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November 15, 2019

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications
Commission 445 12th Street, S.W.
Washington, DC 20554

Re: *AT&T Services, Inc. v. 123.Net*
Proceeding No. 19-222, Bureau ID Number EB-19-MD-007

Dear Ms. Dortch:

AT&T Services, Inc. (on behalf of itself and its operating affiliates) and AT&T Corp. (together, "AT&T") submits this the attached cross examination transcript dated September 23, 2014 from the Michigan Public Service Commission case *Westphalia Telephone Company and Great Lakes Comnet, Inc. against AT&T Corp.*, Case No. U-17619. The transcript is cited in AT&T's Reply Legal Analysis. The document can also be accessed at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t00000001UJqCAAW>.¹

Please contact me if you have any questions regarding this submission.

Sincerely,

/s/ Brian A. McAleenan
Brian A. McAleenan
Counsel for AT&T

cc: Joseph Bowser

¹ When AT&T filed its Reply Legal Analysis, it originally intended to include the publicly available transcript as an exhibit. The file from the Michigan Public Service Commission, however, would not upload to ECFS. AT&T has since corrected the signature file issue that was preventing the file from uploading.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the formal complaint Case No. U-17619
of Westphalia Telephone Company and
Great Lakes Comnet, Inc. against Volume No. 3
AT&T Corp.

PUBLIC

CROSS-EXAMINATION

Proceedings held in the above-entitled matter
before Suzanne D. SONNEBORN, J.D., Administrative Law
Judge with Michigan Administrative Hearing System, at
the Michigan Public Service Commission, Constitution
Hall, 525 West Allegan, Nisbet Room, Lansing, Michigan,
on Tuesday, September 23, 2014, at 9:13 a.m.

APPEARANCES:

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On behalf of Westphalia Telephone Company
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23 REPORTED BY: Lori Anne Penn (CSR-1315)
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I N D E XWITNESS:PAGE

JOHN W. "JACK" HABIAK

Direct Examination by Mr. Ortlieb

324

DAN IRVIN

Direct Examination by Mr. Ortlieb

521

Cross-Examination by Mr. Oliva

547

Cross-Examination by Mr. Brandenburg

566

Redirect Examination by Mr. Ortlieb

578

Recross-Examination by Mr. Oliva

584

JOHN W. "JACK" HABIAK

Cross-Examination by Mr. Oliva

587

Redirect Examination by Mr. Ortlieb

630

Recross-Examination by Mr. Oliva

637

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>MRKD</u>	<u>OFRD</u>	<u>RECD</u>
ATT-3	Schedule JH-1 - Switched Access Call Flow Diagram	322	325	326
ATT-4	Schedule JH-2 - Increase in Complainants' Access Billing	322	325	326
ATT-5	Schedule JH-3 - 8YY Call Flow Diagram	322	325	326
ATT-6	Schedule JH-4 - March 2013 Dispute Letter	322	325	326
ATT-7	Schedule JH-5 - Informal FCC complaint filed by AT&T Corp.	322	325	326
ATT-8	Schedule JH-6 - Informal FCC complaint filed by Verizon, Sprint and CenturyLink	322	325	326
ATT-9	Schedule JH-7 - Comparison of Per-Minute Switched Access Rates	322	325	326
ATT-10	Schedule JH-8 - Calculation of Refund Owed to AT&T Corp.	322	325	326
ATT-11	CONFIDENTIAL Schedule JH-9 - Cricket/U.S. South Toll Free Termination Agreement	322	361	363
ATT-12	CONFIDENTIAL Schedule JH-10 - U.S. South/NuLeeF Toll Free Termination Agreement	322	361	363
ATT-13	CONFIDENTIAL Schedule JH-11 - GLC Supplemental Responses (Errata) to AT&T-003, 004, 010 & 13	322	361	363
ATT-14	CONFIDENTIAL Schedule JH-12 - GLC/LECMI Network Operating Agreement and Service Agreement	322	361	363
ATT-15	Schedule JH-13 - Updated 8YY Call Flow Diagram	322	361	363

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>MRKD</u>	<u>OFRD</u>	<u>RECD</u>
ATT-16	CONFIDENTIAL JH-14 - Deposition Transcript of John Summersett (GLC)	322	361	363
ATT-17	CONFIDENTIAL Schedule JH-19 - GLC payment documents produced by LECMI	322	361	363
ATT-18	Revised Schedule JH-20 - Transport Charges: Southfield to Westphalia	322	361	363
ATT-19	Schedule JH-21 - Excerpt from NECA Tariff 4, Page 408 in May and June, 2013	322	361	363
ATT-20	Schedule JH-22 - GLC Overcharges for LECMI Local Switching	322	361	363
ATT-21	Schedule JH-23 - Excerpt from MECA Tariff M.P.S.C. 25(U)	322	361	363
ATT-22	CONFIDENTIAL Schedule JH-24 - GLC Discovery Response Showing Commissions Paid by GLC on 8YY Traffic	322	458	459
ATT-23	CONFIDENTIAL Schedule JH-25 - Complete Copy of Agreement Between GLC and IBDC	322	361	363
ATT-24	Schedule JH-26 - Analysis of AT&T Michigan Transport Routing	322	361	363
ATT-25	Schedule JH-27 - Excerpt from GLC Federal Tariff, FCC Tariff No. 20	322	361	363
ATT-26	Schedule JH-28 - GLC Website Page	322	361	363
ATT-27	Schedule JH-29 - GLC Discovery Response On Local Switching Charges	322	361	363
ATT-28	Deposition Transcript of Dan Irvin August 13, 2014 Deposition	583	581	583
GLC-55	U.S. Securities & Exchange Commission - Form 8-K - AT&T, Inc.	600	600	600

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Lansing, Michigan

Tuesday, September 23, 2014

At 9:13 a.m.

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(Hearing resumed following adjournment of
Monday, September 22, 2014.)

(Documents marked for identification by the
Court Reporter as Exhibit Nos. ATT-3 through
ATT-3, 4, 5, 6, 7, 8, 9, 10, 15, 18-Revised,
19, 20, 21, 24, 25, 26 and 27; Confidential
Exhibit Nos. ATT-11, 12, 13, 14, 16, 17, 22,
23, and 24.)

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JUDGE SONNEBORN: Good morning. Today is
September 23, 2014. This is a continuation of a hearing
before the Michigan Public Service Commission in Case No.
U-17619, captioned In the matter of the complaint of
Westphalia Telephone Company and Great Lakes Comnet, Inc.
against AT&T Corp. Pursuant to due notice, cross-
examination in this matter was set for this time and
place.

My name is Suzanne Sonneborn, I will be
presiding over this matter.

May I have appearances, please, beginning
with Westphalia.

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1 MR. OLIVA: Michael Oliva, Loomis, Ewart,
2 Parsley, Davis & Gotting, on behalf of the Complainants,
3 Great Lakes Comnet and Westphalia Telephone Company.

4 JUDGE SONNEBORN: Thank you. Good
5 morning, Mr. Oliva.

6 MR. HOLMES: Michael Holmes also on
7 behalf of Applicants/Complainants, Great Lakes Comnet and
8 Westphalia Telephone Company.

9 JUDGE SONNEBORN: Thank you. Good
10 morning, Mr. Holmes.

11 MR. ORTLIEB: Mark Ortlieb, attorney for
12 Respondents/Counter-Plaintiffs, AT&T Corp.

13 JUDGE SONNEBORN: Thank you. Good
14 morning, Mr. Ortlieb.

15 MR. FRIEDMAN: Dennis Friedman, also
16 representing AT&T Corp.

17 JUDGE SONNEBORN: Thank you. Good
18 morning, Mr. Friedman.

19 And Staff, please.

20 MR. BRANDENBURG: Good morning, your
21 Honor. Bryan Brandenburg and Anne Uitvlugt on behalf of
22 the Michigan Public Service Commission Staff.

23 JUDGE SONNEBORN: Thank you. Good
24 morning.

25 We're beginning today with AT&T.

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1 Mr. Ortlieb, Mr. Friedman, you may proceed.

2 MR. ORTLIEB: Thank you, your Honor.

3 J O H N W. "J A C K" H A B I A K

4 was called as a witness on behalf of AT&T Corp. and,
5 having been duly sworn to testify the truth, was examined
6 and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. ORTLIEB:

9 Q Good morning, Mr. Habiak.

10 A Good morning.

11 Q Could you state your name and spell it for the record
12 please?

13 A Jack Habiak, that's H-a-b-i-a-k.

14 Q And Mr. Habiak, do you have before you a document
15 prepared on July 24, 2014, consisting of questions and
16 answers that is 27 pages in length?

17 A Yes.

18 Q And is that your direct testimony in this proceeding?

19 A Yes.

20 Q Was it prepared by you or under your direction --

21 A Yes.

22 Q -- in whole --

23 A Yes.

24 Q Do you have any changes to make to that testimony?

25 A No, I do not.

1 Q And attached to that testimony, are there eight
2 schedules?

3 A Yes.

4 Q And those have been marked as -- in your testimony, those
5 are identified as Schedules JH-1 through JH-8, correct?

6 A Correct.

7 Q And for purposes here today, the court reporter has
8 marked them as Schedules AT&T Exhibits 3 through AT&T
9 Exhibit 10, correct?

10 A Correct.

11 Q Mr. Habiak, if I asked you each of the questions that
12 appears in your direct testimony, would your answers be
13 the same today as contained in that document?

14 A Yes.

15 Q And are any of the schedules that we've discussed
16 confidential?

17 A No.

18 MR. ORTLIEB: O.K. Your Honor, at this
19 point I would like to move for the admission of AT&T
20 Exhibits 3 through 10, and ask that the direct testimony
21 of Mr. Habiak be bound into the record.

22 JUDGE SONNEBORN: Thank you.

23 Mr. Holmes?

24 MR. HOLMES: Your Honor, no objections;
25 however, Mr. Oliva is going to be handling the
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1 cross-examination of Mr. Habiak today.

2 JUDGE SONNEBORN: Thank you.

3 Mr. Oliva, no objections?

4 MR. OLIVA: We have no objection to
5 binding in the testimony. I would just note with respect
6 to proposed Exhibit, I believe it's 8, Schedule JH-6,
7 informal complaint filed by Verizon, Sprint and
8 CenturyLink, that Mr. Habiak's testimony relates simply
9 that this is a complaint that was filed by those three
10 parties, informal complaint at the FCC, that we have no
11 objection to admission of that for the limited purpose
12 that it shows there was a complaint filed. It's
13 obviously not competent evidence as to any factual
14 assertion contained in the document itself.

15 JUDGE SONNEBORN: All right. Thank you.

16 With that limited purpose,
17 Mr. Brandenburg, do you have any objection to this
18 testimony being bound or these exhibits being received?

19 MR. BRANDENBURG: No, we do not.

20 JUDGE SONNEBORN: All right. The
21 July 24, 2014, direct testimony, pages 1 through 27, of
22 Jack Habiak is bound into the record, and AT&T Exhibits 3
23 through 10, also noted as JH-1 through JH-8, are received
24 and admitted into the record.

25 MR. ORTLIEB: Thank you, your Honor.

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

Case No. U-17619

**Direct Testimony of John W. Habiak
On Behalf of AT&T Corp.**

AT&T Corp. Exhibit 1.0

July 24, 2014

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND	3
A.	THE PARTIES	3
B.	SWITCHED ACCESS CHARGES.....	4
III.	THE PARTIES' DISPUTE	8
A.	GLC'S ACCESS RATES ARE EXCESSIVE AND UNREASONABLE	18
B.	WTC'S TRANSPORT CHARGES VIOLATE ITS TARIFF	23
IV.	DETERMINATION OF REFUND AMOUNT REQUIRED	25
V.	CONCLUSION	27

DIRECT TESTIMONY OF JOHN W. HABIAK
ON BEHALF OF AT&T CORP.

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is John (Jack) W. Habiak. My business address is 1 AT&T Way, 2A127, Bedminster, NJ 07921. I am a Director Financial Analysis for AT&T Corp.

Q. WHAT ARE YOUR JOB RESPONSIBILITIES?

A. I lead AT&T Corp.'s investigation and resolution of disputes involving switched access charges billed to AT&T Corp., including disputes that may involve arrangements by carriers to inflate access charges billed to AT&T Corp. My responsibilities include the coordination of data collection and analysis, the review of switched access bills, and the support of policy and litigation efforts. I also participate in the Interstate Regulatory Team, which includes analysis of regulatory filings and support of policy development. In addition, I lead the Global Connectivity Billing Integrity Project for Switched Access.

Q. PLEASE DESCRIBE YOUR EMPLOYMENT EXPERIENCE AND EDUCATION.

A. I have worked for AT&T Corp. and affiliated companies for over 29 years, primarily in the Access Management organization. I also have experience in Network Engineering. My previous positions include:

District Manager – Interstate Access Budget and Regulatory

Manager – Local Issues and Local Connectivity Costs

24 Manager – Business to Business Access Team Leader

25 Manager – Access Tariff Issues Management and Analysis

26 Supervisor – Intrastate Access Budget

27 Supervisor – Network Engineering Cost Model Tool Development and EDP

28 Before joining AT&T, I earned a Bachelor of Science degree in Natural Resource
29 Management from Rutgers University. I have a comprehensive science teaching
30 certificate for the state of New Jersey.

31
32 **Q. WHAT IS THE PURPOSE OF THIS DIRECT TESTIMONY?**

33 A. The purpose of my testimony is to explain why the intrastate switched access charges
34 assessed by the Complainants – Westphalia Telephone Company (“WTC”) and Great
35 Lakes Comnet, Inc. (“GLC”) – are excessive and unreasonable, and to provide an
36 accounting of the refund amounts the Complainants owe to AT&T Corp. I first describe
37 the parties and their relationships, and the “switched access” services that Complainants
38 provide to AT&T Corp. Next, I show how Complainants route switched access traffic to
39 AT&T Corp. I then explain how Complainants overcharged AT&T Corp., by
40 (i) charging for intrastate switched access service at unreasonably high rates, (ii)
41 unreasonably stimulating access traffic and (iii) unreasonably inflating their transport
42 mileage and other charges. Finally, I determine the refund amounts due to AT&T Corp.

43
44 **Q. DO YOU HAVE ANY SUPPORTING SCHEDULES?**

45 A. Yes, I have attached 8 supporting schedules:

46

Schedule JH-1 – Switched Access Call Flow Diagram

Schedule JH-2 – Increase in Complainants’ Access Billing

Schedule JH-3 – 8YY Call Flow Diagram

Schedule JH-4 – March 2013 Dispute Letter

Schedule JH-5 – Informal FCC complaint filed by AT&T Corp.

Schedule JH-6 – Informal FCC complaint filed by Verizon, Sprint and CenturyLink

Schedule JH-7 – Comparison of Per-Minute Switched Access Rates

Schedule JH-8 – Calculation of Refund Owed to AT&T Corp.

II. BACKGROUND

A. THE PARTIES

Q. PLEASE TELL US BRIEFLY ABOUT THE PARTIES TO THIS CASE.

A. AT&T Corp. is the Respondent in this case. To be clear, this is AT&T Corp., the legacy AT&T entity that provided long-distance service before it merged with SBC in late 2005. AT&T Corp.’s affiliate Michigan Bell Telephone Company d/b/a AT&T Michigan (“AT&T Michigan”) is not a party in this case.

AT&T Corp. is registered with the Commission as an interexchange carrier (“IXC”) and provides end users the ability to make interexchange or long-distance calls, *i.e.* calls between local exchanges. AT&T Corp. also provides 8YY toll-free service to end users across the country, generally mid-size businesses. 8YY is a unique service because it is the customer *receiving* the call (rather than the customer *making* the call) that pays for the call. It is generally purchased by businesses that want to make it cheap and easy for their

customers to call them. AT&T Corp.'s 8YY customers are the businesses that receive the 8YY calls.

There are two Complainants. Respondent WTC is an incumbent local exchange carrier ("incumbent LEC") that provides telecommunications exchange and exchange access services to business and residential customers in Michigan. Its main switch is located in Westphalia, Michigan, and as of 2011 it provided roughly 964 basic local exchange access lines in that exchange.

Respondent GLC has registered with the Commission as a provider of exchange access services. GLC is owned by a consortium of LECs, including Ace Telephone Company of Michigan and Bloomingdale Telephone Company. GLC is the owner of WTC. More specifically, WTC is owned by Clinton County Telephone Company, and in September, 2011, Clinton County Telephone Company became a subsidiary of GLC.

B. SWITCHED ACCESS CHARGES

Q. PLEASE EXPLAIN WHAT SWITCHED ACCESS CHARGES ARE.

A. Generally speaking, switched access charges are the fees that a local exchange carrier ("LEC") assesses upon wireline long distance providers when the LEC originates or terminates long distance calls made or received by the LEC's end users. The LEC owns the "loop" that connects those end users to the LEC's switch and the rest of the public switched telephone network. LECs typically assess switched access charges for "originating" and terminating" long-distance calls. For example, let's say that an end

93 user in Westphalia buys long-distance service from AT&T Corp. and makes a long-
94 distance call to a friend in Saginaw. In that case, AT&T Corp. picks up the call from the
95 originating LEC in Westphalia and takes it to the LEC that serves the called party in
96 Saginaw. The Saginaw LEC would in turn deliver the call to the called party. The
97 Westphalia LEC that served the party making the call would typically assess an
98 “originating” switched access charge on AT&T Corp., while the Saginaw LEC that
99 served the party receiving the call would typically assess a “terminating” switched access
100 charge on AT&T Corp. Schedule JH-1 provides a high-level illustration of switched
101 access services.
102

103 **Q. WHAT FUNCTIONS DOES A LEC PERFORM WHEN IT PROVIDES**
104 **ORIGINATING SWITCHED ACCESS SERVICE?**

105 A. When an end user places an interexchange call (either an intrastate or interstate call) from
106 a wireline phone, the call travels from the calling party’s location over a loop provided by
107 the LEC that serves that caller, to that LEC’s local serving office (sometimes called an
108 “end office” or “central office”). There, the LEC’s local switch electronically routes the
109 call along a wired path known as a transport trunk to the interexchange carrier’s point of
110 presence (“POP”). Depending on the relevant network architecture, the call may or may
111 not go through an intermediate switch known as a “tandem” switch. At the POP, the
112 LEC hands the call off to the interexchange carrier and the originating access service
113 ends. This call flow scenario is shown in Schedule JH-1.
114

115 **Q. WHAT FUNCTIONS DOES A LEC PERFORM WHEN IT PROVIDES**
116 **TERMINATING SWITCHED ACCESS SERVICE?**

117 A. The LEC at the receiving end of the call performs the same basic functions as the LEC at
118 the originating end, only in reverse order. Instead of taking the call from the end user
119 placing the call to the IXC's POP, the terminating LEC takes the call from the IXC's
120 POP to the end user receiving the call. This call flow is also shown on Schedule JH-1.

121
122 **Q. HOW ARE SWITCHED ACCESS CHARGES CALCULATED?**

123 A. At both the originating and terminating ends, the LEC charges for various "rate elements"
124 that correspond to the features and functions provided and the facilities used in carrying a
125 particular call. At a high level, these rate elements include (i) switching at the end office,
126 (ii) switching and multiplexing at a tandem office (if the call goes through a tandem), and
127 (iii) transport between the end office and the IXC's POP. These rate elements are
128 generally expressed as per-minute charges for each minute of the call's duration.
129 Transport charges can also vary based on the length or "mileage" of transport facilities
130 used for carrying the call.

131
132 **Q. HOW ARE SWITCHED ACCESS CHARGES REGULATED?**

133 A. For intrastate calls, like the long-distance call between Westphalia and Saginaw in my
134 example above, switched access charges are subject to some regulation by this
135 Commission. If the end user in Westphalia calls someone in Chicago, the call is an
136 interstate call and the associated access charges are regulated by the Federal
137 Communications Commission ("FCC"). My understanding, however, is that in Michigan

(like many states) a LEC's switched access rates for *intrastate* calls "mirror" the corresponding rates for *interstate* calls.

Q. DOES AT&T CORP. DECIDE WHICH LEC WILL "ORIGINATE" OR "TERMINATE" ANY LONG-DISTANCE CALL?

A. No, not at all. AT&T Corp. does not decide which end users call its long-distance or 8YY customers, nor does it decide which calls its long-distance customers make. The end users make that choice. And obviously, AT&T Corp. does not decide where those end users live, or which carrier those end users select to provide their phone service and originate or terminate their calls. Once a LEC delivers a call from a customer served by AT&T Corp., AT&T Corp. has no choice but to accept and carry the call, and no choice but to hand that call off to the terminating LEC that serves the called party. AT&T Corp. cannot block calls coming from or going to a particular LEC, even if that LEC's access charges do not comply with the law.

AT&T Corp. also does not decide which intermediate tandem providers (if any) will handle traffic to and from a particular LEC and deliver it to AT&T Corp. On the contrary, the LEC decides which tandem provider it will use.

Q. AT THE BEGINNING OF YOUR TESTIMONY, YOU MENTIONED THAT YOUR RESPONSIBILITIES INCLUDE THE INVESTIGATION OF ARRANGEMENTS DESIGNED TO INFLATE ACCESS CHARGES. COULD YOU EXPLAIN FURTHER?

161

162 A. There are numerous ways in which access providers have inflated their bills to carriers
163 like AT&T Corp. In the industry, this practice is known generally as “access arbitrage”
164 or simply “arbitrage.” Arbitrage stems from the unusual nature of switched access
165 service. As I explained above, the IXC that “buys” and pays for the service typically
166 does not choose which carrier provides the service, and cannot refuse calls coming from
167 or going to its customers.

168

169 Generically speaking, arbitrage refers to any arrangement that is designed to generate or
170 increase access charges for the LEC rather than actually serving any business or
171 economic purpose for the IXC or the end user. So, for example, if a LEC’s switched
172 access rate for intrastate calls is higher than the corresponding rate for interstate calls, the
173 LEC has an incentive to mis-identify interstate traffic as intrastate so it can charge the
174 higher rate. That is one reason why Michigan, like many other states, requires LECs’
175 intrastate rates to be equal to or less than the corresponding interstate rates.

176

177 **III. THE PARTIES’ DISPUTE**

178 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES?**

179 A. The main dispute between the parties relates to the unreasonably high switched access
180 rates that GLC and WTC seek to impose. Their switched access rates are very high.
181 They correspond to rates one might see for traffic that is originated by end users in
182 remote, rural areas of Michigan. The problem is that most of Complainants’ traffic has
183 nothing to do with rural Michigan.

First, most of the originating switched access traffic comes from competitive local exchange carriers (“CLECs”) that serve dense urban or suburban areas. GLC picks up the traffic in Southfield, transports the traffic a great distance, and then delivers that traffic to AT&T Corp. Before 2014, the vast majority of the CLEC traffic came from Local Exchange Carriers of Michigan (“LECMI”) in Southfield, Michigan; GLC transported the traffic 83 miles to Westphalia, and delivered it to AT&T Corp. in Grand Rapids.

Second, most of Complainants’ terminating switched access traffic is bound for LECMI, a non-rural CLEC. AT&T Corp. delivers the traffic to GLC in Westphalia, and GLC takes the traffic 83 miles to Southfield. At that point, GLC hands the call off to LECMI.

Q. WHY DOES AT&T CORP. DISPUTE GLC’S CHARGES FOR SUCH TRAFFIC?

A. GLC’s application of high rural rates to non-rural CLEC traffic is an unreasonable attempt to get around the rules and inflate access charges. CLECs are subject to FCC rules that “cap” their switched access rates at the level of the incumbent LEC that is their primary competitor. For non-rural CLECs in Michigan, like LECMI, the incumbent LEC for comparison is AT&T Michigan. Thus, if LECMI originates a long-distance call in Southfield that is bound for AT&T Corp., LECMI should charge its non-rural rate for originating the call (which has to be equal to or less than the corresponding AT&T Michigan rate) and deliver it to the closest logical tandem: the AT&T Michigan tandem

in West Bloomfield (7 miles away from Southfield). Instead, GLC picks up the call in Southfield and charges its own high rates for carrying the call to AT&T Corp.

This is doubly improper. GLC is carrying non-rural CLEC traffic, which should be capped at the AT&T Michigan rate. Further, GLC is also a CLEC for purposes of the FCC's rule, so its rates for non-rural Michigan traffic should be also capped at the AT&T Michigan rate. To make matters even worse, GLC charges for 83 miles of transport that AT&T Corp. doesn't need, for GLC to transport the call all the way from Southfield, Michigan to distant Westphalia.

Q. HOW DID AT&T CORP. FIND OUT THAT COMPLAINANTS HAVE BEEN CHARGING HIGH RURAL RATES FOR NON-RURAL TRAFFIC?

A. The issue came to AT&T Corp.'s attention as a result of sharp increases in the volume of access minutes that Complainants billed to AT&T Corp. Those volume increases occurred when Complainants artificially stimulated their access volumes by carrying 8YY traffic that did not originate with their own end users, and that was instead originated by end users of wireless carriers and then passed through non-rural CLECs.

Schedule JH-2 shows Complainants' switched access minutes billed to AT&T Corp. from January 2010 through July 2014, and graphically illustrates the increase in volume over time. As you can see from Schedule JH-2, Complainants' switched access billings for the month of September 2011 were over four times higher than the corresponding monthly billings for January 2010. Nearly all of that fourfold increase relates to charges for

229 originating switched access. As you can see, in January 2010, Complainants billed
230 slightly more for terminating access than originating access; by September 2011,
231 Complainants' originating switched access charges were roughly three times the
232 corresponding charges for terminating switched access.

233
234 **Q. PLEASE TELL US MORE ABOUT COMPLAINANTS' AGGREGATION OF**
235 **WIRELESS 8YY TRAFFIC.**

236 A. As with the non-rural CLEC traffic I discussed above, Complainants are trying to get
237 around the rules. Unlike wireline LECs, wireless carriers cannot charge for switched
238 access service themselves. In recent years, some wireless carriers have sent 8YY traffic
239 to "traffic aggregators" who in turn send it to wireline LECs and other access providers
240 that *can* and do charge for switched access services. Hypercube and Inteliquent
241 (formerly Neutral Tandem) are two prominent examples in the industry of access
242 providers that aggregate 8YY traffic. They may provide tandem switching and some
243 transport, and then hand off the traffic to the carriers that actually provide 8YY service,
244 like AT&T Corp. The access providers/call aggregators then charge AT&T Corp. for
245 originating switched access services. Based on my experience in the industry, I am aware
246 that the access providers will share the access revenues with the wireless carriers whose
247 end users actually originate the traffic (or otherwise compensate them), as an incentive
248 for them to join the aggregation arrangement.

249
250 Like Hypercube and Inteliquent, Complainants here have increased their access volume
251 by handling aggregated wireless 8YY traffic and assessing originating switched access

charges on 8YY providers. The difference is that Hypercube and Inteliquent charge rates on this 8YY traffic that comply with federal law, while Complainants improperly bill for the traffic at unlawfully high rates.

Q. COULD YOU PLEASE SHOW US HOW COMPLAINANTS ARE INVOLVED IN CARRYING WIRELESS-ORIGINATED 8YY CALLS?

A. Yes. Based on my analysis of Complainants' bills, my understanding of the industry and its key players, and my review of Complainants' pleadings in the FCC informal complaint proceeding, the 8YY traffic in dispute follows a complicated, circuitous path. Schedule JH-3 to my testimony provides a graphic illustration. The steps are as follows:

1. An end user who buys wireless service makes an 8YY call to a business served by AT&T Corp.
2. The end user's wireless carrier routes the call to a traffic aggregator (in this case, Incomm, as I discuss further below).
3. Incomm routes the call to one or more intermediate carriers that, at GLC's direction, take the call to LECMI in Southfield.
4. LECMI receives the 8YY aggregated traffic in Southfield and hands it off to GLC there.
5. GLC then transports the call from Southfield to Westphalia (where its tandem switch is located), and charges AT&T Corp. for 83 miles of switched access transport service.
6. GLC hands the call off to WTC in the Westphalia exchange where GLC's tandem switch is located.

7. WTC carries the aggregated 8YY traffic from the exchange boundary of the Westphalia exchange to GLC's tandem switch. This distance is less than 1 mile.
8. GLC (or some related company) performs an 8YY database dip to identify the carrier providing the 8YY service on that particular call (*e.g.*, AT&T Corp.), and GLC's switch directs the call to that carrier.
9. For calls going to AT&T Corp. end users, AT&T Corp. accepts the call at the Westphalia tandem and transports the call to its "point of presence" in Grand Rapids over dedicated transport facilities leased from GLC between Westphalia and Grand Rapids.
10. In Grand Rapids, the call enters AT&T Corp.'s network and is transported to locations across the country for termination to the 8YY toll-free customer.

Q. WHAT ACCESS CHARGES DO COMPLAINANTS ASSESS ON AT&T CORP. FOR THIS CIRCUITOUS ARRANGEMENT?

- A. Complainants are charging AT&T Corp. for the following services, at the following rates, that are allegedly performed by the following carriers (database query charges not included):

CARRIER	ACCESS FUNCTION BILLED	RATE
WTC	Tandem Switched Facility	\$ 0.000418 per mile (for 1 mile)
GLC	Tandem Switched Facility	\$ 0.000418 per mile (for 82 miles)
GLC	Tandem Switched Termination Transport	\$ 0.002171
GLC	Tandem Switching	\$ 0.005476

Until early 2013, almost all of the disputed charges were billed by WTC, although as I discuss below it appears that WTC's bills included charges for services that may have been provided by GLC. I discuss the problems with these charges in more detail in Sections III.A-III.B below. I then calculate the overall dollar impact of Complainants' improper practices, and the refunds requested by AT&T Corp., in Section IV below.

Q. WHICH WIRELESS CARRIERS ARE ORIGINATING THESE CALLS?

A. Until March 2014, Cricket Wireless was the main originating wireless carrier. In March, 2014, Cricket was acquired by AT&T Corp.'s parent company, AT&T Inc., and the flow of wireless 8YY traffic from Cricket through Complainants ceased. As you can see from Schedule JH-2, Complainants' switched access billings to AT&T Corp. dropped sharply in March, 2014.

Q. DID THE DROP IN WIRELESS 8YY TRAFFIC SOLVE THE PROBLEM?

A. No. As I described above, the 8YY traffic was only part of the problem. It caused increases in volume that brought the issue to AT&T Corp.'s attention. But the underlying issue is Complainants' application of high, rural rates (and very large transport charges) to non-rural CLEC traffic. That practice began before the aggregation of Cricket 8YY traffic, and it has continued even after Complainants' aggregation of Cricket 8YY traffic ceased.

Further, almost immediately after the aggregation of Cricket traffic stopped in March 2014, Complainants began billing AT&T Corp. for a significant amount of new traffic.

Based on Complainants' bills, it appears that the traffic comes from a Chicago switch assigned to a competitive LEC called "Peerless" that operates in Michigan and Illinois. Complainants' bills for the Peerless traffic include charges for GLC's tandem switch in Westphalia, and state that GLC delivers the traffic to AT&T Corp. in Grand Rapids. GLC's switched access charges for the Peerless traffic, however, do *not* include any transport charges; they consist only of tandem switching charges, albeit at excessive rates. The ultimate source of the Peerless traffic may be a wireless carrier or carriers. Of course, AT&T Corp. is on the outside of Complainants' arrangement looking in, so we do not know the full scope of the arrangement or all the participants. We hope to learn more of the facts through discovery. But one thing we do know is that no matter where the Peerless traffic comes from, GLC should not be charging AT&T Corp. for non-rural traffic from Chicago at high rates that would only be appropriate, if ever, for rural Michigan.

Q. WHO IS "AGGREGATING" THE TRAFFIC FROM WIRELESS CARRIERS AND DELIVERING IT TO COMPLAINANTS?

A. Based on our investigation to date, it appears that a company called InComm (or its affiliate, U.S South, Communications, Inc.) is the principal carrier "aggregating" the traffic. InComm is based in Atlanta, Georgia, and it provides prepaid product and transaction services. See <http://www.incomm.com/> and <http://www.us-south.net/>. However, it appears that InComm does not send traffic directly to Complainants and does not deal with them directly. Rather, it sends the 8YY traffic to one or more intermediate carriers, and at some point the intermediaries hand off the traffic to Complainants. I am

not yet sure who those intermediaries are. Again, AT&T Corp. needs discovery to learn the full details of Complainants' traffic stimulation arrangements.

Q. ARE THE WIRELESS CARRIERS, OR THE AGGREGATORS, SHARING IN COMPLAINANTS' ACCESS CHARGES?

A. Based on my experience in the industry, I am aware that the LECs billing access charges in these arrangements often enter into agreements to pay the traffic aggregators for the traffic and thereby share the LECs' access revenues. The aggregators, in turn, pay the wireless carriers whose end users originate the traffic. These payments clearly provide the incentive for the wireless carriers and aggregators to participate in this arrangement. With respect to the traffic originated by Cricket, Cricket was paid by InComm for the 8YY traffic, and InComm in turn was paid by one or more of the intermediate carriers that deal with Complainants. It stands to reason that those intermediaries would in turn have been paid by Complainants. But again, at this stage, we do not know all the details of Complainants' arrangement. We intend to take discovery from Complainants so that they divulge all the contracts or informal agreements that are related to their arrangements.

Q. WHEN DID AT&T CORP. FIRST REFUSE TO PAY A PORTION OF COMPLAINANTS' BILLS?

A. AT&T Corp. began to withhold a portion of Complainants' bills (reflecting the improper charges for non-rural CLEC traffic, wireless 8YY traffic, and excessive mileage) beginning with their bills for February 2013 usage. AT&T Corp. concurrently raised

these issues with Complainants in a March, 2013 dispute letter to WTC and GLC. I attach a copy of that letter as Schedule JH-4.

However, Complainants were issuing improper bills for some time before AT&T Corp. discovered the problem in early 2013. AT&T Corp. contests Complainants' bills going back to February 2010. As Schedule JH-2 shows, Complainants' switched access volumes began to increase then, but it took more time for the full increase to be realized. It took some time after that for AT&T Corp. to realize that Complainants' billing increases were the result of improper rates, mileage, and aggregation practices, rather than normal business expansion or fluctuations in volume. In part, this is because AT&T Corp. operates nationwide and has to review and assess switched access charges from a large number of companies. Thus, between February 2010 and February 2013, AT&T Corp. paid Complainants' bills, without realizing that a substantial portion of those bills was improper. AT&T Corp. accordingly seeks a refund of the excessive charges it paid between February 2010 and February 2013.

Q. WHAT OTHER PROCEEDINGS ARE CURRENTLY PENDING ON THIS DISPUTE?

A. Overall, a substantial majority of the disputed charges relate to interstate calls. Accordingly, AT&T Corp. filed an informal complaint against Complainants with the FCC in April 2014, seeking (i) a refund of improper charges that AT&T Corp. paid and (ii) an order directing Complainants to stop improper billing going forward. A copy of that complaint is attached as Schedule JH-5 hereto. Several other leading IXCs –

Verizon, Sprint, and CenturyLink – have also brought their own informal complaint at the FCC complaining about Complainants’ charges for the same reason. I attach a copy of their FCC complaint as Schedule JH-6 hereto. Because most of the traffic at issue is interstate traffic, and because Michigan access rates mirror federal access rates, AT&T Corp. is asking the Commission to defer proceedings on the intrastate portion of the parties’ dispute until the FCC rules on the interstate side.

In addition, there is a new MPSC proceeding that addresses this same dispute. In MPSC Case No. U-17660, GLC and WTC allege that three other IXC’s have objected to paying their switched access rates. These IXC’s are Level 3 Communications, Global Crossing Local Services, Inc, and Wiltel Communications.

A. GLC’S ACCESS RATES ARE EXCESSIVE AND UNREASONABLE

Q. GLC AND WTC CLAIM THAT AT&T CORP. OWES THEM FOR SWITCHED ACCESS CHARGES ASSESSED SINCE FEBRUARY 2013. HOW DO YOU RESPOND?

A. AT&T Corp. does not owe Complainants anything. It has already paid more than the appropriate amount of their bills. The remaining amounts claimed by Complainants are based on their unreasonably high rates, including inappropriate transport mileage charges. In reality, Complainants owe AT&T Corp. a substantial amount as a refund of improper charges that AT&T paid *before* February, 2013, when AT&T began to refuse payment on a portion of Complainants’ billings. Further, Complainants likely owe AT&T Corp. an additional refund for the period *after* February 2013, because the amount that AT&T

Corp. withheld after February 2013 was based on conservative assumptions that understated the amount due to AT&T Corp. Further investigation will assist AT&T Corp. in showing that additional amounts are due.

Q. WHY DOES AT&T CORP. DISPUTE GLC's CHARGES?

A. GLC's access rates are excessive and unreasonable. This is because they greatly exceed the rates charged by the incumbent LEC with which GLC competes: AT&T Michigan. GLC's intrastate switched access rates are higher than the corresponding per-minute rates that would be charged by AT&T Michigan for the same access service – by a multiple of more than 30 times.

Q. WHY DO YOU COMPARE GLC's RATES TO THOSE OF AT&T MICHIGAN?

A. AT&T Corp. explains the relevant legal rules in its Counterclaims. Briefly, Michigan law requires a carrier's intrastate switched access rates to be equal to or less than its corresponding interstate rates, and in turn federal law "caps" a CLEC's interstate switched access rates at the levels charged by the incumbent LEC with which that carrier competes. GLC is a CLEC for purposes of the federal rules. Further, it is carrying traffic originated by non-rural CLECs like LECMI that are also subject to the federal caps.

In addition, federal law has rules governing the artificial stimulation of access volumes. Those rules also use an incumbent LEC's rates as a "cap" on a competing carrier's interstate switched access rates if traffic volume increases by levels specified by the FCC. Because Complainants have artificially inflated their traffic volumes, the access

stimulation rules provide an independent reason for capping Complainants' rates at the levels of the relevant incumbent LEC.

Finally, federal law also prevents carriers from imposing excessive mileage charges through arrangements that are designed to inflate a LEC's transport mileage and that do not provide some corresponding benefit to the IXC or to callers.

Q. WHAT IS THE FACTUAL BASIS FOR AT&T CORP.'S POSITION THAT GLC HAS ENGAGED IN ACCESS STIMULATION?

A. My understanding is that the FCC's rule has two triggers, and if a carrier meets either one it is presumed to be subject to the FCC's rule on access stimulation. One of these is that a LEC has "has had more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year." 47 C.F.R. § 61.3(bbb)(1)(ii). Complainants satisfy this condition. As I explained above, AT&T Corp.'s records show that the volumes of traffic coming through the LECMI switch in Southfield, Michigan increased dramatically over time. This interstate data is attached as Exhibit B to AT&T Corp.'s informal FCC complaint, Schedule JH-5. Since the end of 2011, when the FCC's access stimulation rules became effective, the volume of interstate access minutes of use between AT&T Corp. and this switch increased by 170 percent between May, 2011 (7.46 million MOUs) and May, 2012 (20.13 million MOUs); it increased by 123 percent between June, 2011 (8.63 million MOUs) and June, 2012 (19.20 million MOUs). Both these increases are enough to satisfy the FCC's volume trigger.

454

455 **Q. WHY DOES AT&T CORP. BELIEVE THAT, IN ADDITION TO**
456 **ARTIFICIALLY STIMULATING TRAFFIC VOLUME, GLC IS CHARGING**
457 **FOR EXCESSIVE TRANSPORT MILEAGE?**

458 A. This is self-evident from the circuitous nature of GLC's routing arrangement. Instead of
459 receiving the calls at a point somewhere near an AT&T Corp. point of presence ("POP"),
460 and then delivering them to AT&T Corp. somewhere close by, GLC picks up CLEC and
461 wireless 8YY traffic from the LECMI switch in Southfield and transports that traffic over
462 83 miles to Westphalia. There, GLC hands the calls to WTC, which transports them to
463 GLC's tandem in Westphalia. Under this arrangement, GLC assesses transport charges
464 based on 83 miles of transport service. It is as if you wanted to fly from Chicago to
465 Lansing and take a taxi from the airport to your home in Lansing, but were instead forced
466 to fly into Detroit Metro airport, pick up a taxi there, and ride all the way to your house in
467 Lansing so the taxi service can maximize its charges.

468

469 **Q. DOES GLC's CIRCUITOUS ROUTING ARRANGEMENT RESULT IN ANY**
470 **BENEFITS TO AT&T CORP.?**

471 A. None whatsoever. As I stated earlier, the CLEC and 8YY traffic have no particular
472 connection to Complainants or rural Michigan. The traffic originated by the CLECs is
473 originated in non-rural Michigan, and AT&T Corp. could easily pick up the traffic from
474 AT&T Michigan's tandem switches in non-rural Michigan. The wireless 8YY traffic is
475 even further afield, originated by end users of wireless carriers at locations all over the
476 country. AT&T Corp. has numerous POPs, throughout the United States, where it could

pick up the wireless traffic. Many of those POPs are located much closer to LEC end offices and tandem offices, so the transport mileage would be much shorter than 80 miles, and in many cases less than 1 mile. Many of those POPs are also located in areas served by LECs with access rates that are much lower than GLC's and WTC's rates. If Complainants had not entered into this artificial aggregation and routing arrangement, AT&T Corp. would have simply picked up the same traffic from another switched access provider at a much lower rate. AT&T Corp., the calling party, and the 8YY customer do not receive any benefit from Complainants' routing.

Further, Complainants' arrangement did not result in any overall increase in AT&T Corp.'s 8YY traffic, so it does not result in any increase in 8YY revenue. The end users making the 8YY calls are simply trying to call the 8YY business customer, and would not know or care about the intermediate arrangements involving wireless carriers, aggregators and Complainants in between them and their desired destination. Thus, they would make the same 8YY calls whether or not Complainants inserted themselves into the call flow. From AT&T Corp.'s perspective, Complainants' routing arrangement has only one effect – to artificially drive up access costs. It provides no benefits to AT&T Corp., and is in fact a detriment.

Q. CONSIDERING GLC'S RATE STRUCTURE AND ITS ARTIFICIAL STIMULATION OF ACCESS MINUTES AND TRANSPORT MILEAGE, HOW DO GLC'S ACCESS RATES COMPARE TO THOSE OF AT&T MICHIGAN?

499 A. GLC's overall per-minute rates for originating switched access service are some 30 times
500 the per-minute rates that AT&T Michigan would charge for the same service. Looking at
501 the transport element alone, GLC's inefficient 83-mile runaround results in per-minute
502 transport charges that are over 300 times the per-minute rate AT&T Michigan would
503 charge for transport (based on the 7-mile distance between the LECMI switch in
504 Southfield and the AT&T Michigan switch in West Bloomfield). I provide a detailed
505 comparison of GLC's rates versus AT&T Michigan's rates at Schedule JH-7.

506
507 **B. WTC'S TRANSPORT CHARGES VIOLATE ITS TARIFF**

508 **Q. WHAT IS AT&T CORP.'S BASIS FOR DISPUTING WTC'S ACCESS**
509 **CHARGES?**

510 A. WTC has billed AT&T Corp. for 83 miles of transport facilities. Complainants have not
511 been clear as to who actually provided the 83 miles of transport. The bills submitted by
512 WTC before May 2013 indicate that WTC provided the service. It is also possible that
513 WTC may have billed AT&T for transport service that was actually provided by GLC.
514 But as I explained in Section III.A above, GLC cannot properly charge for 83 miles of
515 transport, because GLC inefficiently routed the traffic in a roundabout manner to inflate
516 its mileage charges. GLC's use of WTC as a billing agent is irrelevant. Whichever
517 company put its name on the bills, GLC's charges were improper.

518
519 To the extent WTC provided the transport itself, its charges would still be unlawful.
520 WTC has adopted the tariff issued by the National Exchange Carriers Association, and
521 the NECA allows it to collect transport charges only for transport within its Local Access

Transport Area (“LATA”). The title page of the NECA tariff expressly limits the area in which the access service (including transport) may be provided, stating that the tariff governs “the provision of Access Services *within a Local Access and Transport Area (LATA) or equivalent Market Area.*”¹ Further, Section 6.1 of the tariff states that “Switched Access Service provides for the ability to originate calls from an end user’s premises to a customer designated premises, and to terminate calls from a customer designated premises to an end user’s premises *in the LATA where it is provided.*” The transport service disputed by AT&T Corp. runs between Southfield and Westphalia. Southfield is in LATA 340, whereas Westphalia is in LATA 344. Therefore, transport between these two points is an interLATA service that is not covered by WTC’s tariff.

Q. WHY DO YOU SAY THAT THE TRANSPORT SERVICE MAY ACTUALLY HAVE BEEN PROVIDED BY GLC RATHER THAN WTC?

A. AT&T Corp. complained about WTC’s billings in early 2013, and reminded WTC that it could not charge for interLATA transport. Starting in May 2013, WTC’s bills said that the 83 miles of transport facilities were being billed on behalf of GLC. It is possible that the transport charges were billed on GLC’s behalf all along, and WTC just started telling us so in May 2013. It is also possible that the transport charges were really billed on behalf of WTC itself, and that WTC tried to “shift” the charges to GLC on its bills because it realized that WTC could not lawfully bill for interLATA transport. In the end,

¹ NECA Tariff, FCC No. 5, Original Title Page 1, Access Service (emphasis added).

it doesn't matter because neither GLC nor WTC could lawfully bill for these excessive transport charges.

IV. DETERMINATION OF REFUND AMOUNT REQUIRED

Q. HAVE YOU CALCULATED THE REFUND AMOUNTS THAT COMPLAINANTS OWE TO AT&T CORP.?

A. Yes. The amount of the refund that AT&T Corp. seeks is \$3,683,025. Schedule JH-8 show the detailed calculation of that refund. As you can see, at this point all of the refund is assigned to WTC, because the overbillings all came from WTC and all the payments were from AT&T Corp. to WTC.

Q. PLEASE EXPLAIN YOUR STARTING POINT FOR DETERMINING THESE AMOUNTS.

A. I started by reviewing Complainants' access bills covering usage from February 2010 through January 2013 (the latest bill before AT&T Corp. began to withhold the unlawful portion of the amounts billed). As I discussed earlier, the bills came from WTC, and those billed stated that WTC was the provider of the service, and AT&T Corp. paid WTC alone. If it turns out that GLC provided the service that was billed by WTC, then GLC would be responsible for the refund. AT&T Corp. is indifferent to which affiliate pays the refund, so long as it is compensated.

Q. PLEASE EXPLAIN HOW YOU DETERMINED THE REFUND AMOUNT DUE.

564 A. As I described above, the central problems with Complainants' charges are (i) they are
565 based on excessive, unreasonable per-minute rates that should have been "capped" at the
566 level of AT&T Michigan's rates, and (ii) they include excessive transport mileage
567 charges that reflect Complainants' inefficient routing scheme. To correct these problems,
568 I took the originating access minutes and reduced the per-minute rates used in the bills to
569 the levels that Complainants should have charged: AT&T Michigan's per-minute rates.
570 Similarly, for the transport mileage portion of these charges, I replaced GLC/WTC's
571 excessive 83 miles of transport facilities (from the LECMI switch in Southfield to the
572 GLC tandem in Westphalia) with a mileage charge based on 7 miles of transport
573 facilities. The latter represents the mileage AT&T Michigan would have used for
574 transporting calls from the LECMI switch in Southfield to the AT&T Michigan tandem
575 in West Bloomfield. By comparing the amounts WTC should have charged (using
576 AT&T Michigan's rates and transport mileage) to the amounts on the bills, I determined
577 the total amount by which WTC overcharged AT&T Corp. through January 2013.

578
579 **Q. IS THERE ANY REFUND DUE TO AT&T CORP. FOR CHARGES AFTER**
580 **JANUARY 2013?**

581 A. I expect there is. Beginning with February 2013 usage, AT&T Corp. started disputing
582 and withholding part of Complainants' bills. However, the amount withheld was based
583 on a preliminary and very conservative (understated) view of the amount due. Thus, it is
584 likely that further investigation will show additional amounts due to AT&T Corp. for the
585 period after January 2013.

586

587 V. CONCLUSION

588 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

589 A. Yes, it does.

1 Q (By Mr. Ortlieb): Now, Mr. Habiak, let me refer you to
2 another document you have before you, and that is a
3 43-page document, consisting of questions and answers
4 that was filed with this Commission on August 28, 2014.
5 Do you see that?

6 A Yes.

7 Q And is that your response testimony in this matter?

8 A Yes.

9 Q And are there both confidential and public versions of
10 that testimony?

11 A Yes.

12 Q And are you looking right now at the confidential
13 version?

14 A I am.

15 Q Do you have any changes or corrections to make to this
16 testimony?

17 A Yes, I do. On page 4, line 65, it says, "excessive rates
18 (which are --", and it says "23", that should be "30
19 times higher".

20 Q Thank you. Please continue.

21 A On page 6, let's see, it's lines 112 to 113, we'd like to
22 strike the sentence that begins with, "Under that
23 agreement, NuLeef paid".

24 JUDGE SONNEBORN: Mr. Habiak, what line
25 is that?

1 A It's line 112 through 113, page 6.

2 JUDGE SONNEBORN: And please indicate the
3 correction again.

4 MR. ORTLIEB: Your Honor, the correction
5 is a deletion, an entire sentence.

6 JUDGE SONNEBORN: That entire sentence
7 beginning with, "Under that agreement"?

8 MR. ORTLIEB: Yes.

9 JUDGE SONNEBORN: Thank you.

10 A And on page 28, line 613, on 613 it says, "overpayments
11 attributable to this problem was", and it formerly said
12 575,000, it is now "1,142,575". And on line 619, it once
13 again replaces the 575 with the "1,142,575".

14 Q (By Mr. Ortlieb): Please continue.

15 A Then on page 30, on line 661, once again we have where it
16 said "23 times higher", and that should be "30".

17 And on page 42, line 939, also once again
18 it's referring to the 575,000, and it should be
19 "1,142,575".

20 Q Thank you, Mr. Habiak. And there is a Revised Schedule
21 JH-20, correct?

22 A Correct.

23 Q Can you briefly explain what the revision there is?

24 A Sure. Let me just pick up the old so I can. So in the
25 former version, if you look on page 2 of that JH-20, you

1 can see that beginning on August 11, the second
2 August 11, the rate goes from the prior August 11, which
3 is four zeros and a 19 to suddenly three zeros and a 34.
4 The data was out of our billing system and, for some
5 reason, for a period of time our billing system
6 identified the per-mile rate incorrectly, it was showing
7 actually the termination rate. Ultimately that got
8 resolved in our billing system, and it went back, as you
9 can see, November of 2012. So when I went back in -- so
10 interestingly enough, in the database it showed the
11 termination rate as the per-mile rate, and so I fetched
12 the proper data, so that's what you see here in the
13 revised schedule, page 2. Once again, starting with the
14 second August, it goes to, continues with the 00019, and
15 then it changes to 00018.

16 Q Thank you. And on page 3 of Revised Schedule 20, right
17 at the end there's some words that are partially
18 obscured. Can you clarify what that says?

19 A Right. It's actually, it's overcharges to AT&T Corp.

20 Q And has the amount to the right of that changed?

21 A Yes. That's the total we've been talking about, the
22 1,142,575.

23 JUDGE SONNEBORN: Mr. Ortlieb, could I
24 have a copy of the revised scheduled, please?

25 MR. ORTLIEB: Oh, absolutely.

1 JUDGE SONNEBORN: Thank you.

2 (Document provided.)

3 Q (By Mr. Ortlieb): So with those corrections and edits --
4 first of all, is that all of the edits?

5 A Yes.

6 Q And so with those corrections and edits, if I asked you
7 all of the questions that are contained in your response
8 testimony document, would your answers be the same and
9 reflected therein?

10 A Yes.

11 Q O.K. And let's talk about the schedules now. You
12 have -- one more question, I'm sorry, before we get to
13 the schedules.

14 This testimony contains a number of
15 portions that have been struck out, correct?

16 A Correct.

17 Q I mean is it your understanding that these reflect the
18 rulings on the motions to strike that were made
19 yesterday?

20 A Yes.

21 Q Now, with respect to the schedules, there are now 11
22 schedules attached to your response testimony, correct?

23 A Yes.

24 Q And just so that we can keep things straight for the
25 record, let's just go through the numbering. Your

1 Schedule JH-9 is now AT&T Exhibit 11, correct?

2 A Yes.

3 Q And your Schedule JH-10 is AT&T Exhibit 12?

4 A Yes.

5 Q And that is a confidential exhibit, correct?

6 A Correct.

7 Q Your Schedule JH-11 is now AT&T Exhibit 13?

8 A Yes.

9 Q That is also confidential?

10 A Correct.

11 Q Your Schedule JH-12 is AT&T Exhibit 14; is that right?

12 A Yes.

13 Q And that is confidential?

14 A Correct.

15 Q Your Schedule JH-13 is AT&T Exhibit 15?

16 A Yes.

17 Q Your Schedule JH-14 is AT&T Exhibit 16?

18 A Yes.

19 MR. HOLMES: That's a confidential

20 exhibit, also, correct?

21 Q (By Mr. Ortlieb): And that is also a confidential
22 exhibit?

23 A Right. Yes.

24 Q And your Schedule JH-19 is AT&T Exhibit 17, correct?

25 A Yes.

1 Q And that's confidential?

2 A Yes.

3 Q And then your Revised Schedule JH-20 is AT&T Exhibit 18?

4 A Yes.

5 Q Your Schedule JH-21 is AT&T Exhibit 19?

6 A Yes.

7 Q Your Schedule JH-22 is AT&T Exhibit 20?

8 A Yes.

9 Q And your Schedule JH-23 is AT&T Exhibit 21; is that
10 correct?

11 A Yes.

12 MR. ORTLIEB: Your Honor, at this point I
13 would like to move for the admission of AT&T Exhibits 11
14 through 21, and request that the response testimony of
15 Mr. Habiak, both the confidential and public versions, be
16 bound into the record. I would further state for the
17 record and ask that confidential treatment be afforded to
18 AT&T Exhibit 12, 13, 14, and 17, and 16. I'm sorry.
19 Strike the 17. It's 16.

20 JUDGE SONNEBORN: And what about Exhibit
21 11, JH-9, is that not confidential?

22 MR. ORTLIEB: Did I miss that one, your
23 Honor?

24 JUDGE SONNEBORN: Yes.

25 MR. ORTLIEB: Schedule JH-11 is
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1 confidential, that is AT&T Exhibit 13, correct?

2 JUDGE SONNEBORN: No. I believe newly
3 marked Exhibit 11 is JH-9; is that right?

4 MR. ORTLIEB: Yes, that is correct.

5 JUDGE SONNEBORN: And that you wish to
6 remain confidential?

7 MR. ORTLIEB: Yes, I wish it to remain
8 confidential.

9 JUDGE SONNEBORN: All right. Mr. Holmes,
10 do you have any objection to this testimony being bound
11 and these exhibits being received?

12 MR. OLIVA: Your Honor --

13 JUDGE SONNEBORN: Pardon me. Mr. Oliva.

14 MR. OLIVA: That's O.K. Subject to we
15 preserve for appeal those parts of our motion to strike
16 that were denied, subject to that, we have no other
17 objection to the testimony or the exhibits.

18 JUDGE SONNEBORN: Thank you.
19 Mr. Brandenburg, do you have any objection?

20 MR. BRANDENBURG: Staff has no
21 objections, your Honor.

22 JUDGE SONNEBORN: All right. Thank you.
23 The public and confidential response
24 testimony of Mr. Habiak dated August 28, 2014, pages 1
25 through 43, with the corrections noted and the stricken

1 portions reflected, is bound into the record. AT&T
2 Exhibits 11 through 21, noting that Exhibits 11, 12, 13,
3 14, 16, 17, and 19 are confidential and subject to the
4 protective order in place in this case, are received and
5 admitted into evidence.

6 MR. ORTLIEB: Thank you, your Honor.

7 JUDGE SONNEBORN: You're welcome.

8 (Testimony bound in.)

9 - - -

21 - - -

22 (Confidential Response Testimony of John W.
23 Habiak is found on Pages 412 through 456 of the
24 Confidential Record.)

25 - - -

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

Case No. U-17619

**Response Testimony of John W. Habiak
On Behalf of AT&T Corp.**

AT&T Corp. Exhibit 1.1

PUBLIC VERSION

August 28, 2014

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FURTHER EVIDENCE OF GLC'S PLAN TO INFLATE SWITCHED ACCESS CHARGES.....	5
III.	GLC'S RATES ARE UNLAWFUL UNDER FEDERAL AND STATE LAW.....	14
IV.	THE COMPLAINANTS OVERCHARGED AT&T CORP. IN THREE WAYS, SEPARATE AND APART FROM THEIR EXCESSIVE RATES.....	25
A.	GLC APPLIED ITS EXCESSIVE RATES TO TRANSPORT ACTUALLY PROVIDED BY LECMI	25
B.	AT&T CORP. WAS BILLED FOR, AND PAID FOR, LOCAL SWITCHING SERVICES THAT WERE NEVER PROVIDED	32
C.	MOST OF THE TRAFFIC IN DISPUTE IS NOT COVERED BY THE GLC AND WTC TARIFFS	36
V.	CONCLUSION	41

RESPONSE TESTIMONY OF JOHN W. HABIAK
ON BEHALF OF AT&T CORP.

I. INTRODUCTION

**Q. ARE YOU THE SAME JACK HABIAK WHOSE DIRECT TESTIMONY ON
BEHALF OF AT&T CORP. WAS FILED IN THIS CASE ON JULY 24, 2014?**

A. Yes.

Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?

**A. My July 24 testimony supported the counterclaims AT&T Corp. filed on that day against
Great Lakes Comnet, Inc. ("GLC") and its affiliate Westphalia Telephone Company
("WTC"). In that testimony, I explained how GLC and WTC overcharged AT&T Corp.,
and why AT&T Corp. was therefore entitled to the refunds it sought in its counterclaims.**

**The testimony I am submitting now opposes the claims GLC and WTC filed in their
complaint. As a practical matter, though, this testimony is in large part an update to my
July 24 testimony in light of what AT&T Corp. has learned in the last month. That is
because the AT&T Corp. counterclaims that my July 24 testimony supported are the
flipside of the GLC and WTC claims against AT&T Corp. that are the subject of this
current testimony. AT&T Corp.'s counterclaims seek a refund of the inflated GLC and
WTC switched access charges that AT&T Corp. paid before it started withholding
payment in early 2013, while the Complainants seek to recover the amount AT&T Corp.**

withheld. Thus, the same considerations generally pertain both to AT&T Corp.'s claims and to the Complainants' claims.

Q. YOU REFERRED TO WHAT AT&T CORP. HAS LEARNED IN THE LAST MONTH. WHAT IS THE SOURCE OF THAT LEARNING?

A. Primarily, GLC's responses to written discovery requests, the deposition of John Summersett, the Chief Operating Officer of GLC, ~~and the deposition of Dan Irvin, the Chief Executive Officer of Local Exchange Carriers of Michigan ("LECMI")¹, the carrier that delivered to GLC the traffic that is the subject of this case.~~

Q. WHAT ARE THE MOST IMPORTANT THINGS AT&T CORP. LEARNED FROM THAT DISCOVERY?

A. ~~Three things: First, we determined that GLC~~ ~~***BEGIN CONFIDENTIAL***~~

 ***** ~~***END CONFIDENTIAL***~~ ~~Second, we discovered that GLC did not, as we previously believed based on the bills we received from WTC, transport the 8YY traffic all the way from Southfield (where LECMI's switch is located) to Westphalia (where GLC's tandem switch is located). Rather, LECMI carried the traffic on its network from Southfield to Flint, where it delivered the traffic to GLC. Nonetheless, AT&T Corp. was billed GLC's inflated transport rates for the entire Southfield to Westphalia route as if~~

¹ Mr. Irvin is actually the CEO of 123.net, the company that now owns what was formerly known as Local Exchange Carriers of Michigan, Inc. or LECMI. 123.net continues to use LECMI as a trade name, but there is no longer a legal entity by the name of LECMI.

~~—GLC and WTC were providing all the transport. Third, we developed more information about a claim we have against GLC/WTC for payments that AT&T Corp. made for local switching that was not in fact provided. I discuss each of these three items below.~~

Q. WHAT ELSE WILL THIS TESTIMONY COVER?

A. I will respond to several points that GLC witness John Summersett made in his direct testimony. Also, I will explain that GLC and WTC overcharged AT&T Corp. under their Michigan tariffs because they charged AT&T Corp. for non-Michigan traffic that those tariffs do not cover.

Q. HOW WOULD YOU SUMMARIZE AT&T CORP.'S POSITION AT THIS STAGE IN THE PROCEEDINGS?

A. AT&T Corp.'s core position is that GLC's switched access rates are unreasonable and unlawful under federal law, and by operation of MTA section 310(2), they are likewise unlawful under state law. This is primarily because the switched access rates do not conform to the pricing limits imposed by FCC Rule 61.26 and to the mileage restrictions imposed by the FCC's *Alpine* decision.²

Second, and wholly apart from the federal law issues, there are three additional reasons why the Complainants' charges to AT&T Corp. were impermissibly high, namely, (1) that GLC/WTC bills for 100% of the Southfield-Westphalia transport route at their

² *AT&T Corp. v. Alpine Commc'ns*, 27 FCC Rcd. 11513, *recon. denied*, 27 FCC Rcd. 16606 (2012).

excessive rates (which are ³⁰~~23~~ times higher than LECMI's rates), even though GLC/WTC actually provided only 56% of the transport; (2) GLC/WTC billed AT&T Corp. for LECMI local switching on the 8YY traffic, even though it admits that LECMI did not perform any local switching functions; and (3) most of the intrastate 8YY traffic for which GLC/WTC billed AT&T Corp., purportedly under their Michigan tariffs, was non-Michigan traffic that is not subject to those tariffs. Rather, it is traffic that is intrastate as to other states (e.g., traffic that originated and terminated within the state of Florida). I discuss all of these issues in more detail below.

Q. DO YOU HAVE ANY SUPPORTING SCHEDULES?

A. Yes, I have 15 supporting schedules:

Schedule JH-9 - Cricket/U.S. South Toll Free Termination Agreement CONFIDENTIAL

Schedule JH-10 - U.S. South/NuLeef Toll Free Termination Agreement

CONFIDENTIAL

Schedule JH-11 – GLC Supplemental Responses (Errata) to AT&T-003, 004, 010 & 013

CONFIDENTIAL

Schedule JH-12 – GLC/LECMI Network Operating Agreement and Service Agreement

CONFIDENTIAL

Schedule JH-13 – Updated 8YY Call Flow Diagram

Schedule JH-14 – Deposition Transcript of John Summersett (GLC) CONFIDENTIAL

~~Schedule JH-15 – LECMI 6/13/14 discovery response in FCC Case EB-14-MDIC-0001~~

CONFIDENTIAL

~~Schedule JH-16 – LECMI 7/9/14 discovery response in FCC Case EB-14-MD1C-0001~~

~~CONFIDENTIAL~~

~~Schedule JH-17 – Deposition Transcript of Dan Irvin (LECMI) CONFIDENTIAL~~

~~Schedule JH-18 – FCC's Switched Access Charge Rules, 61.26 and 61.3~~

Schedule JH-19 – GLC payment documents produced by LECMI CONFIDENTIAL

Schedule JH-20 – Transport Charges: Southfield to Westphalia

Schedule JH-21 – Excerpt from NECA Tariff 4, Page 408 in May and June, 2013

Schedule JH-22 – GLC Overcharges for LECMI Local Switching

Schedule JH-23 - Excerpt from MECA Tariff M.P.S.C. 25(U)

II. FURTHER EVIDENCE OF GLC'S PLAN TO INFLATE SWITCHED ACCESS CHARGES

Q. AT PAGES 9-14 OF YOUR DIRECT TESTIMONY, YOU DESCRIBE HOW GLC ATTRACTED HUGE AMOUNTS OF 8YY TRAFFIC TO ITS NETWORK IN ORDER TO INCREASE THE AMOUNT IT COULD CHARGE AT&T CORP. AND OTHER IXCS. DO YOU HAVE FURTHER INFORMATION?

A. Yes. We have learned that the financial arrangements that applied to the 8YY traffic as it moved from Cricket to GLC were as follows:

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MPSC Case No. U-17619
AT&T Corp. Ex. 1.1 Habiak
Page 6

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131 ***END CONFIDENTIAL***

132

133 **Q. HAVE YOU UPDATED THE CALL FLOW DIAGRAM THAT WAS AN**
134 **EXHIBIT TO YOUR JULY 24 TESTIMONY TO REFLECT THIS NEW**
135 **INFORMATION?**

136 A. Yes. Schedule JH-1 was the Call Flow diagram that reflected my understanding of the
137 8YY call flow at the time of my Direct Testimony. Schedule JH-13 is the revised version
138 of that diagram that shows the latest information.

139

140 **Q. WHAT DOES SCHEDULE JH-13 SHOW?**

141 A. Schedule JH-13 reflects a deliberate and sophisticated plan to maximize the size of the
142 switched access bills sent by GLC & WTC to AT&T Corp. It shows the very round-
143 about route taken by traffic that originates with wireless customers and terminates to
144 AT&T Corp. customers, and it shows the number of carriers that have inserted
145 themselves into this process. Obviously, the only reason for having this many carriers is
146 so that each carrier can extract a fee on the 8YY traffic. And, it is clear to me that this
147 traffic route is arranged so that the carrier with the highest switched access rates (GLC) is
148 the last carrier in line, so that it can charge the unwitting customers (i.e., the IXCs
149 including AT&T Corp.) the highest possible rates on each minute of this traffic. Note
150 that the downstream carriers pay the upstream carriers to send them traffic – *****BEGIN**
151 **CONFIDENTIAL*******
152 *******END**
153 **CONFIDENTIAL***** or indirectly (everyone else), to funnel the traffic to GLC. GLC
154 is able to make those payments because of its absurdly high rates. And, to add insult to

Q. WHAT DID GLC DO TO GET THE 8YY TRAFFIC ON ITS NETWORK?

*****END

³ See Schedule JH-14, the transcript of deposition of John Summersett, Chief Operating Officer of GLC, at 40-50.

176

177 **Q. IS THIS BASIC SET OF FACTS CONSISTENT WITH THE INFORMATION**
178 **PROVIDED BY LECMI?**

179 A. ~~Yes. LECMI discusses the formation of this arrangement in two documents it produced~~
180 ~~in the Verizon FCC informal complaint proceeding. The first is a letter from LECMI~~
181 ~~counsel dated June 13, 2014 and is attached as Schedule JH-15 (at 3). The second is a~~
182 ~~letter from LECMI counsel dated July 9, 2014 and is attached as Schedule JH-16 (at 5).~~
183 ~~Mr. Irvin also discusses this subject in his deposition transcript in this case at pages~~
184 ~~17-18. This deposition transcript is attached as Schedule JH-17.~~

185

186 **Q. GLC ARGUES THAT AT&T CORP.'S CHARGES FOR ITS 8YY SERVICE**
187 **SHOULD BE HIGH ENOUGH TO BEAR THE COST OF GLC'S SWITCHED**
188 **ACCESS CHARGES. HOW DO YOU RESPOND?**

189 A. The amount AT&T Corp. charges for 8YY services is irrelevant. GLC's switched access
190 charges must be evaluated on their own merits to determine whether they are lawful. If
191 GLC's rates are impermissibly high, they are unlawful whether or not a particular IXC
192 customer of GLC manages to make a profit notwithstanding GLC's illegal rates. If a
193 customer's profitability were relevant to the analysis, the Commission would have to look
194 at the rates and profitability of all IXCs that use GLC's switched access services – not
195 just AT&T Corp.'s. Moreover, because unreasonably high access rates are passed on to
196 retail end users, that provides more reason, not less, to curb the GLC's practices.

197

198 **Q. GLC ALSO CONTENDS THAT AT&T CORP. WAS FREE TO SELECT A**
199 **DIFFERENT ACCESS PROVIDER. IS THAT CORRECT?**

200 A. No, it is not. Schedule JH-13 shows that the 8YY traffic was passed around from one
201 carrier to another before getting to GLC. AT&T Corp. had nothing whatsoever to do
202 with those routing decisions. And, given its pre-existing connections to the GLC tandem,
203 AT&T Corp. could not reject the 8YY traffic that GLC delivered, as I explained in my
204 Direct Testimony at lines 141-155.

205

206 **Q. WHAT ABOUT GLC'S ARGUMENT THAT AT&T CORP. CONTROLS**
207 **CRICKET AND COULD HAVE RE-ROUTED THE TRAFFIC?**

208 A. That is a true red herring. As I explained at lines 299-304 of my Direct Testimony,
209 AT&T did not acquire Cricket until March, 2014. Before then, AT&T could not and did
210 not control the actions of Cricket. After the acquisition, the flow of 8YY traffic from
211 Cricket to U.S. South (and on to GLC) ceased.

212

213 **Q. MR. SUMMERSETT CLAIMS IN HIS DIRECT TESTIMONY (PAGE 8, LINES**
214 **4-10) THAT BY ROUTING TO AND FROM LECMI ACCORDING TO LECMI'S**
215 **INSTRUCTIONS IN THE LOCAL EXCHANGE ROUTING GUIDE ("LERG"),**
216 **AT&T CORP. "CONSENTED TO EXCHANGE TRAFFIC WITH LECMI**
217 **PURSUANT TO THE RATES AND TERMS OF GLC'S TARIFF." IS MR.**
218 **SUMMERSETT CORRECT?**

219 A. Not at all. Mr. Summersett is acting as if routing traffic to the connection point
220 designated by a CLEC in the LERG means that the carrier consents in advance to all

MPSC Case No. U-17619
AT&T Corp. Ex. 1.1 Habiak
Page 11

access charges that the CLEC and its interconnected carriers will later assess on that traffic. He is mistaken, for at least three reasons.

First, the routing instructions came from LECMI, not AT&T Corp. AT&T Corp. had no input in those instructions, no involvement in LECMI's decisions to interconnect with GLC, and no role in deciding where LECMI would interconnect with GLC or how GLC would route LECMI's traffic. AT&T Corp. was not consulted about, and certainly did not consent to, the routing arrangements I described in my Direct Testimony and above.

Second, once LECMI published its routing instructions in the LERG, AT&T Corp. had no choice but to receive or deliver traffic in compliance with LECMI's instructions. Most of the charges at issue here are "originating" switched access charges, assessed on calls that go *from* LECMI and GLC *to* AT&T Corp. for delivery to AT&T Corp. customers. When AT&T Corp. receives those calls, all the routing between LECMI and GLC has already occurred. AT&T Corp. simply receives the calls and delivers them to its customers. AT&T Corp. must receive the calls at the point designated by LECMI, because AT&T Corp. cannot block calls bound for AT&T Corp.'s customers.

Likewise, for "terminating" switched access charges – where AT&T Corp. receives a call bound for a LECMI customer and delivers it to LECMI – AT&T Corp. *must* deliver the call to LECMI (because it cannot block the call). Further, AT&T Corp. has no choice but to deliver the call to the place where LECMI instructed carriers to deliver calls in the LERG. LECMI has not given AT&T Corp. any alternative delivery point. Because

AT&T Corp. could not block the LECMI-GLC traffic, its only option was to dispute the charges that GLC and WTC assessed on the LECMI traffic once it discovered that those charges were improper, just as it has done.

Third, all LECs publish their routing instructions in the LERG. All access customers accept traffic from LECs, and take traffic to LECs, in compliance with the LERG instructions. If compliance with the LERG constituted "consent" to all access charges, no access customer could ever dispute any LEC's access charges.

Q. MR. SUMMERSETT ALSO CONTENDS IN HIS DIRECT TESTIMONY (STARTING AT PAGE 8, LINE 9) THAT AT&T CORP. "AGREE[D] TO PAY" THE DISPUTED ACCESS CHARGES WHEN IT SUBMITTED "ACCESS SERVICE REQUESTS" TO GLC. HOW DO YOU RESPOND?

A. As with the LERG, Mr. Summersett is trying to manufacture advance "consent" to all charges where there was no such consent. AT&T Corp. submits ASRs to establish, maintain, or increase the capacity of its connection with a LEC. The ASR Mr. Summersett attaches to his testimony was submitted in July of 2004, well before the practices and charges that AT&T Corp. disputes here. It is simply absurd to suggest that, when it submitted that ASR a decade ago, AT&T Corp. was agreeing in advance to all rates that might be charged on all traffic that might be delivered over the connection.

Moreover, if AT&T Corp. is to receive and deliver its customers' calls – and it must – it has no choice but to submit ASRs in order to establish or augment the capacity of its connections with LECs and meet customer demand.

Q. WOULD IT BE FAIR TO MECHANICALLY APPLY THE TARIFFS AS GLC SUGGESTS?

A. No. If I understand GLC's argument correctly, it is saying that by requesting switched access service from GLC, AT&T Corp. agreed to pay excessive, unreasonable rates that violate state and federal law, and that AT&T Corp. consented to any and all efforts by GLC to drive non-Michigan traffic through its tandem so that it could charge allegedly rural (i.e., NECA) rates on massive volumes of non-rural 8YY traffic. AT&T Corp. did not agree to any of this. It ordered switched access service from GLC with the expectation that it would be charged lawful rates.

Q. GLC ASSERTS THAT AT&T CORP. SHOULD NOT OBJECT TO ITS CHARGES BECAUSE AT&T CORP. PAID THOSE CHARGES FOR SEVERAL YEARS. HOW DO YOU RESPOND?

A. AT&T Corp. has not waived its right to contest the unlawfully high rates charged by GLC/WTC on the excessive volumes of traffic they contrived to bring into Michigan. The fact that AT&T Corp. was induced to pay exorbitant amounts for several years as a result of the traffic stimulation arrangement is no justification for the unlawful rates. And, we did not discover many of the facts regarding Complainants' arrangement until the discovery process in this case revealed them.

288

289 **Q. GLC ALSO ASSERTS THAT AT&T CORP. DID NOT FOLLOW THE RIGHT**
290 **PROCEDURES TO DISPUTE THE SWITCHED ACCESS CHARGES. PLEASE**
291 **RESPOND.**

292 A. It took AT&T Corp. a while to detect the traffic stimulation program instituted by GLC.
293 But when AT&T Corp. eventually realized in early 2013 what was going on, it began
294 withholding certain payments to GLC on the February, 2013 bill. And shortly thereafter
295 it sent a detailed dispute letter to WTC, which was doing the billing for GLC. That letter
296 is dated March 20, 2013 and is attached as Schedule JH-4 to my Direct Testimony.
297 AT&T Corp. followed up with a second letter on June 6, 2013, which is attached to the
298 Complaint as GLC Exhibit 3.

299

300 **III. GLC'S RATES ARE UNLAWFUL UNDER FEDERAL AND STATE LAW**

301 **Q. WHAT FEDERAL RULES APPLY TO GLC'S SWITCHED ACCESS RATES?**

302 A. As I explained in my Direct Testimony, I am not a lawyer and I will leave it to the
303 lawyers to address questions of law in the briefs. But like most managers in the
304 telecommunications industry, many of the services I deal with are subject to some degree
305 of federal and state regulation and for that reason I need to be generally familiar with
306 those rules. ~~It is my understanding that GLC's switched access rates are subject to the~~
307 ~~price limits established by the FCC in its *Switched Access Charge Order* and the resulting~~
308 ~~FCC Rule 61.26. One part of Rule 61.26 applies to carriers such as GLC and requires~~
309 ~~their switched access rates to be no higher than the corresponding rates of the incumbent~~
310 ~~EEC with which they compete (e.g., AT&T Michigan). Another part of this rule the~~

~~“access stimulation” rule required GLC to immediately lower its rates to the level of the price cap LEC with the lowest switched access rates in the state (which is AT&T Michigan in this instance) once GLC met the two conditions for access stimulation. The first condition is an “access revenue sharing agreement”; the second condition concerns traffic growth. I discuss this on pages 19-22 of my Direct Testimony. A copy of these rules is attached as Schedule JH-18.~~

Q. DID GLC HAVE “ACCESS REVENUE SHARING AGREEMENTS”?

A. Yes. GLC paid carriers to send it 8YY traffic.

Q. HOW DID AT&T CORP. LEARN THAT GLC PAID CARRIERS TO SEND IT 8YY TRAFFIC?

A. *BEGIN CONFIDENTIAL *******

 *****⁴

Q. *****
 *****?

A. *****

⁴ Schedule JH-11 at 2.

MPSC Case No. U-17619
AT&T Corp. Ex. 1.1 Habiak
Page 16

*******END CONFIDENTIAL***** so that GLC could deliver the traffic to AT&T Corp.
and charge AT&T Corp. its inflated rates.

**Q. ARE YOU SURE THAT AT&T CORP. IS ONE OF THE “CERTAIN IXCS”
REFERRED TO IN GLC’S STATEMENT?**

A. Yes. GLC admitted that at deposition.⁵

Q. IN THE DISCOVERY RESPONSE YOU QUOTED, *BEGIN
CONFIDENTIAL*******

⁵ Schedule JH-14 at 156.

MPSC Case No. U-17619
AT&T Corp. Ex. 1.1 Habiak
Page 17

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MPSC Case No. U-17619
AT&T Corp. Ex. 1.1 Habiak
Page 18

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MPSC Case No. U-17619
AT&T Corp. Ex. 1.1 Habiak
Page 19

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406 ***** **END CONFIDENTIAL** *** ~~I do not want to leave that contention~~
407 unanswered, so I will summarize the Rules here, based on information provided by
408 counsel. Please understand, however, that I am not a lawyer, and that I discuss the
409 regulations in this testimony in order to provide context; the full-fledged legal discussion
410 on which AT&T Corp. relies will be provided later, by AT&T Corp.'s counsel.
411
412 FCC Rule 61.26(g)(1) provides, "A CLEC engaging in access stimulation, as that term is
413 defined in § 61.3(bbb), shall not file a tariff for its interstate exchange access services that
414 prices those services above the rate prescribed in the access tariff of the price cap LEC
415 with the lowest switched access rates in the state."
416
417 Section 61.3(bbb), in turn, states that a CLEC engages in access stimulation when it
418 satisfies two conditions: namely, (i) that it has an access revenue sharing agreement, and
419 (ii) that it has "an interstate terminating-to-originating traffic ratio of at least 3:1 in a
420 ~~calendar month or has had more than a 100% growth in interstate originating and/or~~

—terminating switched access minutes of use in a month compared to the same month in
the preceding year.”

*****BEGIN CONFIDENTIAL*******

*******END CONFIDENTIAL***** satisfies condition (i),

and I demonstrated in my Direct Testimony (at page 20) that GLC also satisfied condition

(ii) because it had more than a 100% growth in interstate access minutes from one year to
the next.

Q. DOES GLC DISPUTE THOSE GROWTH FIGURES?

A. I do not believe so.

Q. IN THAT CASE, *BEGIN CONFIDENTIAL*******

*******END**

CONFIDENTIAL* DOES GLC ACKNOWLEDGE THAT ITS RATES WERE
UNLAWFULLY HIGH?**

A. No. In the discovery response *****BEGIN CONFIDENTIAL*******

*******END**

CONFIDENTIAL*** GLC asserted that it is not subject to the FCC's access stimulation

—rules because it is not a CLEC, and because the rules do not apply to 8YY traffic.

442 Q. ~~DOES IT MAKE SENSE TO YOU THAT GLC, AND THE 8YY TRAFFIC THAT~~
 443 ~~IS AT ISSUE HERE, WOULD BE EXEMPT FROM THE FCC'S ACCESS~~
 444 ~~STIMULATION RULES?~~

445 A. No, because the main reason the FCC gave for its adoption of those rules clearly applies
 446 here. Here is what the FCC stated when it adopted the rules:

447 The record confirms the need for prompt Commission action to address effects of
 448 access stimulation and to help ensure that interstate switched access rates remain
 449 just and reasonable, as required by section 201(b) of the Act. Commenters agree
 450 that interstate switched access rates being charged by access stimulating LECs do
 451 not reflect the volume of traffic associated with access stimulation. As a result,
 452 access stimulating LECs realize significant revenue increases and thus inflated
 453 profits that almost uniformly make their interstate switched access rates unjust
 454 and unreasonable.

455 Access stimulation imposes undue costs on consumers, inefficiently diverting
 456 capital away from more productive uses such a broadband deployment. When
 457 access stimulation occurs in locations that have higher than average access
 458 charges, which is the predominant case today, the average per-minute cost of
 459 access and thus the average cost of long-distance calling is increased . . . [A]ll
 460 customers of these long-distance providers bear these costs, even though many of
 461 them do not use the access stimulator's services, and, in essence, ultimately
 462 support businesses designed to take advantage of today's above-cost intercarrier
 463 compensation rates.⁶

464 Those FCC conclusions apply to the traffic at issue here just as forcefully as they apply to
 465 any other access traffic.
 466

467
 468
 469 Q. ~~WHAT IS AT&T CORP.'S RESPONSE TO GLC'S ASSERTION THAT IT IS~~
 470 ~~NOT A CLEC?~~

⁶ Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, 26 FCC Rcd 17663 (2011) ("CAF Order"), at ¶¶ 662-663.

471 ~~A. That is a question for the lawyers. For reference, counsel have advised me that Rule~~
472 61.26 – the rule that caps the access rates of a CLEC that engages in access stimulation –
473 defines the term “CLEC.” Specifically, Rule 61.26(a)(1) states: “CLEC shall mean a
474 local exchange carrier that provides some or all of the interstate exchange access service
475 used to send traffic to or from an end user and does not fall within the definition of
476 ‘incumbent local exchange carrier’ in 47 U.S.C. 251(b).”

477
478 GLC apparently claims it is not a CLEC because it has no end users and thus is not a
479 “local exchange carrier.” But the FCC has defined “local exchange carrier” as “any
480 person that is engaged in the provision of telephone exchange service or exchange access
481 as defined in the Act.” 47 C.F.R § 61.3(w). GLC fits that definition, because while it
482 does not provide telephone exchange service (since it has no end user customers), it does
483 provide exchange access, which is the “offering of access to telephone exchange service
484 or facilities for the purpose of the origination or termination of telephone toll services.”
485 47 U.S.C. § 3(16).

486
487 **Q. IN ADDITION TO THE FACT THAT CLECS ARE SUBJECT TO THE FCC’S**
488 **ACCESS STIMULATION RULES, IS THERE ANOTHER REASON THAT IT IS**
489 **SIGNIFICANT THAT GLC IS A CLEC?**

490 A, Yes. As I said in my direct testimony (at page 9) CLECs are subject to an FCC Rule –
491 separate and apart from the access stimulation rules – that caps their switched access rates
492 ~~at the level of the incumbent LEC that is their primary competitor. GLC’s switched~~

493 ~~access rates, however, are much higher than the rates of the competing ILEC, AT&T~~
494 Michigan, and are therefore unlawful.

495

496 **Q. WHAT WOULD HAPPEN IF THE COMMISSION WERE TO CONCLUDE**
497 **THAT GLC IS NOT A CLEC AND IS THEREFORE NOT SUBJECT TO THE**
498 **FCC RULES YOU HAVE DISCUSSED?**

499 A. GLC's position, if accepted, would create a giant loophole in the FCC's CLEC access
500 rules, with perverse and undesirable consequences. If GLC were correct that any
501 competitive carrier not directly serving end users is not a "CLEC" subject to Rule 61.26,
502 then every CLEC in the nation could quickly divide itself into two affiliated entities, one
503 serving end users directly, and another entity that serves no end users directly and only
504 provides access services to IXCs. Under GLC's view, the latter entity would not be a
505 "CLEC" under 61.26, and as a consequence, would be entirely unconstrained by the
506 FCC's rules governing rates for access services. In short, GLC's argument makes no
507 logical sense, and would create an enormous "regulation-free" zone that such carriers
508 ~~would clearly seek to exploit.~~

509

510 **Q. HOW DO YOU RESPOND TO GLC'S CONTENTION THAT 8YY TRAFFIC IS**
511 **NOT SUBJECT TO THE FCC'S ACCESS STIMULATION RULES?**

512 A. AT&T Corp. will address the contention more fully after GLC has explained what it is
513 based on.

514

MPSC Case No. U-17619
AT&T Corp. Ex. 1.1 Habiak
Page 24

515 Q. ***BEGIN CONFIDENTIAL*****
516 *****
517 *****
518 *****
519 A, *****
520 *****
521 *****
522 *****
523 ~~*****~~
524 ~~*****~~
525 ***END CONFIDENTIAL***

527 Q. CAN YOU REMIND THE COMMISSION WHY A VIOLATION OF THE
528 FEDERAL SWITCHED ACCESS PRICING RULES ALSO CONSTITUTES A
529 VIOLATION OF MICHIGAN LAW?

530 A. ~~Under section 310(2) of the MTA, the intrastate switched access rates of GLC and WTC~~
531 ~~cannot exceed the rates allowed by the federal government for interstate switched access~~
532 ~~services:~~

533 A provider of toll access services shall set the rates for intrastate switched toll
534 access services at rates that do not exceed the rates allowed for the same interstate
535 services by the federal government and shall use the access rate elements for
536 intrastate switched toll access services that are in effect for that provider and are
537 allowed for the same interstate services by the federal government.

538
539 Thus, Michigan law limits the intrastate switched access rates of GLC and WTC to the
540 ~~rates that would be allowable for those services under federal law:~~

541

542 **IV. THE COMPLAINANTS OVERCHARGED AT&T CORP. IN THREE WAYS,**
543 **SEPARATE AND APART FROM THEIR EXCESSIVE RATES**
544

545 **A. GLC APPLIED ITS EXCESSIVE RATES TO TRANSPORT ACTUALLY PROVIDED BY**
546 **LECMI**
547

548 **Q. YOU SAID AT&T CORP. LEARNED IN THE LAST MONTH THAT GLC DID**
549 **NOT IN FACT PROVIDE TRANSPORT ALL THE WAY FROM SOUTHFIELD**
550 **TO WESTPHALIA, AS YOU PREVIOUSLY BELIEVED. PLEASE EXPLAIN.**

551 **A. In my Direct Testimony (at pages 12-13), I described the call path of the 8YY calls that**
552 **are the subject of this proceeding. As I explained, the call is initiated by an end user**
553 **using a wireless phone; is routed by the wireless provider to a carrier called U.S. South;**
554 **passes through one or more intermediate carriers ***BEGIN CONFIDENTIAL*****

555 *********

556 *****END CONFIDENTIAL*** to LECMI in Southfield; is transported from there to**
557 **Westphalia, at which point GLC hands the call off to WTC, which carries the call from**
558 **the exchange boundary of the Westphalia exchange less than one mile to GLC's tandem**
559 **switch; and is then – after a dip into the 8YY database – delivered by GLC to AT&T**
560 **Corp.**

561

562 For access charge purposes, where distance is measured according to V&H coordinates,
563 the distance from LECMI's switch in Southfield to the GLC tandem switch in Westphalia
564 is 83 miles. The bills we received from WTC attributed none of that transport mileage to
565 LECMI. Instead, as I explained in my Direct Testimony (at pages 23-24), the bills
566 attributed all 83 miles to WTC until May, 2013, after AT&T Corp. reminded WTC that it

MPSC Case No. U-17619
AT&T Corp. Ex. 1.1 Habiak
Page 26

could not charge for interLATA transport. At that point, WTC changed the bills so that they indicated that 82 miles of the transport (apparently, everything except the distance from the Westphalia exchange boundary to GLC's Westphalia switch) was being billed on behalf of GLC. In any event, AT&T Corp. understood that, based on the bills, the transport was being provided entirely by GLC/WTC. That understanding is reflected in my Direct Testimony, where I repeatedly indicated – based on the information that was available to us at the time – that GLC or WTC transported the 8YY calls from Southfield to Westphalia.

In fact, GLC witness John Summersett testified to the same effect in his Direct Testimony. He stated, “When a wireless customer makes an 800 toll-free call to an AT&T end user, the call is originated by the wireless service provider and delivered to LECMI's end office switch in Southfield Michigan, where it enters the PSTN. The call is transmitted over the GLC and WTC transport facilities over local/intraLATA dedicated toll interconnection trunks to the GLC tandem switch.”⁷

~~We have now learned, however, that the 800 toll-free calls (i.e., the 8YY calls) were not in fact transmitted over the GLC and WTC transport facilities from Southfield to the GLC tandem switch. In reality, LECMI transported the 8YY calls to Flint, handed the traffic to GLC there, and GLC transported the calls from Flint to Westphalia.~~

⁷ Direct Testimony of John Summersett on Behalf of Complainants, at p. 6, lines 1-5.

588 Q. HOW DO YOU KNOW THAT?

589 A. ~~***BEGIN CONFIDENTIAL***~~
 590 ~~*****8~~
 591 ~~*****9~~
 592 ~~*****10~~
 593 ~~*****11~~
 594 ~~*****~~
 595 ~~*****END~~

596 CONFIDENTIAL ***

597

598 Q. WHAT DIFFERENCE DOES IT MAKE THAT LECMI TRANSPORTED THE
 599 TRAFFIC TO FLINT?

600 A. It means that LECMI provided about 44% of the transport from Southfield to
 601 Westphalia.¹² If AT&T Corp. had been billed for the transport on the Southfield-to-
 602 Westphalia route in accordance with the way transport was actually provided, AT&T
 603 Corp. would have been billed for only 56% of the transport at the excessive GLC rates;
 604 the other 44% would have been attributed to LECMI, with its lower, reasonable, rates.
 605 Instead, AT&T Corp. was billed – and paid, until the point in 2014 at which it started

⁸ Schedule JH-17 at p. 6.

⁹ Schedule JH-17 at page 31, line 24 to page 33, line 2.

¹⁰ ~~Id. at 13, lines 2-4.~~

¹¹ ~~Id. at 34, lines 8-12.~~

¹² The 44% figure was calculated as follows: The distance from LECMI's switch in Southfield to the point in Flint at which LECMI delivered the traffic to GLC is 44 miles (using V&H coordinates). The distance from that point in Flint to GLC's switch in Westphalia is 57 miles. Thus, the transport provided by LECMI constitutes 44% of the whole.

withholding a portion of Complainants' bills – for 100% of the transport at GLC's excessive rates.

Q. HAS AT&T CORP. QUANTIFIED THE IMPACT OF THIS IN DOLLARS AND CENTS?

A. Yes. For the period February, 2010 to January, 2013, the amount of AT&T Corp.'s overpayments attributable to this problem was ~~\$575,503~~ ^{\$1,142,575}. I show the calculation of this amount in Schedule JH-20. Simply put, this schedule recalculates the transport charges by applying the LECMI tariff transport rate to the route miles actually provided by LECMI. Page 1 of Schedule JH-20 shows the transport charges as billed by WTC/GLC. Page 2 shows how the transport charges of LECMI would have been calculated if they reflected the actual route miles provided by LECMI. Page 3 shows the difference - ~~\$575,503~~ ^{\$1,142,575}. AT&T Corp. paid this amount to WTC/GLC.

Q. WHAT IS THE FINANCIAL IMPACT OF APPLYING THE LECMI RATES TO THE LECMI ROUTE MILES FOR THE PERIOD AFTER FEBRUARY, 2013?

A. February, 2013 to July, 2014 covers the period during which AT&T Corp. paid GLC for 7 miles of transport at transport rates equal to those of AT&T Michigan, as required by FCC rules, and withheld payment of the rest of the WTC/GLC transport charges. As a purely academic exercise, if one were to recalculate the transport bills rendered by WTC/GLC for this time period to reflect the amount of transport provided by LECMI, at LECMI's transport rates, the amount would go down to \$1,655,071. This is about \$1,200,000 less than the amount of transport charges actually billed for this time period.

629 In other words, even if GLC were permitted to bill AT&T Corp. for 83 miles of transport
630 (which it should not be), GLC's charges for this period were still overstated by roughly
631 \$1,200,000.

632

633 ~~Q. MR. IRVIN SAID HE WAS 99% SURE THAT LECMI DELIVERED THE 8YY~~
634 ~~TRAFFIC TO GLC IN FLINT. THAT LEAVES A 1% CHANCE THAT THE~~
635 ~~HAND-OFF WAS SOMEWHERE ELSE. WHAT WOULD THAT DO TO YOUR~~
636 ~~CONCLUSION?~~

637 A. If the hand-off wasn't in Flint, it was necessarily in Lansing, since Mr. Irvin was 100%
638 sure it was either Flint or Lansing. If the hand-off was in Lansing, that would mean that
639 LECMI provided far more than 44% of the total transport from Southfield to Westphalia
640 because Lansing is much closer to Westphalia than Flint, so the reduction in transport
641 ~~charges would be even greater.~~

642

643 Q. WHAT DOES GLC SAY ABOUT THIS ISSUE?

644 A. GLC says that none of this matters because it agreed with LECMI that GLC would bill
645 for all of LECMI's mileage at GLC's inflated transport rates. GLC says that this is
646 reflected in a billing percentage (BIP) agreement that is listed in its NECA 4 tariff.

647

648 Q. HOW DO YOU RESPOND?

649 A. Carriers that jointly provide transport on a switched access route can and do enter into
650 agreements that each will bill (either in one bill or in separate bills) for the portion of the
651 route it provides, at its own rates. So, if carrier A provides 10 miles of a jointly-provided

circuit and carrier B provides 5 miles, the carriers would typically agree that carrier A will bill for 66% of the route and carrier B will bill for 33% of the route, each at its own rates.

That is not what happened in this case. Nothing about the GLC/LECMI agreement resembles standard or acceptable practice in the industry. This is not even a case where there was minor variation between the BIP and the actual route miles. To the contrary, GLC/WTC billed for 100% of the route and LECMI billed for none of it. And, of course, GLC's transport rates are about ³⁰~~28~~ times higher than LECMI's – so it is obviously in the interests of these carriers to allocate route miles to the absolutely highest rate in order to maximize the amount paid by AT&T Corp., which in turn maximizes the revenue that the carriers can split under a “revenue sharing” agreement. That is an unreasonable and abusive practice that the MPSC cannot condone – especially since costs imposed on 8YY service providers like AT&T Corp. must inevitably be reflected in higher prices to consumers.

Q. WHAT ABOUT THE NECA 4 TARIFF?

A. The fact that GLC and WTC placed an abusive and improper agreement in the tariff has no impact, from my perspective. Moreover, the BIP was not placed into the tariff until June, 2013 – well after most of the charges in dispute were incurred. Page 1 of Schedule JH-21 shows the relevant tariff page from June, 2013. The 0% (LECMI), 1% (WTC), 99% (GLC) BIP is at the bottom of that page. Page 2 shows the tariff page as it existed in May, 2013. Alphabetically, the Southfield-Westphalia route would have appeared

after the “South Haven-Zeeland” route and before the “Springport-Albion” route. No Southfield-Westphalia route is shown.

Q. IN THE PRECEDING DISCUSSION, YOU REPEATED A POINT YOU MADE IN YOUR DIRECT TESTIMONY, NAMELY, THAT THE ACCESS CHARGE BILLS AT&T CORP. RECEIVED FROM WTC SHOWED WTC AS THE TRANSPORT PROVIDER UNTIL EARLY 2013, AT WHICH POINT AT&T CORP. REMINDED WTC IT COULD NOT BILL FOR INTERLATA TRANSPORT AND THE BILLINGS CHANGED TO SHOW GLC AS THE PRINCIPAL TRANSPORT PROVIDER. WHAT IS AT&T’S POSITION ON THE BILLINGS THAT SHOWED WTC AS THE TRANSPORT PROVIDER?

A. Those charges were invalid. Southfield is in LATA 340, and Westphalia is in LATA 344. Transport between Southfield and Westphalia = the transport that WTC’s bills showed WTC was providing until early 2013 – is therefore an interLATA service that is not authorized by WTC’s tariff, as I explained in my Direct Testimony at pages 23-24.

In my Direct Testimony (at page 25), I said that whether the transport was provided by GLC or WTC, “it doesn’t matter because neither GLC nor WTC could lawfully bill for these excessive charges.” That statement was correct. To be clear, though, even if the Commission were to find that the transport rates were not excessively high, AT&T Corp. would still be entitled to a refund of the WTC transport charges that were shown on the bills for the simple reason that WTC could not legally charge AT&T Corp. for the interLATA transport that was shown on the bills.

698

699 **B. AT&T CORP. WAS BILLED FOR, AND PAID FOR, LOCAL SWITCHING SERVICES**
700 **THAT WERE NEVER PROVIDED**

701

702 **Q. PLEASE EXPLAIN THIS ISSUE.**

703 A. As part of the switched access bills on the aggregated 8YY traffic that are in dispute in
704 this case, GLC and WTC billed AT&T Corp. for LECMI local switching that was never
705 provided. AT&T Corp. paid a significant amount of money to WTC and GLC for this
706 non-existent service and is entitled to a full refund of these amounts.

707

708 **Q. IS THERE ANY DISPUTE THAT AT&T CORP. WAS, IN FACT, BILLED**
709 **LOCAL SWITCHING ON AGGREGATED 8YY TRAFFIC BY GTC AND WTC?**

710 A. No.

711

712 **Q. OVER WHAT PERIOD OF TIME?**

713 A. These LECMI local switching charges on aggregated 8YY traffic were billed to AT&T
714 Corp. from to February, 2012 through at least July, 2013.

715

716 **Q. HOW MUCH DID AT&T CORP. PAY TO GTC AND WTC FOR LECMI LOCAL**
717 **SWITCHING ON AGGREGATED 8YY TRAFFIC IN THIS PERIOD?**

718 A. \$815,372. This is shown on Schedule JH-22.

719

720 **Q. PLEASE EXPLAIN THIS SCHEDULE.**

721 A. Column A shows the total minutes of use (MOUs) for which AT&T Corp. was charged
722 for traffic coming through LECMI in each month. Column B shows the local switching
723 MOUs billed to AT&T Corp. Up until January, 2012, the numbers were different. This
724 is how it should have been, because LECMI local switching was not provided on every
725 call coming through LECMI. Rather, it was just provided on calls in which a LECMI end
726 user was involved, so that the LECMI switch was used to handle that call.

727
728 After February 2012, however, GLC/WTC began billing LECMI local switching on
729 every MOU – even on the aggregated 8YY calls that did not involve the use of the
730 LECMI switch. This is shown by the fact that the MOU numbers in columns A and B for
731 each month after February 2012 are the same.

732
733 Column C shows our estimate of the number of MOUs that *continued* to involve the
734 LECMI switch after GLC/WTC began applying the LECMI local switching charge to
735 every MOU. We derived this number by calculating the average *legitimate* local
736 switching MOUs for the preceding six-month period, i.e., from August 2011 through
737 January 2012.

738
739 Column D shows the rate we were charged for local switching and the last column shows
740 the overcharges for each month. AT&T Corp. paid the entire amount shown in the last
741 column.

742
743 Q. **DID AT&T CORP. STOP PAYING THOSE CHARGES AT SOME POINT?**

744 A. Yes, in August, 2013.

745

746 Q. IS GLC ATTEMPTING TO RECOVER IN THIS CASE FOR LOCAL
747 SWITCHING CHARGES ON AGGREGATED 8YY TRAFFIC FOR THE
748 PERIOD AFTER JULY, 2013?

749 A. I do not believe so.

750

751 Q. WHY DO YOU SAY THAT LOCAL SWITCHING SERVICES ON
752 AGGREGATED 8YY TRAFFIC WERE NEVER PROVIDED?

753 A. The 8YY calls in issue were never processed through the LECMI local switch, so it
754 would have been impossible for LECMI to have provided local switching services.
755 Instead, these calls came to LECMI in IP (internet protocol) format and were handled by
756 LECMI's VOIP switch.

757

758 Q. ~~IS THERE ANY DISPUTE ABOUT THE FACT THAT LECMI NEVER~~
759 PROVIDED LOCAL SWITCHING SERVICES ON 8YY TRAFFIC UNDER ITS
760 SWITCHED ACCESS TARIFF?

761 A. No. ***BEGIN CONFIDENTIAL*****

762 *****

763 *****

764 ***** **END CONFIDENTIAL**

765

766 **Q. WHY SHOULD GLC AND WTC REFUND THESE AMOUNTS TO AT&T**
767 **CORP.?**

768 A. Two reasons. First, GLC and WTC participated with LECMI and ***BEGIN
769 **CONFIDENTIAL*****END CONFIDENTIAL***** to set up this 8YY
770 traffic flow and must have known that there was no local switching provided by LECMI
771 on these calls. Nonetheless, GTC and WTC rendered bills to AT&T Corp. that
772 represented that the service had been provided and that charges for that service were due
773 and owing. AT&T Corp. was used to paying these charges on LECMI end-user traffic
774 (where LEMCI local switching was used), so it dutifully paid those bills to GTC and
775 WTC. GTC and WTC bear responsibility for causing AT&T Corp. to pay these wrongful
776 charges.

777

778 Second, according to LECMI, GTC and WTC did not pay all of the local switching
779 revenue to LECMI and retained a good portion of that revenue for itself. AT&T Corp. is
780 working to identify how much of this revenue was retained by GTC and WTC.

781

782 **Q. TO BE CLEAR, AT&T CORP. IS SEEKING A REFUND OF ALL LOCAL**
783 **SWITCHING CHARGES ON AGGREGATED 8YY TRAFFIC – NOT JUST**
784 **THOSE LOCAL SWITCHING CHARGES RETAINED BY GLC, CORRECT?**

785 A. That's right. GTC and WTC are responsible for creating this entire situation and they
786 should not be permitted to simply ignore the fact that they were instrumental in causing
787 AT&T Corp. to pay at least \$815,372 in unauthorized charges. GLC takes the attitude
788 that this is not its problem. And GLC believes that it is entitled to collect 100% of the

MPSC Case No. U-17619
AT&T Corp. Ex. 1.1 Habiak
Page 36

amounts billed under its tariff – without any consideration for the amounts AT&T Corp. overpaid as a direct result of the actions of GTC and WTC. That would be an extremely unfair result and I urge the Commission to avoid an injustice of that sort.

Q. SHOULD THE COMMISSION BE CONCERNED THAT IF IT REQUIRES GLC/WESTPHALIA TO REFUND THE UNAUTHORIZED LOCAL SWITCHING CHARGES, AT&T CORP. MIGHT RECOVER THE SAME AMOUNT TWICE BY OBTAINING A REFUND FROM LECMI?

A. No. That would obviously be improper. Assuming the Commission resolves this issue in favor of AT&T Corp., AT&T Corp. will not accept a duplicative refund from LECMI.

C. MOST OF THE TRAFFIC IN DISPUTE IS NOT COVERED BY THE GLC AND WTC TARIFFS

Q. PLEASE EXPLAIN THIS ISSUE.

A. Recall that the aggregated 8YY traffic that we are discussing originates with mobile phone users all over the country who make calls to companies all over the country that purchase AT&T Corp's 1-800 service. The traffic is aggregated and makes its way to GLC in Michigan, which then delivers the calls to AT&T Corp. in Westphalia.

Of the total universe of such 8YY traffic, most is interstate, because it originates in one state (where the cell site serving the calling party is located) and terminates in another state (where the AT&T Corp. 1-800 customer is located). That traffic is not covered by GLC's or WTC's Michigan tariff, and is not the subject of this case. Rather, it is covered

by their interstate switched access tariffs, filed with the FCC, and is the subject of a case that is proceeding before the FCC.¹³

The remaining traffic – traffic that originated and terminated in the same state – is intrastate traffic. But of that intrastate traffic, virtually none of it is *Michigan* intrastate traffic. That is, it is not traffic that originates and terminates in Michigan. Rather, it is Florida intrastate traffic (for calls made by a wireless customer in Florida to an AT&T Corp. 1-800 customer in Florida), Illinois intrastate traffic (for calls made by a wireless customer in Illinois to an AT&T Corp. 1-800 customer in Illinois), and so on.

Q. WHAT DIFFERENCE DOES THAT MAKE?

A. The bills that GLC/WTC sent to AT&T Corp., including both the bills that AT&T Corp. paid in their entirety and the bills that AT&T Corp. paid in part after it started withholding, covered *all* the intrastate traffic, not just the intra-Michigan traffic, but also the intra-Florida traffic, the intra-Illinois traffic, and so on. That non-Michigan traffic, however, is not subject to the Complainants' Michigan tariffs, because those tariffs, issued under authority of Michigan law, necessarily cover only Michigan traffic. In fact, the tariff pursuant to which WTC billed us specifically defines the switched access services as those that provide "the ability to originate calls from an end user's premises to a customer's designated premise *both of which premises are located in Michigan*, and to terminate calls from a customer's designated premises to an end user's premise, *both of*

¹³ As I stated in my Direct Testimony (at pages 17-18), AT&T Corp. filed an informal complaint against the Complainants at the FCC, as did several other leading IXCs. AT&T Corp. will soon convert that informal complaint to a formal complaint pursuant to FCC procedural rules.

834 *which premises are located in Michigan.*¹⁴ (emphasis added). A copy of the relevant
835 tariff pages are attached as Schedule JH-23.

836

837 **Q. HAS AT&T CORP. FIGURED OUT WHAT PORTION OF THE INTRASTATE**
838 **TRAFFIC FOR WHICH WTC BILLED AT&T CORP. ORIGINATED IN**
839 **MICHIGAN AND TERMINATED IN MICHIGAN?**

840 A. Yes. We did an analysis of the aggregated 8YY traffic in issue that looked at the calling
841 and the called numbers for the calls billed to AT&T Corp. to identify the states in which
842 the traffic originated and terminated. That analysis showed that, at most, only 1% of the
843 total traffic for which we were billed actually terminated to customers in Michigan.
844 Likewise, that analysis showed that, at most, only 1% of the total traffic for which we
845 were billed was actually originated by callers in Michigan. In reality, I think that little, if
846 any, of the aggregated 8YY calls in dispute originated in Michigan and perhaps a
847 negligible amount (less than 1%) terminated in Michigan.

848
849 **Q. CAN YOU SAY MORE ABOUT THE ANALYSIS?**

850 A. The analysis looked at all the aggregated 8YY traffic for which GLC billed AT&T Corp.
851 – which includes interstate and intrastate traffic. The data is from billing records
852 provided by GLC to AT&T Corp. for March, 2013. We took a statistically significant
853 sample of one day's calls and matched them to AT&T Corp.'s records, and from those
854 AT&T Corp. records we determined the actual terminating location. We had to do this

¹⁴ MECA Tariff M.P.S.C. 25(U), Part IV, 5th Revised Sheet 1.

855 because the call detail records from GLC/WTC do not contain the terminating location of
856 the party receiving the call. The records only have the terminating 8YY number. That
857 data, and the analysis, are representative of the entire period of the dispute related to
858 aggregated 8YY traffic February, 2010 through January, 2014.

859

860 **Q. WHY IS THIS INFORMATION SIGNIFICANT?**

861 A. Traffic that is not Michigan intrastate traffic cannot be subject to the intrastate switched
862 access tariffs of GLC and WTC. WTC's tariff says this explicitly, and the same has to be
863 true for the GLC tariff. And, moreover, there is a serious question whether it is
864 appropriate for the MPSC to exercise authority over traffic that is not intrastate Michigan
865 traffic.

866

867 **Q. WHAT IS THE IMPLICATION FOR THIS CASE?**

868 A. As I stated above, virtually none of the aggregated 8YY traffic is intrastate Michigan
869 traffic, so the claims of GLC and WTC should be dismissed. Under the most charitable
870 view, perhaps 1% of this traffic is intrastate Michigan, so at the very least the claims
871 should be reduced to cover only 1% of the traffic in issue.

872

873 **Q. YOU SAID THAT THE ONLY INTRASTATE TRAFFIC THAT IS SUBJECT TO**
874 **GLC'S AND WTC'S MICHIGAN TARIFFS IS TRAFFIC THAT ORIGINATES**
875 **AND TERMINATES IN MICHIGAN. ISN'T THERE LANGUAGE IN THE GLC**
876 **TARIFF THAT DEFINES INTRASTATE TRAFFIC DIFFERENTLY?**

MPSC Case No. U-17619
AT&T Corp. Ex. 1.1 Habiak
Page 40

877 A. Yes, there is. Section 2.3.11(C)(1) of GLC's tariff states that a call will be treated as
878 intrastate if it "enters a customer network at a point within the same state as that in which
879 the called station (as designated by the called station telephone number) is situated." As
880 applied here, that appears to mean that a call that originates in Florida or Illinois, for
881 example, is to be treated as an intrastate Michigan call if it enters AT&T Corp.'s (the
882 "customer's) network at a point in Michigan and the AT&T Corp. 8YY customer (the
883 "called station") is also in Michigan. If that is what the tariff means and if it permissible
884 for GLC to define a Michigan intrastate call in that fashion, the percentage of truly
885 Michigan intrastate traffic would still be very small in relation to all intrastate traffic.

886
887 Under this slightly different analysis, all the calls entered AT&T Corp.'s network in
888 Michigan (namely, in Westphalia). The determinative factor in this alternative analysis is
889 therefore the location of the called party. If the called party is in Michigan, then that
890 particular call would be a Michigan intrastate call. If the called party is not in Michigan,
891 that would be an interstate call subject to the FCC's jurisdiction and not to this
892 proceeding.

893
894 As I explained above, only a negligible amount (less than 1%) of the traffic terminated to
895 called parties located in the state of Michigan, so under this alternative approach only 1%
896 of the traffic, at the most, would be considered Michigan intrastate traffic. The remainder
897 of the traffic would be considered interstate and would be subject to the FCC's
898 jurisdiction and would be resolved pursuant to the complaint activity between the parties
899 currently underway at the FCC.

900

901 **Q. GLC ASSERTS THAT NONE OF THIS MAKES ANY DIFFERENCE BECAUSE**
902 **OF THE “PIU” FACTORS PROVIDED BY AT&T CORP. TO WTC. HOW DO**
903 **YOU RESPOND?**

904 A. The percent interstate use (PIU) factors provided by AT&T Corp. to WTC were based on
905 the normal, in-state, business-as-usual switched access traffic coming from GLC – not the
906 out-of-state, aggregated 8YY traffic that GLC managed to put on its system by paying for
907 it. AT&T Corp. does not know what new traffic arrangements GLC enters into and has
908 no way of knowing the jurisdiction of the traffic in those new arrangements. In this case,
909 GLC drastically changed the nature of its traffic by swamping its system with huge
910 volumes of out-of-state traffic and the PIU factors provided to WTC never caught-up
911 with this change. The plan implemented by GLC to inflate AT&T Corp.’s access bills
912 was very successful, but it was also over-reaching and not in compliance with the law.
913 GLC should not be able to collect these billed amounts by pointing to the PIU factors that
914 its own conduct made inaccurate. And AT&T Corp. should not be penalized for failing
915 to act faster in response to this traffic stimulation that GLC orchestrated.

916

917 **V. CONCLUSION**

918 **Q. HOW SHOULD THE COMMISSION PROCEED?**

919 A. For the reasons I discuss in my testimony, and as AT&T Corp. will discuss in its briefs,
920 the Commission should find that little, if any, of the aggregated 8YY traffic in dispute is
921 Michigan intrastate traffic and therefore is not subject to the intrastate tariffs of GLC or
922 WTC.

If the Commission does not make this finding, then it should find that: (1) GTC and WTC were entitled to charge no more than the switched access rates of the competing ILEC (i.e., AT&T Michigan); and (2) GTC and WTC were entitled to charge for 7 miles of transport, rather than the 83 miles actually billed. Accordingly, AT&T Corp. is entitled to a refund of the \$3,683,025 in excess charges it paid between February, 2010 and January, 2013. GLC and WTC have been fully compensated for the switched access services it provided from February, 2013 to the present and their claim for further compensation should be denied.

Finally, in the event the Commission gives AT&T Corp. anything less than full relief on the arguments set out above, the Commission should find that: (1) AT&T Corp. is entitled to additional refunds from GLC/WTC for the period February 2010 to January 2013 to reflect the reduction in the transport rate on the Southfield-to-Flint route from GLC's very high rates to LECMI's reasonable rate; and (2) AT&T Corp. is entitled to a refund from GLC/WTC of the entire amount of ~~\$575,503~~ ^{\$1,142,575} in LECMI local switching charges that should not have been billed.

Q. ARE THERE ANY CIRCUMSTANCES UNDER WHICH IT WOULD BE APPROPRIATE FOR THE COMMISSION TO BIFURCATE THE LIABILITY AND DAMAGES ISSUES?

A. Yes. Given that this proceeding is moving very quickly with short intervals, it makes sense for the Commission to consider this case in two phases. The first phase would

946 resolve the legal issues. After that, and if necessary, the Commission could initiate a
947 second phase that would resolve the refund/damages issues. This would give the
948 Commission a better opportunity to adequately address all the issues raised by this
949 complicated case.

950

951 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

952 **A. Yes.**

(Transcript continues following Page 456 of the
Confidential Record.)

- - -

Q (By Mr. Ortlieb): Mr. Habiak, let's now turn to your
rebuttal testimony. Do you have before you a document
that is consisting of questions and answers that is 28
pages long and that has been identified as your rebuttal
testimony in this proceeding?

A Yes.

Q And are there both a confidential and a public version of
that testimony?

A Yes.

Q And do you have any corrections or changes to make to
that testimony?

A I do. On page 3, there are two schedules that should
have been marked "Confidential"; line 54, JH-24, and line
57, JH-25.

Q Thank you. Any other changes?

A No.

Q Now, the schedules themselves, JH-24 and JH-25, they have
been marked Confidential, correct? Would you accept,
subject to check, that they've been marked Confidential?

A Yes, subject to check, yes.

Q And in addition to Schedules JH-24 and 25, are there four
other schedules that you are sponsoring with your

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1 testimony?

2 A Yes.

3 Q And are any of those confidential?

4 A No.

5 Q And your Schedules JH-24 through 29 have been assigned
6 AT&T Exhibit Nos. 22 through 27, correct?

7 A Yes.

8 Q Mr. Habiak, if I asked you all of the questions that are
9 contained within the document before you, would your
10 answers be the same as reflected therein?

11 A Yes.

12 Q Thank you.

13 MR. ORTLIEB: Your Honor, at this point
14 AT&T moves for the admission of AT&T Exhibits 22 through
15 27, with the notation that 22 and 23 are confidential,
16 and further ask that the confidential and public versions
17 of Mr. Habiak's rebuttal testimony be bound into the
18 record.

19 JUDGE SONNEBORN: Mr. Oliva, do you have
20 any objection to this testimony being bound and these
21 exhibits being received?

22 MR. OLIVA: Subject to reserving our
23 position on the motions to strike, I have no other
24 objections, your Honor.

25 JUDGE SONNEBORN: Mr. Brandenburg?

1 MR. BRANDENBURG: No objections, your
2 Honor.

3 JUDGE SONNEBORN: The public and
4 confidential response testimony of Jack Habiak, dated
5 September 11, of 2014, pages 1 through 28, with the minor
6 edits noted and the stricken portions reflected, are
7 bound into the record. AT&T Exhibits 22 through 27,
8 noting that AT&T Exhibits 22 and 23 are confidential and
9 subject to the protective order in place in this case,
10 are received and admitted into the record.

11 MR. ORTLIEB: Thank you, your Honor.

12 JUDGE SONNEBORN: You're welcome.

13 (Testimony bound in.)

14 - - -

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(Confidential Response Testimony of John W.
Habiak is found on Pages 490 through 519 of the
Confidential Record.)

- - -

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

Case No. U-17619

**Rebuttal Testimony of John W. Habiak
On Behalf of AT&T Corp.**

AT&T Corp. Exhibit 1.2

PUBLIC VERSION

September 11, 2014

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE COMMISSION SHOULD DISREGARD COMPLAINANTS' ATTEMPTS TO DISTRACT THE COMMISSION FROM THEIR OWN UNLAWFUL CHARGES.....	3
A.	AT&T CORP. CANNOT BE BLAMED FOR COMPLAINANTS' UNLAWFUL CHARGES.....	3
B.	COMPLAINANTS' MISCHARACTERIZATION OF CRICKET AS "AT&T'S WIRELESS AFFILIATE"	9
C.	COMPLAINANTS' "THEY DO IT TOO" ARGUMENT	13
D.	COMPLAINANT'S "NO HARM, NO FOUL" ARGUMENT	18
III.	GLC'S ATTEMPT TO EVADE THE RULES BY CREATING ITS OWN EXEMPTION FOR "COMPETITIVE ACCESS PROVIDERS."	20
IV.	COMPLAINANTS' OTHER ARGUMENTS LACK MERIT	26
V.	CONCLUSION	28

REBUTTAL TESTIMONY OF JOHN W. HABIAK

ON BEHALF OF AT&T CORP.

I. INTRODUCTION

Q. ARE YOU THE SAME JACK HABIAK WHOSE DIRECT TESTIMONY ON BEHALF OF AT&T CORP. WAS FILED IN THIS CASE ON JULY 24, 2014, AND WHOSE RESPONSE TESTIMONY ON BEHALF OF AT&T CORP. WAS FILED IN THIS CASE ON AUGUST 28, 2014?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?

A. The purpose of this testimony is to rebut the responsive testimony submitted on August 28, 2014 by Great Lakes Comnet, Inc. ("GLC") and its affiliate Westphalia Telephone Company ("WTC"). I refer to GLC and WTC collectively as "Complainants."

Q. DO YOU HAVE ANY OVERALL COMMENTS ON THE TESTIMONY SO FAR, AND ON COMPLAINANTS' RESPONSE TESTIMONY?

A. Yes. In my direct testimony, I showed that the Complainants' switched access charges are unreasonably high under federal law, and therefore unreasonably high under Michigan law, which requires all intrastate switched access rates to mirror the corresponding interstate rates. As I explained, the Complainants (i) apply high "rural Michigan" rates to non-rural traffic (much of which isn't even Michigan traffic),

(ii) engaged in “access stimulation” by routing wireless 8YY traffic into Michigan, and
(iii) apply transport charges that reflect unreasonably high transport mileage of 83 miles.

~~In my response testimony, I showed that discovery has revealed even more problems with~~
Complainants’ charges. First, Complainants billed for the entire 83 miles of transport
between the Local Exchange Carriers of Michigan (“LECMI”) switch in Southfield and
the GLC tandem in Westphalia at their own very high rates, even though Complainants
did not provide all of the transport service. In fact, discovery revealed that LECMI, not
Complainants, provided nearly half the transport mileage (from Southfield to Flint) – a
fact Complainants never mentioned in their bills or in their testimony. Second,
Complainants billed AT&T Corp. for local switching by LECMI, even though LECMI
~~did not perform any local switching.~~ Third, Complainants billed Michigan intrastate rates
on traffic that originates and terminates in states other than Michigan.

Complainants’ “response” consists mostly of irrelevant attempts to change or avoid the
subject. Their lead argument is to “blame the victim.” Complainants say that AT&T
Corp. should have taken costly steps to avoid their network, and they argue that AT&T
Corp. should be forced to pay Complainants’ unlawful charges because it didn’t take the
“options” Complainants suggest after the fact. I show below that Complainants’ so-
called “options” were not viable. More importantly, their arguments are an irrelevant
diversion. If Complainants’ charges are unlawful (as I have shown they are),
Complainants are not entitled to collect or keep those charges, so criticizing AT&T Corp.
for incurring the charges is beside the point.

46

47 ~~In addition, Complainants still fail to come to grips with the facts that discovery has~~
 48 revealed. In particular, Complainants' response testimony still acts as if Complainants
 49 provided the entire transport service between Southfield and Westphalia, and does
 50 ~~nothing to account for the fact that LECMI provided 44% of that service.~~

51

52 **Q. DO YOU HAVE ANY SUPPORTING SCHEDULES?**

53 **A.** Yes, I have six supporting schedules:

54 Schedule JH-24 – GLC Discovery Response Showing Commissions Paid by GLC on
 55 8YY Traffic *CONFIDENTIAL*

56
 57 Schedule JH-25 – Complete Copy of Agreement Between GLC and IBDC *CONFIDENTIAL*

58 Schedule JH-26 – Analysis of AT&T Michigan Transport Routing

59 Schedule JH-27 – Excerpt from GLC Federal Tariff, FCC Tariff No. 20

60 Schedule JH-28 – GLC Website Page

61 Schedule JH-29 – GLC Discovery Response On Local Switching Charges

62

63 **II. THE COMMISSION SHOULD DISREGARD COMPLAINANTS' ATTEMPTS**
 64 **TO DISTRACT THE COMMISSION FROM THEIR OWN UNLAWFUL**
 65 **CHARGES**

66

67 **A. AT&T CORP. CANNOT BE BLAMED FOR COMPLAINANTS'**
 68 **UNLAWFUL CHARGES**

69

70 **Q. GLC WITNESS SUMMERSETT CLAIMS THAT AT&T CORP. CANNOT**
 71 **CHALLENGE COMPLAINANTS' CHARGES BECAUSE IT HAD "OTHER**
 72 **OPTIONS" FOR ROUTING THE TRAFFIC AT ISSUE. (RESPONSE**
 73 **TESTIMONY, P. 5, LINES 4-11.) HOW DO YOU RESPOND?**

74 A. Mr. Summersett's claim is both wrong and irrelevant. I show below that each of the so-
75 called "options" he proposes was not really a viable "option" at all. They are simply
76 unfounded speculations that GLC has invented after the fact. More important, however,
77 Mr. Summersett's argument is an irrelevant attempt to distract the Commission from
78 Complainants' unlawful charges. If Complainants' switched access charges are unlawful
79 – and they are – it makes no difference whether AT&T Corp. could (at great trouble and
80 expense) have avoided Complainants' network. After all, every IXC could
81 hypothetically avoid LEC access charges, by building out a redundant network to all
82 possible end users and thereby avoiding the LECs' local networks. So if the theoretical
83 possibility of "avoidance" by the IXC were relevant, LECs could charge whatever they
84 wanted for access, no IXC could ever complain, and no state or federal regulator could
85 ever do anything about the charges. Obviously, that is not the case.

86
87 **Q. YOU MENTIONED THAT MR. SUMMERSETT'S "OPTIONS" FOR AVOIDING**
88 **GLC'S TANDEM SWITCH ARE NOT ONLY IRRELEVANT BUT WRONG.**
89 **HOW DO YOU RESPOND TO HIS MAIN "OPTION," THAT AT&T CORP.**
90 **SHOULD HAVE ESTABLISHED ITS OWN DIRECT CONNECTION WITH**
91 **LECMI AND BYPASSED COMPLAINANTS' FACILITIES (PAGE 6 LINE 20 –**
92 **PAGE 7 LINE 5)¹?**

93 A. That is not a viable option at all. Establishing a connection between two networks is
94 expensive, and it requires time and the cooperation of *both* parties. LECMI has no

¹ Unless otherwise specified, all references to Mr. Summersett's testimony are to his response testimony filed August 28, 2014.

obligation to establish a “direct” connection with AT&T Corp. or any other IXC, and no obligation to route traffic over such a connection if there were one. And obviously, LECMI has no incentive to establish a “direct” connection that results in much lower access revenues to itself or cuts off its share of the Complainants’ access revenues; to the contrary, LECMI’s natural self-interest creates an affirmative incentive *against* cooperation. In fact, AT&T Corp. approached LECMI about establishing a direct connection in early 2014 (before this complaint was filed) and LECMI never even responded.

Q. WHAT ABOUT MR. SUMMERSETT’S SECOND “OPTION,” UNDER WHICH AT&T CORP. WOULD ESTABLISH AN “INDIRECT” CONNECTION WITH LECMI, BY TELLING AT&T MICHIGAN TO MAKE LECMI SET UP A CONNECTION WITH AT&T MICHIGAN FOR TRAFFIC GOING TO OR FROM AT&T CORP.? (PAGE 7 LINE 6 – PAGE 8 LINE 4)

A. This, too, was never really an option. Once again, it takes *both* parties to establish a connection between two networks. As I explained above, LECMI has no obligation to establish a special connection for AT&T Corp. traffic, and no incentive to reduce its own access revenues. Accordingly, there is little reason to believe it would be willing to arrange such a connection through AT&T Michigan. In fact, Complainants’ own witness Mr. Eaton testified that GLC was established precisely because LECs like LECMI wanted to *avoid* using AT&T Michigan’s tandems. It makes no sense for Complainants to suggest now that LECMI would have agreed to use AT&T Michigan’s tandems and to bypass the GLC tandem.

118

119 **Q. MR. SUMMERSETT CLAIMS THAT THE INTERCONNECTION**
120 **AGREEMENT BETWEEN AT&T MICHIGAN AND LECMI REQUIRES LECMI**
121 **TO SET UP A CONNECTION AT AT&T MICHIGAN'S REQUEST. IS THAT**
122 **CORRECT? (PAGE 7 LINE 6 – PAGE 8 LINE 4)**

123 A. No. Mr. Summersett is misreading the interconnection agreement. That agreement was
124 set up for the exchange of AT&T Michigan traffic and LECMI traffic, not for traffic
125 going to or coming from AT&T Corp. The provision he references is limited to
126 establishing connections for *intra*LATA toll traffic, not for *inter*LATA traffic of the kind
127 that is involved here. Section 5.2.3 plainly states that the "Access Toll Connecting
128 Trunks" it talks about "shall be two-way trunks connecting an End Office Switch that
129 Requesting Carrier utilizes to provide Telephone Exchange Service and Switched
130 Exchange Access Service *in a given LATA* to an access Tandem Switch [AT&T
131 Michigan] utilizes to provide Exchange Access *in such LATA*." Further, Section 5.2.4
132 (which Mr. Summersett attached to his testimony but ignores) specifically says that the
133 Access Toll Connecting Trunks are to carry "*IntraLATA* toll free traffic."

134

135 **Q. OVER AND ABOVE MR. SUMMERSETT'S MISREADING OF THE**
136 **INTERCONNECTION AGREEMENT, IS THERE ANY OTHER PROBLEM**
137 **WITH HIS "OPTION"?**

138 A. Yes. AT&T Corp. cannot ask AT&T Michigan to "arrange" a special connection with
139 LECMI for AT&T Corp. traffic, and AT&T Michigan would not be able to set up a
140 special connection for AT&T Corp.'s benefit in any event. Although I am not a lawyer, I

understand that AT&T Michigan cannot give special preferences to any IXC (in particular its affiliate AT&T Corp.) and thus, as a matter of business policy, AT&T Corp. does not ask AT&T Michigan for such improper preferences. Mr. Summersett's theory that AT&T Corp. had "control over AT&T Michigan" and could have exercised that "control" ignores the fact that these affiliates are separate companies subject to legal restrictions.

Q. MR. SUMMERSETT SAYS IT HIS "UNDERSTANDING THAT DIRECT TRUNKS EXISTED BETWEEN LECMI AND AT&T, BUT WERE NOT USED BY AT&T FOR THIS TRAFFIC" (PAGE 7 LINES 4-5). IS HE RIGHT?

A. No. Mr. Summersett is confusing matters with the careless use of the term "AT&T." The "direct trunks" he is talking about are *not* between LECMI and AT&T Corp., and they cannot be used by AT&T Corp. for the traffic at issue here. The trunks run between LECMI and AT&T Michigan. As I just explained, the connections between LECMI and AT&T Michigan are for local traffic and intraLATA toll traffic. AT&T Corp. cannot use those trunks for the interLATA traffic at issue in this case.

Q. MR. SUMMERSETT'S NEXT SUGGESTED "OPTION" IS THAT AT&T CORP. COULD HAVE NEGOTIATED A "LIMIT" ON THE TRAFFIC IT DELIVERED TO OR ACCEPTED FROM LECMI. (PAGE 20, LINES 17-18). WAS THIS REALLY AN OPTION?

A. Not at all. There are multiple reasons why his idea would not work. First, this "option" is not one AT&T Corp. could have taken on its own. It depends on the cooperation and

MPSC Case No. U-17619
AT&T Corp. Ex. 1.2 Habiak
Page 8

agreement of LECMI, a party that AT&T Corp. does not control and that has an affirmative incentive *not* to cooperate (because a limit on traffic would have reduced LECMI's revenues).

Second, Mr. Summersett does not explain how a "limit" on traffic would work in practice, or how it could be enforced. In reality, the only way to enforce the limit would be for AT&T Corp. to block incoming or outgoing traffic that exceeds the limit, and obviously that is not a viable option for AT&T Corp.

Finally, a "limit" on traffic would not solve the problem of Complainants' unreasonably high access rates. It would only reduce the amount of traffic subject to those charges.

Q. FINALLY, MR. SUMMERSETT SUGGESTS THAT AT&T CORP. "CHOSE" TO EXCHANGE TRAFFIC WITH LECMI AND "COULD HAVE DISCONTINUED USE OF GLC'S SERVICES AT ANY TIME." (PAGE 20 LINES 8-21). IS HE RIGHT?

A. Absolutely not. AT&T Corp. has no choice but to exchange traffic with LECMI, and, as I explained in my response testimony, AT&T Corp. has no control over or input into LECMI's decisions about where to interconnect and route traffic. AT&T Corp. has a duty to interconnect with all other carriers, including LECMI. It interconnected with LECMI long before the dispute in this case arose. Now that AT&T Corp. is connected with GLC (and through it, with LECMI) AT&T Corp. has to accept traffic bound for its end users, and has to deliver calls from its end users that are destined for LECMI. I

explained at length in my opening and responsive testimony why AT&T Corp. cannot block such traffic, and Mr. Summersett is simply ignoring these basic facts of life.

**B. COMPLAINANTS' MISCHARACTERIZATION OF CRICKET AS
"AT&T'S WIRELESS AFFILIATE"**

**Q. MR. SUMMERSETT CLAIMS THAT AT&T CORP. IS RESPONSIBLE FOR
COMPLAINANTS' ROUTING OF WIRELESS 8YY TRAFFIC BECAUSE
"AT&T HAS CONTROL OVER HOW ITS WIRELESS AFFILIATES
INITIALLY ROUTE WIRELESS-ORIGINATED 8YY TRAFFIC THAT IS AT
ISSUE IN THIS CASE." (PAGE 5 LINES 12-14). IS HE RIGHT?**

A. Certainly not. This is another example of a continuing mischaracterization by GLC. All of the wireless-originated 8YY traffic that is at issue in this case was originated by Cricket when it was *not* an affiliate of AT&T Corp. Cricket *became* an affiliate of AT&T Corp. in early 2014, but when it did, it immediately ceased the flow of wireless traffic to GLC. Obviously, GLC knows these things: the acquisition of Cricket by AT&T Inc. was a matter of public record, and GLC obviously knows that the flow of wireless 8YY traffic to GLC stopped once the acquisition was complete. Mr. Summersett's continued attempts to call Cricket "AT&T's wireless affiliate" – when it was clearly *not* "AT&T's wireless affiliate" at any time relevant to this case – are simply another attempt to distract the Commission from Complainants' unlawful charges.

**Q. WHAT ABOUT MR. SUMMERSETT'S ASSERTION THAT CRICKET COULD
HAVE SENT THE TRAFFIC "DIRECTLY TO AT&T" BUT HAD A**

211 **“FINANCIAL INCENTIVE TO SEND THE TRAFFIC TO INCOMM, A**
212 **TRAFFIC AGGREGATOR”? (PAGE 9 LINE 20 – PAGE 10 LINE 2).**

213 A. This, too, is irrelevant. This case concerns *Complainants*’ charges for the wireless traffic.
214 Cricket’s decisions and intentions are beside the point for two reasons. First, Cricket was
215 not an affiliate of AT&T Corp. at any time relevant to this case. Second, the problem
216 here is that Complainants inserted themselves into the traffic flow and are trying to make
217 AT&T Corp. pay their very high rates for wireless 8YY traffic that has nothing to do with
218 rural Michigan (and for the most part, neither originates nor terminates in Michigan).
219 This is in sharp contrast to aggregators, like Intelliquent and Hypercube, that apply the
220 much lower rates of non-rural ILECs.

221

222 **Q. TODAY, DOES CRICKET SEND TRAFFIC DIRECTLY TO AT&T CORP. OR**
223 **TO TRAFFIC AGGREGATORS?**

224 A. I previously believed that Cricket stopped sending traffic to aggregators after the
225 acquisition by AT&T Inc., and my response testimony (lines 211-212) said so. However,
226 I subsequently learned that Cricket still sends wireless 8YY traffic to Incomm; it just
227 instructed Incomm that the traffic should not go through GLC. As I stated above, the
228 point is not relevant to this case, but I do want to make sure the record is correct.

229

230 **Q. MR. SUMMERSETT CLAIMS “IT IS UNCLEAR” WHY INCOMM ROUTED**
231 **THE TRAFFIC “THE WAY IT DID,” BUT SUGGESTS THAT “IT MAY BE**
232 **THAT THE ROUTING WAS BASED ON THE CARRIER OR INTERMEDIATE**

233 **AGGREGATOR THAT WOULD PAY OR INCENT INCOMM THE MOST.”**

234 **(PAGE 10 LINES 5-8). WHAT DO YOU THINK ABOUT HIS SUGGESTION?**

235 A. There is nothing “unclear” or mysterious about Incomm’s incentives. GLC knows full
236 well that the chain of payments and incentives in this case starts with GLC, ***BEGIN

237 **CONFIDENTIAL*******

238 *****

239 *******END**

240 **CONFIDENTIAL***** GLC did not disclose any of these arrangements in its direct
241 testimony, and GLC is still trying to be coy about them even after they were revealed in
242 discovery. GLC’s obvious reluctance to come clean about its incentive and access
243 revenue sharing arrangements is confirmation that those agreements (which are designed
244 to stimulate traffic and did so) are one reason why GLC cannot apply excessive rates to
245 the traffic it has stimulated.

247 Q. **HAVE YOU RECEIVED FURTHER EVIDENCE OF THE INCENTIVES GLC**
248 **PROVIDED TO ATTRACT THE 8YY TRAFFIC TO ITS NETWORK?**

249 A. Yes. In a Second Supplemental Response dated September 8, 2014 to AT&T Corp.’s
250 discovery requests, ***BEGIN **CONFIDENTIAL*******

251 *****

252 *****

253 *****

254 *****

255 *****

MPSC Case No. U-17619
AT&T Corp. Ex. 1.2 Habiak
Page 12

256 *****
257 *****
258 *****
259 *****END
260 **CONFIDENTIAL*****
261
262 **Q. HAVE YOU RECEIVED FURTHER EVIDENCE ABOUT THE AGREEMENT**
263 **BETWEEN GLC AND IDBC?**
264 **A. Yes. In the same discovery response I mentioned above, ***BEGIN**
265 **CONFIDENTIAL*******
266 *****
267 *****
268 *****
269 *****
270 *****
271
272 *****
273 *****
274
275 *****
276 *****
277 *****

278 *****

279 *****

280

281 *****

282 *****

283

284 Q. *****

285 *****?

286 A. ~~*****~~

287 ~~*****~~

288 ~~*****~~

289 ~~*****~~

290 ~~*****~~

291 ~~*****END CONFIDENTIAL*****~~

292

293 C. COMPLAINANTS' "THEY DO IT TOO" ARGUMENT

294 Q. MR. SUMMERSETT TRIES TO DEFEND COMPLAINANTS' ROUTING OF

295 THE TRAFFIC AT ISSUE BY POINTING TO A FEW EXAMPLES OF

296 ROUTING BY AT&T MICHIGAN. (PAGE 12 LINE 10- PAGE 13 LINE 10).

297 BEFORE RESPONDING, COULD YOU BRIEFLY RECAP WHAT IS WRONG

298 WITH THE TRANSPORT ROUTING THAT COMPLAINANTS ARE USING

299 HERE?

MPSC Case No. U-17619
AT&T Corp. Ex. 1.2 Habiak
Page 14

300 A. Yes. As I explained in my direct testimony, Complainants are claiming that AT&T Corp.
301 should pay them for 83 miles of transport from Southfield all the way to Westphalia, at
302 Complainants' transport rates of \$0.000418 per minute per mile. They are doing this
303 even though there is an AT&T Michigan tandem only seven miles away from the LECMI
304 switch in Southfield, and even though LECMI's transport rates are only about \$0.000014
305 per minute per mile (and in fact, are required to be only about \$0.000014 per minute per
306 mile because by law LECMI's rates cannot exceed AT&T Michigan's rates). Further,
307 Complainants aren't even providing all of the 83 miles of transport that they want to
308 collect. As explained in my response testimony, discovery revealed that in reality
309 LECMI is providing 44% of the transport, but Complainants are trying to collect 100% of
310 the transport, and charging all of it at their own rates (rather than LECMI's own, much
311 lower rate). As a result, Complainants are charging AT&T Corp. some *30 times* the
312 lawful rate.

313
314 **Q. HOW DO YOU RESPOND TO MR. SUMMERSETT'S CONTENTION THAT**
315 **THERE IS NO REQUIREMENT THAT A LEC SEND ITS TRAFFIC TO THE**
316 **NEAREST TANDEM? (PAGE 12 LINES 3-9).**

317 A. AT&T Corp. agrees there is no such requirement, and AT&T Corp. is not suggesting
318 there should be.

319
320 **Q. THEN WHY DO YOU REFER TO THE FACT THAT THERE IS AN AT&T**
321 **MICHIGAN TANDEM ONLY SEVEN MILES AWAY FROM THE LECMI END**
322 **OFFICE?**

323 A. I want to be very clear on this. AT&T Corp. is not saying that any routing of the 8YY
324 traffic other than through the nearest tandem is automatically unreasonable. Rather, we
325 are saying that it was unreasonable for the Complainants to charge their exorbitant rates
326 for traffic that was transported over a circuitous route that was approximately 12 times as
327 long as the distance to the nearest tandem. And since the 83 miles of transport at the
328 Complainants' exorbitant rates was grossly excessive, AT&T Corp. is entitled to a
329 refund. For purposes of calculating that refund, some reasonable mileage figure must be
330 used, and we have used that seven mile distance from the LECMI switch in Southfield to
331 the AT&T Michigan tandem in West Bloomfield. And this is not an arbitrary selection of
332 locations for comparison. On the contrary, the LECMI Southfield switch subtended the
333 West Bloomfield tandem switch up until 2003, so the 7 miles used by AT&T Corp. as a
334 reasonable mileage figure is based on the actual mileage charged by LECMI in the past.
335 Again, though, we are not saying that in all cases the shortest distance is necessarily the
336 only reasonable distance.

337
338 **Q. MR. SUMMERSETT CLAIMS THAT AT&T MICHIGAN DOES NOT ALWAYS**
339 **ROUTE TRAFFIC TO THE NEAREST TANDEM. (PAGES 12-13). WHAT IS**
340 **YOUR RESPONSE?**

341 A. This argument is another irrelevant diversion. GLC is trying to distract the Commission
342 from Complainants' unlawful charges by arguing "they do it too." The issue before the
343 Commission is whether *Complainants'* charges are reasonable and lawful, and in
344 particular whether it was proper for Complainants to apply exorbitant rates (including 83
345 miles of transport) to non-rural traffic (including 8YY wireless traffic). We are not here

to examine the traffic routing decisions of AT&T Michigan (which has much lower access rates) for other kinds of traffic in other parts of the state. Further, GLC's attempt to criticize AT&T Michigan is way off base, as there is a dramatic difference between AT&T Michigan's routing and what Complainants are doing here.

Q. HOW DO THE AT&T MICHIGAN ROUTING DECISIONS THAT MR. SUMMERSETT DISCUSSES DIFFER FROM THE COMPLAINANTS' ROUTING HERE?

A. Although in a few cases AT&T Michigan routes traffic to an AT&T Michigan tandem that is further away than a tandem served by Frontier, the difference in mileage is nowhere near as large as the massive increase in mileage that Complainants have sought to impose on AT&T Corp. More importantly, AT&T Michigan's tandem switching rates are lower than Frontier's, so AT&T Michigan's "bypass" ends up *saving* money for the IXC, not gouging the IXC like Complainants are trying to do.

Q. COULD YOU GIVE US AN EXAMPLE?

A. Certainly. Mr. Summersett criticizes AT&T Michigan for routing traffic from Three Oaks to its own tandem in Grand Rapids, rather than routing that traffic to Frontier's tandem in Three Rivers. While it is true that AT&T Michigan's routing yields more mileage, the proportionate increase (from 51 miles to 94 miles – less than double) is nowhere near the increase in mileage that Complaints are trying to impose, which multiplies the mileage by a factor of nearly 12 (from 7 miles to 83 miles). More importantly, the bottom-line result is a savings to the IXC, because AT&T Michigan's

per-minute rates are lower even with the increase in transport mileage. As I show in Schedule JH-26, AT&T Michigan's rate for that traffic is only \$0.003352 per minute, even when you consider the additional miles of transport. If AT&T Michigan were to route the traffic through the Frontier tandem instead, the per-minute rate would be slightly higher -- \$0.003707 -- so the IXC benefits from AT&T Michigan's current routing. As Schedule JH-26 shows, this is true of every single one of the examples Mr. Summersett cites.

In sharp contrast, Complainants' routing multiplies the transport mileage by a factor of nearly 12, and then Complainants compound the problem further by applying their own rates -- which are several times *higher* than the access rates of AT&T Michigan, Frontier, or LECMI -- to the entire transport service. The end result is not a savings to the IXC, as is the case with AT&T Michigan's routing, but a 30-fold increase in price. So, far from showing that AT&T Michigan has joined in Complainants' gouging practices, Mr. Summersett's examples only provide further confirmation that Complainants' practices are unreasonable.

**Q. HOW DOES THIS ILLUSTRATION TIE BACK TO YOUR PREVIOUS
TESTIMONY ABOUT THE FCC'S *ALPINE* DECISION?**

A. ~~In the *Alpine* decision, the FCC held that several LECs' charges were contrary to their tariffs and to federal law, because the LECs imposed over 100 miles of distance-sensitive charges by using a routing arrangement that "had no benefits for their end-user customers.~~

~~--or IXCs, yet substantially increased access charges billed to IXCs.²²~~ In my direct testimony, I showed that Complainants' 83-mile routing arrangement provides no benefits to end users or IXCs, yet substantially inflates Complainants' access charges to IXCs. By contrast, Complainants are trying to distract the Commission by talking about routing decisions by AT&T Michigan that do *not* increase access charges paid IXCs; to the contrary, those decisions reduce the total charge paid by IXCs.

D. COMPLAINANT'S "NO HARM, NO FOUL" ARGUMENT

Q. MR. SUMMERSETT ARGUES THAT AT&T CORP. CHARGES 99 CENTS A MINUTE FOR 8YY SERVICE, SO IT SHOULD NOT OBJECT TO OVER-PAYING FOR GLC'S SWITCHED ACCESS. (PAGES 16-17) HOW DO YOU RESPOND?

A. GLC's argument is wrong on many levels. ~~First, GLC's switched access rates are unlawful because they do not comply with the FCC's pricing rules.~~ Whether or not AT&T Corp. (or any other IXC) can make a profit despite GLC's unlawfully high rates has nothing to do with the question.

Second, GLC's argument, boiled down to its essence, is that AT&T Corp.'s customers should bear the burden of GLC's excessive rates by paying higher prices for 8YY service. That argument is anti-consumer and should get no traction with the Commission.

²² ~~AT&T Corp. v. Alpine Commc'ns, 27 FCC Red. 11513, ¶¶ 1, 29, recon. denied, 27 FCC Red. 16606 (2012).~~

412

413 Third, GLC only refers to a published, default “rack rate.” (See Exhibit GLC 29).

414 *****BEGIN CONFIDENTIAL*******415 *******END**416 **CONFIDENTIAL***** And there is nothing unusual about having published rates that

417 are higher than the actual rates paid by customers – it is common in the industry.

418

419 **Q. MR. SUMMERSETT ALSO ARGUES THAT GLC DID NOT ARTIFICALLY**420 **STIMULATE NEW 8YY TRAFFIC, SO AT&T CORP. WAS NOT HARMED.**421 **(PAGE 19, LINES 1-16). IS THIS RIGHT?**

422 **A.** The argument makes no sense. First, AT&T Corp. does not claim that it was harmed by
423 an increase in the overall amount of 8YY traffic. Rather, AT&T Corp.’s complaint is that
424 the out-of-state 8YY traffic in issue was re-directed from switched access providers with
425 reasonable switched access rates (i.e., that complied with FCC pricing rules) to GLC,
426 which applied exorbitant, non-compliant rates.

427

428 Second, the question whether there was an overall increase in 8YY traffic during 2010-
429 2013 is irrelevant. The real issue is whether GLC was charging lawful rates on the 8YY
430 traffic that went through its network; and it was not.

431

III. GLC'S ATTEMPT TO EVADE THE RULES BY CREATING ITS OWN
EXEMPTION FOR "COMPETITIVE ACCESS PROVIDERS."

Q. MR. SUMMERSETT SAYS IT IS HIS "UNDERSTANDING THAT THE FCC
HAS REPEATEDLY RECOGNIZED THAT WHERE A [COMPETITIVE
ACCESS PROVIDER] DOES NOT OWN END OFFICES, IT IS NOT SUBJECT
TO THE REGULATIONS GOVERNING CLEC SWITCHED ACCESS RATES."
(PAGE 17 LINES 7-9). HOW DO YOU RESPOND?

A. Mr. Summersett's assertion is a legal argument and AT&T Corp.'s lawyers will address it
in their briefs.

Q. ~~IN YOUR RESPONSE TESTIMONY, YOU DISCUSSED FCC RULE 61.26 AND~~
SHOWED THAT THERE WAS NO EXEMPTION FOR CAPS. RECOGNIZING
THAT YOU ARE NOT A LAWYER, IS THERE ANY BASIS FOR MR.
SUMMERSETT'S NEW "UNDERSTANDING" IN THAT RULE?

A. Based on my understanding of industry terms and the plain language of the regulation,
Rule 61.26 defines the term "CLEC" to mean: "a local exchange carrier that provides
some or all of the interstate exchange access service used to send traffic to or from an end
user and does not fall within the definition of 'incumbent local exchange carrier' in 47
U.S.C. 251(b)." 47 C.F.R. § 61.26(a)(1) (emphasis added). A "local exchange carrier" is
"any person that is engaged in the provision of telephone exchange service *or* exchange
access." 47 U.S.C. § 153(26)(emphasis added). A self-styled "CAP" that does not own
end offices may not be "engaged in the provision of telephone exchange service," but it is
~~"engaged in the provision of exchange access," and that is enough to make it a LEC.~~

456 ~~Likewise, a "CAP" that does not own end offices may not provide "all of the interstate~~
457 ~~exchange access service used to send traffic to or from an end user" but it still provides~~
458 ~~"some" of that service, and under the regulation, that is enough to make it a CLEC.~~

459
460 Further, the Rule specifically confronts the situation in which an access provider does *not*
461 provide service to the end user, and it does not create an exemption for those providers.

462 To the contrary, it says that the cap on that provider's rates is *even lower* than the cap for
463 access providers that do provide service to the end user. Paragraph (f) says: "If a CLEC
464 provides some portion of the interstate switched exchange access services used to send
465 traffic to or from an end user not served by that CLEC, the rate for the access services
466 provided may not exceed the rate charged by the competing ILEC for the same access
467 services." In other words, a CLEC that serves the end user can charge up to the
468 competing ILEC's *full* access charge for all rate elements, including the ILEC's end
469 office charges; but a CLEC like GLC that does not serve the end user can only charge
470 *part* of the competing ILEC's access rate (*i.e.* the rate elements that correspond to the
471 services the CLEC actually provides).

472
473 This Rule makes perfect sense. A CLEC that provides only *part* of the access service
474 should charge less than the CLEC that provides service all the way to the end user.

475 Under GLC's theory, though, a CLEC that provides part of the access service can charge
476 *much more* than the CLEC that provides service all the way to the end user; in fact, it can

477 ~~impose virtually unlimited charges with no cap at all.~~

478

479 Q. MR. SUMMERSETT SAYS THAT THE FCC RECENTLY ORDERED THAT
480 CERTAIN SWITCHED ACCESS RATES BE TRANSITIONED TO BILL-AND-
481 KEEP AND THAT LECS CAN RECOVER THEIR SWITCHED ACCESS COSTS
482 FROM END USERS (PAGE 17 LINES 12-14), BUT HE DOESN'T REFERENCE
483 ANY RULES OR ORDERS. WHAT IS HE TALKING ABOUT?

484 A. ~~Mr. Summersett appears to be talking about the FCC's 2011 order reforming certain~~
485 ~~interstate switched access rates for all LECs.³ That order requires certain rate elements to~~
486 ~~be transitioned to "bill and keep" (in other words, reduced to zero) over several years.~~

487
488 Q. DOES THAT ORDER HAVE ANY RELEVANCE TO THIS PROCEEDING?

489 A. Not in the least. AT&T Corp. does not contend that GLC's rates should be transitioned
490 to bill and keep under the 2011 order. (In fact, my understanding is that rates for tandem
491 switching and transport are not being transitioned to bill and keep.) Rather, AT&T Corp.
492 maintains that GLC's rates are subject to the "caps" the FCC established for (i) CLEC
493 access rates, and (ii) rates by LECs that engage in "access stimulation." The cap on
494 CLEC access rates was established years before the 2011 order. The cap for access
495 stimulation was established in a different part of the 2011 order, and is separate from the
496 transition to bill and keep.

497
498 Q. WHAT ABOUT MR. SUMMERSETT'S POLICY ARGUMENT THAT
499 CARRIERS LIKE GLC "DO NOT PROVIDE LOCAL EXCHANGE SERVICES

³ ~~In re Connect America Fund: A National Broadband Plan For Our Future, 27 FCC Rcd. 4040 (2011)~~

TO END USERS FROM WHICH THEY CAN RECOVER OR SUBSIDIZE THE
REDUCED REVENUES FROM SWITCHED ACCESS SERVICES”? (PAGE 17
LINES 16-18).

A. ~~His policy argument is irrelevant, factually unfounded, and wrong. The pertinent FCC~~
Rule, Rule 61.26, does not exempt such carriers: in fact, as I showed above, it states that
the cap on their access rates is *lower* than the cap on carriers that provide service to end
users. GLC’s interstate switched access rates have to comply with the federal Rule and
(as I explained in my direct and response testimony) GLC’s intrastate switched access
rates have to “mirror” its federal rates. AT&T Corp.’s lawyers will of course respond to
any legal arguments the Complainants’ lawyers might raise. But in any event this
Commission cannot ignore or rewrite the law based on Mr. Summersett’s policy
~~arguments.~~

Factually, Mr. Summersett is apparently trying to create the impression that GLC cannot
recover its costs at the rates required by federal law, and that it has to charge 30 times the
lawful rate to recover its cost. If that is his position, he has not provided any financial
data to support it and his policy argument has no foundation.

Finally, Mr. Summersett’s policy argument is wrong in any event. Historically, LECs set
high access rates to subsidize the cost of serving end users, particularly the cost of local
“loops” connecting end users to end offices. The FCC has decided that such subsidies are
harmful and unsustainable, so end users must bear more of the cost the carrier incurs to
serve them. If a carrier does not own end offices and does not serve end users, then there

523 was no policy reason to support high access rates for that carrier in the first place. That
524 carrier does not incur any cost to serve end users, so it never needed access charges to
525 subsidize that cost and has no need to shift end-user costs back to end users. Further, it
526 makes no sense to give carriers an exemption when they do *not* serve end users: that
527 would just encourage CLECs to stop serving end users so they can engage in pure
528 arbitrage and impose unlimited access charges.

529
530 **Q. HOW DO YOU RESPOND TO MR. SUMMERSETT'S CONTENTION (AT**
531 **PAGE 11) THAT THE COMPLAINANTS DID NOT ENGAGE IN ARBITRAGE?**

532 A. As I said in my direct testimony, the Complainants engaged in arbitrage because they
533 implemented an arrangement that was designed to increase their access revenues at the
534 expense of AT&T Corp. and other IXC's while not serving any legitimate business or
535 economic purpose. For purposes of illustration, I gave a classic example of arbitrage. I
536 did not suggest that GLC and WTC were engaging in the particular form of arbitrage that
537 I used for illustration. In his response, Mr. Summersett says that GLC and WTC did not
538 engage in that form of arbitrage. That is correct. But GLC and WTC engaged in a
539 different form of arbitrage, by circumventing the FCC's caps on CLEC access rates and
540 by engaging in access stimulation.

541
542 **Q. LET'S GET BACK TO THE CAP ON CLEC ACCESS RATES. OUTSIDE OF**
543 **THIS PROCEEDING, DOES GLC CLAIM THAT IT IS NOT A CLEC OR THAT**
544 **IT IS EXEMPT FROM RULE 61.26?**

MPSC Case No. U-17619
AT&T Corp. Ex. 1.2 Habiak
Page 25

545 A. No, just the opposite. GLC's federal tariff (Tariff FCC No. 20) plainly states that "[t]he
546 Company" - GLC - "is a rural CLEC under Section 61.26(a)(6) of the Federal
547 Communications Commissions (FCC's) Rules, 47 C.F.R. § 61.26(a)(6)." I have attached
548 excerpts from the tariff as Schedule JH-27. As the tariff shows, GLC's admission is the
549 basis for GLC's use of the rates in the NECA tariffs. Thus, in the federal forum GLC
550 admits that it is a CLEC under Rule 61.26.

551
552 **Q. WHAT ABOUT GLC'S CLAIM THAT IT IS A "RURAL" CLEC?**

553 A. AT&T Corp.'s lawyers will address any legal arguments GLC might raise, but as a
554 factual matter GLC is certainly not "rural." I have attached as Schedule JH-28 a page
555 from GLC's website, http://www.glcom.net/network/glc_network_map.pdf, which
556 clearly shows that GLC's extensive fiber network, includes fiber rings in several "metro"
557 areas: Chicago, Detroit, Lansing, Grand Rapids, and Ann Arbor. Thus, a substantial
558 portion of GLC's service territories fall within urban, not rural, areas.

559
560 Further, the crux of this dispute is that GLC is trying to impose "rural" NECA rates on
561 traffic that is clearly not "rural." Traffic to and from LECMI, a CLEC that operates in
562 the Detroit metropolitan area and has a switch in Southfield, is certainly not "rural."
563 8YY traffic originated by wireless end users across the country, and destined for
564 businesses with 8YY numbers, is certainly not "rural" either.

565

IV. COMPLAINANTS' OTHER ARGUMENTS LACK MERIT

Q. MR. SUMMERSETT CLAIMS THAT GLC'S RATES ARE NECESSARILY JUST AND REASONABLE, BECAUSE THEY ARE "EQUAL TO THOSE RATES SET FORTH IN THE NATIONAL EXCHANGE CARRIERS ASSOCIATION ('NECA') TARIFF No. 5," AND ARE SUBJECT TO FCC APPROVAL AND USED BY "HUNDREDS OF CARRIERS NATIONWIDE." (PAGE 16 LINES 12-18). HOW DO YOU RESPOND?

A. Mr. Summersett is wrong about this, for a very simple reason: GLC is not a member of NECA. Carriers that are members of NECA concur in, and are identified in, the NECA tariff. GLC, in contrast, has its own tariff. In that tariff, GLC has adopted the NECA rates, but as a non-NECA member, GLC does not concur in the NECA tariff. The rates in the NECA tariff are approved by the FCC *for use by NECA carriers*, but not for use by any and every carrier that adopts the NECA rates. And the NECA rates, however just and reasonable they may presumptively be for NECA members, are not presumptively just or reasonable for GLC.

Q IS THERE AN ADDITIONAL REASON THAT THE NECA RATES ARE NOT PRESUMPTIVELY JUST OR REASONABLE FOR GLC?

A. Yes. The NECA tariff includes terms and conditions to which NECA carriers are bound. By approving the NECA tariff, the FCC is saying, in effect, that the rates are just and reasonable so long as they are associated with those terms and conditions. As I stated, GLC does not concur in the NECA tariff. As a result, it is not bound by the terms and

588 conditions in that tariff. And at least one of the terms in the NECA tariff is one that I'm
589 certain GLC wouldn't be willing to live with.

590

591 **Q. WHAT TERM IS THAT?**

592 A. The prohibition against transporting traffic over LATA boundaries. Recall that WTC,
593 which is a NECA carrier, is subject to this prohibition, and that is one reason that the
594 Southfield-to-Westphalia transport that was attributed to WTC on the bills WTC sent us
595 was unlawful. GLC of course routinely transports traffic over LATA boundaries, and so
596 would be unwilling to subscribe to the NECA tariff.

597

598 **Q. IS THERE ANOTHER REASON THAT THE COMMISSION SHOULD REJECT**
599 **GLC'S CLAIM THAT IT IS ENTITLED TO CHARGE THE NECA RATES?**

600 A. Yes. I do not know the details of how the NECA rates are calculated, but I do know at a
601 high level that the rates take into account the differing costs of all the NECA carriers.
602 Also, when an individual NECA carrier charges the NECA rates and is paid accordingly,
603 that carrier does not retain the revenues itself. Rather, the NECA carriers' access
604 revenues are pooled, and are then re-allocated among them. Since GLC is not a member
605 of NECA, it does not participate in this process at either end. That is, its costs are not
606 taken into account when the NECA rates are established, and it is not part of the pooling
607 and revenue allocation in which NECA carriers participate. This is yet another reason
608 that rates that the FCC has determined are just and reasonable for NECA carriers are not
609 just and reasonable for GLC

610

611 **Q. DO YOU HAVE ADDITIONAL INFORMATION ON AT&T CORP.'S CLAIM**
612 **FOR REFUNDS OF THE LOCAL SWITCHING CHARGES?**

613 A. Yes. I address this issue in my response testimony at pages 32-36. In a nutshell, I
614 demonstrated that Complainants collected \$815,372 from AT&T Corp. for local
615 switching services that were never provided, so that AT&T Corp. is entitled to a full
616 refund. The new information is the Complainant's supplemental response to AT&T DR
617 009, which I attach as Schedule JH-29. There, Complainants explain that all IXC's were
618 billed for LECMI local switching and that all IXC's (other than AT&T Corp.) received
619 full credits for those charges in May and June, 2013. Also, WTC advised LECMI in
620 June, 2013 that AT&T Corp. was entitled to a full credit for the local switching charges,
621 so Complainants have known for well over a year that AT&T Corp. was and is entitled to
622 a refund of the local switching charges. In light of this admission, the Commission
623 should order Complainants to make those refunds.

624

625 **V. CONCLUSION**

626 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

627 A. Yes.

1 (Transcript continues following Page 519 of the
2 Confidential Record.)

3 - - -

4 JUDGE SONNEBORN: At this time, we did
5 discuss taking a brief break in Mr. Habiak's testimony.
6 Shall we do so at this time?

7 MR. ORTLIEB: Yes, I think that's a good
8 idea.

9 JUDGE SONNEBORN: O.K.

10 (At 9:33 a.m., there was a ten-minute recess.)

11 - - -

12 JUDGE SONNEBORN: We are back on the
13 record. Mr. Ortlieb, your witness.

14 MR. ORTLIEB: Thank you, your Honor.
15 AT&T has issued a hearing subpoena for Mr. Dan Irvin,
16 whose deposition testimony was the subject of some
17 discussion yesterday. Mr. Irvin has appeared today
18 voluntarily in response to the subpoena. He's brought
19 with him his counsel, who is also in the room. And we
20 would ask permission, your Honor, to conduct a direct
21 examination of Mr. Irvin?

22 JUDGE SONNEBORN: All right. I will
23 allow that.

24 MR. ORTLIEB: Thank you.

25 - - -

1 D A N I R V I N

2 was called as a witness on behalf of AT&T Corp.and,
3 having been duly sworn to testify the truth, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ORTLIEB:

7 Q Mr. Irvin, thank you for showing up today. I know you
8 had to travel from Southfield.

9 And once again, I'm Mark Ortlieb, I'm an
10 attorney for AT&T Corporation. There are other attorneys
11 in the room representing other parties, and they may have
12 questions for you after I'm done.

13 Could you state your name and spell it
14 for the record?

15 A Sure. It's Dan Irvin, D-a-n I-r-v-i-n.

16 Q And where do you work?

17 A I work at 123.NET.

18 Q And is that also known as LECMI, or was it in the past?

19 A Yeah, we do business as -- we have a d/b/a of LECMI.

20 Q And in the past, there was an entity called LECMI?

21 A Yes.

22 Q And a corporation?

23 A Yes.

24 Q And is 123.NET a successor to LECMI in any way?

25 A It is.

1 Q And what's your title at -- I'm going to call it LECMI,
2 if that's O.K., for purposes of this proceeding, but I
3 understand you're at 123.NET today.

4 A Sure.

5 Q What is your title there?

6 A So I'm the CEO.

7 Q Do you have an ownership interest?

8 A I do.

9 Q And what are your job responsibilities as CEO?

10 A Generally managing the business.

11 Q So does that mean that you're -- does that make you
12 familiar with the financial relationships that LECMI has
13 with other companies?

14 A Yes.

15 Q And does it make you generally familiar with the
16 contractual relationships that LECMI has with other
17 companies?

18 A Yes.

19 Q And for how long a period of time has that been the case?

20 A About 17 years.

21 Q Is LECMI a party to one or more informal complaints at
22 the FCC involving access stimulation on 8YY traffic?

23 A Yes.

24 Q And does one of those informal complaints involve AT&T
25 Corp. as a plaintiff?

1 A Yes.

2 Q And LECMI is a defendant in one of those proceedings,
3 correct?

4 A Correct.

5 Q Now, you recall giving your deposition in this matter on
6 August 13?

7 A Yes.

8 Q And that was -- was that at your office in Southfield?

9 A Yes.

10 Q And did you and I talk before that deposition?

11 A Just casually say hello I think. Not really. We didn't
12 talk about the case.

13 Q And were attorneys for Great Lakes Comnet present during
14 that deposition?

15 A They were.

16 Q And attorneys for Staff as well, correct?

17 A Yes.

18 Q And did you and I talk -- have we talked before your
19 appearance here today?

20 A Yes.

21 Q And when was that?

22 A We spoke on the phone Friday.

23 Q And your attorney was present, correct?

24 A Yes.

25 Q And the substance of the conversation was generally what

1 you're -- your appearance here today and --

2 A Correct.

3 Q -- what you might say in relation to your deposition
4 testimony?

5 A Yes.

6 Q Directing your attention to the 2003 time period, did
7 LECFI establish network connections with Great Lakes
8 Comnet?

9 A Yes.

10 Q And when was that, roughly?

11 A I'm sorry, you said around 2003; are you looking for a
12 month?

13 Q Right. Yes. Early, late, mid 2003?

14 A I don't recall.

15 Q And can you describe the physical connections that were
16 established at that time between LECMI and Great Lakes
17 Comnet?

18 A I don't recall what they were at that time.

19 Q Do you recall what kind of traffic was being exchanged
20 between the companies?

21 A Sure. Yeah, that was -- we use them for inbound traffic,
22 we use them for 8YY termination and inbound traffic
23 outside the state.

24 Q And would it be fair to say that for LECMI, at the time
25 in 2003, that for LECMI's end-user traffic, if the

1 traffic was not going to be handled completely on the
2 LECMI network, that the Great Lakes provided the
3 connection that those customers would use to reach other
4 parties?

5 A Well, we basically have two paths. So there would be --
6 we would have a long-distance carrier that we would use,
7 and then we would use them. So there would be, if we
8 didn't handle it ourselves, we might have contracted with
9 like Level 3, and then they would handle the rest of the
10 traffic, they being GLC.

11 Q So LECMI at the time had connections with other
12 carriers --

13 A Yes.

14 Q -- in addition to Great Lakes Comnet?

15 A Yes.

16 Q Just so the record is straight, if I'm understanding
17 this, the type of traffic that was exchanged was 8YY
18 traffic, and there was also LECMI end-user traffic that
19 was going to Great Lakes?

20 A Yes.

21 Q Now, just for some context, what types of services was
22 LECMI providing at that time to its end users?

23 A So we would provide local service, and we also provide
24 other services that are not telecom, voice-related,
25 hosting transport, but most of it was voice services to

1 businesses.

2 Q So would it be accurate to think of LECMI as just a
3 provider of local phone service to businesses?

4 A Yes.

5 Q Some residential?

6 A Some.

7 Q Still in the 2003 timeframe, you describe this connection
8 between LECMI and Great Lakes. Was there a trunk group
9 designation or name that was associated with that?

10 A You know, I don't recall from back then. I know our
11 primary trunk group that we have with them is called 313.
12 313. So that's been in existence, I'm not sure when it
13 started; I assume it started around then.

14 Q O.K. And did LECMI enter into any agreements with Great
15 Lakes at that time?

16 A We did. We entered into agreement where they would do --
17 they would kind of handle this business for us, they
18 would do the billing and bill all the various carriers on
19 our behalf.

20 Q And did LECMI receive payment from Great Lakes --

21 A We did, yep.

22 Q -- under that arrangement?

23 A Yes.

24 Q And at that time, can you describe what that compensation
25 was in the 2003 timeframe and beyond?

1 A Well, they would bill our, the elements that were billed
2 under our OCN, they would keep one percent of that for
3 billing those, and then there was, I've come to find out
4 that there was a percentage that they paid us on elements
5 that they billed in exchange for some transport.

6 Q Do you know what that percentage was?

7 A In retrospect, we can't put our finger on a number, it
8 bounced around so much. But, you know, it's like in the,
9 it bounced around from 5 to 15 percent. Inconsistent.

10 Q And we'll get back to that topic in a moment. I want to
11 ask you whether at some point in time after 2003 where
12 LECMI became involved and aggregated 8YY traffic with
13 Great Lakes?

14 A I'm sorry, I want to answer that previous question a
15 little bit --

16 Q Sure.

17 A -- differently, more accurately. We were -- we never
18 knew what elements GLC was billing, nor the amounts, so
19 it was difficult for us to ascertain what percentage we
20 were getting. We still to this day don't have an
21 accurate accounting of what elements they were billing on
22 traffic that we provided to them.

23 Q O.K. So let's stick with that compensation question for
24 a while. So you were saying that the percentage would
25 vary between 5 and 15 percent; is that correct?

1 A Well, we -- yes. Again, we're making guesses based on,
2 you know, incomplete data, so we don't really know for a
3 fact what they're -- what they were charging and getting
4 paid for these minutes that traveled through their
5 tandem. You know, we got -- in the course of these,
6 these proceedings, we got some information from them and
7 tried to figure that out, and that's why we came up with
8 a wild range, because we just don't know what those
9 numbers are.

10 Q So the percentages, you're saying, have varied, and
11 you're also saying that you didn't know what services
12 Great Lakes was billing for that would have counted
13 toward the aggregate revenue against which those
14 percentages were measured; is that correct?

15 A Correct.

16 Q Anything else that you want to say about the compensation
17 arrangements with Great Lakes?

18 A No.

19 Q Did they change over time?

20 A They did. At first they were as I described, one percent
21 on our elements and some other percentage on their
22 elements. Then when we started doing after a while this
23 8YY traffic, after that started, then there was -- that
24 continued for the first part of it, then there was a
25 period of time where they stopped paying us on those

1 elements and only paid us local switching, and then that
2 stopped and they paid us nothing for about a year.

3 Q And what is the situation today with Great Lakes Comnet?

4 A So it's been 18 months we haven't received a penny from
5 any of the carriers. You know, they were billing on our
6 behalf, but they haven't paid us anything for 18 months.

7 Q Let's go back to the 2009-2010 timeframe.

8 A Uh-huh.

9 Q In that timeframe, did LECMI become involved in 8YY
10 traffic, aggregated 8YY traffic?

11 A Yes.

12 Q And did LECMI -- could you explain how that came about?

13 A Sure. So we -- first we heard about it was one of our --
14 we deal through -- we have a lot of agents and resellers
15 that use our service, and one of our agents, John Lodden,
16 came to us with a problem that he was having. He was
17 doing some work for GLC, and he had a couple of Tls worth
18 of traffic that he was terminating for them, and he was
19 having some technical problems with it, so he was unable
20 to get his SBC to work properly, and he asked for some
21 assistance, so we got involved at that time.

22 Q Now, you used the term SBC; is that a session border
23 controller?

24 A Correct.

25 Q And that's just a network component that's used for this
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1 kind of traffic?

2 A Yes.

3 Q So when Mr. -- now, who is Mr. Lodden?

4 A Mr. Lodden is a, at this point in time, Mr. Lodden is a
5 reseller of LECMI services. In the past, he was a part
6 of LECMI. When we first started LECMI, he helped us get
7 it off the ground and had, at that point in time, he was
8 compensated by having a preferential reseller agreement
9 with us.

10 Q So that enabled him to enter into this network
11 arrangement with Great Lakes that you referred to a
12 moment ago; is that correct?

13 A Correct. And he still sells things to Great Lakes as of
14 today.

15 Q So you mentioned a moment ago that Mr. Lodden was having
16 some difficulty in his arrangements. So what did LECMI
17 do about that?

18 A So LECMI moved -- well, LECMI -- LECMI has a large voice
19 switch and we had SBCs that would allow this traffic to
20 scale, so we moved that traffic over to our VoIP switch
21 and our SBCs.

22 Q And what kind of traffic was this?

23 A At that point in time, we didn't know, we had no idea
24 what it was. We've learned that it's, you know, the 8YY
25 traffic in question.

1 Q And did you have an understanding at the time about the
2 identity of the carrier that was delivering the traffic
3 to LECMI?

4 A We had -- up until the hearing at the FCC, I didn't know
5 who they were up until, what was that, last week.

6 Q Can you describe the network arrangements that LECMI
7 established to handle this traffic?

8 A Sure. So essentially the -- we only allow traffic to
9 come to our VoIP switch that's, where we know the IP
10 address, so we were given a couple of IP addresses where
11 this traffic would be flowing from, and we programmed our
12 switch to allow that traffic and, you know, that's how it
13 got started. Is that your question?

14 Q Yes. So that the network components that were involved
15 at LECMI consisted of I think you mentioned a session
16 board controller?

17 A Yep.

18 Q A VoIP switch?

19 A Yes.

20 Q Did it include transport?

21 A Yes.

22 Q Between what locations?

23 A So transport for this traffic I've since learned since
24 our previous deposition that it indeed goes to Flint, so
25 we own the transport from our Southfield POP to Flint,

1 and there in Flint we hand it off to GLC with, over an OC
2 circuit.

3 Q So at your deposition you testified that you were
4 99-percent sure that the traffic was transported over
5 LECMI facilities from Southfield to Flint.

6 A Right.

7 Q And so are you clarifying that testimony today?

8 A Yeah. Now I'm a hundred-percent sure, yep.

9 Q And this is, you said it was a LECMI fiber transport
10 facility between Southfield and Flint?

11 A Correct.

12 Q And you thought it was an OC and/or an optical carrier
13 network level of capacity?

14 A It is.

15 Q Do you know where in Flint that you have a meet point
16 with Great Lakes?

17 A It's within a few hundred yards of the CO there.

18 Q Would that be in downtown Flint?

19 A Yes, downtown Flint.

20 Q Do you know when LECMI established this transport
21 facility to Flint?

22 A It would have been right around the start of the 8YY
23 traffic.

24 Q O.K. So in the 2010 timeframe?

25 A Yes.

1 Q So would you say that a hundred percent of this 8YY
2 traffic traveled between Southfield and Flint to Great
3 Lakes over LECMI fiber facilities to Flint?

4 A Yeah. When you say a hundred percent, you know, there
5 was some redundancy, there was some other circuits that
6 it could have potentially traveled, but I think like 99.9
7 percent of the traffic would have flowed through Flint.

8 Q From the beginning?

9 A Yes.

10 Q O.K. And that, just for sake of clarity, that trunk
11 group had its different designation, did it not?

12 A That trunk group was the 331.

13 Q So before you talked about a trunk group 313 --

14 A Yep.

15 Q -- that was established, and now this 2010 trunk group is
16 331?

17 A Yes.

18 Q Was there an agreement between LECMI and Great Lakes that
19 a hundred percent of that route between Southfield
20 through Flint to Westphalia would be billed by Great
21 Lakes at the Great Lakes transport rates?

22 A Not that I know of.

23 Q O.K. So you didn't have any involvement in such an
24 agreement?

25 A No.

1 Q Would you have known about it if there was?

2 A Well, we didn't know until these proceedings started, we
3 didn't know that -- I didn't know that, you know, the
4 extent of the revenue that was being charged on that
5 transport, so it wasn't something that was like on my
6 radar. We were happy to get our elements and, you know,
7 a portion of whatever they were billing. We assumed the
8 billing -- I assumed the billing that they were -- was
9 because of their transport services, and I didn't realize
10 that this mileage was a -- I also didn't know that they
11 were getting the kind of revenue they were getting on it.

12 Q It surprised you, the size of it surprised you?

13 A Yes.

14 Q Do you think you were entitled to a bigger share of it?

15 A Well, if they were going to pay us 10 percent, I don't
16 believe that -- perhaps they didn't pay us the full
17 10 percent.

18 Q I want to hand you a copy of an e-mail. I'm not going to
19 mark this as an exhibit, it is part of an AT&T exhibit
20 that's been admitted already. I'm just going to ask you
21 if you can, whether you recognize that document?

22 (Document distributed.)

23 A I do.

24 Q And is that your name shown as a cc on this e-mail?

25 A That is.

1 Q Can you identify the document and what that is?

2 A This is --

3 MR. OLIVA: Counsel, if I may interrupt.
4 Which -- well, one, for purposes of the transcript, this
5 question now is going to -- these documents have been
6 marked as confidential subject to protective order.

7 MR. ORTLIEB: Good point.

8 MR. OLIVA: Two, what exhibit is this a
9 part of?

10 MR. ORTLIEB: Can we go off the record?

11 JUDGE SONNEBORN: Yes.

12 (At 10:03 a.m., a brief discussion was held off
13 the record.)

14 - - -

15 (Transcript continues on Page 536 of the
16 Confidential Record.)

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(Transcript continues following Page 539 of the
Confidential Record.)

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Q (By Mr. Ortlieb): Changing topics somewhat, you
mentioned Mr. Andre Cooks?

A Yes.

Q Have you dealt with him professionally?

A Yes.

Q And you have dealt with him on the subject of 8YY
traffic?

A Yes.

MR. OLIVA: Counsel, are we off the
confidential portion or are we still on?

MR. ORTLIEB: We're off. Thank you.

THE REPORTER: Starting now?

JUDGE SONNEBORN: Before that question.

MR. OLIVA: Starting with the question
about Mr. Cooks.

MR. ORTLIEB: So we're off confidential
beginning with the question, "Have you dealt with him
professionally?"

JUDGE SONNEBORN: Thank you.

Q (By Mr. Ortlieb): And I believe you said you have on the
subject of 8YY traffic?

A Yes.

1 Q And have you had a conversation with Mr. Cooks involving
2 the amount of traffic that LECMI should expect over trunk
3 group 331?

4 A Yes.

5 Q What did he tell you?

6 A Well, throughout the years we were doing it, that it
7 would be -- how can I put it -- that this traffic was
8 available for, you know, for us to terminate, and that,
9 you know, that it was likely to be a good business, that
10 it might not last long, that there might be some other
11 ways that they were going to do it. There was some
12 statements that it would be -- it could be temporary.
13 That -- you know, we probably talked to him five or, five
14 or so times about the traffic.

15 Q Did he ever indicate that Great Lakes wanted to keep the
16 traffic levels down for any reason?

17 A Yes --

18 Q What did he say about that?

19 A -- absolutely. There were some limits that they needed
20 to, you know, abide by, and so they, they would
21 essentially be able to throttle or regulate the amount of
22 calls that would come towards us.

23 Q Did he say what those limits were, what they were trying
24 to stay under?

25 A I think it was a hundred percent a year, something like

1 that.

2 Q Have you noticed in looking back at the traffic flow
3 whether it, you know, graphically it had any pattern to
4 it?

5 A It was -- yeah, in retrospect, it was, you know, looked
6 like Andre tried to keep that traffic under that, under
7 those guidelines.

8 Q Normally does traffic vary time of day?

9 A Yes. Usually our traffic is kind of a smooth curve that
10 has certain peaks, and depending on if it's a business
11 traffic or residential traffic, yeah. And I think this
12 traffic was exceptional because it was as many trunks as
13 we had available, those would be consumed, or at least it
14 would be kind of a flat -- there would be some dips in it
15 on off hours, but there would be a lot of flat tops on
16 it, which is very unusual for, in retrospect, for our
17 traffic.

18 Q Does that indicate anything to you?

19 A Well, if that was our normal traffic, that would indicate
20 that we needed to add trunks and that we were blocking
21 calls. So it indicates that, like Andre said, this was a
22 spigot that could be turned off and on, and so they were,
23 somebody upstream from us was regulating this traffic.

24 Q Why did -- did you have any understanding of what he
25 meant by that it could be temporary?

1 A Well, I couldn't remember. I don't remember. But I do
2 remember him saying that it could be temporary. I don't
3 remember why he said that.

4 Q Anything else about this topic before we leave it?

5 A (Nodding negatively.)

6 Q On the -- you mentioned IP addresses --

7 A Yep.

8 Q -- I believe. And I think what you said was that your
9 session boarder controller would only accept traffic from
10 certain IP addresses?

11 A Correct.

12 Q Did you at some point come to learn the identity of the
13 carriers with those IP addresses that were sending
14 traffic to you on this trunk group 331?

15 A Well, we did a -- we were curious after these proceedings
16 started to look at those, and so we looked at our switch,
17 our SBC, and saw that I think there were seven or eight
18 of them, and so we did ARIN lookups on them, and, you
19 know, identified those. A couple of them were owned by,
20 we were surprised that a couple of them were owned by GLC
21 and then a couple of them were, looked like they were
22 owned by an outfit in like the Boston area.

23 Q What -- and so what does that suggest to you if, that if
24 one or two of them were owned by GLC?

25 A You know, that's about all I can say, looking at the ARIN

1 thing, is that GLC had the, there were -- ARINs had
2 assigned those to GLC at some point in time.

3 Q What is ARIN, I'm going to ask just for clarification,
4 and I don't need the acronym, just a description of what
5 the thing is?

6 A They're the people that divvy out the IP addresses that
7 we, that make up the internet today.

8 Q So something like a central registry where you can
9 associate an IP address with the owner or user of it?

10 A They hand out blocks of IP addresses for corporations and
11 people to use.

12 Q And is ARIN, is that A-R-I-N?

13 A Yes.

14 Q And lastly, Mr. Irvin, my final topic is going to be with
15 respect to local switching charges. Are you aware that
16 this dispute involves disputes over LECMI local switching
17 charges?

18 A Yes.

19 Q And AT&T's informal complaint at the FCC against Great
20 Lakes and LECMI also involves that same issue, correct?

21 A Yes.

22 Q What is a LECMI local switching charge?

23 A So it's a charge that we -- if a call is -- it's two
24 places where I see it coming into play; one is if
25 somebody calls one of my customers, that charge arises,

1 and then also if one of my customers places an 800
2 number, dials outward to an 800 number, we also have that
3 charge.

4 Q So it's just the, the use of the LECMI switch to help
5 process one of your customer's calls?

6 A Yes, yep.

7 Q Do you agree that LECMI did not provide local switching
8 services to AT&T Corp. on the aggregated 8YY traffic
9 we're discussing here?

10 A Yes.

11 Q And is that because LECMI didn't perform any local
12 switching functions?

13 A That's correct. Those numbers, those calls came in
14 from -- well, now we know they came in from, you know,
15 cell phone, cell phone users.

16 Q And if AT&T had been billed and paid for LECMI local
17 switching charges, would you think AT&T would be entitled
18 to some refund for that?

19 A Yes.

20 Q Did LECMI get, did LECMI receive all of the local
21 switching charges that AT&T paid?

22 A Not all.

23 Q Do you know what happened to the money?

24 A We received some. I don't -- I do not have the
25 accounting on that.

1 Q O.K. Just two followup questions, Mr. Irvin. The
2 compensation that you talked about earlier that you
3 received from Great Lakes, was that compensation for the
4 use of the LECMI network associated with this 8YY
5 traffic?

6 A Can you say that again?

7 Q O.K. I'll rephrase it. Was the 10 percent that you
8 received -- I'll make it even more open-ended -- what was
9 that for?

10 A You know, there's, kind of unclear, but it's in our
11 original network operating agreement, I think it was a
12 lease payment is what it's, what it says.

13 Q And do you have an understanding of what that really
14 translates into, compensation for what that LECMI does?

15 A You know, it's kind of evolved through the years. I
16 didn't really have any understanding of what it was, and
17 then I thought it was for ports on our switch or
18 transport between the switches, kind of -- unfortunately
19 it's kind of nebulous. This is kind of a small part of
20 our -- you know, we do a lot of things at 123.NET, and
21 this is maybe five percent of our business, so we can
22 outsource it to, you know, to GLC to handle all this for
23 us; and it was a deal that was struck by John Lodden with
24 GLC, you know, it worked very well for, you know, eight
25 or ten years.

1 Q And then one final question. With respect to the 313
2 traffic, again, and that's distinct from the 331, that's
3 the LECMI end-user traffic, do you know where that is
4 handed off to Great Lakes?

5 A Yeah, I think that's handed off in Lansing to GLC.

6 MR. ORTLIEB: O.K. Thank you, Mr. Irvin.

7 I have no further questions.

8 A O.K.

9 MR. OLIVA: Can we --

10 JUDGE SONNEBORN: Mr. Oliva.

11 MR. OLIVA: -- take short break before we
12 start with cross?

13 JUDGE SONNEBORN: We may.

14 MR. OLIVA: Thank you.

15 (At 10:22 a.m., there was a 15-minute recess.)

16 JUDGE SONNEBORN: We are back on the
17 record. Mr. Irvin, you're still under oath.

18 A O.K.

19 JUDGE SONNEBORN: Mr. Oliva.

20 - - -

21 CROSS-EXAMINATION

22 BY MR. OLIVA:

23 Q Good morning, Mr. Irvin.

24 A Good morning.

25 Q I have a few questions for you. You stated that you've
Metro Court Reporters, Inc. 248.426.9530

1 been 17 years the CEO of LECMI, and you talked about when
2 you founded the company; is that right?

3 A Let's see. So I didn't found -- the company was
4 originally -- do you want me to go through the corporate
5 history of the company?

6 Q Well, let me see, maybe I can shortcut this.

7 A O.K.

8 Q So you founded a company called Internet 123?

9 A Yes.

10 Q Right. And at the end of 2009, you changed the name of
11 that company to like Liquidation Company?

12 A Yes.

13 Q And that company's now, no longer in business, right?

14 A Correct.

15 Q O.K. It was an earlier company which is the -- there is
16 an earlier company which is currently 123.NET --

17 A Yes.

18 Q -- that -- you did not found that company, right?

19 A Correct.

20 Q O.K. And when did you acquire an interest in what is now
21 123.NET and LECMI?

22 A It was a company called MIX Mutual, Michigan or Mutual
23 Information Exchange or Michigan Information Exchange, so
24 it was kind of a shell CLEC, and I bought that from a
25 guy, Jeff Honeyacre (ph.) right around, right around that

1 same time period.

2 Q I'm sorry, what time period?

3 A It would have been around 2000. I don't recall.

4 Q Around 2000. O.K. Now, and at that time you became a
5 director of the company, but you weren't president,
6 right?

7 A I think I -- I think there was a time period when there
8 were two other people that served there, one was John
9 Lodden and one was -- I don't know if he was the
10 president -- it was James Kandler. There was -- those
11 people have been involved since day one with that, with
12 what we know as LECMI.

13 Q But back to my question: At that time, you weren't
14 the -- you weren't the president of the company?

15 A I don't recall. There were --

16 Q So as of --

17 A I could have been.

18 Q As of 2003, Glenn Adams was president; is that right?

19 A 2003. O.K.

20 Q O.K. Are you agreeing with me or --

21 A Well, I mean you've pulled this Glenn Adams, Glenn Adams
22 acted that, as that for a time period.

23 Q O.K. So just so we can be clear on this -- I'm not going
24 to mark this as an exhibit, but --

25 (Document distributed.)

1 Q O.K. I've handed you a document. This is -- can you
2 tell me what this is?

3 A It's -- well, do you want me to read it?

4 Q No, no. I mean this is the Annual Report that the
5 corporation files with the Michigan, at the time,
6 Department of Consumer and Industry Services, Bureau of
7 Commercial Services Corporation Division?

8 A Correct.

9 Q So this is the 2003 Annual Report, and this is your
10 signature at the bottom of it, right?

11 A It is.

12 Q O.K. It identifies Mr. Adams as president and yourself
13 as a director, right?

14 A Yes.

15 Q O.K. And then you were still just a director as of 2007,
16 right?

17 A I don't recall.

18 Q O.K. I'm handing you another document, I'm not going to
19 mark this as an exhibit, but this is -- take a look at
20 this.

21 (Document provided to the witness.)

22 Q This is the Annual Report for Local Exchange Carriers of
23 Michigan, Inc., for 2007. This has your signature at the
24 bottom of it, right?

25 A Yep.

1 Q And in the, you've checked the box that says there's no
2 changes from the previous filing up there in the, about
3 the middle of the page, right?

4 A Yep.

5 Q And you identify your title next to your signature as
6 director, right?

7 A Yes.

8 Q O.K. And then I'm handing you another document, I will
9 not ask that this be marked as an exhibit.

10 (Document provided to the witness.)

11 Q So this is, is it not, the Annual Report that LECMI filed
12 for 2008, right?

13 A Looks like it.

14 Q O.K. And this has your signature at the bottom?

15 A Yes.

16 Q And this time you identify yourself as president, right?

17 A Yes.

18 Q O.K. But you still also checked the box that says
19 there's no changes in the previous filing, so this filing
20 you made with the Corporation Securities Bureau -- I'm
21 dating myself -- the Department of Labor and Economic
22 Growth, sorry, you say there's no changes. So at this
23 point, is your line 6 where you're identifying yourself
24 as president, is that correct, or are the boxes up above
25 correct where you say there's no change which would

1 indicate that Mr. Adams is still president?

2 A Well, Mr. Adams was not involved in the company beyond
3 its original formation. So I would say that we probably
4 shouldn't have checked that box, and we should have
5 indicated that, you know, that Glenn was no longer
6 involved in the company.

7 Q O.K. But he was involved in the company, as we said
8 earlier, as of, at least as of 2003?

9 A Only in its -- Glenn was only involved in its incep --
10 its very, right at the very beginning.

11 Q Well, was 2003 the very beginning?

12 A I would have to look back. I'm really bad with these
13 kind of dates. I'm, you know, if this is really
14 important, I can look back and find out, you know, when
15 the company was formed and when we actually bought it.
16 Glenn was not a --

17 Q Continue.

18 A Glenn's not involved in the company at all.

19 Q He's not now?

20 A And he wasn't for -- he was only involved for a minute
21 then.

22 Q You just said -- you said earlier. Now, the Company that
23 is now 123.NET was originally known as Midwest
24 Information Exchange, right?

25 A Yes.

1 Q O.K. And that company was incorporated in 1996, right?

2 A O.K.

3 Q Well, are you just agreeing with me because I'm saying
4 so, or did you know that?

5 A That sounds about right.

6 Q O.K. now, at the 2003 timeframe, then, according to your
7 filing that you made with the Corporations Division, you
8 weren't at that time the CEO of the company, right?

9 A So I've always been the -- we can talk about CEO,
10 president, whatever you want to call it, I've always been
11 the primary owner of that since I got it from
12 Mr. Honeyacre, and it's always been 100 percent under my
13 control.

14 Q But in the 2003 timeframe, you weren't involved
15 personally in negotiating the agreements between LECMI
16 and GLC, right?

17 A Mr. John Lodden had --

18 Q Mr. Lodden did that?

19 A -- done it, yes.

20 Q O.K. And so it was he who negotiated those agreements,
21 right?

22 A That's correct.

23 Q O.K. And he signed them as Vice President for Business
24 Development for LECMI, right?

25 A If you say so.

1 Q So he would have been the person who was responsible for
2 negotiating the billing percentages?

3 A At what time period?

4 Q In 2003.

5 A He's the one that negotiated that contract.

6 Q O.K. And he's the one -- and the billing percentages
7 that were negotiated in connection with that contract are
8 contained in NECA Tariff, that's N-E-C-A, Tariff No. 4;
9 is that right?

10 A I don't know.

11 Q You don't know. All right. You don't really know too
12 much about the details of this business at all, right;
13 when I say this business, the relationship between GLC
14 and LECMI?

15 MR. ORTLIEB: I'll object to that as
16 argumentative.

17 JUDGE SONNEBORN: Mr. Oliva, do you wish
18 to withdraw that question?

19 MR. OLIVA: Sure, I'll withdraw that
20 question.

21 JUDGE SONNEBORN: Thank you.

22 Q (By Mr. Oliva): Are you familiar with the details of
23 that agreement?

24 A I am now.

25 Q And when did you become familiar with the details of that
Metro Court Reporters, Inc. 248.426.9530

1 agreement; since this litigation began?

2 A Well, I've read it over, yes. I've read it over probably
3 two or three times before this litigation, and then
4 several times during this litigation.

5 Q O.K. And that agreement identifies what transport
6 facilities that GLC is going to provide; is that correct?

7 A I would have to look at it.

8 Q O.K. In your deposition just a little over a month ago,
9 August 13, you said, when Mr. Holmes was questioning you
10 about NECA Tariff 4, you said you didn't even know what
11 NECA Tariff 4 meant; is that right?

12 A Yes.

13 Q O.K. And you weren't involved -- and just to be clear,
14 you said Mr. Lodden was involved in the negotiation with
15 GLC with regard to the billing percentages and the
16 traffic routes, right?

17 A Yes.

18 Q But you were not?

19 A No.

20 Q O.K. Now, in 2003 when the agreement was negotiated,
21 LECMI did not have fiber to Flint; is that right? I'm
22 talking about, when I say agreement, I'm talking about
23 the network operating agreement with GLC?

24 A We did not own fiber from Southfield to Flint at that
25 time.

1 Q O.K. And so the physical connection pursuant to that
2 network operating agreement was made by GLC at
3 Southfield, right?

4 A Not necessarily. We, at that point in time we didn't own
5 our own fiber, but we were leasing transport from another
6 carrier.

7 Q Who was that other carrier?

8 A That would have been U.S. Signal.

9 Q And did you subsequently purchase that fiber from U.S.
10 Signal, or are you still leasing it?

11 A We no longer -- we -- that's a very complicated question.

12 Q Well, it's a very simple question. Did you subsequently
13 purchase the fiber from U.S. Signal from Southfield to
14 Flint?

15 A We purchased some fiber from Southfield to Flint, and I
16 think that some of the fiber -- we purchased 500 miles of
17 fiber, 500 or 600 miles of fiber at that time, and some
18 of that was owned by U.S. Signal.

19 Q O.K. At that time, when exactly is at that time?

20 A I think it was around, it's '05.

21 Q '05?

22 A '06. Something like that.

23 Q You're not sure?

24 A Not good on that. Could have been a little bit later.

25 Q So it could have been later. Could it have been as late

1 as 2009?

2 A You know what, I'm just not -- those dates aren't fresh
3 in my mind. Sorry.

4 Q All right. But again, of course for --

5 A Over the course of time, we stopped using U.S. Signal,
6 bought our own fiber, and then moved all of our transport
7 over to that fiber that we purchased, and so from the
8 start of the 331 traffic, that was no longer leased, that
9 was over our fiber that we had in both Lansing and in
10 Flint.

11 Q And now you stated when Mr. Ortlieb was questioning you
12 that now you're a hundred-percent sure that you were
13 transporting traffic, this would be trunk 331 traffic,
14 through Flint?

15 A Yes.

16 Q But then you said, well, maybe not, because there's
17 other, there are other routes, right?

18 A Yes.

19 Q And the traffic could be going by those other routes,
20 some of it?

21 A Through the connection that we have in Lansing.

22 Q Could also be going through the connection you have with
23 GLC at Southfield, right?

24 A As far as I know, those are the only two connections we
25 have with them.

1 Q What -- wasn't there physical connection with GLC at
2 Southfield back when the network operating agreement was
3 established?

4 A I would -- I would doubt it.

5 Q But you don't know?

6 A I would have to -- that was back in '03. I don't recall.

7 Q And doesn't the network operating agreement call for GLC
8 to establish the transport from Southfield?

9 A I would have to look at that agreement.

10 Q So you don't know? If that's what it provides --

11 A There was a lease --

12 Q -- do you have any reason to doubt that GLC provided --

13 A I'm talking about -- so when I talk about, just plain
14 English, we own the transport from Southfield to Flint
15 and we own the transport from Southfield to Lansing, it
16 means just -- that's just the facts. I don't know how
17 else you want to slice and dice it, but that's the way
18 it's sat for the last -- for this matter, that's the way
19 it is.

20 Q You stated when you were questioned by Mr. Ortlieb
21 earlier this morning that you didn't know what elements
22 that GLC and WTC were billing on your behalf; is that
23 right?

24 A I said on what elements they were -- first of all, yes,
25 that's correct.

1 Q O.K. And aren't the elements they're to bill for
2 contained in your tariff?

3 A Yes.

4 Q O.K. So don't you know those are the elements they're
5 billing for?

6 A I didn't know. This was -- again, this is a very small
7 part of our business, and we outsourced it to GLC. They
8 are the ones that, you know, maintained the tariff, made
9 changes to the tariff, and we were -- our tariff
10 essentially was a one line where we were I think
11 concurring, or I'm not sure of the word, to their master
12 tariff, if you will.

13 Q But that was something Mr. Lodden was involved with and
14 you didn't have any real involvement with it, right?

15 A Correct.

16 Q O.K. Now, Westphalia only bills for you -- I'm sorry,
17 not for you -- for LECMI with respect to the traffic
18 that's being transported from LECMI to GLC, right?

19 A Correct.

20 Q You don't -- so you have other services, you provide
21 other services on your network that GLC and Westphalia do
22 not do the billing for?

23 A Sure, yes.

24 Q Correct? And they do not maintain the tariff with
25 respect to those services, or are those services covered

1 under the same tariff?

2 A I don't know the answer to that.

3 Q O.K. Now, LECMI has direct trunking with AT&T; is that
4 correct?

5 A Yes.

6 Q And how long has it had that?

7 A You know, for -- since our inception.

8 Q O.K. Now, in the 331 trunk group, you were talking
9 earlier that a portion of the traffic comes in on a few
10 IP addresses, right?

11 A Yes.

12 Q O.K. And at the time that that traffic was coming in,
13 you had no idea where that traffic was coming from?

14 A Correct.

15 Q O.K. You didn't -- you weren't curious enough to look up
16 the IP addresses to see who that was coming from, right?

17 A At that time, no.

18 Q And now subsequently you said you had and you checked
19 ARIN, A-R-I-N, right?

20 A Correct.

21 Q O.K. Does ARIN always accurately reflect who holds an IP
22 address, do you know?

23 A Well, you know, it's, the IP address can be anywhere in
24 the world. Well, I shouldn't say that. You want to talk
25 about how stuff is routed on the internet in ARIN?

1 ARIN --

2 Q No.

3 A If you have an IP address, you get it assigned from ARIN.

4 I think it is pretty accurate.

5 Q You mentioned that some of the IP addresses that you
6 looked up were held by a Boston carrier. Who was that
7 carrier?

8 A I don't recall.

9 Q Was it AT&T?

10 A I don't think it was AT&T.

11 Q But you just don't recall?

12 A It's in a document somewhere. The one that struck, you
13 know, the one I do remember is the name I recognize,
14 which was -- which I said before.

15 Q O.K. Do you know what kind of trunk traffic is routed on
16 the trunks between, the direct trunks between AT&T and
17 LECMI?

18 MR. ORTLIEB: I'll object to that
19 question as outside the scope of the direct.

20 JUDGE SONNEBORN: Mr. Oliva.

21 MR. OLIVA: I think, your Honor, given
22 the extraordinary leeway that was afforded to AT&T to
23 call Mr. Irvin as a live direct testimony, that some
24 leeway should be allowed.

25 JUDGE SONNEBORN: I'll allow that leeway.

1 You may answer the question, Mr. Irvin.

2 Do you need it repeated?

3 Q (By Mr. Oliva): Do you need me to repeat the question?

4 A Sure.

5 Q Previously you stated that LECMI does have direct
6 trunking with AT&T, right?

7 A Yes.

8 Q Do you know what kind of trunk traffic is being routed on
9 these trunks between AT&T and LECMI?

10 A Sure. It's some local traffic.

11 Q Some local traffic?

12 A Local traffic, yes.

13 Q Local traffic from LECMI customers?

14 A Yes.

15 Q All right. Is there any other kind of traffic?

16 A Well, I'm not the best describing the type of traffic. I
17 can tell you that if you -- if somebody in the LATA that
18 we service picks up a phone and makes a call, it goes
19 over those trunks from AT&T.

20 Q Does LECMI have SS7 ability?

21 A Yes.

22 Q From who does it get SS7 capability?

23 A I'm not a hundred-percent sure, but I think it's AT&T.

24 Q Do you -- do you understand what SS7 is?

25 A Yes, sir.

1 Q Can you describe it briefly?

2 A It's the -- it's a switching system that controls the
3 setup and teardown of calls on a PSTN.

4 Q O.K. Independently of AT&T providing that service to
5 LECMI, LECMI doesn't have that capability itself, right?

6 A We have STPs, you know, I think we've changed them
7 throughout the years where we get that from. I'm not
8 sure. I'm not a hundred-percent sure where we're getting
9 our SS7 interconnections from.

10 Q O.K. So you don't know whether you've got SS7 capability
11 on your switches?

12 A I'm a hundred-percent sure we have SS7 capability on our
13 switches.

14 Q Has that capability been turned on on any or all of those
15 switches?

16 A The switches wouldn't work in -- that's always been
17 turned on. It's a fundamental part of it.

18 JUDGE SONNEBORN: Mr. Oliva, we are going
19 a bit far afield at this point.

20 MR. OLIVA: O.K. I will change up
21 things.

22 JUDGE SONNEBORN: Thank you.

23 Q (By Mr. Oliva): You said when Mr. Ortlieb was
24 questioning you earlier that Mr. Lodden, who we've talked
25 about, was involved in the negotiation of the network

1 operating agreement and the routing billing percentages.
2 He's now a reseller of LECMI services?

3 A Correct.

4 Q O.K. And he does that through a company called, I
5 believe it was Michigan Network Services; is that right?

6 A Yep.

7 Q O.K. And you're currently in a lawsuit, or you've been
8 sued by Michigan Network Services?

9 A We are.

10 Q O.K. And a couple of weeks ago Judge Alexander in the
11 Oakland County Circuit Court issued a temporary
12 restraining order precluding LECMI from shutting off
13 services to Michigan Network Services?

14 A Yep. Mr. -- they are five or six months behind, and
15 we're trying to get them to pay us.

16 Q O.K. And then you've got a date back before Judge
17 Alexander on Thursday, right?

18 MR. ORTLIEB: Objection both as to scope
19 and relevance. I think Mr. Oliva has been permitted some
20 way of establishing the existence of that lawsuit. Going
21 deeper into it at this point is both beyond the scope and
22 not terribly relevant.

23 MR. OLIVA: I'll withdraw the question.

24 JUDGE SONNEBORN: Thank you, Mr. Oliva.

25 Q (By Mr. Oliva): Where is LECMI currently -- LECMI is not
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1 currently sending any traffic to GLC over trunk 331,
2 right?

3 A I don't -- I don't think there's any traffic. The
4 traffic would be very minimal, there may be some very
5 residual traffic, but I don't think there's any -- we've
6 moved to another tandem.

7 Q O.K. What other tandem did you move to?

8 A Inteliquent.

9 Q Inteliquent. When did you make that move?

10 A Well, we made the move -- you know, it takes some time to
11 update the LERG and whatnot, so we initiated that the
12 first of the year, and I think it got completed here in
13 the last few months.

14 Q And then where are you sending your featured group D
15 switch access traffic now?

16 A You know, I wouldn't be the guy to answer that question.

17 Q O.K. Isn't it a fact that you're now sending it to
18 Neutral Tandem?

19 A I think they're one and the same, Inteliquent and Neutral
20 Tandem. They changed their name so that it's now
21 Inteliquent. It used to be Neutral Tandem.

22 MR. OLIVA: I have no further questions,
23 your Honor.

24 JUDGE SONNEBORN: Thank you, Mr. Oliva.

25 Mr. Ortlieb, any redirect?

1 MR. ORTLIEB: I have one thing.

2 MR. BRANDENBURG: Your Honor, Staff would
3 like to indicate we have, for Mr. Irvin, a little bit of
4 cross.

5 MR. ORTLIEB: I'm sorry?

6 JUDGE SONNEBORN: Mr. Brandenburg would
7 like to cross-examine Mr. Irvin. So why don't you
8 proceed first, Mr. Brandenburg.

9 - - -

10 CROSS-EXAMINATION

11 BY MR. BRANDENBURG:

12 Q Good morning, Mr. Irvin.

13 A Good morning.

14 Q We've met before, I'm Bryan Brandenburg, I'm an assistant
15 attorney general, and I represent the Michigan Public
16 Service Commission Staff. And I'd just like to explore a
17 little bit down some of the same line of questioning that
18 other counsels have pursued, and if I ask a question in a
19 slightly different way or even repeat it, I'd ask you to
20 bear with me because this seems to be a very technical
21 and complicated issue. I just want to be able to fully
22 grasp this.

23 A O.K.

24 Q And I'm going to refer to it as, 123.NET as LECMI as
25 well.

1 A That's fine.

2 Q LECMI owns a system that provides this transport between
3 Southfield and Flint?

4 A Yes.

5 Q And this, when we say transport, are we talking about
6 voice transport?

7 A It's general purpose transport. We own the fiber, we
8 have both voice and data on that fiber.

9 Q O.K. And there was an arrangement between LECMI and GLC
10 where LECMI would move voice calls, data transport from
11 Southfield to Flint?

12 A Correct.

13 Q O.K. Would you say the primary source of the voice calls
14 was 8YY traffic?

15 A On that particular path, I think very close to a hundred
16 percent of that traffic was 8YY.

17 Q And you've said earlier that you don't know exactly who
18 was supplying that traffic?

19 A I didn't up until the last couple, until at the FCC I
20 learned.

21 Q Did you know what sort of entity would be supplying that
22 traffic?

23 A What sort of entity?

24 Q Would it be an interexchange carrier?

25 A No. I'll tell you what we did know is after a few months

1 of seeing this traffic, we looked at it and saw that it
2 was mostly 800 number traffic. Then I think we did
3 lookups on the ANIs and saw that it was cell phone
4 traffic from I think, you know, I think it was T-Mobile.

5 Q O.K.

6 A One of those kind of not AT&T, not Sprint, I think it was
7 T-Mobile.

8 Q And if I remember right from your deposition, you said
9 that LECMI owns a switch in Southfield?

10 A Correct.

11 Q It's located right across from your office building?

12 A Yes.

13 Q Now, when calls come into this switch, you said that you
14 only accept certain IP addresses?

15 A Correct.

16 Q How do you decide which IP addresses to accept?

17 A Well, we have -- we make arrangements, we -- someone
18 tells us that they're going to send us traffic and they
19 say, you know, we're going to send traffic from this IP
20 address; sometimes it's a customer, so it could be a
21 customer at a small business that sets up a hosted PBX at
22 their location and there's an IP address associated with
23 that. In this case, it was another carrier, so they gave
24 us that, those IP addresses.

25 Q So another carrier would contact your company and say,

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1 we'd like to send this information to your switch in
2 Southfield, it's going to be coming from these IP
3 addresses?

4 A Yeah. In that case, it was GLC that gave us that
5 information.

6 Q How many IP addresses are we talking about?

7 A There's seven or eight.

8 Q Seven or eight. And do you tend to verify these IP
9 addresses in any way?

10 A Typically we're assigning them ourselves to a customer
11 with a PBX or something at their facility. When they're
12 coming from a carrier -- and there's a certain amount of
13 trust we have with GLC, we've been doing business with
14 them for, you know, over ten years, and when they give us
15 an IP address, we would just -- we would not go and
16 verify it because, you know, it came from a trusted
17 partner.

18 Q That's what I was trying to figure out, whether or not
19 there was a level of trust between your company and GLC,
20 or if you did in fact have to verify each IP address?

21 A No, no. We, today we conduct a lot of business with GLC.

22 Q O.K. Now, once these calls hit your Southfield switch
23 and you send them on to Flint --

24 A Yes.

25 Q -- during that portion of the transport, are the calls

1 billed at LECMI's tariff rates or at GLC's tariff rates?

2 A That's a good question. I'm, you know, I'm not -- I'm
3 just saying what things are. I don't believe that -- I
4 think they were billed -- you know, I don't have a
5 hundred-percent visibility to answer that question.

6 Q And that's because after that call hit your switch in
7 Southfield, that's where GLC starts billing for you?

8 A GLC was doing all the billing for themselves and for us,
9 so we assumed that they would be billing it at, you know,
10 the proper rates.

11 Q Are you able to tell, because it's your switch, how many
12 calls go through that switch?

13 A Yes.

14 Q Or how much data goes through that switch?

15 A Yes.

16 Q And you -- do you have an idea of what GLC's tariff rates
17 are?

18 A I do now.

19 Q But not previously?

20 A No. I personally didn't know. We as a company didn't
21 know.

22 Q Now, is this the agreement that you said was a little bit
23 odd, because you were negotiating percentage, but you
24 didn't know what that percentage represented?

25 A Correct.

1 Q At that point in time, when that agreement was made,
2 would it have been possible to look up GLC's tariff
3 rates?

4 A Sure.

5 Q So if you could tell what GLC's tariff rates were and you
6 know how many calls and how much data goes through your
7 switch, wouldn't you be able to figure out the total
8 number that you were negotiating a percentage of?

9 A Yes, we could have, back at that time.

10 Q But back at that time, that was John Lodden doing that
11 negotiating?

12 A At the time of this e-mail, the e-mail where we're
13 talking with Andre, John Lodden was not doing the
14 negotiations at that time, it was --

15 Q That was Ryan Duda?

16 A Correct.

17 Q How long has Ryan Duda worked for your company?

18 A Over 15 years.

19 Q You obviously have a level of confidence in his ability
20 to negotiate?

21 A I do.

22 Q Do his negotiations and the numbers that he comes up
23 with, do they ultimately need to be approved by you?

24 A Yes, we discuss them.

25 Q And wouldn't you expect an employee who's been with you

1 for 15 years and is in charge of negotiations to be able
2 to put together what I just described using GLC's tariff
3 rates and the information that you have at your disposal
4 regarding the total amount of data and calls?

5 A In retrospect, that would have been a good idea, but I
6 didn't expect him to do that at that time, and I was
7 involved in this, because we didn't understand the
8 amounts. So it was a, kind of a, you know, de minimus
9 kind of amount for us, and this was not the main focus of
10 our business, so it was -- we should have paid more
11 attention to it, certainly in retrospect.

12 Q I'm curious, are the numbers on this e-mail, and I'm
13 referring to the one that was passed out earlier as part
14 of AT&T's Exhibit 17 --

15 A Yep.

16 Q -- are these the percentages --

17 JUDGE SONNEBORN: Mr. Brandenburg, are we
18 entering an another confidential portion of this
19 testimony?

20 MR. BRANDENBURG: I'm not going to refer
21 to any of them specifically.

22 JUDGE SONNEBORN: O.K. Thank you.

23 Q (By Mr. Brandenburg): Do these percentages represent the
24 agreement between GLC and LECMI with regards to providing
25 billing services for transport between Southfield and

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1 Flint?

2 A They were an attempt to get on -- in writing what the
3 agreement was. The percentage of what, we didn't have a
4 full understanding of. So I'm -- maybe you could ask
5 that again.

6 Q I'm just trying to figure out, and maybe I missed it
7 during Mr. Ortlieb's direct examination, but I believe
8 you said LECMI received one percent of the revenues?

9 A So --

10 Q And I will -- go ahead.

11 A One percent of elements that they billed under our OCN.
12 So, for instance, on the 313, we're entitled to bill
13 local switching, so that would have been an element that
14 they would bill, and there's other elements that are
15 billed under our OCN, so we get one percent of that, and
16 then some percent of the elements that they billed under
17 their OCNs. So does that make sense?

18 Q It does. At the end of the day, LECMI owns this network?

19 A To Flint.

20 Q To Flint.

21 A Correct.

22 Q And GLC is basically just providing a billing service?

23 A Well, they're providing the transport from Flint to, at
24 least from Flint to their location, and there's an
25 argument that they should be paying us a lease, but

1 there's nothing that was -- it's nebulous.

2 Q I probably should have been a little bit more specific.

3 I meant to say that LECMI owns the system between

4 Southfield and Flint?

5 A Correct.

6 Q And GLC was providing billing services between Southfield

7 and Flint?

8 A Well, they were. They were providing the whole, billing

9 for the whole thing.

10 Q But LECMI was only receiving one percent of the revenues

11 generated from the transport between Southfield and

12 Flint?

13 A We were -- we don't know. We don't have visibility into

14 what they were billing under their OCN, they haven't

15 shared that with us. So I don't know what percentage I

16 was getting from what they billed under their OCN. And

17 my understanding is that they didn't bill the transport

18 under our OCN, they billed it under their OCN, and I

19 never saw a bill for transport presented to the carriers

20 under our OCN.

21 Q Does LECMI incur many costs when providing transport

22 between Southfield and Flint?

23 A Sure. We -- the fiber network is, we spent \$6 million to

24 acquire that, you know, the whole network, which is

25 around 600 miles, we have to rent the COs, we have to

1 rent space from AT&T in the CO, we have to provide
2 equipment on the ends, maintenance, a lot of, lot of
3 expenses, sure.

4 Q Sounds like a huge investment?

5 A Well, it is, for us.

6 Q With such a huge investment, it just seems odd to me that
7 LECMI wouldn't demand more from GLC.

8 A Well, you know, this network goes around the state and,
9 you know, we pay for it over time, and there is a certain
10 kind of a wholesale price for a DS3 or kind of transport
11 that's common, you know, somewhere between, you know, in
12 the hundreds of dollars, not a month. So we -- we knew
13 those costs and we fully expected to be compensated one
14 way or another for providing that work from, you know, to
15 GLC.

16 Q Is it true that the more calls and the more data that
17 travels between Southfield and Flint would mean more
18 revenue to LECMI?

19 A Sure.

20 Q You mentioned something earlier that peaked my interest,
21 and you said that Andre Cooks was trying to keep the
22 traffic under a certain number.

23 A Yes.

24 Q Can you explain what you actually meant by that?

25 A Well, it was communicated to us that there were some

1 guidelines that were in place for traffic growth, and
2 that they were -- they would only be growing at that
3 rate, so, and I believe that was like a hundred percent a
4 year. So our, you know, we have to increase our
5 capacity, and we were asking Andre, you know, what's
6 going to happen with this business, you know, it started
7 off very small and we saw it growing, like where is this
8 going, and so that's what he communicated to us.

9 Q You also mentioned that you thought that somebody was
10 regulating the traffic upstream.

11 A Correct.

12 Q Who would be regulating the traffic upstream?

13 A Well, let me say this, that looking at the traffic
14 patterns, on a normal circuit they, they're very smooth,
15 and so there's no blocking, there's no clipping, there's
16 no blocking of the calls; on this one, the patterns were,
17 the circuit was pegged, so for a long time during the day
18 there was, you know, the circuits were maxed out or there
19 was somebody that had imposed a limit on the number of
20 calls that were going to go through this path, because
21 otherwise there would be blocking. And we weren't
22 setting the limit, somebody else was. So in other words,
23 if we had capacity for, say, a thousand calls, somebody
24 was setting it to 99, it never got to a thousand. So it,
25 it -- somebody else was regulating this. We weren't

1 blocking the calls, somebody was only sending us so many,
2 and it was flat. Does that make sense?

3 Q It does make sense. I'm wondering if it made complete
4 sense to you when it was happening; did you have an idea
5 of why someone would be doing this?

6 A Well, after some time, you know, we understood it.

7 Q And it was simply to prevent your system from being
8 clogged up with too many calls?

9 A Well, if, you know, if I had the capacity for a thousand
10 calls and somebody sent a thousand and one, that guy
11 would get blocked.

12 Q O.K.

13 A So somebody knew that we only had capacity or somebody
14 was, somebody upstream was regulating that. I don't
15 know.

16 Q I understand. Well, thank you very much for explaining
17 that to me.

18 MR. BRANDENBURG: Staff does not have any
19 further questions.

20 JUDGE SONNEBORN: Thank you,
21 Mr. Brandenburg.

22 Mr. Ortlieb.

23 MR. ORTLIEB: AT&T has just a few
24 questions. Can we take just a moment while we confer?

25 JUDGE SONNEBORN: Yes, you may. We'll go
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1 off the record for five minutes.

2 (At 11:29 a.m., there was a seven-minute
3 recess.)

4 JUDGE SONNEBORN: We're back on the
5 record. Mr. Ortlieb.

6 MR. ORTLIEB: Yes. Thank you, your
7 Honor.

8 - - -

9 REDIRECT EXAMINATION

10 BY MR. ORTLIEB:

11 Q Mr. Irvin, do you recall that Mr. Oliva asked you about
12 John Lodden negotiating a billing percentage on behalf of
13 LECMI with Great Lakes?

14 A Correct.

15 Q What billing percentage did you understand that to be?

16 A It was nebulous, so there was --

17 Q In other words -- I'm sorry, not the number, I'm not so
18 much interested in the number, but what was the subject
19 matter of the billing percentage that was being
20 negotiated?

21 A So there's the one percent on elements that we, that were
22 billed under our OCN, and the rest was to be paid to us
23 in the form of a lease for elements that they billed.

24 Q I want to clarify this one percent discussion.

25 A O.K.

1 Q The one percent is what Westphalia retains as a billing
2 agent when it bills end users for network components
3 provided by LECMI, correct?

4 A No, not end users. Carriers.

5 Q O.K. Let me rephrase it, then.

6 A O.K.

7 Q The one percent is the billing fee that Westphalia
8 retains when it bills carriers for services provided by
9 LECMI?

10 A Correct.

11 Q And an example of that you gave, and I'm just trying to
12 clarify this, was local switching in situations where
13 LECMI does in fact provide local switching. If LECMI's
14 local switching rate is billed to an IXC, Westphalia
15 keeps one percent, LECMI gets 99 percent?

16 A Correct.

17 Q And that is contrasted with a different compensation
18 arrangement you had with respect to, and I'm going to use
19 an example, the transport provided from Southfield to
20 Flint?

21 A Correct.

22 Q And in that situation, LECMI provided that network
23 transport to Great Lakes, correct?

24 A Correct.

25 Q Great Lakes used it and billed for it at the Great Lakes

1 rate, correct?

2 A Yes.

3 Q And then as compensation, LECMI wasn't paid anything
4 directly for the transport, rather it got a percentage,
5 and you said 10 percent at one time?

6 A Yes.

7 Q It got a percentage of the overall revenues that Great
8 Lakes collected as a result of using that transport?

9 A Correct.

10 Q Now, at one point, and again, this is just for
11 clarification, you referred to the wireless carrier that
12 may have been sending this traffic as T-Mobile, and you
13 said you didn't know, you weren't sure. I give you that.

14 A Right.

15 Q So my question to you is whether it could have been
16 Cricket?

17 A MetroPSC. Could have been all of those. I don't
18 remember which one.

19 Q Fair to say you're certain it was not one of the big
20 guys, like a Verizon or an AT&T, correct?

21 A Correct.

22 Q And then with respect, there was also a conversation you
23 had with Mr. Oliva about direct trunking between LECMI
24 and AT&T?

25 A Right.

1 Q Were your answers with respect to AT&T Michigan?

2 A The former SBC, or AT --

3 Q The local operating company.

4 A Yeah, it's with them.

5 Q The former Michigan Bell, if you want to go all the way
6 back?

7 A Yes. But those trunks were with them, not to carry long-
8 distance traffic.

9 Q We're not talking about direct connections between LECMI
10 and AT&T Corp., the IXC?

11 A Correct, correct.

12 Q O.K. And finally, with respect to your deposition that
13 you gave to everyone here on August 13, were the answers
14 you gave during that deposition truthful and accurate?

15 A Yes.

16 Q And except as you have clarified them here, they remain
17 truthful and accurate, correct?

18 A Correct.

19 MR. ORTLIEB: Your Honor, in light of
20 that and just to, for the completeness of record, AT&T
21 would move for the admission of Dan Irvin's deposition
22 transcript.

23 JUDGE SONNEBORN: Mr. Oliva, Mr. Holmes?

24 MR. OLIVA: Well, yes, I mean in effect
25 AT&T's asking to you reverse your ruling on the motions
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1 to strike. You know, AT&T had a full opportunity to ask
2 what questions it wanted to ask Mr. Irvin on direct
3 testimony for the purpose of this hearing to present him
4 as a live direct; I think it's entirely improper to now
5 at the last minute seek to introduce the deposition
6 transcript.

7 JUDGE SONNEBORN: Mr. Ortlieb.

8 MR. FRIEDMAN: Briefly, if I may, your
9 Honor. At this point, since a transcript is for all
10 meaningful purposes, exactly identical to the written
11 prefiled testimony that was admitted yesterday of GLC's
12 witness. That testimony is written questions and
13 answers. The deposition is written questions and
14 answers. GLC's witnesses appeared here yesterday, they
15 said yeah, all that stuff is true, and it was admitted.
16 Now Mr. Irvin is here today saying, yeah, all that stuff
17 is true. I really don't see the argument at this point,
18 given that foundation, for excluding it.

19 And to that I would add only this: That
20 in its examination of this witness, counsel for GLC used
21 the deposition substantively, not to impeach, but there
22 were several points when counsel said, you said this at
23 your deposition, right, and really what it was that was
24 said at the deposition was substantively identical to
25 what the witness said here, so we've already crossed that

1 bridge. Now, we intentionally did not object to those
2 questions precisely because the deposition should now,
3 the transcript should now come in, and I don't see any
4 objection to it.

5 JUDGE SONNEBORN: I'm going to allow the
6 deposition transcript of Dan Irvin. I do not believe it
7 constitutes a reversal of my prior ruling, which was in
8 the context of a deposition transcript attached to the
9 testimony of Jack Habiak and was deemed at that time
10 inadmissible hearsay. The transcript as it's being
11 offered today, Mr. Ortlieb has laid a foundation for,
12 Mr. Irvin has acknowledged that his answers that he gave
13 at the time of his August 13 deposition were truthful and
14 accurate, and remain truthful and accurate, with the
15 exception of the corrections he's made. Mr. Irvin has
16 been subject to cross-examination at today's hearing.
17 And I will admit the deposition as AT&T Exhibit No. 28.

18 (Document marked for identification by the
19 Court Reporter as AT&T Exhibit No. 28.)

20 MR. ORTLIEB: Thank you, your Honor.

21 JUDGE SONNEBORN: You may step down.

22 MR. OLIVA: Well, your Honor, I have some
23 recross --

24 JUDGE SONNEBORN: I'm sorry. I
25 apologize, Mr. Oliva.

1 MR. OLIVA: -- to the redirect.

2 JUDGE SONNEBORN: All right.

3 - - -

4 RECROSS-EXAMINATION

5 BY MR. OLIVA:

6 Q Mr. Ortlieb asked you about what percentages Mr. Lodden
7 negotiated on behalf of LECMI with GLC with respect to
8 the network operating agreement. One of the percentages
9 he negotiated that's contained in the network operating
10 agreement is the percentage that each company would bill
11 for transport services between Southfield and the
12 Westphalia switch; is that not correct?

13 A Do you have that agreement for me to look at?

14 Q And that's contained not in the agreement, but in NECA
15 Tariff 4, which you said you're not familiar with, right?

16 A O.K. If you're asking -- so maybe you could ask that
17 question again.

18 Q O.K. One of the billing percent -- one of the
19 percentages that Mr. Lodden negotiated on behalf of LECMI
20 with GLC and Westphalia was the percentage of transport
21 services to be billed by each company between Southfield
22 and Westphalia contained in NECA Tariff 4. Are you
23 familiar with that or not?

24 A I don't know that he negotiated that. The way the
25 tariffs worked was we conformed to their tariffs, we

1 counted on them to -- we outsourced this thing to them.
2 This was something that we relied on GLC's expertise to
3 do. They came up with the tariffs, we were a concurring
4 carrier. I don't know that John Lodden negotiated that
5 or not.

6 Q You don't know one way or the other?

7 A I just said that.

8 MR. OLIVA: I have no further questions,
9 your Honor.

10 JUDGE SONNEBORN: Thank you, Mr. Oliva.
11 Mr. Brandenburg?

12 MR. BRANDENBURG: Staff does not have any
13 recross.

14 JUDGE SONNEBORN: Thank you. You may
15 step down at your leisure.

16 A Thanks.

17 JUDGE SONNEBORN: Thank you.

18 (The witness was excused.)

19 - - -

20 JUDGE SONNEBORN: At this time, it's now
21 close to noon. I would propose that we take a one-hour
22 lunch and convene back here at 1:00 o'clock.

23 MR. ORTLIEB: Thank you, your Honor.
24 Makes sense.

25 MR. HOLMES: Thank you.

1 MR. OLIVA: Thank you.

2 JUDGE SONNEBORN: Thank you. We're off
3 the record.

4 (At 11:47 a.m., the hearing recessed for
5 lunch.)

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Lansing, Michigan

Tuesday, September 23, 2014

At 1:00 p.m.

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(Hearing resumed following the lunch recess.)

JUDGE SONNEBORN: All right. We are back on the record to return to the beginning of the cross-examination of Mr. Habiak. Mr. Habiak, you are still under oath.

THE WITNESS: Yes. Thank you.

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J O H N W. "J A C K" H A B I A K resumed the stand, and having been previously sworn, testified further as follows:

CROSS-EXAMINATION

BY MR. OLIVA:

Q Good afternoon, Mr. Habiak.

A Afternoon.

Q If you could turn to your direct testimony, page 1. At the bottom of the page you describe your employment experience and education.

A Yes.

Q You are currently, you say, actually on line 7, you're currently Director of Financial Analysis for AT&T Corp.?

A Yes.

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1 Q When did you start in that position?

2 A Probably about -- well, the title's changed, so I would
3 say officially that title, maybe three or four years ago.

4 Q O.K. And then down at the bottom of the page, line 22,
5 you said you were District Manager - Interstate Access
6 Budget and Regulatory. What dates does that title
7 encompass?

8 A I don't really -- off the top of my head, I don't know.

9 Q Which district -- which district were you district
10 manager over?

11 A Oh, a district manager is a title within AT&T at that
12 time, and so it's not a district like geographic
13 district, it's a title of a position, a level of a
14 position within AT&T.

15 Q O.K. Now, was that the position immediately prior to
16 your current one?

17 A Yes.

18 Q O.K. And then prior to being District Manager -
19 Interstate Access Budget and Regulatory, you were Manager
20 - Local Issues and Local Connectivity Costs?

21 A That's correct.

22 Q And as, is this also the case as with district manager,
23 that this isn't -- when it says local issues, there's not
24 a particular locality?

25 A That's correct.

1 Q And you have -- do you recall now during what time period
2 you were in this position?

3 A My guess is it probably was like in the 1996 timeframe.

4 Q O.K. And then on to the next page, line 24 of page 2,
5 prior to that, you were Manager of Business to Business
6 Access Team Leader?

7 A Yes.

8 Q Do you recall when that was?

9 A That was probably in the, probably like 1992 timeframe.

10 Q O.K. And prior to that, Manager - Access Tariff Issues
11 Management and Analysis; do you recall when that was?

12 A I would guess 1990.

13 Q And then prior to that, Supervisor - Intrastate Access
14 Budget; do you recall what timeframe that was?

15 A Probably 1988.

16 Q O.K. And prior to that, Supervisor - Network Engineering
17 Cost Model Tool Development and EDP. Well, first, what
18 does EDP stand for?

19 A Electronic data processing, PC type stuff.

20 Q O.K. And that must have been some time ago because
21 that's an archaic term?

22 A Yes.

23 Q Do you recall when that was?

24 A '84-85 timeframe.

25 Q O.K. And was that your first position with AT&T?

1 A Yes.

2 Q O.K. Now, were all of these with, all of these positions
3 with AT&T Corp., or were any of them with any other AT&T
4 company?

5 A It would be AT&T Corp., from what I understand.

6 Q O.K.

7 A The old AT&T.

8 Q O.K. And then --

9 A I just want to add, I'm kind of totally guessing at those
10 years really. If I need to be very specific, I could
11 look those up.

12 Q O.K. No, that's fine. Now, you said you earned a
13 Bachelor of Science degree in Natural Resource Management
14 from Rutgers University?

15 A Yes.

16 Q What year was that?

17 A 1979.

18 Q 1979. O.K. Do you have any other degrees beyond that?

19 A No.

20 Q O.K. And you have a teaching, a science teaching
21 certificate from the State of New Jersey. So were you a
22 teacher before you worked for AT&T?

23 A Briefly I was a teaching assistant --

24 Q O.K.

25 A -- for a couple of years.

1 Q At what level?

2 A Well, it was a teaching assistant. Oh, with the -- a
3 grade level. It was high school.

4 Q For high school. O.K. You don't have an engineering
5 degree?

6 A No.

7 Q And you're not a professional engineer?

8 A No.

9 Q And so when, on the prior page when you say on line 20 of
10 page 1, you have experience in network engineering, your
11 job duties did not encompass those of a professional
12 engineer in network engineering?

13 A No.

14 Q If you could turn to page 7 of your direct testimony. At
15 line, starting at line 149, you state, "AT&T Corp. cannot
16 block calls coming from or going to a particular LEC,
17 even if that LEC's access charges do not comply with the
18 law." Is that true of other carriers as well, that they
19 can not block calls coming to or from a particular LEC?

20 A I would assume that that's true, that the FCC would
21 definitely frown on that blockage.

22 Q O.K. So it would frown on GLC if it blocked calls coming
23 from or to a particular LEC as well, right?

24 A Yes.

25 Q O.K. And on lines 54 and 55, you say: On the contrary,
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1 the LEC decides which tandem provider to use. So in the
2 dispute we're involved with today, it's your
3 understanding the LEC which is making that decision was
4 LECMI, right?

5 A Correct.

6 Q O.K. If you could turn to page 10 of your direct
7 testimony. And there generally you discuss that AT&T --
8 you've got an Exhibit JH-2.

9 MR. OLIVA: I don't believe that's
10 confidential, right?

11 MR. ORTLIEB: That's correct.

12 Q (By Mr. Oliva): Showing increases in traffic that the
13 switched access minutes being billed to AT&T Corp.
14 January '10 through July 2014, right?

15 A January '09 through July '14.

16 Q I'm sorry if I misspoke. O.K. So your testimony says
17 from January 2010, so it's actually from January '09,
18 right?

19 A The chart, yes.

20 Q O.K. You say in your testimony that the access billings
21 for September 2011 were four times higher than the
22 billings in January 2010, right?

23 A Yes.

24 Q O.K. And that would have been apparent to AT&T at the
25 time; isn't that correct?

1 A I would say that, right off that it took us a while
2 longer than I would have liked to recognize that this
3 traffic was escalating in volume and cost.

4 Q O.K. Given that it was escalating in volume and cost,
5 did AT&T approach GLC to attempt to negotiate an access
6 rate at a discounted rate from its tariff rates?

7 A During what period are you talking?

8 Q Well, during -- let's talk about during late 2011.

9 A No, not that I know of.

10 Q O.K. Do you know of any other point in time at which
11 AT&T approached GLC to request to negotiate an access
12 rate discounted from its tariff rate?

13 A We approached Westphalia and GLC -- well, we had
14 conversations with GLC and Westphalia in I would say late
15 2013 about settling our issues.

16 Q On page 11 of your direct testimony, you state, beginning
17 at line 238, in some: In some recent years, some
18 wireless carriers have sent 8YY traffic to "traffic
19 aggregators" who in turn send it to wireline LECs and
20 other access providers that can and do charge for
21 switched access services. So it's the carrier -- the
22 wireline -- excuse me -- the wireless carriers who are
23 sending the traffic to aggregators, right?

24 A That's correct.

25 Q And one of -- one of the wireless carriers that was

1 sending their traffic to an aggregator was Cricket,
2 right?

3 A That's what I understand.

4 Q O.K. At what point in time did AT&T come to understand
5 that Cricket was sending its traffic to traffic
6 aggregators?

7 A I'm not quite sure. It was sometime in 2013, maybe mid,
8 but I can't pinpoint a date. Maybe like in the
9 summertime or the fall. I'm not really sure.

10 Q O.K. And do you know how AT&T became aware of that?

11 A We had requested CDRs from LECMI, and an analysis was
12 done at some point during 2013, and that analysis showed
13 that most of the traffic was Cricket.

14 Q O.K.

15 JUDGE SONNEBORN: Mr. Habiak, what is a
16 CDR?

17 A Excuse me?

18 JUDGE SONNEBORN: What is a CDR? Did you
19 say you requested a CDR?

20 A Customer data records. It's a detailed record of the
21 calls that are generating access charges that -- we don't
22 get that kind of detail in our access bill, so we have to
23 go to the local exchange carriers to get that data.

24 JUDGE SONNEBORN: Thank you.

25 Q (By Mr. Oliva): And it was in this same timeframe that
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1 AT&T, that is the summer of 2013, that AT&T publicly
2 announced its acquisition of Leap Wireless, which is
3 Cricket, right?

4 A I don't know.

5 MR. OLIVA: O.K. I'm not going to mark
6 this as an exhibit yet, but --

7 (Document distributed.)

8 Q (By Mr. Oliva): I've handed you a document, I guess
9 which is a Form H-K -- excuse me -- Form 8-K filed by
10 AT&T, Inc., with the Securities and Exchange Commission
11 from its edgar system signed by Rick L. Moore, Senior
12 Vice President Corporate Development. Have you ever seen
13 this document before?

14 A No.

15 Q Turn to page 6 of this document. Actually, it's -- first
16 there's -- if you turn, once you get past the first nine
17 pages, I guess, it's a cover page that states this is an
18 Agreement and Plan of Merger among Leap Wireless
19 International, Inc., AT&T Inc., Laser, Inc., and Mariner
20 Acquisition Sub Inc., Dated as of July 12, 2013.

21 A Am I supposed to be looking at a particular page, because
22 I'm not sure where you are?

23 Q If you get past the first -- the first sheet you have
24 says page 1 of 9.

25 A Yes.

1 Q You get past the ninth page of that section, there's a
2 page that says page 1 of 52?

3 A Gotcha.

4 Q O.K. That's what I was referring to.

5 MR. ORTLIEB: So if there's a question
6 pending, I will offer a mild objection at this point
7 because what we have is a document that the witness says
8 he never saw, so there's absolutely no foundation to ask
9 him about it. I suspect what is now going to happen is
10 we're going to all jointly read various provisions from
11 this SEC filing, and we'll all agree that it says what it
12 says, and that will be it. But it is a mild objection.
13 I understand this happens from time to time.

14 JUDGE SONNEBORN: I'll allow the leeway,
15 Mr. Oliva.

16 MR. OLIVA: O.K.

17 Q (By Mr. Oliva): I guess there's not a question. This is
18 an agreement -- well, since you haven't seen this
19 document, on page 1 of 52 of this agreement says it's the
20 Agreement and Plan of Merger between Leap Wireless, AT&T,
21 and some other parties as of July 12, 2013, filed with
22 the Securities and Exchange Commission. If you could
23 turn to the page, it's the first yellow tab, page 20 of
24 52.

25 A Yes.

1 Q This document, there's a paragraph (m) Material
2 Contracts, and it's (1), it's paren. I'm sorry. It
3 would be (m)(i)(C): The material contract is "any
4 contract that is reasonably likely to require either (x)
5 annual payments to or from the Company and its
6 Subsidiaries of \$1,000,000 or more or (y) aggregate
7 payments to or from the Company and its Subsidiaries of
8 \$5,000,000 or more." Do you see that?

9 A Yes.

10 MR. OLIVA: And then I have a
11 confidential question and answer.

12 - - -

13 (Transcript continues on Page 598 of the
14 Confidential Record.)

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1 (Transcript continues following Page 598 of the
2 Confidential Record.)

3 - - -

4 Q (By Mr. Oliva): And if we turn then to, back to the SEC
5 filing that I gave you, turn to the second tab. On page
6 22 of 52.

7 THE REPORTER: Of the Confidential?

8 MR. OLIVA: We're off confidential.

9 We're done with confidential. I'm sorry.

10 Q (By Mr. Oliva): It states, in paragraph (ii) there: A
11 correct and complete copy of each Material Contract in
12 effect as of the date of this Agreement has been
13 delivered to Parent prior to the date of this Agreement.
14 Do you see that?

15 A Uh-huh.

16 Q O.K. So again, with the limitation that this is the
17 first you've seen a copy of this SEC filing, is it
18 reasonable to conclude that AT&T had in its possession a
19 copy of the agreement for aggregation of the Cricket
20 traffic as of mid summer 2013?

21 MR. ORTLIEB: Objection as to reasonable
22 to conclude. I believe that it's appropriate to examine
23 the witness on his personal knowledge of what he knows,
24 but that question calls for him to speculate on something
25 that may or may not have happened.

1 JUDGE SONNEBORN: Mr. Oliva, could you
2 rephrase your question?

3 MR. OLIVA: Sure.

4 Q (By Mr. Oliva): Do you have any reason to believe that
5 AT&T did not have in its possession as of July of 2013
6 the contracts pursuant to which Cricket was aggregating
7 its traffic?

8 A I don't know. I mean I have no idea. I wasn't part of
9 this whatsoever.

10 MR. OLIVA: Your Honor, I'm going to ask
11 that this SEC filing be marked as an exhibit. I believe
12 the next number is GLC-55.

13 JUDGE SONNEBORN: Mr. Ortlieb, do you
14 have any objections?

15 MR. ORTLIEB: No, I don't.

16 (Document marked for identification by the
17 Court Reporter as Exhibit No. GLC-55.)

18 JUDGE SONNEBORN: Mr. Oliva, would you
19 like to admit it at this time?

20 MR. OLIVA: Yes, your Honor.

21 JUDGE SONNEBORN: GLC Exhibit 55 has been
22 received and admitted into the record.

23 Q (By Mr. Oliva): Now, do you know whether Cingular or any
24 other AT&T wireless affiliate sent traffic to an
25 aggregator during, let's say in the general timeframe

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1 we're talking about, let's say from the mid 2000s
2 forward?

3 A I don't have any specifics on that. I understand that
4 they may have used traffic aggregators from time to time,
5 but I don't know when or, you know, whether they continue
6 to do so, I have no idea.

7 Q O.K. Now, the traffic termination agreement that we've
8 been talking about, which is in Confidential Exhibit 47,
9 and I'm -- we don't have to go confidential at this
10 point. That was entered into in June of 2008, right?

11 MR. ORTLIEB: Could we get some
12 clarification on the agreement you're referring to?

13 MR. OLIVA: Sure.

14 Q (By Mr. Oliva): I'm talking about the traffic
15 communication agreement between Cricket Communications
16 and U.S. South, Inc., which is Confidential Exhibit
17 GLC-47, and on page 15 are the signature pages, and those
18 were signed in June of 2008, right?

19 A That's what it says.

20 Q O.K. Do you know where Cricket was sending this traffic
21 under the traffic termination agreement prior to the time
22 it began sending it to LECMI?

23 A No.

24 Q O.K. Do you know where it's sending it now?

25 A No.

1 Q Did you know the circumstances under which -- well, you
2 state at the bottom of page 14 of your direct testimony
3 at line 314, "...almost immediately after the aggregation
4 of Cricket traffic stopped in March 2014, Complainants
5 began billing AT&T Corp. for a significant amount of new
6 traffic."

7 A Where is that? I'm sorry.

8 Q The bottom of page 14 of your direct testimony.

9 MR. ORTLIEB: Do you have a line number?

10 MR. OLIVA: Line 314.

11 MR. ORTLIEB: Thank you.

12 A Yes.

13 Q (By Mr. Oliva): O.K. If you don't know where the
14 Cricket traffic is going now, how do you know that the
15 aggregation of Cricket traffic stopped?

16 A I believe we thought the aggregation of Cricket traffic
17 stopped at that time. Our business unit attorney -- I
18 mean this was -- well, anyway, our business unit attorney
19 was under the impression that the aggregation had
20 stopped, but we later found out that it had not.

21 Q O.K.

22 A But it's not going to GLC.

23 Q All right. So you don't -- you later found out that the
24 aggregation had not stopped by Cricket?

25 A Right.

1 Q It continued to be aggregated?

2 A Right.

3 Q Through what period?

4 A That, I have no idea.

5 Q O.K.

6 A It could very -- I don't know.

7 Q And so your information based -- your information on
8 whether or not the aggregation continued is not a matter
9 of personal knowledge, it's something you were told by
10 one of AT&T's business attorneys?

11 A Yes.

12 Q O.K. By anyone else?

13 A No.

14 Q Now, is AT&T proposing in this case it will give back the
15 money that Cricket collected pursuant to these
16 aggregation agreements?

17 A I don't know.

18 Q But to be clear, your testimony is, you're complaining
19 about the process in your testimony that an aggregator is
20 paying Cricket to aggregate the traffic and Cricket put
21 that money in its pocket, O.K., and that money of -- your
22 complaint is basically saying that that money, that flow
23 of money to Cricket started with AT&T paying rates that
24 you complain of as being unreasonable to GLC, right?

25 A Yes.

1 Q And so a portion of that money that AT&T paid went into
2 Cricket's pocket?

3 A That's correct.

4 Q O.K. And now AT&T owns Cricket, right?

5 A AT&T owns Cricket today.

6 Q And everything in that pocket?

7 A AT&T owns Cricket today.

8 Q And everything in Cricket's pocket?

9 A We own Cricket today. I don't know what else to tell
10 you.

11 Q O.K. AT&T's business acquisitions is outside the scope
12 of the duties you perform in your employment, right?

13 A Correct.

14 Q O.K. So you didn't have anything to do with the
15 negotiation or execution of the merger between AT&T and
16 Cricket?

17 A Correct.

18 Q Is AT&T currently being billed for Cricket traffic on 8YY
19 calls that are delivered to it that originated with
20 Cricket end users?

21 A I imagine so, yes.

22 Q By whom?

23 A I don't know.

24 Q Are you aware of any traffic that comes from other
25 carriers besides those affiliated with AT&T that are

1 going to terminate with 8YY customers of AT&T?

2 A Could you repeat the question, I'm not sure I understood
3 it?

4 Q Let me restate that. Customers of -- customers of
5 wireless carriers other than AT&T or its affiliates make
6 calls to 8YY numbers that are customers of AT&T, right?

7 A Yes.

8 Q So I've got a Verizon phone. If I called, you know, a --
9 if I called an 800 number that was an AT&T customer, that
10 call would come from Verizon to AT&T, right?

11 A Correct.

12 Q O.K. So are -- do Verizon or Sprint or T-Mobile or any
13 other 8YY -- or excuse me -- any other wireless carriers,
14 to your knowledge, have their calls aggregated before
15 they come to AT&T?

16 A I don't know.

17 Q Let's turn to your rebuttal testimony. If I turn to page
18 2, beginning on line 38, you say, "Complainants say that
19 AT&T Corp. should have taken costly steps to avoid their
20 network, and they argue that AT&T Corp. should be forced
21 to pay Complainants' unlawful charges because it didn't
22 take the 'options' Complainants suggest after the fact."
23 AT&T has direct end-office trunks with other LECs; is
24 that correct?

25 A That's correct.

1 Q And AT&T has deployed end-office trunks well before 2010
2 with other LECs, right?

3 A Certainly.

4 Q And those LECs also connect to their tandem switches,
5 right?

6 A Yes.

7 Q O.K. Now, on page 4 of your rebuttal testimony, lines
8 beginning at the bottom of the page on lines 93, et al,
9 you said, "Establishing a connection between two networks
10 is expensive, and it requires time and cooperation of
11 both parties." Can you tell me what the cost would have
12 been to establish direct trunking between AT&T and LECMI?

13 A It's uncertain. You need to be able to have an agreement
14 to move forward in the first place. It can be costly if
15 construction is required, but you need to have that first
16 step and have a party that's willing to direct connect
17 with you.

18 Q In order to establish network connection with LECMI, so
19 the first step would be for AT&T to request direct
20 trunking from LECMI, right?

21 A That's usually how it goes.

22 Q O.K. And AT&T never made such a request; isn't that
23 right?

24 A We did.

25 Q Well, you said they made a -- you made an inquiry?

1 A That's the start of the request, yes.

2 Q A request is a different thing from an inquiry, right?

3 A Not in my view.

4 Q If LECMI had refused to offer a direct trunk, couldn't
5 AT&T have demanded that LECMI provide trunking?

6 A LECMI is a CLEC, and they do not have an obligation to
7 direct connect.

8 Q Isn't their -- their obligation to establish a direct
9 connection is determined under their tariff; is that
10 right?

11 A Their obligation to direct connect is in the FCC rules,
12 and for a CLEC, it's either through a tandem or through
13 direct connect. It's not mandatory one way or the other.

14 Q Now, on page 5, you say, and this is beginning on line
15 100, that AT&T approached LECMI about establishing a
16 direct connection in early 2014 (before this complaint
17 was filed) and LECMI never even responded.

18 A Right.

19 Q So you approached them this year about that?

20 A Yes, we did.

21 Q You didn't approach them earlier?

22 A No.

23 Q Why didn't you pursue direct trunking earlier?

24 A I don't know.

25 Q What specific actions did you take in terms of reaching
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1 out to LECMI about establishing direct trunking when you
2 approached them in 2014?

3 A I wasn't a part of the attempt to communicate, but I
4 believe -- I'm not sure whether it was a phone call or
5 e-mail sent or both.

6 Q But so you weren't party to these discussions?

7 A No.

8 Q O.K. Who was?

9 A I'd have to look that up.

10 Q O.K. Now, you're not affiliated in any way with LECMI,
11 right?

12 A No.

13 Q Either personally or AT&T Corp., the company?

14 A Not that I know of.

15 Q Are you personally privy to any of its, of any of LECMI's
16 internal business decisions?

17 A No.

18 Q Now, on the one hand in this testimony you're saying
19 establishing a direct connection isn't a viable option at
20 all, that's what you say at the bottom of page 4 on line
21 93. If that's the case, why did AT&T approach LECMI
22 about direct trunking if it wasn't a viable option?

23 A It was an attempt to avoid the costly charges we were
24 experiencing, so the group gave it a shot.

25 Q The group. But again, you don't know who that was in the

1 group, who's in the group?

2 A Not off the top of my head. When you see traffic like
3 this, CLECs typically, when you have minutes of use
4 transport, they are not interested in having a direct
5 connect because they typically are benefiting from the
6 permitted use transport, and a direct connect will alter
7 their inflow of access charges. That's what we
8 experience.

9 MR. OLIVA: Move to strike. That wasn't
10 responsive to any pending question, your Honor.

11 MR. ORTLIEB: It was, your Honor, it was
12 directly responsive to the line of inquiry which was, why
13 didn't AT&T establish direct connections, and Mr. Habiak
14 is explaining we made inquiries, but we were not
15 surprised that those inquiries were not positively
16 responded to.

17 JUDGE SONNEBORN: I'll allow the
18 response. I do believe it was an elaboration on
19 Mr. Habiak's answer to Mr. Oliva's prior question.

20 Q (By Mr. Oliva): So you say that, again to go back, you
21 say that in early 2014, AT&T Corp. approached LECMI about
22 a direct connection, and LECMI's never responded. Do you
23 know what followup, if any, AT&T had with LECMI?

24 A I don't believe there was any additional followup, but I
25 can't be sure. Shortly thereafter, the traffic went down

1 significantly, so.

2 Q AT&T Corp. is an interexchange carrier, right?

3 A Yes.

4 Q All right. LECMI can access AT&T Corp.'s interexchange
5 carrier through AT&T Michigan's access tandems, right?

6 A Not currently.

7 Q Why not?

8 A There's, from what I understand, there's no connectivity
9 there.

10 Q No connectivity at the AT&T Michigan tandem between LECMI
11 and AT&T Michigan or --

12 A Yeah. You heard this morning that was for a local --
13 that's a local trunk group.

14 Q There's no connectivity between AT&T Michigan and AT&T
15 Corp. at that point?

16 A There probably is a connection between AT&T Corp. and
17 AT&T Michigan tandem, yes, certainly is.

18 Q Are you -- I'm going to show you provision -- this is a
19 document that's been previously admitted into evidence as
20 Exhibit GLC-25.

21 (Document provided to the witness).

22 Q Are you familiar with this document?

23 A I've seen it.

24 Q This is an excerpt between the LECMI and AT&T
25 Interexchange Agreement, right?

1 MR. ORTLIEB: I guess I object to that.
2 I'm not sure that appropriately characterizes what it is.

3 Q (By Mr. Oliva): Is this a document that was produced by
4 AT&T on discovery in response to 0029?

5 MR. ORTLIEB: If it will expedite things,
6 I recognize what it is, I have no quibbles about what it
7 is, but I just have a question about your description of
8 what agreement it comes from, and it comes from an
9 interconnection agreement between LECMI and AT&T
10 Michigan.

11 MR. OLIVA: O.K.

12 Q (By Mr. Oliva): And this exhibit states in Section
13 5.2.2, does it not, "Access Toll Connecting Trunks shall
14 be used solely for the transmission and routing of
15 Exchange Access, 800 and 976 traffic to allow Requesting
16 Carrier's Customers to connect to or be connected to the
17 interexchange trunks of any Interexchange Carrier which
18 is connected to an Ameritech access Tandem." Is that
19 correct?

20 A That's what it says.

21 Q O.K. So isn't it under this provision, LECMI can access
22 AT&T Corp. through AT&T's Michigan access tandem, right?

23 A I don't know that that's the appropriate conclusion here.
24 The agreement that you're talking about is for the
25 exchange of local traffic, so I'm not familiar with those

1 documents, I'm not familiar with translating what's in
2 those documents.

3 Q O.K. Fair enough. What would be the process for AT&T
4 Corp. and AT&T Michigan to establish connectivity at a
5 particular tandem, recognizing you're not an engineer?

6 A Engineers issue ASRs, access service requests, for
7 facilities to connect to tandems.

8 Q You're not involved in issuing ASRs?

9 A No.

10 Q And you're not involved in reviewing them --

11 A No.

12 Q -- in the course of your normal duties, right?

13 A No.

14 Q Now, AT&T Corp. has direct trunking with many local
15 exchange carriers, right?

16 A They do.

17 Q O.K. With -- and AT&T Michigan would in that respect
18 just be another local exchange carrier, right?

19 A Yes.

20 Q So what would be an improper preference about asking AT&T
21 Michigan to make such a connection when you have them
22 with all kinds of local exchange carriers?

23 A I'm not sure I understand what you're talking about.

24 Q Well, you say -- you would say on page -- you say on page
25 7 that, at the top of the page, beginning on line 141,

1 AT&T Michigan cannot give special preferences to IXC, and
2 thus, as a matter of policy, AT&T Corp. doesn't ask AT&T
3 Michigan for such improper preferences. Well, my
4 question is, what would be an improper preference about
5 establishing direct connection between AT&T Michigan and
6 AT&T Corp. at any particular tandem?

7 A There's nothing improper about AT&T attaching itself to
8 AT&T tandems anywhere. That's not what was being
9 suggested.

10 Q Does AT&T Corp. control the size of its own trunk groups?

11 A Yes.

12 Q O.K. And it can order as little or as much connectivity
13 as it wants by issuing ASRs, right?

14 A That's -- the facilities have to be readily available.
15 If there's a sudden huge increase in traffic, it may take
16 a while to be able to get that capacity; like I said, it
17 may have to be constructed, it's not something that
18 happens with a click of a finger.

19 Q Now I want to turn back to your response testimony, the
20 testimony that was filed on August 28. Turning to page
21 6, and this question will be confidential.

22 - - -

23 (Transcript continues of Page 614 of the
24 Confidential Record.)

25 - - -

1 (Transcript continues following Page 616 of the
2 Confidential Record.)

3 - - -

4 JUDGE SONNEBORN: Back on the record.

5 Q (By Mr. Oliva): Now, you'd agree with me, would you not,
6 that GLC did not control where Cricket sent its traffic?

7 MR. OLIVA: This is public.

8 A That's correct.

9 Q (By Mr. Oliva): And GLC didn't control how InComm sent
10 its traffic -- InComm, I-n capital C-o-m-m -- sent its
11 traffic, right?

12 A It didn't control it, no.

13 Q And GLC didn't control how IBDC sent its traffic, right?

14 A You could say that, yes.

15 Q All right.

16 A They certainly don't control them.

17 Q And GLC doesn't control how LECMI sends its traffic,
18 right?

19 A That's true.

20 Q Now, AT&T submitted ASRs to GLC requesting that traffic
21 be routed from LECMI to GLC's access tandem and then to
22 AT&T's POP; is that right?

23 A Say that again.

24 Q AT&T submitted ASRs that requested that the traffic be
25 routed from LECMI to GLC's access tandem to AT&T's POP,

1 right?

2 A AT&T would submit ASRs to, in a response to the increase
3 in traffic at GLC's tandem to connect to our POP.

4 JUDGE SONNEBORN: Could you please
5 clarify what POP stands for?

6 A It's point of presence.

7 JUDGE SONNEBORN: Thank you.

8 A It's where the IXC network begins, the local network ends
9 and the IXC network begins.

10 JUDGE SONNEBORN: Thank you.

11 Q (By Mr. Oliva): Now, up until 2003, LECMI was sending
12 its traffic to AT&T at West Bloomfield; is that right?

13 A That's right.

14 Q I'm sorry. Go back to a prior question. An ASR
15 instructs what traffic to place on the trunks that are
16 ordered, right?

17 A Honestly, I don't know. The ASR orders an amount of
18 capacity between, in this case, between us and, in your
19 case, the GLC access tandem. The traffic that gets sent
20 down those trunks and up those -- well, that sends down
21 those trunks is something that our switches, on a
22 terminating side, our switches would send the traffic.

23 Q If you could turn to page 41 of your, this is response
24 testimony still. You say beginning at line 905, "The
25 percent interstate use (PIU) factors provided by AT&T

1 Corp. to WTC were based on the normal, in-state,
2 business-as-usual switched access traffic coming from GLC
3 - not the out-of-state, aggregated 8YY traffic that GLC
4 managed to put on its system by paying for it."

5 I'm going to show you, this is from
6 Exhibit GLC-27, which I've believe is not confidential.
7 Attached to these are PIUs that AT&T submitted to WTC.
8 Are you familiar with those?

9 A I see them here, yes.

10 Q Were you involved personally in preparing them?

11 A No.

12 Q What department is involved in preparing them, do you
13 know?

14 A The Carrier Billing Management Group.

15 Q O.K. Do you -- can you point to me where in those PIU
16 statements it says that those factors are based on normal
17 in-state, business-as-usual switched access traffic and
18 not out-of-state, aggregated 8YY traffic?

19 A I -- no. But I know, it's my understanding that it is
20 based upon normal traffic.

21 Q But that's not your department?

22 A That's not my department. I certainly work with them.

23 Q How is it communicated to carriers such as WTC that only
24 normal in-state, business-as-usual switched access
25 traffic is to be, to have the PIU factors applied to it?

1 A That, I can't say.

2 Q Because you don't know?

3 A I don't know.

4 (Document retrieved by Mr. Oliva.)

5 Q Are you a statistician?

6 A No.

7 Q So if you turn to page 38 of your response testimony, you
8 say: We took a statistically significant sample of one
9 day's calls and matched them to AT&T's records. Right?

10 JUDGE SONNEBORN: Line 853, Mr. Oliva?

11 MR. OLIVA: Page 38, line 853.

12 JUDGE SONNEBORN: Thank you.

13 A I don't seem to have that here.

14 Q (By Mr. Oliva): O.K. This is your response testimony.
15 That's O.K. It's a lot of paper.

16 A Yeah, those pages are missing.

17 MR. ORTLIEB: They really are?

18 A Yes. They really are. Sorry. Oh, wait a minute. Hold
19 on. They were misnumbered. O.K. Got it.

20 Q (By Mr. Oliva): Do you see that? O.K. So when you say
21 we took, you're not a statistician, it was somebody else,
22 right?

23 A Yes. We had someone else do that for us.

24 Q O.K. And so because you're not a statistician, you're
25 not in a position to offer an opinion as to whether that

1 sample is statistically significant, right?

2 A I was told by our subject matter experts that it was --

3 MR. OLIVA: Your Honor --

4 A -- based upon industry practices.

5 MR. OLIVA: Your Honor, I'm going to have
6 to say that -- I'm going to move that the words
7 "statistically significant" be struck on the basis that
8 the witness is not an expert to offer an opinion about
9 whether or not the sample was statistically significant
10 or not, and obviously the person who did do this is not
11 here to testify, and this is clearly a special study that
12 was done for this litigation, it would not fall under the
13 normal business records exception of a regularly kept
14 business record.

15 JUDGE SONNEBORN: Mr. Ortlieb, response.

16 MR. ORTLIEB: Your Honor, the witness has
17 more to say on this point, and has an additional basis to
18 support that one-percent figure as being reliable and
19 statistically significant. And if I could ask a few
20 additional questions to elicit that basis, I think that
21 would be helpful. In other words, I guess I could put it
22 a different way. The objection is premature. I don't
23 believe counsel has fully explored the witness's
24 knowledge of that particular fact.

25 JUDGE SONNEBORN: Well, in reviewing this
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1 portion of Mr. Habiak's testimony, I'm not persuaded that
2 it should be stricken from the record at this time based
3 on the cross-examination that Mr. Oliva has thus far
4 elicited from Mr. Habiak.

5 MR. OLIVA: O.K.

6 JUDGE SONNEBORN: I'll deny that request.

7 MR. OLIVA: Thank you.

8 Q (By Mr. Oliva): So you took a sample, you took a -- or
9 your people being, somebody's people, someone at AT&T
10 took a sample of, a sample from one day's calls, right?

11 A Yes, that's right.

12 Q Not all of the calls from one day?

13 A All of the calls from one day.

14 Q All of the calls from one day. And --

15 A And that one day, by the way, is something that the labs
16 has -- this is what I was told -- that they have
17 demonstrated that the first or second Wednesday of the
18 month is very representative of the traffic, history has
19 shown that that's a true statement, and so they picked
20 one of -- the first Wednesday of that month.

21 MR. OLIVA: Your Honor, I just -- my mind
22 boggles. The statement is clearly beyond the witness's
23 competence to testify to, it's clearly hearsay, and I
24 would expect an expert witness fully qualified to be on
25 the stand to try make that kind of assertion.

1 MR. ORTLIEB: Your Honor, the witness is
2 saying that it is -- this is the type of information that
3 is normally relied upon by AT&T in the conduct of its
4 business. This is within the well-known exception to the
5 hearsay rule. What he just explained is that AT&T labs
6 over the course of years has developed information that
7 in order to analyze traffic data, which AT&T does
8 routinely, daily, you that don't need to analyze a whole
9 year's worth of data, you don't need to analyze a month's
10 worth of data, if you pick the right day and that is the
11 second, first or second Wednesday of a month, the usage
12 patterns in that day have been reliably shown within AT&T
13 to be representative of the traffic for long periods of
14 time, and that's what we rely upon in our business.

15 MR. OLIVA: Well, your Honor, nowhere in
16 any of the -- nowhere in any of the prefiled testimony
17 are any of these representations being made now by
18 counsel contained, and had they been, and again, from a
19 qualified expert, we would have had the ability and
20 incentive to conduct discovery with respect to these
21 assertions and to possibly present opposing testimony.

22 MR. ORTLIEB: The assertion has been in
23 testimony since August 28.

24 MR. OLIVA: Not the assertion that this
25 is a regularly -- not the assertions that are now being

1 made that the basis for this reliance is on other studies
2 that AT&T has done over the years and so forth.

3 MR. ORTLIEB: I don't believe Mr. Habiak
4 did anything out of the ordinary. He reported on a fact
5 in his testimony, he did that in a timely and early way,
6 he has now subjected himself to cross-examination, and
7 you have elicited further bases for the statement that he
8 made, and I think that's exactly how the process is
9 supposed to work. And I think the facts elicited, and
10 this is not from me, that's from Mr. Habiak where he
11 said, I think, that AT&T labs developed it, and based on
12 usage, traffic usage in the first or second Wednesday of
13 the month is representative.

14 JUDGE SONNEBORN: Well, I understand your
15 concern, Mr. Oliva, and I'd like to make a couple of
16 comments here. First of all, this testimony offered by
17 Mr. Habiak was filed on August 28, and this portion of
18 his testimony was not a subject of your timely motion to
19 strike. You're effectively asking me today to allow for
20 an untimely motion to strike a line of his response
21 testimony through the course of cross-examination, and I
22 doesn't think it's appropriate for me to do so at this
23 time.

24 I will say that your concern, your
25 objection certainly goes to the weight of Mr. Habiak's

1 testimony, and I and the Commission will give it the
2 weight that it deserves, and your argument in your brief
3 can point that out.

4 I don't believe it's appropriate for
5 Mr. Habiak to expand on his testimony beyond answering
6 your question unless he would like to probe further on
7 the basis for it. We do have I think an answer to the
8 question that you've given him, he's responded that he's
9 not a statistician, and so I think I'm going to allow it
10 to remain part of his testimony, and again, this does go
11 to the weight of his testimony.

12 MR. OLIVA: O.K. Your Honor, may I
13 suggest we take just a short break now --

14 JUDGE SONNEBORN: We may.

15 MR. OLIVA: -- and then we'll be fairly
16 short to wrap up afterwards.

17 JUDGE SONNEBORN: Is ten minutes
18 sufficient?

19 MR. OLIVA: Ten minutes is sufficient.

20 JUDGE SONNEBORN: O.K.

21 (At 2:25 p.m., there was a 15-minute recess.)

22 JUDGE SONNEBORN: Back on the record.
23 Mr. Oliva.

24 MR. OLIVA: Thank you, your Honor.

25 Q (By Mr. Oliva): Just briefly to the question we were
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1 discussing before the break with respect to the sample of
2 one day's calls. You said that would have been the
3 second or third Wednesday of the month?

4 A The first or second.

5 Q First or second -- I'm sorry -- Wednesday of the month.
6 You don't know which Wednesday, do you, in this case?

7 A I believe it was the first Wednesday of March, the month
8 of March 2013, subject to check, but I believe that was
9 it.

10 Q Do you know whether that was a day there was American
11 Idol voting?

12 A No idea.

13 Q ABC's American Idol is 8YY provided by AT&T, right?

14 A O.K.

15 Q And so people call in to an 800 number to vote for their
16 favorite contestant?

17 A Yes.

18 Q Do you think that might skew very significantly the
19 sample of that Wednesday when you try to then project it
20 over four years?

21 A I can't say.

22 Q In the study that you, that AT&T undertook, you say the
23 call detail records from GLC/WTC did not contain the
24 terminating location of the party receiving the call,
25 right?

1 A Right.

2 Q So nothing in GLC's call detail record would tell GLC
3 where the terminating location is, right?

4 A It was call detail records from LECMI.

5 MR. ORTLIEB: Perhaps are you referring
6 to a specific portion of his testimony?

7 MR. OLIVA: At the same page we've been
8 talking about, the bottom of 38 and the top of 39 of the
9 response testimony.

10 A Then I guess they were provided by GLC.

11 Q (By Mr. Oliva): So GLC would not have had available to
12 it the location of the --

13 A Oh, no, not at all. What was -- what we received was
14 data that showed the handset number for all the calls for
15 that month, and so what we knew was where did those
16 handset numbers come from, meaning if it was a handset
17 number that the handset belonged to someone who lived in
18 Texas, that's what we -- that's what we knew from that
19 data, and we also knew from that data that this was
20 Cricket traffic. So what we then had to do was look at
21 our own internal data to see what 800 number was being
22 called. We also had to determine where was that handset
23 when the call was made, and for that, we had to rely on
24 additional dataset that actually was provided by, and we
25 get this from all the wireless carriers, it provides

1 these what's called the SID, or the station identifier,
2 and what that says is, well, where -- when that customer
3 made that call, what cell tower did it come from. And so
4 if somebody was from Texas and they were calling from
5 Oklahoma, well, then we would know that that handset was
6 in Oklahoma.

7 What we found was is that less than
8 one percent of all these calls on that day were actually
9 originated in Michigan. We also found when we compared
10 the numbers that were being called, less than one percent
11 of the 8YY numbers were also in Michigan, they were all
12 outside of Michigan, so more than 99 percent of the calls
13 were interstate in nature.

14 MR. OLIVA: Your Honor, I move to strike
15 most of that response. The question I asked was whether
16 the information was contained in GLC's call record
17 detail.

18 MR. ORTLIEB: Your Honor, the question
19 goes to the issue of whether the dataset that Great Lakes
20 provided to AT&T Corp. was sufficient to support the
21 conclusion that Mr. Habiak reached, and Mr. Habiak has
22 just explained that he agreed with Mr. Oliva that it was
23 not, but that AT&T brought into the analysis some
24 additional datasets in order to support his conclusion.

25 JUDGE SONNEBORN: Could you read back the
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1 original question, please.

2 (The record was read aloud as follows:

3 "Q So GLC would not have had available to it the
4 location of the --")

5 JUDGE SONNEBORN: I'll grant Mr. Oliva's
6 motion to strike that answer as non-responsive to the
7 question asked.

8 Q (By Mr. Oliva): So let me restate the question.

9 A Uh-huh.

10 Q GLC would not have had available to it in the call detail
11 records the location of the 800 number to which the calls
12 terminated?

13 A That's true.

14 Q O.K. Now, does AT&T Corp. provide SS7 services to other
15 service providers?

16 A I don't know.

17 Q O.K. So you don't know whether or not it could have
18 provided those services, not whether it did, but whether
19 it could have provided those services to LECMI?

20 A Unfortunately, I don't know.

21 Q O.K. Does AT&T have currently any disputes with any
22 other carriers besides those in this case over traffic of
23 this nature that is 8YY traffic?

24 MR. ORTLIEB: Your Honor, if I might just
25 state on the record I don't know what the answer is going

1 to be here, but if I could caution my witness if the
2 answer involves what you think is confidential
3 information, let us know. We can appropriately handle
4 that on the record.

5 A I -- I don't know.

6 MR. OLIVA: I have no further questions,
7 your Honor.

8 JUDGE SONNEBORN: Thank you.

9 Mr. Ortlieb, do you have redirect?

10 Excuse me.

11 Mr. Brandenburg, does Staff have any
12 questions for Mr. Habiak?

13 MR. BRANDENBURG: No, we do not, your
14 Honor. Thank you.

15 JUDGE SONNEBORN: You're welcome.

16 Mr. Ortlieb, do you have any redirect?

17 MR. ORTLIEB: Your Honor, I do have some
18 redirect.

19 JUDGE SONNEBORN: All right. You may
20 proceed.

21 REDIRECT EXAMINATION

22 BY MR. ORTLIEB:

23 Q Mr. Habiak, do you recall some discussion with Mr. Oliva
24 about whether GLC controls how InComm, IBDC or LECMI send
25 their traffic?

1 A Yes.

2 Q To your knowledge, did GLC -- and I believe your response
3 to that was that you agree GLC does not control how those
4 other entities send their traffic?

5 A That's true.

6 Q Did GLC in your view exert any influence in the way those
7 entities sent their traffic?

8 A Well, GLC certainly provided enormous incentives for this
9 traffic to be routed ultimately to GLC by providing all
10 these revenue shares, these revenue share dollars.

11 Q You were also asked some questions about 8YY call
12 aggregation in general. As a theoretical matter, does
13 AT&T Corp. have a strenuous objection to the practice in
14 the industry of 8YY aggregation?

15 A No.

16 Q What is AT&T's concern with 8YY aggregation?

17 A Our only concern is when the rates are not appropriate,
18 as in this case.

19 Q And by not appropriate, do you mean instances where they
20 could be 300 times higher than they otherwise should be?

21 A That's absolutely correct, right.

22 Q There was also some discussion about connections between
23 AT&T Corp., AT&T Michigan, and LECMI. Do you recall
24 those discussions?

25 A Yes.

1 Q And if I followed you correctly, you explained that -- or
2 you agreed that LECMI likely had local connections to the
3 AT&T Michigan tandem?

4 A Yes.

5 Q What kind of traffic would that connection be for?

6 A That would be for traffic that is non- -- it's for local
7 and local toll traffic, meaning that it would be for
8 traffic that, for example, went from Southfield to West
9 Bloomfield, so someone in Southfield is calling someone
10 in West Bloomfield, they would need that interconnect
11 trunk to complete the call.

12 Q So is it fair to say that these local trunk connections
13 are for traffic that is either very local or somewhat
14 local in nature?

15 A That's correct.

16 Q Let's contrast that, if you will, with the IXC or the
17 access connection that exists between AT&T Corporation on
18 the one hand and AT&T Michigan on the other hand. What
19 type of traffic flows over that connection?

20 A Those are totally for long distance types of calls.

21 Q And as a matter of industry practice, is traffic
22 segregated between local connections and IXC connections?

23 A Absolutely.

24 Q And why would that be?

25 A Well, first, the rates are completely different.

1 Q So that if traffic were intermingled on the same
2 transport group, would there be an effective way to bill
3 accurately for that traffic?

4 A I don't believe so.

5 Q O.K. And is it customary in the industry to keep those
6 two traffics separate?

7 A Absolutely.

8 Q There was some discussion about American Idol voting and
9 how it might impact things. The day in question, I
10 believe in your testimony the study looked at March 6 of
11 2013; does that sound correct?

12 A Uh-huh, yep.

13 Q Do you have the foggiest idea whether there was an
14 American Idol show on?

15 A No, I don't.

16 Q Do you have the foggiest idea about what the ratings were
17 for that show?

18 A I have no idea.

19 Q The foggiest idea about what the call volumes might have
20 been for what show?

21 A Don't know.

22 Q There was also some discussion about, again with respect
23 to this one-percent analysis that you directed, there was
24 some question about how it could have used data provided
25 by Great Lakes when you acknowledged that that data Great

1 Lakes has has two important limitations, correct?

2 A That's correct.

3 Q And one limitation is the fact that it doesn't, that
4 Great Lakes' data would not identify the location of the
5 ultimate party receiving that call?

6 A That's correct.

7 Q How did AT&T address that limitation?

8 A Well, AT&T, it's their 8YY customer, so they have that
9 data, so they know where that call is terminating.

10 Q And I believe the other limitation that was inferred was
11 that since this traffic is wireless in nature, a caller
12 could actually be at a different location than his home
13 location?

14 A Right.

15 Q So given the mobile nature of this traffic, how did AT&T
16 account for the geographic location of the caller at the
17 time the call was made?

18 A Well, once again, there is another dataset that has the
19 station identifier or which tells us what cell tower was
20 being used when that call was made, so that would
21 pinpoint approximately where that handset was when the
22 call was made.

23 Q O.K. Thank you.

24 MR. ORTLIEB: Your Honor, these next
25 questions are just meant to be helpful, and if they're

1 not, just tell me and --

2 JUDGE SONNEBORN: O.K.

3 MR. ORTLIEB: -- I'll stop. What I want
4 to do is ask Mr. Habiak just about some definitions and
5 acronyms that have been used today and see if that might
6 shed some light.

7 JUDGE SONNEBORN: All right.

8 Q (By Mr. Ortlieb): You heard the term ASR used?

9 A Yes.

10 Q What does that stand for?

11 A It's an access service request.

12 Q What is it?

13 A It's what AT&T and other carriers would use to order
14 capacity between themselves and, in this case, the LEC.

15 Q And it's industry standard?

16 A Right.

17 Q What is CDR?

18 A It's a customer service record, and it has details such
19 as the phone numbers that generated the call and the
20 phone numbers that they were -- that they called.

21 Q And I believe you explained earlier that that could be
22 backup data that a local exchange carrier could provide
23 to an IXC such as AT&T Corp. in the event of a billing
24 dispute?

25 A Right. It's often requested.

1 Q And you explained what a POP was, so I won't go into
2 that. CO, that term came up; what is that term?

3 A Central office.

4 Q And there's another kind of an office called a tandem
5 office?

6 A Right.

7 Q Can you explain the difference between an end office or
8 central office on the one hand and a tandem office?

9 A Well, sure. An end office is where typically the number
10 assignments for all the -- it does the switching for --
11 if you imagine you're someone at your home and you have
12 normal telephony, you have copper wires going to that
13 local switch, and that local switch knows your -- knows
14 your telephone number and determines where that phone
15 call you're making; are you calling your neighbor or are
16 you calling your aunt in California, and that switch
17 makes that decision. If it's your aunt in California, it
18 either goes down a dedicated path to the appropriate IXC
19 by a dedicated connection, or it goes to a tandem switch.
20 A tandem switch is another switch that would handle
21 traffic and then send it to the IXC from there.

22 Q In the switching hierarchy, a tandem switch is over the
23 end offices?

24 A Right.

25 Q How about the term switched access service?

1 A Well, switched access service is the -- is what is
2 provided when carriers, the local carrier provides to the
3 IXC to connect to the IXC network.

4 Q And finally we've heard the term 8YY; is that what used
5 to just be called 800 traffic?

6 A Right. But the 800 numbers, they ran out of 800 numbers,
7 so they had to start coming up with other 8s.

8 Q So 888, 877 --

9 A Yes.

10 Q -- all do the same thing?

11 A Right, exactly.

12 Q So now the traffic is referred to as?

13 A 8YY.

14 Q Thank you.

15 MR. ORTLIEB: Your Honor, I have no
16 further questions.

17 JUDGE SONNEBORN: Mr. Oliva, do you
18 have --

19 MR. OLIVA: I have just have a little bit
20 of -- just a couple of questions on recross.

21 JUDGE SONNEBORN: O.K.

22 RECROSS-EXAMINATION

23 BY MR. OLIVA:

24 Q Mr. Ortlieb was asking you about ASR. ASRs are exchanged
25 between all kinds of carriers, not just LECs, right, not
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1 just local exchange carriers?

2 A They may very well be. My experience with them is just
3 from the access perspective.

4 Q O.K. You were asked about the difference between a
5 central office, or sometimes called an end office, and a
6 tandem office. What kind of traffic gets exchanged
7 between a central office and a tandem office?

8 A Well, it would be traffic that does not have a dedicated
9 route, and it's traffic that, by the way, is shared, it's
10 called common transport. So, for example, if none of the
11 IXCs have a direct connection to a particular LEC, then
12 all that traffic goes through the tandem, and it's
13 everyone's traffic that goes through that tandem, AT&T,
14 Verizon, Sprint, and then it goes to the tandem, and it's
15 at the tandem that it then gets disbursed and sent to the
16 appropriate IXC's network.

17 Q So that would include long-distance traffic, too, right?

18 A Yeah, that is for long-distance traffic, correct.

19 Q It is for long-distance traffic.

20 A Uh-huh.

21 MR. OLIVA: I have no further questions,
22 your Honor.

23 JUDGE SONNEBORN: Thank you.

24 This concludes our cross-examination.

25 Mr. Habiak, you may step down at your leisure.

1 A Thank you.

2 (The witness was excused.)

3 - - -

4 JUDGE SONNEBORN: And this concludes the
5 cross-examination in this case.

6 MR. ORTLIEB: Yes, it does, your Honor.
7 I just have one additional matter, if that's -- I think
8 now is the appropriate time to raise it.

9 Your Honor, given that Mr. Irvin's
10 testimony earlier today, or his deposition transcript was
11 admitted, that raised a question in our mind concerning
12 the portions Mr. Habiak's testimony that was stricken
13 because of the prior striking of that deposition
14 transcript. And so I've gone back and looked at the
15 specific places, and I want to make a motion, a limited
16 motion, to reinsert portions, not all, though, but
17 portions of Mr. Habiak's testimony that had relied upon
18 that.

19 JUDGE SONNEBORN: You may do so. Can you
20 direct me to the pages again, please?

21 MR. ORTLIEB: Yes, your Honor, if you're
22 willing to consider that, I would limit my motion to the
23 response testimony; I will not concern myself with the
24 rebuttal. On page 2 and 3, all of that material I would
25 request that it be reinserted. And then continuing on

1 page 26 and 27, I would request that all of that be
2 reinserted. And then on page 29, I would request that
3 that be reinserted.

4 JUDGE SONNEBORN: Mr. Oliva, do you wish
5 to respond?

6 MR. OLIVA: Well, yes, your Honor. For
7 purposes of cross-examination, we relied upon your
8 Honor's rulings on the motion to strike, and so obviously
9 we didn't cross-examine Mr. Habiak with respect to the
10 stricken portions of the testimony, and re-admitting the
11 stricken portion of the testimony is not appropriate.
12 AT&T can file its brief arguing as to its interpretation
13 of what is contained in Mr. Irvin's deposition, and
14 there's no prejudice to him whatsoever. But I mean,
15 quite frankly, your Honor's ruling was correct at the
16 time and we're entitled to rely upon it through the
17 cross-examination. Mr. Ortlieb could have made this
18 motion at the outset of Mr. Habiak's testimony being
19 introduced after Mr. Irvin, but he chose the manner of
20 the presentation of his case, and frankly, he should live
21 with it.

22 JUDGE SONNEBORN: Mr. Ortlieb, do you
23 wish to respond?

24 MR. ORTLIEB: My only response, your
25 Honor, would be a limited one, is that there's nothing

1 controversial about these sections that we're asking to
2 restore. I don't think there's any prejudice here in
3 terms of cross-examination because it all relates to
4 this -- well, principally relates to this issue of
5 transport through Flint, and of course that was -- has
6 already been touched upon in other places in Mr. Habiak's
7 testimony that was not stricken, namely, JH-20 that we
8 dealt with earlier today, and restoring the language
9 would certainly provide additional context and fill holes
10 that otherwise exist in the testimony currently for no
11 good reason.

12 JUDGE SONNEBORN: I'm going to deny your
13 motion, Mr. Ortlieb, and stand by my earlier ruling. At
14 least in part as I review what you would like to be
15 reinserted, for example, page 27, Mr. Habiak's response
16 testimony at line 593, he recites Mr. Irvin having said:
17 I know a hundred percent of our 331 went either to
18 Lansing or to Flint and I'm about 99 percent sure it went
19 to Flint. His direct testimony this morning was slightly
20 different than this recitation made by Mr. Habiak. So I
21 think to reinsert it at this point in the proceedings
22 would be confusing and would not provide a clean record
23 to the Commission.

24 MR. ORTLIEB: Thank you, your Honor.

25 JUDGE SONNEBORN: You're welcome.

1 Is there anything further?

2 MR. OLIVA: Nothing further from
3 Westphalia or Great Lakes.

4 JUDGE SONNEBORN: Thank you.

5 I would like to make one request with
6 respect to the briefs that you'll be filing on
7 October 10. I would prefer to have you organize them, to
8 the extent you're able, by issue. I know that there's a
9 format, and I don't want you to deviate from what you
10 normally do with respect to these briefs, but given the
11 number of issues before me, and the complicated nature of
12 them. I think organization by issue in addition to
13 testimony will provide clarity for me, as well as the
14 Commission.

15 Do you have any questions regarding that?

16 MR. OLIVA: No, your Honor.

17 MR. BRANDENBURG: No, your Honor.

18 JUDGE SONNEBORN: O.K. Thank you, all,
19 very much.

20 MR. ORTLIEB: Thank you, your Honor.

21 MR. BRANDENBURG: Thank you, your Honor.

22 MR. OLIVA: Thank you.

23 (At 3:11 p.m., the hearing concluded.)

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C E R T I F I C A T E

I, Lori Anne Penn (CSR-1315), do hereby
certify that I reported in stenotype the proceedings had
in the above-entitled matter, that being Case No.
U-17619, before Suzanne D. Sonneborn, J.D.,
Administrative Law Judge with Michigan Administrative
Hearing System, at the Michigan Public Service
Commission, Constitution Hall, 525 West Allegan, Lansing,
Michigan, on Tuesday, September 23, 2014; and do further
certify that the foregoing transcript constitutes a true
and correct transcript of my stenotype notes.

Lori Anne Penn, CSR-1315
33231 Grand River Avenue
Farmington, Michigan 48336

Dated: _____