public Service Commission on the Wyoming Universal Service Fund:

1. For the period October 28, 1999 through December 31, 2001 (issued May 15, 2002)
2. For the period January 1, 2002 through December 31, 2004 (issued January 31, 2006)

DECLARATION OF

WARREN R. FISCHER, C.P.A.

In Support of Cross Telephone Company, L.L.C's Request for Review of Decision of The Universal Service Administrative Company

USAC Audit ID: HC2016BE031

SAC No. 431985

January 4, 2019

CONFIDENTIAL AND PROPRIETARY

Confidential Treatment Requested Pursuant to 47 C.F.R. 54.711(b)

EXHIBIT 2: NBVDS Investment, L.L.C. FCC Form 602 Ownership Disclosure

FCC Form 602
Main Form

FCC Ownership Disclosure Information for the Wireless Telecommunications Services

Approved by OMB
3060 – 0799
See instructions for
Public burden estimate
Submitted
02/09/2018 at 10:18 AM
File Number:
0008093135

Filing Type

1) ☒ Current Filing ☐ Proposed Filing

Filer Information

2) First Name (if individual):	MI:	Last Name:	Suffix:
3) Filer Name (if entity): NBVDS Investment, L.L.C.		4) FCC Registration Number (FRN): 0017194986	

5) Contact Information

Name and Address:	
c/o Cimarron Telephone Company, L.L.C. PO BOX 160 101 Cimarron Street Mannford, OK 74044 Attn: Jake Baldwin	Telephone Number: 918-865-3311 Fax Number: E-mail Address: regulatory@mbo.net

Related FCC Regulated Businesses of Filer

6a) Name of all FCC-Regulated Businesses owned by Filer (use additional sheets, if necessary):	6b) Principal Business:	6c) FCC Registration Number (FRN):	6d) Percent of Interest Held:
Cim-Tel Cable, L.L.C.	CATV	0003723053	100.00
Cimarron Telephone Company, L.L.C.	Local Exchange Carrier	0001701275	100.00
Cross Cable Television, L.L.C.	CATV	0003723129	100.00
Cross Telephone Company, L.L.C.	Telecommunications	0001700616	100.00
Cross Wireless, L.L.C.	Telecommunications	0007258973	100.00
Cross-Valliant Celluar Partnership	Cellular	0001699693	50.00
MBO Video, L.L.C.	Wholesale Telecom Services	0020053435	100.00
MBO Wireless, L.L.C.	Wireless Carrier	0001697291	100.00
Opticel Long Distance, L.L.C.	Service Provider	0003741188	50.00
Opticel, L.L.C.	Service Provider	0015267610	40.00

CONFIDENTIAL AND PROPRIETARY
Confidential Treatment Requested Pursuant to 47 C.F.R 54.711(b)

Declaration of Warren R. Fischer
USAC Audit ID: HC2016BE031
January 4, 2019
Exhibit 2

6a) Name of all FCC-Regulated Businesses owned by Filer (use additional sheets, if necessary):	6b) Principal Business:	6c) FCC Registration Number (FRN):	6d) Percent of Interest Held:
The Pottawatomie Telephone Co., L.L.C.	Local Exchange Carrier	0003733839	100.00

Signature
7) Typed or Printed Name of Party Authorized to Sign

First Name: Jake	MI:	Last Name: Baldwin	Suffix:
Title: Legal Counsel			
Signature: Jake Baldwin			Date: 02/09/2018

WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1) AND/ OR FORFEITURE (U.S. Code, Title 47, Section 503).

FCC 602
Schedule A

FCC Ownership Disclosure Information for the Wireless Telecommunications Services

Approved by OMB
3060 – 0799
See instructions for
Public burden estimate

Schedule for Disclosable Interest Holders

Disclosable Interest Holder Information (complete as many as required to describe all disclosable interest holders)

1) Disclosable Interest Holder's First Name (if individual):	MI:	Last Name:	Suffix:
Nancy		Overland	

2) Disclosable Interest Holder's Name (if entity):	3) FCC Registration Number(FRN):
	0017194986

4) Disclosable Interest Holder's Address:
623 Pool Place
Shawnee, OK 74801

5) Type of Interest in Filer ( ) (refer to Instructions for a list of codes):	6) Disclosable Interest Holder is a (n): ( ) (refer to instructions for list of codes):	7) Percent of Interest Held in Filer:
Direct Ownership Interest in Filer	Individual	27.71

8) Disclosable Interest Holder's Type of Ownership ( ) (refer to instructions for a list of codes):	9) Disclosable Interest Holder's Country of Citizenship or Jurisdiction of Formation:
Membership Shares	United States

Related FCC Regulated Businesses of Disclosable Interest Holders (repeat for each interest holder identified)

10a) Name and address of all FCC-Regulated Businesses owned by the Disclosable Interest Holder listed in Item 1 or 2 (use additional sheets, if neccessary)	10b) Principle Business	10c) FCC Registration Number (FRN)	10d) Percent of Interest Held
Cim-Tel Cable, L.L.C.	CATV	0003723053	27.71
Cimarron Telephone Company, L.L.C.	Local Exchange Carrier	0001701275	27.71
Cross Cable Television, L.L.C.	CATV	0003723129	27.71

CONFIDENTIAL AND PROPRIETARY
Confidential Treatment Requested Pursuant to 47 C.F.R 54.711(b)

Declaration of Warren R. Fischer
USAC Audit ID: HC2016BE031
January 4, 2019
Exhibit 2

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Cross Telephone Company, L.L.C.	Telecommunications	0001700616	27.71
Cross Wireless, L.L.C.	Telecommunications	0007258973	27.71
Cross-Valliant Celluar Partnership	Cellular	0001699693	13.86
MBO Video, L.L.C.	Wholesale Telecom Services	0020053435	27.71
MBO Wireless, L.L.C.	Wireless Carrier	0001697291	27.71
Opticel Long Distance, L.L.C.	Service Provider	0003741188	13.86
Opticel, L.L.C.	Service Provider	0015267610	11.08
The Pottawatomie Telephone Co., L.L.C.	Local Exchange Carrier	0003733839	27.71

FCC Ownership Disclosure Information for the Wireless Telecommunications Services

Approved by OMB
3060 – 0799
See instructions for
Public burden estimate

Schedule for Disclosable Interest Holders

Disclosable Interest Holder Information (complete as many as required to describe all disclosable interest holders)

1) Disclosable Interest Holder's First Name (if individual):	MI:	Last Name:	Suffix:
Susan		Baldwin	

2) Disclosable Interest Holder's Name (if entity):	3) FCC Registration Number(FRN):
	0015532559

4) Disclosable Interest Holder's Address:
P.O.. Box 160
Mannford, OK 74044

5) Type of Interest in Filer ( ) (refer to Instructions for a list of codes):	6) Disclosable Interest Holder is a (n): ( ) (refer to instructions for list of codes):	7) Percent of Interest Held in Filer:
Direct Ownership Interest in Filer	Individual	27.71

8) Disclosable Interest Holder's Type of Ownership ( ) (refer to instructions for a list of codes):	9) Disclosable Interest Holder's Country of Citizenship or Jurisdiction of Formation:
Membership Shares	United States

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Cimarron Telephone Company, L.L.C.	Local Exchange Carrier	0001701275	27.71
Cross Cable Television, L.L.C.	CATV	0003723129	27.71

CONFIDENTIAL AND PROPRIETARY
Confidential Treatment Requested Pursuant to 47 C.F.R 54.711(b)

Declaration of Warren R. Fischer
USAC Audit ID: HC2016BE031
January 4, 2019
Exhibit 2

10a) Name and address of all FCC-Regulated Businesses owned by the Disclosable Interest Holder listed in Item 1 or 2 (use additional sheets, if neccessary)	10b) Principle Business	10c) FCC Registration Number (FRN)	10d) Percent of Interest Held
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Cross Wireless, L.L.C.	Telecommunications	0007258973	27.71
Cross-Valliant Celluar Partnership	Cellular	0001699693	13.86
MBO Video, L.L.C.	Wholesale Telecom Services	0020053435	27.71
MBO Wireless, L.L.C.	Wireless Carrier	0001697291	27.71
Opticel Long Distance, L.L.C.	Service Provider	0003741188	13.86
Opticel, L.L.C.	Service Provider	0015267610	11.08
The Pottawatomie Telephone Co., L.L.C.	Local Exchange Carrier	0003733839	27.71

FCC 602
Schedule A

FCC Ownership Disclosure Information for the Wireless Telecommunications Services

Approved by OMB
3060 – 0799
See instructions for
Public burden estimate

Schedule for Disclosable Interest Holders

Disclosable Interest Holder Information (complete as many as required to describe all disclosable interest holders)

1) Disclosable Interest Holder's First Name (if individual):	MI:	Last Name:	Suffix:
V. David		Miller	II

2) Disclosable Interest Holder's Name (if entity):	3) FCC Registration Number(FRN):
	0017194986

4) Disclosable Interest Holder's Address:
P.O. Box 9
Warner, OK 74469

5) Type of Interest in Filer ( ) (refer to Instructions for a list of codes):	6) Disclosable Interest Holder is a (n): ( ) (refer to instructions for list of codes):	7) Percent of Interest Held in Filer:
Direct Ownership Interest in Filer	Individual	27.71

8) Disclosable Interest Holder's Type of Ownership ( ) (refer to instructions for a list of codes):	9) Disclosable Interest Holder's Country of Citizenship or Jurisdiction of Formation:
Membership Shares	United States

Related FCC Regulated Businesses of Disclosable Interest Holders (repeat for each interest holder identified)

10a) Name and address of all FCC-Regulated Businesses owned by the Disclosable Interest Holder listed in Item 1 or 2 (use additional sheets, if neccessary)	10b) Principle Business	10c) FCC Registration Number (FRN)	10d) Percent of Interest Held
Cim-Tel Cable, L.L.C.	CATV	0003723053	27.71
Cimarron Telephone Company, L.L.C.	Local Exchange Carrier	0001701275	27.71
Cross Cable Television, L.L.C.	CATV	0003723129	27.71

CONFIDENTIAL AND PROPRIETARY
Confidential Treatment Requested Pursuant to 47 C.F.R 54.711(b)

Declaration of Warren R. Fischer
USAC Audit ID: HC2016BE031
January 4, 2019
Exhibit 2

10a) Name and address of all FCC-Regulated Businesses owned by the Disclosable Interest Holder listed in Item 1 or 2 (use additional sheets, if neccessary)	10b) Principle Business	10c) FCC Registration Number (FRN)	10d) Percent of Interest Held
Cross Telephone Company, L.L.C.	Telecommunications	0001700616	27.71
Cross Wireless, L.L.C.	Telecommunications	0007258973	27.71
Cross-Valliant Celluar Partnership	Cellular	0001699693	13.86
MBO Video, L.L.C.	Wholesale Telecom Services	0020053435	27.71
MBO Wireless, L.L.C.	Wireless Carrier	0001697291	27.71
Opticel Long Distance, L.L.C.	Service Provider	0003741188	13.86
Opticel, L.L.C.	Service Provider	0015267610	11.08
The Pottawatomie Telephone Co., L.L.C.	Local Exchange Carrier	0003733839	27.71

DECLARATION OF

WARREN R. FISCHER, C.P.A.

In Support of Cross Telephone Company, L.L.C's Request for Review of Decision of

The Universal Service Administrative Company

USAC Audit ID: HC2016BE031

SAC No. 431985

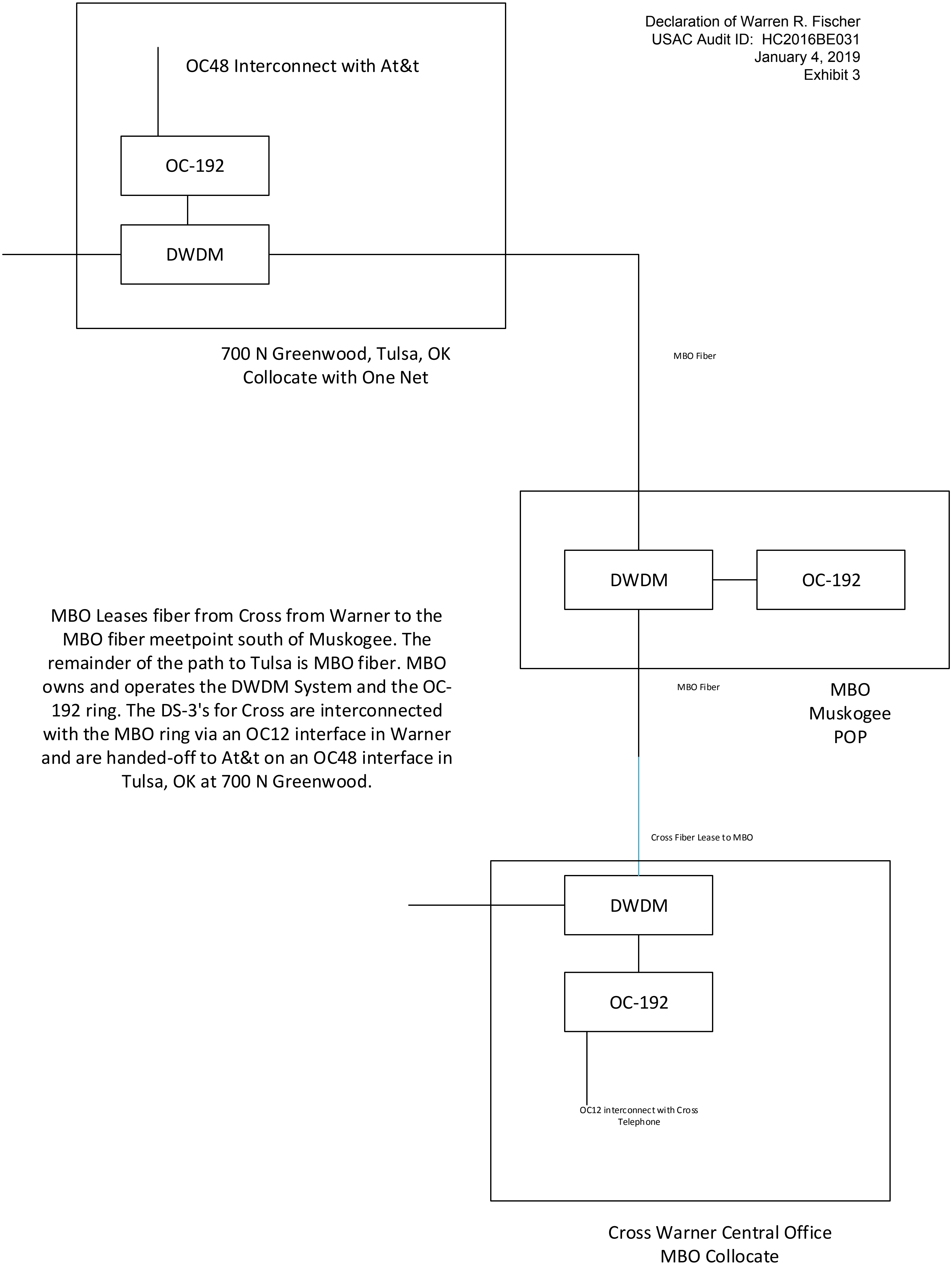
January 4, 2019

CONFIDENTIAL AND PROPRIETARY

Confidential Treatment Requested Pursuant to 47 C.F.R. 54.711(b)

EXHIBIT 3: MBO Video, L.L.C. Fiber Ring Diagram

Declaration of Warren R. Fischer
USAC Audit ID: HC2016BE031
January 4, 2019
Exhibit 3



MBO Leases fiber from Cross from Warner to the MBO fiber meetpoint south of Muskogee. The remainder of the path to Tulsa is MBO fiber. MBO owns and operates the DWDM System and the OC-192 ring. The DS-3's for Cross are interconnected with the MBO ring via an OC12 interface in Warner and are handed-off to At&t on an OC48 interface in Tulsa, OK at 700 N Greenwood.

DECLARATION OF

WARREN R. FISCHER, C.P.A.

In Support of Cross Telephone Company, L.L.C's Request for Review of Decision of The Universal Service Administrative Company

USAC Audit ID: HC2016BE031

SAC No. 431985

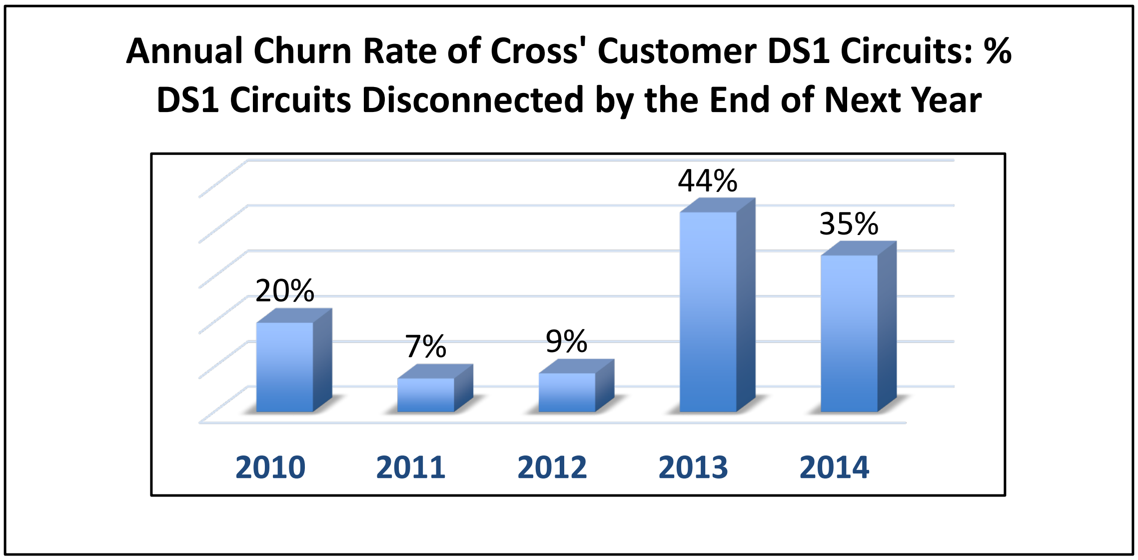
January 4, 2019

CONFIDENTIAL AND PROPRIETARY

Confidential Treatment Requested Pursuant to 47 C.F.R. 54.711(b)

EXHIBIT 4: Cross Telephone Circuit Churn

Annual Churn Rate of Cross' Customer DS1 Circuits: Percent of Year End Customer DS1 circuits Disconnected by the End of Next Year					
Year End:	2010	2011	2012	2013	2014
Churn Rate	20%	7%	9%	44%	35%
Year End Circuits	106	148	175	172	101



DECLARATION OF

WARREN R. FISCHER, C.P.A.

In Support of Cross Telephone Company, L.L.C's Request for Review of Decision of

The Universal Service Administrative Company

USAC Audit ID: HC2016BE031

SAC No. 431985

January 4, 2019

CONFIDENTIAL AND PROPRIETARY

Confidential Treatment Requested Pursuant to 47 C.F.R. 54.711(b)

EXHIBIT 5: June 1, 1998 Lease of Dark Fiber from Cross Telephone Company to MBO Video

EQUIPMENT LEASE

This Lease (this "Lease") is made effective as of June 01, 1998, between Cross Telephone Company (the "Lessor"), Warner, Oklahoma and MBO Video (the "Lessee"), Earlsboro, Oklahoma and states the agreement of the parties as follows:

FACILITIES SUBJECT TO LEASE. The Lessor shall lease four (4) dark fibers from the Warner Central Office, located in Warner, Oklahoma, to the AT&T POP Location in Muskogee, Oklahoma.

PAYMENT TERMS. The Lessee shall make payments of $6,250.00 each month for the term of the lease. Payments shall be due on the first day of each month, with the first payment due on June 01, 1998. The lease payments shall be due whether or not the Lessee has received notice of a payment due.

RISK OF LOSS OR DAMAGE. The Lessee assumes all risks of loss or damage to the equipment from any cause, and agrees to return it to the Lessor in the condition received from the Lessor, with the exception of normal wear and tear.

LEASE TERM. This Lease shall begin on the above effective date and shall terminate upon 30 days written notice by either party.

CARE AND OPERATION OF EQUIPMENT. The equipment may only be used and operated in a careful and proper manner. Its use must comply with all laws, ordinances, and regulations relating to the possession, use, or maintenance of the equipment, including registration and/or licensing requirements, if any.

MAINTENANCE AND REPAIR. The Lessee shall maintain the equipment in good repair and operating condition, allowing for reasonable wear and tear.

The Lessor shall pay all costs required to maintain the equipment in good operating condition. Such costs shall include labor, material, parts, and similar items.

LESSOR'S RIGHT OF INSPECTION. The Lessor shall have the right to inspect the equipment at any time.

RETURN OF EQUIPMENT. At the end of the Lease term, the Lessee shall be obligated to return the equipment to the Lessor.

OWNERSHIP AND STATUS OF EQUIPMENT. The equipment will be deemed personal property, regardless of the manner in which it may be attached to any other property. The Lessor shall be deemed to have retained title to the equipment at all times, unless the Lessor transfers the title by sale. The Lessee shall immediately advise the Lessor regarding any notice of any claim, levy, lien, or legal process issued against the equipment.

LIABILITY INSURANCE. The Lessor shall be responsible for maintaining liability insurance regarding the equipment.

CASUALTY INSURANCE. The Lessor shall be responsible to maintain casualty insurance with respect to loss or damage of the equipment.

DEFAULT. The occurrence of any of the following shall constitute default under this Lease:

A. The failure to make a required payment under this Lease when due.

B. The violation of any other provision or requirement that is not corrected within 30 day(s) after written notice of the violation is given.

C. The insolvency or bankruptcy of the Lessee.

D. The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or government agency.

RIGHTS ON DEFAULT. If the Lessee is in default under this Lease, without notice to or demand on the Lessee, the Lessor may take possession of the equipment as provided by law, deduct the costs of recovery (including attorney fees and legal costs), repair, and related costs, and hold the Lessee responsible for any deficiency. The Lessor shall be obligated to re-lease the equipment, or otherwise mitigate the damages from the default, only as required by law.

NOTICE. All notices required or permitted under this Lease shall be deemed delivered when delivered in person or by mail, postage prepaid, addressed to the appropriate party at the address shown for that party at the beginning of this Lease.

ASSIGNMENT. The Lessee shall not assign or sublet any interest in this Lease or the equipment or permit the equipment to be used by anyone other than the Lessee or Lessee's employees, without Lessor's prior written consent.

ENTIRE AGREEMENT AND MODIFICATION. This Lease constitutes the entire agreement between the parties. No modification or amendment of this Lease shall be effective unless in writing and signed by both parties. This Lease replaces any and all prior agreements between the parties.

GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of Oklahoma.

SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER. The failure of either party to enforce any provision of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

Lessor:
Cross Telephone Company

By: ______________________
V. David Miller II
President

Lessee:
MBO Video

By: ______________________
H. Gene Baldwin
Vice President

DECLARATION OF

WARREN R. FISCHER, C.P.A.

In Support of Cross Telephone Company, L.L.C's Request for Review of Decision of

The Universal Service Administrative Company

USAC Audit ID: HC2016BE031

SAC No. 431985

January 4, 2019

CONFIDENTIAL AND PROPRIETARY

Confidential Treatment Requested Pursuant to 47 C.F.R. 54.711(b)

EXHIBIT 6: MBO Video Circuit Pricing Reasonableness Test

To: Ana Moron
From: Dan Overland
Date: February 27, 2008
Subject: Reasonableness Testing for Cross Circuits Utilizing MBO Facilities

Historically, rural Independent Telephone Companies and RBOCs interconnect their facilities for the purposes of handling and passing traffic to and from each other's facilities. The actual facilities costs were based on a SWB (now AT&T) tariff rate (In 1998, the reference is to the SWB Tariff #73, Page 6-179.3) that calculates miles to and from the central office delivery point of each company and adds other termination charges that will be charged to the company.

In the late 1990's, MBO Video was completing their fiber facility construction from Tulsa to the interconnection point in Muskogee and on to a Warner, OK meet point. One of the specific economies/benefits from this facility was for both Cimarron and Cross Telephone Company to petition SWB to change their meet points to Tulsa, OK or, in its stead, utilize their own facilites (leased from MBO) to carry their traffic to the meet point instead of using and paying SWB for it.

As of May 8, 1998, Cross Telephone would have been paying $55,224.00 per month (SWB's tariff rate) for the connection of 52 DS1s from the Warner, OK central office to the UCAT location. They would also be paying $3,953.10 per month to terminate 7 DS1s in the AT&T point of connection in Muskogee.

With the newly completed MBO facility, Cross Telephone could achieve the same connectivity to those locations by changing their meet points with SWB and ATT and utilize the MBO facility for the hauling of the circuits, compensating them instead of SWB.

To determine the reasonableness of what MBO should charge to Cross Telephone Company, our consultant, John Harris, did a reasonableness check using the calculations from the SWB Tariff #73. His original work papers are attached.

To summarize those, there were two elements to calculate for each DS1 ordered. First SWB's tariff charged $51.30 for each DS1 for the Transport Termination at the end of the route. Also, for each DS1, SWB's tariff would charge $17.70 for each mile between the originating office (Warner, OK) and the termination point (UCAT, which is in downtown Tulsa or Muskogee, Ok at their point of presence), where SWB will pickup the traffic and route it as it pleases.

The mileages between points that are based on the location codes listed in the tariff are as follows:

Warner, OK to UCAT	**60 Miles**
Warner, OK to AT&T point of connection in Muskogee, OK	**29 Miles**

The math calculations used from 1998 for the circuit costs for Muskogee, OK to UCAT are:

52 DS1s from Warner, OK to UCAT X $51.30 per DS1 =	**$ 2,667.60**
60 Miles from Warner, OK to UCAT X $17.70 per mile =	**$ 55,224.00**
	$ 57,891.60
SWB Equivalent Monthly Charge per DS1 to UCAT	**$ 1,113.30**

The math calculations used from 1998 for the circuit costs for Muskogee, OK to the AT&T POP in Muskogee, OK are:

7 DS1s from Warner, OK to AT&T/Muskogee, OK X $51.30 per DS1	**$ 359.10**
29 Miles from Warner, OK to AT&T/ Muskogee, OK X 17.70 per mile	**$ 3,593.10**
	$ 3,952.20
SWB Equivalent Monthly Charge per DS1 to Muskogee	**$ 564.60**

Utilizing these tariff prices from the 1998 Tariff, MBO rates were developed to be less than the SWB rate:

To UCAT:	**SWB rate:**	**$1,113.30**	**MBO rate:**	**$1,100.00**
To Muskogee	**SWB rate:**	**$ 564.60**	**MBO rate**	**$ 550.00**

Since the inception of the change to MBO for these circuits, additional DS1s have been added to the system by Cross. As a result of your request, a recount of DS1s using these routes were completed and are as follows:

DS1s from Warner, OK to UCAT	**110 (an increase of 28)**
DS1s from Warner, OK to AT&T/ Muskogee	**9 (an increase of 2)**

While the amount of DS1s to UCAT has doubled and there have been two additional DS1s added to Muskogee, **NO** additions to the original billing amounts have been charged by MBO to Cross Telephone Company.

As a comparison using the Warner, OK to UCAT circuit – SBC's (now AT&T) tariff pricing as of 2/22/2008 for the same circuit has increased to $1,710.33. I have attached a SBC price quote for your records.

MBO Video, Inc.
Circuits Provided to Cross and Cimarron Telephone Companies

IntraMBOCkts.xls
05/08/98
JPH

Calculation for Comparison Purposes
What was SWBT earning on the circuits?

SWB Rates	Source	Rate	NRC
Direct Trunk Transport Termination (per T-1)	SWB#73 p. 6-179.3	51.30	$408 for first DS1, $314 additional
Direct Trunk Transport (per T-1 Mile)	SWB#73 p. 6-179.3	17.70	

Mileage	
Mannford to UCAT	21
Warner to UCAT	60
Warner to ATT - Muskogee	29

Access Minutes for	Cimarron	Cross
Average Monthly Interstate AMOU for 1997	1,148,726	1,420,482
Average Monthly Intrastate AMOU for 1997	843,583	2,746,930
Average Monthly WACP MOU	7,246,051	#N/A
Total Minutes	9,238,359	4,167,412

Calculation of Equivalent Revenues Earned by Bell

	Mannford - UCAT	Warner - UCAT	Warner-ATT Musk.
# of DS1s (Per Ed Smith)	43	52	7
Direct Trunk Transport Termination Rate	51.30	51.30	51.30
Direct Trunk Transport Access Revenue	2,205.90	2,667.60	359.10
Mileage	21	60	29
Direct Trunk Transport (per T-1 Mile)	17.70	17.70	17.70
	15,983.10	55,224.00	3,593.10
Total SWB Monthly Earnings	18,189	57,892	3,952
Annual Earnings	218,268	694,699	47,426
Equivalent Monthly Charge per DS1	423.00	1,113.30	564.60

MBO Video, Inc.
Circuits Provided to Cross and Cimarron Telephone Companies

IntraMBOCkts.xls
05/08/98
JPH

	Mannford - UCAT	Warner - UCAT	Warner-ATT Musk.
Mileage	21	60	29
# of DS1s (Per Ed Smith)	43	52	7
Rate per DS0 Mile	0.070	0.070	0.070
Equivalent Monthly Charge	1,517	5,242	341

DS3 ASSIGNMENT REPORT

AS OF 2/22/08

DS3 SYSTEM NAME	A-END	Z-END	TOTAL ASSIGNED T1
102	TULSOKPPHSN	WRNROKXA01T	25
103	TULSOKPPHSN	WRNROKXA01T	23
104	TULSOKPPHSN	WRNROKXA01T	18
106	TULSOKPPHSN	WRNROKXA01T	17
109	TULSOKPPHSN	WRNROKXA01T	20
111	TULSOKPPHSN	WRNROKXA01T	7
		TOTAL	110

DS3 SYSTEM NAME	A-END	Z-END	TOTAL ASSIGNED T1
AT&T POP	MSKGOKAT	WRNROKXA01T	9
		TOTAL	9

1 ORDER	$97.00
1 LSO CHAN TERM	$378.00
NRC (1 MO)	$475.00

MO	TOTALS	%	NRCs
1	$1,710.33	0	$1,389.00
12	$1,674.91	2	$1,389.00
24	$1,657.11	3	$489.00
36	$1,613.76	6	$489.00
60	$1,593.46	7	$489.00
84	$1,586.91	7	$489.00

1 ORDER	$14.00
1 POP FIRST CT	$900.00
NRC (1 MO)	$914.00

SWB PRICING PLAN: TPP

WARNER
WRNROKXA
IND(OCN#1985)
918 Z7 463

LATA 538
59.39 Mi (99%) (1%) 0.60 Mi

TULSA
TULSOKTB
SOUTHWESTERN
918 Z2L 582

CCC=NO

CHAN TERM:	$184.32	$98.47	CM FIXED:	$32.50	CHAN TERM:	$200.00
LSO SUB:	$184.32	$1,185.62	CM MILEAGE:	$9.42	**POP SUB:**	$200.00
		$1,284.09	**«IOC SUB»**	$41.92		

IND(OCN#1985): $1,468.41 **SOUTHWESTERN: $241.92** **CT<>OT**

TOTAL NRC: $1,389.00

1 DS1 CIRCUIT $1,710.33 MONTHLY

DS1 circuit cost 918-463 to 918-582.
Tusla local loop zero mileage.
For cost comparison.

Issue: 15 Feb 08 Quote: 22 FEB 2008 Name:

Recall Quote

GENERAL CONTRACT FOR SERVICES

This Contract for Services (this "Contract") is made effective as of June 01, 1998, by and between Cross Telephone Company of Warner, Oklahoma and MBO Video of Earlsboro, Oklahoma. In this Contract, the party who is contracting to receive services will be referred to as Cross, and the party who will be providing the services will be referred to as MBO Video.

1. DESCRIPTION OF SERVICES. Beginning on June 01, 1998, MBO Video will provide the following services (collectively, the "Services"):

2. Initially, 52 DS1 circuits from Warner Oklahoma to the UCAT meet point with SWB in Tulsa. The number of circuits may be changed at the option of Cross Telephone Company, subject to availability.

3. PAYMENT FOR SERVICES. Cross will pay MBO Video according to the following schedule:

   $1100 per DS1 per month

4. TERM/TERMINATION. Either party upon 30 days written notice to the other party may terminate this Contract.

5. CONFIDENTIALITY. MBO Video, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of MBO Video, or divulge, disclose, or communicate in any manner any information that is proprietary to Cross. MBO Video and its employees, agents, and representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after the termination of this Contract.

6. INDEMNIFICATION. MBO Video agrees to indemnify and hold harmless Cross from all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against Cross that result from the acts or omissions of MBO Video and/or MBO Video's employees, agents, or representatives.

7. WARRANTY. MBO Video shall provide its services and meet its obligations under this Contract in a timely and workmanlike manner. The quality of service provided shall equal or exceed applicable Bellcore established standards.

8. ENTIRE AGREEMENT. This Contract contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter hereunder. This Contract supersedes any prior written or oral agreements between the parties.

9. SEVERABILITY. If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

Service Recipient:
Cross Telephone Company

By: V. D. J. Miller II

V. David Miller, II
President

Service Provider:
MBO Video

By: H. Gene Baldwin

H. Gene Baldwin
Vice President

GENERAL CONTRACT FOR SERVICES

This Contract for Services (this "Contract") is made effective as of June 01, 1998, by and between Cross Telephone Company of Warner, Oklahoma and MBO Video of Earlsboro, Oklahoma. In this Contract, the party who is contracting to receive services will be referred to as Cross, and the party who will be providing the services will be referred to as MBO Video.

1. DESCRIPTION OF SERVICES. Beginning on June 01, 1998, MBO Video will provide the following services (collectively, the "Services"):

2. Initially, 7 DS1 circuits from Warner, Oklahoma to the POP Location with AT&T in Muskogee, Oklahoma. The number of circuits may be changed at the option of Cross Telephone Company, subject to availability.

3. PAYMENT FOR SERVICES. Cross will pay MBO Video according to the following schedule:

   $550 per DS1 per month

4. TERM/TERMINATION. Either party upon 30 days written notice to the other party may terminate this Contract.

5. CONFIDENTIALITY. MBO Video, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of MBO Video, or divulge, disclose, or communicate in any manner any information that is proprietary to Cross. MBO Video and its employees, agents, and representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after the termination of this Contract.

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Service Recipient:
Cross Telephone Company

By: ______________________________
V. David Miller, II
President

Service Provider:
MBO Video

By: ______________________________
H. Gene Baldwin
Vice President

DECLARATION OF

WARREN R. FISCHER, C.P.A.

In Support of Cross Telephone Company, L.L.C's Request for Review of Decision of The Universal Service Administrative Company

USAC Audit ID: HC2016BE031

SAC No. 431985

January 4, 2019

CONFIDENTIAL AND PROPRIETARY

Confidential Treatment Requested Pursuant to 47 C.F.R. 54.711(b)

EXHIBIT 7: Comparison of Cross Telephone Cost Study Factors to Average of Other SACs

Filing Year	For Year	Cost Company Loop Cost Algorithm Line	AL3	AL4	AL5	AL6
		Entity:	**"A" Factor Cable & Wire Facilities. C&WF Category 1 divided by Total C&WF**	**"B" Factor Central Office Equipment. COE Category 4.13 divided by Total COE**	**"C" Factor Cable & Wire Facilities (Gross Allocator) C&WF Category 1 divided by Total Plant in Service**	**"D" Factor Central Office Equipment (Gross Allocator) COE Category 4.13 divided by Total Plant In Service**
2013	2012	Average for SACs with 6,000-17,887 Loops	0.90	0.42	0.54	0.12
		Cross Telephone	**0.91**	**0.41**	**0.54**	**0.11**
2014	2013	Average for SACs with 6,000-17,887 Loops	0.90	0.43	0.55	0.12
		Cross Telephone	**0.91**	**0.40**	**0.54**	**0.10**
2015	2014	Average for SACs with 6,000-17,887 Loops	0.91	0.47	0.56	0.12
		Cross Telephone	**0.91**	**0.40**	**0.55**	**0.10**

Data Source: https://www.fcc.gov/general/universal-service-fund-data-neca-study-results

Criteria: For study areas with more than 6,000 but fewer than 17,887 Total Loops (DL060)