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September 6, 2002

Ex Parte

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

Re: Joint Application by Verizon for Authorization To Provide In-Region, InterLATA Services in States of Delaware and New Hampshire, Docket No. 02-157

Dear Ms. Dortch:

At the request of FCC staff Verizon hereby places the transcript of the June 25, 2002 meeting of the Delaware Public Service Commission in the record of the above-cited docket.

Please let me know if you have any questions. The twenty-page limit does not apply as set forth in DA 02-1497.

Sincerely,

A handwritten signature in black ink that reads "Richard T. Ellis".

cc: H. Thaggert
V. Schlesinger
G. Remondino
T. Wilson

VOLUME 6
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN RE: IN THE MATTER OF :
THE INQUIRY INTO VERIZON :
DELAWARE INC.'S COMPLIANCE :
WITH THE CONDITIONS SET : PSC DOCKET NO. 02-001
FORTH IN 47 U.S.C. SECTION :
271 (FILED FEBRUARY 1, 2002) :

Public Service Commission Hearing taken
pursuant to notice before Gloria M. D'Amore,
Registered Professional Reporter, in the offices of
the Public Service Commission, 861 Silver Lake
Boulevard, Cannon Building, Suite 100, Dover,
Delaware, on Tuesday, June 25, 2002, beginning at
approximately 1:00 p.m., there being present:

APPEARANCES:

On behalf of the Public Service Commission:
ARNETTA McRAE, CHAIR
JOSHUA M. TWILLEY, VICE-CHAIRMAN
DR. DONALD J. PUGLISI, COMMISSIONER
JAY LESTER, COMMISSIONER
JOANN CONAWAY, COMMISSIONER

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1 APPEARANCES CONTINUED:

2 On behalf of the Public Service Commission Staff:
3 GARY A. MYERS, ESQUIRE

4 On behalf of the Public Service Commission Staff:
5 REGINA A. IORII, ESQUIRE

6 On behalf of the Public Service Commission Staff:
7 BRUCE H. BURCAT, EXECUTIVE DIRECTOR
8 CONNIE S. McDOWELL, CHIEF OF TECHNICAL SERVICES
9 KAREN J. NICKERSON, SENIOR SECRETARY
10 PATRICIA STOWELL, PUBLIC UTILITIES ANALYST
11 PAUL HARTMAN, COMMISSION'S CONSULTANT

12 On behalf of the Office of the Public Advocate:
13 G. ARTHUR PADMORE

14 On behalf of Verizon Delaware, Inc.:
15 JULIA A. CONOVER, ESQUIRE
16 JOSHUA W. MARTIN, III, PRESIDENT, VERIZON DELAWARE
17 DOUG SMITH, VICE-PRESIDENT OF REGULATORY AFFAIRS

18 On behalf of Cavalier Telephone:
19 MARK ZITZ, PRESIDENT MID-ATLANTIC REGION

20 On behalf of AT&T:
21 MARK A. KEFFER, ESQUIRE

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1 CHAIR McRAE: If everybody is ready to
2 get started. This is a one-item agenda. So, I don't
3 think we need to review that. We can dispense with
4 all of the formalities and get right into it.

5 As you know, this meeting is
6 especially to address the matter of the inquiry into
7 Verizon Delaware's compliance with the conditions set
8 forth in the code -- Federal Code Section 271. And,
9 I believe, all of the parties involved in that
10 proceeding are present. So, if you'll take your
11 positions, we will get started.

12 There are no minutes, by the way, for
13 now.

14 Excuse me. There is one matter I
15 forgot. One housekeeping matter before we get
16 started.

17 We've made it a practice of
18 recognizing the Staff of the Commission in our public
19 meeting for their service time. And today, we have
20 two people to recognize before we get into the
21 proceeding business.

22 One is Susan Neidig, who has achieved
23 20 years with the Commission. We have something here
24 for Susan.

1 We also want to recognize Ronette
2 Brown, who has achieved five years.

3 We will move right into the
4 proceeding. We have before us, and he will introduce
5 himself for the record, but the CEO of Verizon
6 Delaware, Mr. Joshua Martin.

7 MR. MARTIN: Madam Chair,
8 Vice-Chairman, Commissioners.

9 I am Joshua Martin, President of
10 Verizon Delaware.

11 Thank you for this opportunity to
12 speak with you briefly this afternoon.

13 After enormous efforts by a lot of
14 people over an extended period of time, we are within
15 reach of giving Delaware consumers what they want,
16 more choice in local, interstate toll, and long
17 distance service, and the convenience of having one
18 supplier, one bill, and one phone call to make.

19 Today, you, the Delaware Public
20 Service Commission, are considering Verizon
21 Delaware's request to provide a positive consultative
22 report to the Federal Communications Commission, the
23 FCC.

24 Commissioners, our markets are

1 irreversibly open.

2 As The Hearing Examiner found, after
3 considering Verizon Delaware's application, including
4 two days of hearings, Verizon Delaware is in full
5 compliance with the Federal Telecommunications Act of
6 1996, particularly, Section 271.

7 I will also note that the FCC has
8 already evaluated and approved the long distance
9 application of Verizon Pennsylvania.

10 And the significance of that is, we
11 used the same systems and procedures to provide
12 services to the CLECs here in Delaware as Verizon
13 Pennsylvania uses in our sister state to the north.

14 As of the date of the filing of this
15 case, which was February 1st, almost seven percent of
16 Delaware customers were using competing carriers,
17 including a substantial number of residential
18 customers.

19 These figures were not disputed during
20 this proceeding, and, in fact, the figures were
21 corroborated by your own Staff, based on information
22 that they got from our competitors.

23 By comparison, while the FCC has
24 consistently said that there is no volume

1 requirement, or market share test for 271 entry, it
2 has approved the long distance applications in
3 Vermont and Maine.

4 Now, the significance of those
5 approvals is that those states have about the same,
6 or less competitive activity on an absolute basis and
7 also on a percentage of total lines than we have here
8 in Delaware.

9 Now, you may hear that there are
10 portions of our state that do not have the same level
11 of competition as other areas.

12 But I have to tell you, the citizens
13 of Selbyville, or Dagsboro, or even Bridgeville don't
14 have the right to choose that competitor, it's simply
15 because our competitors have chosen to deny them that
16 opportunity. Stated differently, our competitors
17 have not decided to offer service in those areas.

18 So, in closing, let me reiterate.

19 The Hearing Examiner found and
20 recommended to you that Verizon meets the 14 point
21 competitive checklist. And also, that competitors
22 are alive and well in Delaware.

23 I think the time has come that the
24 only telecommunications company in Delaware that is

1 denied the right to initiate long distance service
2 should have that right.

3 Because, then again, the only
4 telecommunications company in the State of Delaware
5 that is denied the right to initiate long distance
6 service should have that right.

7 The time has come to give Delaware
8 consumers the same opportunity and the same choice
9 that consumers have in the States of Maine, Vermont,
10 Massachusetts, Connecticut, Rhode Island, New York,
11 Pennsylvania, and as of last night, New Jersey. The
12 same rights that those states already enjoy.

13 That concludes my initial statement.

14 I will now ask our General Counsel,
15 Julia Conover, to, briefly, discuss a few specifics
16 of our case.

17 MS. CONOVER: Thank you, Joshua, and
18 thank you, Commissioners.

19 Joshua has laid a foundation for your
20 deliberations this afternoon. But I would like to
21 talk just a little bit about a number of specifics
22 that were in The Hearing Examiner's report.

23 As Joshua stated, The Hearing Examiner
24 found that we are in compliance with the 14 point

1 checklist.

2 I think it is very significance that
3 there were really only three checklist items that
4 were challenged at all. And, at least, two of those
5 cases involved ongoing -- two ongoing cases that are
6 pending before you.

7 And The Hearing Examiner decided,
8 quite promptly, that those proceedings should
9 continue before you, and those issues should not be
10 decided in the case, in this case, and we agree with
11 that.

12 The Hearing Examiner did, however,
13 recommend three conditions that we believe are either
14 necessary, or should not be considered in this
15 proceeding for a variety of reasons. Either they
16 have already been met, or they are being dealt with
17 in other proceedings, or should be dealt with in
18 other proceedings.

19 Specifically, he recommended that
20 Verizon provide a verification that certain fixes to
21 the billing system, that were in progress at the time
22 of the hearings, had, in fact, been implemented. And
23 we, in fact, did provide such verification via letter
24 by an officer of Verizon Delaware that the problems

1 were fixed, and that, essentially, verified we had
2 checked the bills, and the problems no longer
3 existed.

4 So, this condition has already been
5 met and is no longer necessary.

6 Second, The Hearing Examiner
7 recommended a mandatory 60-day cooling off period for
8 parties to discuss any change of law that takes place
9 that has an impact on the relationship between
10 Verizon and the CLECs.

11 Now, many of our contracts already
12 have change of law provisions in them. So, we don't
13 necessarily believe that the 60-day cooling off
14 period is necessary.

15 However, we do recognize that there
16 could be a sensible default provision, if there is
17 not already a change of law provision in a contract.

18 However, the provision that The
19 Hearing Examiner recommended as a condition should
20 not apply, if the parties have already negotiated a
21 contract with a different provision that has been
22 filed with the Commission and has been approved.

23 So, if you think this condition has
24 merit, then we would ask that it only apply where

1 there is no contrary contract provision.

2 I just would like to say
3 parenthetically, this issue came up in the context of
4 reciprocal compensation. The Hearing Examiner's
5 language may have been somewhat confusing.

6 So, I want to assure the Commission,
7 we are paying reciprocal compensation to other
8 carriers for local service, as required by the Act.

9 However, we have disputed, as we
10 believe is our right, and are not paying, carriers
11 bills for reciprocal compensation for Internet
12 traffic.

13 We believe that under our agreements,
14 and under the Act, we do not believe reciprocal
15 compensation should be owed, or is owed under the
16 contracts for Internet-bound traffic period.

17 This issue does not need to be decided
18 by the Commission here today. It is, actually,
19 pending in the other AT&T matters, but I just wanted
20 to reassure you that we believe that we are paying
21 reciprocal compensation where it is owed under our
22 contract for local service.

23 Finally, The Hearing Examiner proposed
24 a condition that would prevent, effectively prevent

1 Verizon Delaware from negotiating contracts on a
2 going-forward basis with other carriers to,
3 essentially, share the costs of transporting calls
4 from Verizon customers to the carrier's network.

5 This recommendation, we believe,
6 improperly inserts the Commission into contract
7 negotiations that are in the future, and, we believe,
8 it is particularly troublesome. It is not really
9 part of this proceeding.

10 Just a little bit of background. We
11 agree, we have no problem that the CLEC can designate
12 physical points, or interconnection points on their
13 network, where our network interconnects.

14 But, we would like to have the
15 opportunity to negotiate, the ability to negotiate a
16 different point where the financial responsibility
17 would pass.

18 In particular, where the carriers
19 choose distance places, perhaps, even in another
20 state, for their physical point of presence.

21 We believe that the financial
22 responsibility carrying the calls would then pass at
23 a different point than this physical point, so that
24 the unnecessary costs would not be -- we can then

1 share these costs with the CLEC. Otherwise, Verizon,
2 Delaware is bearing the costs, the entire costs of
3 transporting the calls to the distance location.

4 Now, The Hearing Examiner said, we
5 should never be able to negotiate such a provision,
6 to share the cost, to carry traffic to a distant
7 point for interconnection. And, I believe, that he
8 was under the impression that these provisions were
9 contrary to the Telecom Act. But that is simple not
10 the case.

11 The FCC specifically addressed this
12 point when AT&T raised the exact same point in
13 Verizon Pennsylvania's 271 case. And the FCC there
14 said that Verizon's position does not -- and this is
15 a quote -- quote, Does not represent a violation of
16 our existing rules.

17 Equally important, the Third Circuit
18 in a recent rule on an appeal by MCI involving a case
19 in Pennsylvania, made it very clear that they see
20 that the Third Circuit sees the difference between
21 the physical point of interconnection and the
22 financial point of interconnection.

23 Judge Roth, speaking for the Court
24 specifically said, If a carrier's CLECs' selection of

1 a physical point of interconnection proves more
2 expensive to Verizon, the Commission, and this is a
3 quote -- quote, Should consider shifting costs to the
4 CLEC. And that's precisely the kind of provision we
5 would like to have the opportunity to negotiate.

6 I just want to be very clear. We are
7 not asking the Commission to decide this issue, this
8 specific issue on the merits in our favor here
9 today.

10 That debate will likely come before
11 you in another proceeding.

12 What we are saying is that there
13 should not be a condition imposed that, essentially,
14 prevents us from negotiating these provisions, that,
15 essentially, decides the issue against us.

16 We really want you to abstain on that
17 issue because we do not believe it is proper here in
18 a 271 proceeding.

19 So, in summary, we would respectfully
20 request that the Commission adopt The Hearing
21 Examiner's recommendation without any conditions
22 because they have either been met, or they are not
23 properly addressed in this proceeding.

24 Thank you very much.

1 CHAIR McRAE: Mr. Keffer speaking for
2 AT&T.

3 MR. KEFFER: Good afternoon,
4 Mark Keffer for AT&T Communications of Delaware.

5 Let me start with a question.

6 Procedurally, how does the Commission
7 intend to take up the exceptions that the parties
8 have raised. One at a time, as we have done in other
9 cases that I've attended or --

10 CHAIR McRAE: Well, this is my
11 reflection on that.

12 At this point, I am interested in
13 hearing -- aside from what you stated in your
14 writings -- I want each party to, essentially,
15 identify what their issues, as Verizon has just done,
16 and if you will summarize them.

17 And we will go through all of the list
18 of issues that are outlined in the discussion.

19 MR. KEFFER: So, this is in the nature
20 of opening remarks, then?

21 CHAIR McRAE: That's right.

22 You can, certainly, be brief and save
23 your strong comments for later.

24 MR. KEFFER: Like you, AT&T has read

1 The Hearing Examiner's report.

2 AT&T has raised five issues that we
3 want the Commission to consider.

4 First and foremost, we have been
5 denied our due process rights to explore the evidence
6 that underlies Verizon's application.

7 I was interested to see Mr. Martin
8 here today because that is the first time he has
9 lended his voice to this proceeding, even though his
10 testimony was admitted into the record.

11 Second exception is that the
12 application does not serve the public interest. Of
13 course, that's related to the first, because there is
14 no evidence in the record that identifies for you
15 where competition has developed in Delaware.

16 So, what Verizon is asking you to do
17 is endorse an application to the FCC, and you have no
18 information before you about where competition exist
19 in the state, how it is developing, and, perhaps,
20 more importantly, where it is not present in the
21 state.

22 Exception three. We raised our
23 pricing concerns, again. You, probably, heard all
24 you want to hear from me on that. So, when we get to

1 that one, I will, probably, just respond to any
2 questions.

3 Exception four. We've raised concerns
4 about the problems with Verizon's electronic
5 wholesale billing. It hasn't worked very well in
6 Pennsylvania. That suggest it is not going to work
7 very well here as well.

8 Finally, as Ms. Conover alluded to,
9 we've raised concerns about reciprocal compensation.

10 That issue is before the Commission in
11 another proceeding.

12 The concern here is that, Verizon has
13 unilaterally amended the provision of its
14 Interconnection Agreement with the CLEC to change the
15 way that it pay reciprocal compensation. If they're
16 going to do that, they're not ready for approval of
17 the 271 application.

18 Thank you.

19 CHAIR McRAE: Cavalier.

20 MR. ZITZ: Chair McRae and
21 Commissioners.

22 As President of, perhaps, the only
23 competitive carrier in this State, Cavalier Telephone
24 Mid-Atlantic, I'm appealing to you today to delay

1 your approval of Verizon's 271 application, pending
2 further due diligence of The Hearing Examiner's
3 findings and recommendations.

4 In this 271 proceeding, we have a
5 classic case of a bully forcing its own view of the
6 world upon you and the citizens of Delaware.

7 They have Cavalier squeezed in a death
8 grip, whose outcome will have a pronounced influence
9 upon competition in this state. And you are squeezed
10 to grant this big boy its wishes.

11 Verizon has flooded you and your Staff
12 with an awesome display of paper and purported
13 facts.

14 Attention everyone, the Verizon 271
15 machine is now in motion. Heaven help the small
16 competitor that would stand in its way.

17 If you put all of the mountains of
18 papers aside and step briefly away from the fray, you
19 will find more form than substance in their
20 application.

21 Competition is just in its infancy in
22 Delaware. All is not well.

23 I would urge you to pay particular
24 attention to Cavalier's concerns.

1 There are two active cases now before
2 you that could radically effect competitive
3 interconnection.

4 The first case is "PUC" 320-02,
5 concerns the GRIPS issues.

6 The second case, PSC Regulation Docket
7 52 is an outcrop of GRIPS and relates to service
8 termination between connecting carriers.

9 Specifically, regarding the GRIPS
10 issue. For two-and-a-half years, beginning in 1999,
11 Verizon paid its way under our Interconnection
12 Agreement, but suddenly stopped paying.

13 Verizon now suggest CLECs have chosen
14 interconnection points that caused them to incur
15 needless expense.

16 Verizon, certainly, didn't express
17 this for the two-and-a-half years it paid Cavalier.

18 This issue is broader than an
19 interconnection issue. It is an issue that
20 significantly effects the public interest, and one
21 that is incredibly unfair to Cavalier. It is unfair
22 for Cavalier to provide transport service without
23 compensation.

24 When we attempted to seek relief,

1 Verizon complained to the Commission that Cavalier
2 had no right to terminate.

3 Cavalier cannot provide free service
4 to Verizon.

5 Verizon's refusal to pay has material,
6 adverse consequences on Cavalier and other CLECs
7 competing in Delaware.

8 If you approve this checklist item,
9 without waiting until these cases are decided, you
10 place the future of Cavalier in competition at
11 peril.

12 The Hearing Examiner has said that
13 Verizon Delaware should accept the cost
14 responsibilities for the transport of its traffic.

15 Unless it can commit to do so, The
16 Hearing Examiner does not believe that he can find
17 Verizon compliant with Checklist Item No. 1.

18 The FCC will look to you to tell them
19 whether or not you think this is a significant enough
20 -- this is significant enough to warrant slowing
21 down the 271 train.

22 You should tell them how important
23 this issue is to Delaware consumers. It will be the
24 difference between competition and no competition for

1 Delaware consumers.

2 In its exception, Verizon does not
3 take this responsibility.

4 Verizon believes that it is immune
5 from this responsibility based upon the record
6 established in the Pennsylvania 271 proceeding.

7 But the fact remains that the
8 Pennsylvania 271 proceeding did not address a
9 specific complaint, such as the one now before this
10 Commission.

11 No carrier in Pennsylvania has served
12 notice to suspend its interconnection. No carrier in
13 that state had deployed an extensive network with its
14 own capital expenditures interconnected with Verizon
15 at various multiple interconnection points, while
16 receiving compensation for two-and-a-half years to
17 carry Verizon's traffic, only to have the rug pulled
18 out from under its feet through Verizon's bullying
19 tactics.

20 Underlike the situation now in
21 Delaware, no network deployments were in an active
22 state of jeopardy.

23 So, with this pretense, Why in the
24 world is there a need to rush this judgment? What

1 can be gained by granting Verizon's application at
2 this time? To satisfy some Verizon executive's
3 bonus. To bring greater benefits to Verizon.

4 Without a full hearing on GRIPS, the
5 competitive market in Delaware is subject to
6 irreparable harm.

7 Today, you are in the driver's seat,
8 and I encourage you to stay there.

9 Thank you.

10 CHAIR McRAE: Mr. Padmore, do you have
11 any comments?

12 PUBLIC ADVOCATE PADMORE: I did not
13 file any exceptions.

14 I may have something to say after the
15 parties have spoken and before you begin your
16 deliberations.

17 CHAIR McRAE: Staff.

18 MR. MYERS: Thank you, Madam Chair.

19 Like the Public Advocate, Staff did
20 not file any exceptions.

21 We think The Hearing Examiner did an
22 admirable job.

23 I reserve the opportunity to speak to
24 the particular exceptions raised by both sides.

1 But, I think, in a way, it might be
2 helpful if I speak a few minutes to the overall
3 picture here and more in the context of process than
4 substance at this point.

5 I think the central question, I think,
6 the Commissioners have, and, I think, the one that
7 answers some of the exceptions here is, what goal The
8 Hearing Examiner did in producing his document, and
9 what you want out of this document.

10 And that goes back to what the 271
11 statutory process is about.

12 If you will recall, it, basically, has
13 three parts. It is, basically, an FCC proceeding.
14 They're the ones that have the final -- the final say
15 as to whether, in effect, Verizon will get InterLATA
16 authority from any particular state.

17 The statutory scheme starts out with
18 what you hear about tracks, whether, in effect, there
19 is a facilities-based existing competitor that is
20 serving more than a de minimis number of business and
21 residential customers.

22 The second one is the checklist. That
23 is whether, in effect, the service to that, or any
24 other competitors Verizon is complying with its 14

1 point obligations, premised on Section 271.

2 In those two things, the statute
3 convinced the FCC to consult with the states for
4 track compliance and checklist compliance.

5 The FCC has given the additional
6 authority to determine whether, even if there's those
7 factors present in any particular state, whether it
8 is in the public interest subject to the
9 restrictions, they can't expand the checklist
10 compliance.

11 Now, what the states do, and what that
12 leads to is what is the nature of the consultative
13 report.

14 I guess there's two ends to the
15 spectrum here.

16 One is, you can, in effect, produce
17 for the FCC a landscape of what competition looks
18 like throughout the state. What each particular
19 problem is and how you propose to address it. That's
20 one extreme.

21 The other extreme is, in effect, to
22 determine whether there has been sufficient
23 compliance with the statutory standards as
24 interpreted by the FCC, sort of a clerk's role.

1 Whether, in effect, this condition has been met, that
2 condition has been met, that condition has been met,
3 that condition has been met, as interpreted by the
4 FCC.

5 I think what The Hearing Examiner
6 delivered to you today, and what you have before you,
7 is not either extreme, but closer to this side than
8 that side.

9 I think if you want a real picture of
10 what competition looks like in this state, I think it
11 is subject to dispute what it looks like.

12 This doesn't pretend to answer that.
13 I think the focus of The Hearing Examiner here was,
14 in effect, to see whether there has been statutory
15 compliance. Then suggest that you could in the
16 exercise of your authority, suggest other conditions
17 that would make entry into the long distance market
18 in the public interest.

19 So, I think you have to keep that in
20 mind as you work through here. There is going to be
21 some things that this report and this record do not
22 show to you about whether, in effect, there is a
23 vibrant competitive market in the state.

24 What it is focused primarily on is

1 whether, in effect, the statutory conditions have
2 been met. And, I think, in doing that, The Hearing
3 Examiner has done a good job.

4 Thank you.

5 CHAIR McRAE: We have all heard all of
6 the preliminary comments of the parties.

7 Let me just say, my observation, and
8 it looks like from your writings as well, the issues
9 fall generally under Track A questions, Checklist
10 Item 1, 2 and 13.

11 So, if we would look at a path forward
12 to address them, that's where all of the issues have
13 fallen, if we take them one at a time.

14 Did you have something to say?

15 MR. KEFFER: When you say, Track A, I
16 would treat public interest issues differently than
17 Track A questions. But they are often lumped
18 together for purposes of discussion.

19 CHAIR McRAE: If it makes it easier
20 for you to treat it differently, that's fine. But in
21 the report, Track A is kind of tied in with the
22 public. They may have a separate piece, but, I
23 think, it is in the public interest issue.

24 Is that okay with you guys?

1 COMMISSIONER PUGLISI: What about the
2 due process issue raised by Mr. Keffer? How does
3 that fit into this?

4 CHAIR McRAE: It was raised in the
5 context of one of those items.

6 COMMISSIONER PUGLISI: I just wanted
7 to make sure it will be addressed there.

8 CHAIR McRAE: It was raised in the
9 context. I think it is under Track A.

10 COMMISSIONER PUGLISI: Yes, it was.

11 MR. KEFFER: Track A slash public
12 interest.

13 CHAIR McRAE: I'm assuming Mr. Keffer
14 will --

15 COMMISSIONER PUGLISI: I have no
16 doubt.

17 CHAIR McRAE: I'm just guessing at
18 that now, of course.

19 Unless the Commission Members want to
20 make any preliminary comments before we go forward
21 with this, because, at some point, I would like to
22 give the public an opportunity to comment.

23 We will get the arguments out of the
24 way, then we will hear from the public. So, we will

1 start out with Track A slash public interest, if you
2 will.

3 Since AT&T has an objection, we will
4 let them go here and give Verizon the last
5 opportunity to comment.

6 MR. KEFFER: In a judicial
7 investigation, the right of cross-examination of an
8 adversary's witness is absolute and not a mere
9 privilege of one against whom a witness may be
10 called.

11 Cross-examination is a fundamental
12 right, basic in our judicial system, and is an
13 essential element of a fair trial and the proper
14 administration of justice.

15 Due process requires that any
16 testimony, which may be considered in reaching an
17 administrative decision should be sworn and must be
18 subjected to cross-examination.

19 Those are not my words. Those are the
20 words of Delaware's Courts.

21 The first quote was from the
22 Liberto v. Delaware Violent Crimes Compensation Board
23 case. I'm sorry. I gave you the wrong cite.

24 Pusey v. Delaware Alcohol Beverage

1 Control Commission.

2 The second is the Blue Cross and Blue
3 Shield of Delaware Incorporated versus Elliott, again
4 cited in the pleadings.

5 When Verizon put on its case, before
6 The Hearing Examiner, it refused to make Mr. Martin
7 available for cross-examination.

8 Even though Mr. Martin's testimony is
9 the place where Verizon elected to include evidence
10 about the extent to which competition had developed
11 in Delaware.

12 After reviewing Mr. Martin's
13 testimony, AT&T served discovery on Verizon, asking
14 questions about where competition had developed in
15 each of Verizon's 33 Delaware wire centers.

16 Verizon objected, arguing that it
17 would be burdensome to produce that information about
18 the number of UNE loops, UNE-P arrangements and
19 resale arrangements that it was providing to
20 competitors in the various locales in Delaware.

21 It would just be too burdensome to
22 produce that information.

23 The Examiner went along with their
24 argument and said that they would not have to produce

1 it.

2 Now, a few weeks later, in a Virginia
3 proceeding, AT&T served the same data request on
4 Verizon Virginia. And their, a Hearing Examiner
5 brushed aside Verizon's arguments about burden. Told
6 Verizon it would have to produce that information for
7 each of Virginia's over 200 wire centers, and Verizon
8 was able to produce that information in about a
9 week.

10 Now, what does that mean for the
11 record of this proceeding.

12 You're being asked to make a
13 recommendation to the FCC, and you don't have any
14 information available to you. There is nothing in
15 this record to tell you where competition has
16 developed in Delaware and where it has not.

17 If some member of the public comes to
18 you and asks, Hey, is there telephone competition in
19 my community, in my neighborhood, in my portion of
20 the state, your answer is going to be, Gee, I don't
21 know. We didn't ask that question.

22 Now, Verizon is, probably, going to
23 read some of the FCC orders.

24 If I was them, I would read from the

1 New Jersey decision that came out last night. They
2 are going to quote provisions from the FCC that says,
3 It's not going to look at the level of competition
4 that is occurring in a state. It is not interested
5 in a market share task. It's not going to set some
6 bar that CLECs have to get over before the bell
7 operating company will be allowed into long distance
8 business.

9 Now, that makes a lot of sense. The
10 FCC is not going to try to set a uniform standard for
11 the entire country. Each state is different.

12 But more importantly, the FCC, under
13 the consultative role that the states have,
14 recognizes that the states are going to be looking at
15 these issues.

16 The states are the ones that are going
17 to explore this evidence. The states are the ones
18 that are going that are going to be weighing it.

19 And based on that, the states are
20 either going to recommend that the 271 application be
21 approved, or tell the bell operating company it has
22 more work to do before the State Commission is going
23 to be willing to recommend approval of the
24 application.

1 It boils down to a very basic point.

2 AT&T wanted you to have information
3 available about what's going on in Delaware. And The
4 Hearing Examiner denied us that opportunity.

5 Before you sign off on Verizon's
6 application, before you decide up or down, how you
7 are going to vote on the things, you, at least, ought
8 to make sure that you have a complete record.

9 You, at least, ought to make sure when
10 people in Delaware ask you about the status of
11 competition, that you got facts before you, that will
12 allow to you answer that question.

13 CHAIR McRAE: Before we move to
14 Verizon's response, do any of the Commissioners have
15 any questions? Do you want to hear from Verizon
16 first?

17 VICE-CHAIRMAN TWILLEY: I have a
18 question.

19 I heard Mr. Martin say to us a few
20 minutes ago, that seven percent of the telephone
21 users in Delaware are not customers of Verizon.

22 And, therefore, I would gather from
23 that statement that there is competition in the
24 communications business here to the extent it is

1 seven percent.

2 Are you saying that there was never
3 any valid testimony in the record to support what he
4 just told us?

5 MR. KEFFER: I'm saying, we were never
6 allowed to test that assertion. Even if it's true,
7 where is that seven percent of the customers. Are
8 they all in Wilmington, or are they scattered
9 throughout the state? You don't know. We don't
10 know. Only Verizon knows. They were unwilling to
11 provide the information, and The Examiner said, that
12 was just fine.

13 CHAIR McRAE: Okay.

14 MR. KEFFER: We think you ought to be
15 applying a little higher standard here.

16 Certainly, give people their due
17 process rights to develop a record.

18 CHAIR McRAE: Let me clarify something
19 here.

20 It is, also, AT&T's chief assertion,
21 that's their operative question before the
22 Commission. One might argue that question is really
23 not the question they're asking. And, maybe, there's
24 a perception it should be, but it may, in fact, not

1 be the driving question for the Commission at this
2 point.

3 And the other point that you asked
4 about is, is that the only information in the
5 record.

6 I would just note, from what I see in
7 The Hearing Examiner's report, AT&T's witness,
8 Mr. Kirchberger confirmed the numbers and actually
9 gave a breakdown.

10 MR. KEFFER: That is --

11 CHAIR McRAE: I was responding to the
12 question here. You have answered him. I'm going to
13 move onto Verizon to address your point.

14 MS. CONOVER: Thank you, Chair.

15 I would like to address a couple of
16 the points that AT&T raised.

17 First, with respect to the due process
18 claim and the right of cross-examination of
19 Mr. Martin.

20 Again, this issue came up at a
21 prehearing conference when we were setting up witness
22 schedules. So, there is a not a transcript of it.
23 So, our recollections are -- we really have to rely
24 on our recollections.

1 But, I believe, what was argued at
2 that point was that the parties agreed, but there was
3 no dispute over the actual Track A facts.

4 Essentially, what AT&T wanted to do
5 was have argument about the significance of the Track
6 A facts. The seven percent facts. They did not
7 dispute them.

8 And based upon the discussion The
9 Hearing Examiner ruled that since the basic facts
10 were not disputed, it was not necessary to bring
11 Mr. Martin to the hearings for cross-examination.

12 Essentially, what he did was, he made
13 it a very clear condition that we were only going to
14 rely upon Mr. Martin's affidavit for the limited
15 Track A facts, which, essentially, the break down of
16 the number of competitors. So, he did limit us.

17 Again, that came up at the hearing,
18 and The Hearing Examiner reinforced that the Martin
19 testimony, because he had not appeared for
20 cross-examination, was going to be limited to the
21 bear Track A facts.

22 So, that was the condition, and we
23 agreed with it.

24 I might state, talking a little bit

1 about the Track A. Track A really was not disputed
2 in the case.

3 This was one of the reasons why The
4 Hearing Examiner excused Mr. Martin from the
5 proceeding.

6 The FCC said that Track A requires a
7 finding that there is, at least, one competing
8 provider that is an actual commercial alternative to
9 the petitioning character. That simply was not
10 disputed here.

11 In fact, Delaware has about 50,000
12 competitive lines, which is about close to seven
13 percent of customers in Delaware are using
14 competitors. That was really something that was not
15 disputed by AT&T. They had a concern that was not
16 enough, or that the geographical dispersion was not
17 adequate. They did not dispute the bear number.

18 I, also, might add in this case, we
19 were benefited by the fact, that under this
20 Commission's order, all of the CLECs in Delaware were
21 asked to respond to the order and provide to Staff,
22 essentially, a summary of -- provide data as to how
23 many competitive lines they had on a business and
24 residential basis, and they provided that information

1 to the Staff, which was presented and summarized in
2 Staff Exhibit 2A.

3 Again, as I understand it, not ever
4 CLEC responded. But that exhibit itself would be
5 sufficient to support a Track A finding, even if we
6 didn't have Mr. Martin's affidavit in the case.

7 So, I think this is really a bogus
8 issue, quite honestly.

9 As far as the discovery issue, I would
10 have to say, this issue was raised at the 11th hour
11 after the discovery deadline by The Hearing
12 Examiner.

13 AT&T filled a motion to compel,
14 literally a few days before the hearing, and after
15 the discovery deadline had already past.

16 Whereas, by contrast, in Virginia, the
17 issue was brought out very early in the proceeding.
18 And we opposed it. We don't think it is relevant.

19 But in that case, The Hearing Examiner
20 permitted or required us to produce the data. In
21 this case, The Hearing Examiner ruled we would not
22 have to, on the eve of trial, at the last minute, do
23 a special study to respond to AT&T's request.

24 He also agreed, and I would also state

1 that this evidence was really tangential. The
2 relevance of the geographical dispersion is really
3 tangential. The FCC has made it very clear that the
4 geographical dispersion of competition is
5 irrelevant.

6 And, again, it should come to no
7 surprise to anyone that competitors choose to go into
8 populated areas and to urban areas before they go
9 into rural areas.

10 This is recognized by the FCC. I am
11 sure this Commission recognizes it. It should not be
12 a surprise. It is not a factor, according to the FCC
13 in making a 271 determination.

14 CHAIR McRAE: Commissioners.

15 COMMISSIONER PUGLISI: Does the Staff
16 or Public Advocate want to speak?

17 PUBLIC ADVOCATE PADMORE: No.

18 MR. MYERS: I think I can agree with
19 both sides here. It goes back to what I was trying
20 to convey in my initial point, presenting two
21 different views to you about what the context of your
22 consultation should be in your decision.

23 Mr. Keffer is right. I read the
24 New Jersey order from last night that talks about

1 factors on the public interest side that the FCC says
2 they don't have to consider.

3 I think both he and Ms. Conover are
4 right.

5 Also, The Hearing Examiner concluded,
6 Track A was not disputed -- statutory ground of Track
7 A.

8 I think Mr. Keffer is right. This
9 Commission wants to have a full-blown detailed
10 picture of where competition is and where competition
11 is not. This record does not give you that.

12 I think, The Hearing Examiner took the
13 position that because Track A was undisputed, the FCC
14 had leaned away from these factors being considered,
15 that the competitors interest in keeping confidential
16 its business plans, as reflected by where they were
17 making entry, outweighed the minimal relevance of
18 geographic information.

19 So, again, what you are being
20 presented here with, and what underlies both parties
21 arguments, is their views of what you should have
22 before you and what you should paint for the FCC.

23 If you are going to paint whether they
24 have complied with the statutory requirements as

1 interpreted by the FCC, geographical dispersion,
2 given the consensus of Track A compliance is not
3 going to be considered by the FCC standing alone.

4 If you want to present a broader
5 picture to the FCC about what competition is in
6 Delaware and make a recommendation, these factors
7 should be considered, you will have a difficult time
8 on this record.

9 CHAIR McRAE: I think it goes back to
10 the point I was making in terms of the approach the
11 Commission might take.

12 If, in fact, we were examining this
13 from the state perspective, or compliance checklist,
14 which, from my observation is, basically, the course
15 that we followed in the hearing process and through
16 to what we have before us, and, of course, if there
17 is a different perspective you are looking at, there
18 are a couple of ways to look at it, from my
19 perspective.

20 One is, it is not necessarily a matter
21 that has to be resolved on this record today. We can
22 deal with the checklist compliance, and at the same
23 time, look at some of the issues we wanted to at a
24 state level.

1 But, I think, now, that that question
2 is before us, and as we look at the due process
3 issue, it has come up in the context of this. I have
4 my views about that.

5 But I, frankly, think we should try to
6 get through these issues one at a time and decide
7 where we want to be. It, certainly, would change the
8 cast, if we were to look at the posture of the state
9 interest broadly.

10 I would fully agree with this record
11 does not satisfy that. It does, in fact, speak to
12 the checklist compliance from the FCC perspective.

13 COMMISSIONER PUGLISI: Well, I don't
14 think we are here to look at the State interest
15 issues. We are here to look at the statutory
16 compliance.

17 The broader range of issues might be
18 interesting. Some of my colleagues at the university
19 might like to look at competition in some of the
20 smaller towns and how competition immigrates to those
21 towns. I don't think we are here for that today.

22 On the due process issue, given what
23 Ms. Conover said, if Mr. Martin's testimony was given
24 for the very limited purpose that she suggest, then I

1 don't think there has been a violation of due
2 process.

3 I read nothing else into his testimony
4 other than that very limited piece of information.

5 The geographical information, I don't
6 see its relevance to the statutory question. As we
7 sit here today, I don't see its relevance to this
8 Commission's deliberations.

9 But that's my view.

10 CHAIR McRAE: Any other Commissioners
11 have any comments from that point?

12 I would also note, it was mentioned
13 that there was no other evidence in the record. I do
14 think it is important to point out that we have quite
15 a few references in The Hearing Examiner's report as
16 to other documentation as to what the competitive
17 landscape looks like.

18 I would tend to agree it is not
19 de minimis.

20 But I need a motion to move --

21 COMMISSIONER PUGLISI: Madam Chair, we
22 have Cavalier sitting here today, which is a real
23 live competitor. There is evidence right there.

24 I would make a motion that we accept

1 The Hearing Examiner's finding and recommendations
2 concerning Track A Compliance.

3 CHAIR McRAE: Is there a second on
4 that?

5 COMMISSIONER CONAWAY: I will second
6 the motion.

7 CHAIR McRAE: All in favor say yea.
8 Yea.

9 COMMISSIONER LESTER: Yea.

10 COMMISSIONER PUGLISI: Yea.

11 COMMISSIONER CONAWAY: Yea.

12 VICE-CHAIRMAN TWILLEY: Before we vote
13 on it, I am going to vote in favor of it.

14 But I want to express what I regard as
15 severe inconsistencies, maybe almost bordering on the
16 point of hypocrisy.

17 There is no local telephone
18 competition Downstate. Zero. I mean, I don't know
19 where it is in Wilmington. I'm not very familiar
20 with Wilmington. That is almost another country in
21 terms of competitive activities, I guess.

22 But I feel uneasy when I hear
23 representations that competition is alive and well in
24 Delaware. It's, certainly, not alive and well in

1 Lower Delaware. And I represent Lower Delaware and
2 part of it.

3 And so, I feel uneasy when I am
4 sitting here listening to what I regard as untruths.

5 But the issue would appear to be
6 procedures instead of the real picture. That's
7 really what the situation has really emerged to be.

8 There is a benefit to the consumers of
9 Delaware to have another long distance carrier.
10 Nobody has made much of a point of that. But there
11 are two areas of competition at issue here.

12 One of them is to let Verizon get into
13 the long distance competition. And whoop-de-do, I
14 think as soon as they get this permission, there's
15 really going to be a real wham-bam business going on
16 as they try to take the customers from AT&T, for
17 example, and point out how great it's to going to be
18 that you can get all of this on one bill.

19 So, the customers of these
20 communications companies are going to benefit from
21 the long distance companies.

22 But the other flip side of the coin
23 is, it's at the expense of AT&T. We have already
24 approved wholesale costs, which Cavalier has said are

1 going to ruin it. Maybe they wouldn't ruin them.

2 But there's, certainly, been plenty of
3 argument and testimony to the effect that the
4 framework we have set up is noncompetitive.

5 The framework we have set up is not
6 going to result in any local telephone company's
7 coming in here in mass and trying to get customers.

8 So, what are we going to end up with?
9 We're going to end up with a monopoly, which will be
10 Verizon in the local telecommunications service and
11 expanded competition in interstate communication
12 services. And to the extent of the expansion of
13 interstate competition, us consumers benefit.

14 In the other area, we are not any
15 worse off.

16 So, from the perspective of what
17 should we do when we are faced with this kind of a
18 dilemma, I'm going to vote to support the motion.

19 CHAIR McRAE: Well, I think you have
20 eloquently stated some of the issues. I would not
21 want to at all be deceptive that there is not an
22 awareness.

23 I think it's articulated in The
24 Hearing Examiner's report of the fact that

1 competition is hardly at a level that any of us would
2 like to see it.

3 I am not certain that it is not
4 inherent in the structure of how we got to the
5 Telecommunications Act of 1996, if part of the
6 problems are not, certainly, built into that.

7 We also have some other issues in
8 terms of what the parties are willing to do with
9 their investments. I think there are proceedings
10 that we can look to in the future, and we, at some
11 juncture, may be revisiting some of those UNE
12 numbers.

13 But that's not what we have been asked
14 to do here today, in my view.

15 On that basis, I am trying to confine
16 my observations to what I'm being asked to consider.

17 We have a motion that speaks to
18 whether there is competition in Delaware. It does
19 not address necessarily the form, extent, or
20 geography, and to that end, I am calling for the vote
21 on that motion.

22 COMMISSIONER PUGLISI: Madam Chair, I
23 should have asked this before.

24 You had indicated earlier, you were

1 going to give the public the right to comment.

2 Do you want them to have the right to
3 comment before we vote on each of those separate
4 issues?

5 CHAIR McRAE: There is a public
6 interest segment that's part of the report. I
7 thought that would be a good opportunity then. I'm
8 not sure on the whole due process piece that that
9 would be the forum.

10 So, I would ask that we proceed with
11 this vote, and the next segment does speak to public
12 interest.

13 COMMISSIONER PUGLISI: That's fine.
14 Whatever you would like to do.

15 CHAIR McRAE: And the motion is then
16 the determination that there is track -- that the due
17 process issue is addressed in the Track A Compliance
18 -- that Verizon has met the Track A Compliance
19 component. That was moved and seconded. We were
20 about to vote.

21 VICE-CHAIRMAN TWILLEY: And I
22 interrupted.

23 CHAIR McRAE: All in favor say yea.
24 Yea.

1 COMMISSIONER LESTER: Yea.

2 COMMISSIONER PUGLISI: Yea.

3 VICE-CHAIRMAN TWILLEY: Yea.

4 COMMISSIONER CONAWAY: Yea.

5 CHAIR McRAE: Opposed? Abstentions?

6 Now, I do know Mr. Keffer raised the
7 public interest separately. That would be also be an
8 opportunity to hear from some of the public that's
9 present.

10 I will ask Mr. Keffer to make his
11 comments on that, first of all, followed by Verizon,
12 and then the public.

13 MR. KEFFER: It's the same point. It
14 goes to level of competition in the state. I have
15 said what I'm going to say.

16 CHAIR McRAE: Ms. Conover, don't feel
17 that you have to respond. Please.

18 MS. CONOVER: I just want to say one
19 thing. Two things.

20 One is, the FCC has found that
21 Verizon's entry into long distance is in the public
22 interest.

23 And the other point is, the Delaware
24 General Assembly has also determined that it is the

1 public policy of Delaware to encourage customer
2 choice to have competitive alternatives.

3 So, therefore, we don't believe this
4 Commission needs to make a determination of public
5 interest. We think it is manifestly in the public
6 interest to grant Verizon's long distance request.

7 CHAIR McRAE: I have received several
8 letters from parties in the public.

9 I assume there are some public out
10 there.

11 At this time, I will ask the public,
12 or the people who choose to speak to comment, if you
13 wish.

14 There is no one from the public here
15 to speak.

16 We will move along to the Public
17 Advocate and Staff.

18 PUBLIC ADVOCATE PADMORE: Well, I have
19 kind of the same feeling as Commissioner Twilley.

20 Some of my clients will benefit from
21 the increased level of competition that might come
22 from long distance.

23 But on the other hand, we get
24 complaints about local service, and I can't find any

1 other company to send them to, to try for service.

2 They only have Verizon to deal with,
3 particularly customers in Kent and Sussex, as
4 Mr. Twilley alluded to.

5 But The Hearing Examiner has made its
6 findings. I did not take exceptions to them. I
7 don't, at this point, since it is strictly a
8 compliance filing, we have to wait and see what
9 happens, if anything, happens at all.

10 CHAIR McRAE: Mr. Myers.

11 MR. MYERS: Just for clarification
12 purposes.

13 If we are talking about a finding
14 concerning the public interest in the context of
15 factors of geographical location and competition, I
16 will refer to the remarks I had before and go back to
17 what the Commissioners' view their role is here.

18 Again, indicating what the FCC says,
19 in itself, it does not think that the public interest
20 necessarily requires it to consider any of those
21 elements in this public interest analysis.

22 CHAIR McRAE: Do any Commissioners
23 have any comments?

24 COMMISSIONER PUGLISI: I guess the

1 question following what Mr. Myers said, whether we
2 need to even have a vote on the motion concerning
3 public interest.

4 MR. MYERS: Well, I don't want to
5 mislead you.

6 If you believe that there is a public
7 interest problem, I guess, then in that situation,
8 you have the right, as any other party, to convey
9 that to the FCC to try to convince them to do that.

10 I'm just saying, in the context of
11 their ruling and the body of decisional law, or
12 decisional rulings made by the FCC, they have said,
13 and they reemphasized it last night in New Jersey,
14 they did not think it was necessary, in effect, that
15 they consider those factors in the public interest.

16 I am sort of reporting the facts, not
17 advocating the position.

18 CHAIR McRAE: The only reason due
19 process is not addressed in the report, and that's
20 why I took that separately, we need to go through
21 these issues and ultimately deal with The Hearing
22 Examiner's report. The due process piece was,
23 essentially, presented separately.

24 VICE-CHAIRMAN TWILLEY: What we are

1 supposed to adopt?

2 CHAIR McRAE: Well, that's from last
3 week. The proceeding on June 18th. We're, actually,
4 working through the compliance checklist and the
5 issues that have been raised around that. And the
6 first one was due process. There was also public
7 interest, which is kind of tied into that whole Track
8 A discussion. There were specific exceptions
9 regarding Checklist Items 1, 2 and 13.

10 Moving through that, I guess, the next
11 point is with respect to Checklist Item 1.

12 My recollection is both AT&T and
13 Cavalier took exceptions to those checklist items.

14 VICE-CHAIRMAN TWILLEY: Haven't the
15 arguments been made that deal with these facts?

16 CHAIR McRAE: They have given various
17 comments from the outset dealing with what the
18 various issues are. We're going through them.
19 Checklist Item 1.

20 All of the parties have something to
21 say about pricing, GRIPS piece, and those are were
22 all under one.

23 That's Checklist Item 1. There are
24 issues associated with that. I think AT&T had an

1 issue.

2 MR. KEFFER: That's Verizon's
3 exceptions on GRIPS.

4 CHAIR McRAE: I'm sorry. Verizon had
5 an exception.

6 MS. CONOVER: Can I proceed?

7 CHAIR McRAE: Yes.

8 MS. CONOVER: I tried not to use GRIPS
9 because it is one of those acronyms I personally
10 hate. Si, I tried to use interconnection points.

11 But, essentially, our argument there,
12 as I discussed earlier, we believe that The Hearing
13 Examiner was in error in imposing a condition that
14 prohibits us from attempting to negotiate a different
15 physical -- a different financial responsibility for
16 transport than a physical responsibility for
17 transport.

18 I believe I did really summarize our
19 position to begin with. But I will reiterate, we are
20 not looking for this Commission to decide, once in
21 for all, whether or not you think we should or should
22 not be able to negotiate of these GRIPS position.
23 That would come up, perhaps, in an interconnection
24 arbitration.

1 What we are saying is, we should be
2 permitted to negotiate, to attempt to negotiate those
3 provisions.

4 And the FCC has made it very clear
5 that our negotiating position on GRIPS does not, in
6 fact, violate any existing rules addressed in the
7 context of the Pennsylvania 271 provision, this exact
8 argument that was raised.

9 We would respectfully request that the
10 Commission remove that provision that prohibits us
11 from negotiating one of these provisions. And we
12 would ask that, essentially, that be addressed in
13 another proceeding, if you believe that is
14 appropriate. It is not appropriately addressed
15 here.

16 CHAIR McRAE: Any questions on that
17 issue? We will go all the way through.

18 COMMISSIONER PUGLISI: I would like to
19 hear what the other parties have to say. We did not
20 hear Staff or the Public Advocate address that all.
21 I don't know if Staff or the Public Advocate would
22 like to say anything, or if AT&T, or if Cavalier want
23 to respond.

24 MR. MYERS: I would like to say

1 something. I think AT&T and Cavalier are the people
2 that you should hear from also.

3 CHAIR McRAE: Actually, I'm surprised
4 when you said it was not one of your issues. It is
5 commented on in this part of AT&T discussions in The
6 Hearing Examiner's report. It is not your issue.

7 MR. KEFFER: It is an issue we are
8 deeply concerned about.

9 We did not take exception to The
10 Hearing Examiner's report. I would like to respond
11 what Verizon has to say.

12 I think Cavalier is more directly
13 immediately impacted, and, I think, Mr. Zitz wanted
14 to go first.

15 MR. ZITZ: Chair McRae and
16 Commissioners.

17 This is a significant financial issue
18 for us.

19 At the time I addressed this
20 Commission back in April, there was a formal docket,
21 I believe, 320-02, and I would please ask that you
22 look at your discussion on the record and see what
23 your concerns were at that time, because they are
24 still serious concerns.

1 At this time, the bill that Verizon
2 owes us is now well in excess of ten million
3 dollars.

4 So, a company my size is hardpressed
5 to put aside a ten million dollars debt. I think
6 that this issue is one for other competitors, who
7 will enter the Delaware marketplace. So, I think
8 this is something that the issue here in that docket
9 and in the outcrop of Regulation Docket 52 really
10 need to be addressed here, because, I think, this
11 gets to the heart of competition.

12 CHAIR McRAE: Okay. Thank you.

13 Mr. Keffer.

14 MR. KEFFER: This is an issue where
15 The Hearing Examiner got it right.

16 Checklist Item 1 requires that Verizon
17 provide interconnection to its competitor.

18 The Act says that those competitors
19 can choose where they want to interconnect.

20 Verizon says, euphemistically, they
21 want to negotiate, quote/unquote, how that
22 interconnection is going to occur. What Verizon
23 means by negotiate is, they are going to use their
24 huge size and their market power to impose on small

1 CLECs, like Cavalier and others, how that
2 interconnection is going to take place.

3 What the examiner is telling you is
4 that, now that he has heard the evidence, he believes
5 that Verizon cannot be found in compliance with the
6 checklist, if it is allowed to run free and
7 negotiate, quote/unquote, with small CLEC competitors
8 the way that it wants to.

9 What he's saying to you is, if you're
10 going to say that they're compliant with the
11 checklist, then a condition on a requirement that
12 they allow the CLEC to elect a point where they're
13 going to interconnect, and have that be the point of
14 financial responsibility.

15 Verizon brings its traffic to that
16 point. CLEC brings its traffic to that point. And
17 the costs are borne by each party on each side of the
18 point of interconnection.

19 Verizon wants to say, yes, CLEC, you
20 can interconnect wherever you want, but for
21 financial purposes, you got to bring your traffic
22 right up to our end office. We're going to hand you
23 your traffic right at our end office. Everything
24 that occurs beyond that is a cost burden to you.

1 All the examiner is saying, No,
2 shouldn't work that way, most states have found it
3 shouldn't work that way, asking a condition of 271
4 compliance on that requirement. It's appropriate.

5 CHAIR McRAE: Let me understand
6 something in connection with that.

7 If you don't have, and I realize it is
8 another proceeding, I'm not sure how deeply I want to
9 get into that, if you don't have some control, how
10 does the CLEC determine, or how does the local
11 provider, the local service provider, how do you
12 determine for convenience a CLEC wants to put it some
13 distance in a place that fits its needs.

14 MR. KEFFER: That's its right. That's
15 the whole idea behind the provision of the Act that
16 allows the CLEC to select the point of
17 interconnection. Interconnection point.

18 Congress recognized that the R BOCS
19 are everywhere, and they got this huge presence and
20 huge market power and CLECs are just starting up.
21 That provision is intended to give the CLEC some
22 ability to work their way into the market.

23 I'll agree with you, it is not a
24 provision that's perfectly balanced. It is not

1 intended to be perfectly balanced. It is intended to
2 convey a benefit upon the CLECs to allow them to
3 depict how this is going to occur.

4 COMMISSIONER PUGLISI: Well, you made
5 the point, Mr. Keffer, and I don't think Verizon was
6 disputing that the CLEC can choose the point of
7 interconnection.

8 But under the statute that you cited,
9 or referred to, does it also indicate there that the
10 ILEC has to bear the cost of that.

11 MR. KEFFER: I believe it does. I
12 believe that is what Congress intended.

13 Now, all that Congress is saying is
14 that the FCC has never decided one way or the other.

15 When she says their GRIPS proposal
16 does not violate any FCC rules, that's right, because
17 the FCC has not stepped up to it yet. There are a
18 lot of things the FCC has not stepped up to yet.
19 That's just one of them.

20 Verizon -- it is very clever. The
21 first time I saw this, I applauded their attorneys
22 for coming up with it.

23 They are trying to separate physical
24 responsibility from financial responsibility. Well,

1 it is very clever. If you read the Act and think
2 about it for 30 seconds, you will see it is not what
3 Congress intended.

4 Most states have come out, as I just
5 stated.

6 COMMISSIONER PUGLISI: Are you
7 suggesting when you use the word most, because I know
8 you always use your words carefully, are you
9 suggesting some states have not adopted your view on
10 it?

11 MR. KEFFER: Well, I'm using my words
12 carefully because I don't want to stand here and
13 sound like I've researched the issue thoroughly and
14 up to date.

15 The overwhelming majority. Whether
16 there are some that have gone the other way, I am
17 sure Ms. Conover can fill you in, if that is the
18 case.

19 MR. ZITZ: May I respond, also.

20 I think in this case, Verizon had a
21 contract with Cavalier.

22 Verizon made payments on that contract
23 for two-and-a-half years. Now, Verizon decides it
24 doesn't want to pay. I think that spells significant

1 financial consequences for a CLEC who is not as large
2 as Verizon and does not have the financial
3 wherewithal that Verizon does.

4 So, if I were not judicious and
5 careful in managing other parts of my business, this
6 could spell disaster for me.

7 So, I think, that when I attempted to
8 disconnect them for nonpayment, as they do to
9 subscribers in Delaware every day, they came running
10 here to say, foul play.

11 Well, I am asking for the same ability
12 to disconnect customers for nonpayment that Verizon
13 imposes on its customers every day.

14 So, I mean, there really need to be
15 some parody here.

16 Thank you.

17 MS. CONOVER: Chair, could I have a
18 point of clarification here, if it is appropriate?

19 CHAIR McRAE: Yes.

20 MS. CONOVER: I have heard Mr. Zitz
21 say a few times that we suddenly changed our practice
22 and suddenly stopped paying them for this transport.

23 What he has not said, is that we
24 designed a new Interconnection Agreement with

1 Cavalier. And that is what, formerly Conectiv, that
2 is why there was a change. It is absolutely clear.
3 There was a new contract. It was signed and was
4 filed with this Commission and approved.

5 And we believe, under that new
6 contract, we are not -- it does have a GRIPS
7 provision in it. We are not obligated under that
8 contract to pay the transport. And that is the
9 dispute that is in the pending proceeding.

10 I just want to say that for
11 clarification.

12 CHAIR McRAE: The difficulty with
13 going down this path is, in fact, the fact it is a
14 pending matter for the Commission to resolve.

15 The awkwardness of this process is
16 some of this is spill over, and it is very difficult
17 to keep them separated because they do bear on what
18 we have before us. That is a fact of a certain
19 proceeding -- the interpretation of that contract.

20 So, I am going to move on to
21 Mr. Padmore.

22 PUBLIC ADVOCATE PADMORE: Thank you.

23 I agree that this is not the
24 appropriate place to decide the dispute between

1 Verizon and Cavalier.

2 But my concern, which was expressed in
3 my brief to The Hearing Examiner about that dispute
4 is that Cavalier is the only alternative,
5 facility-based carrier in the State.

6 And, I think, it would benefit the
7 public if that matter of the GRIPS were clarified or
8 resolved prior to the Commission making the final
9 decision on 271. Because, I think, it is intertwined
10 with the concept of interconnection and for CLECs.

11 But I did not object or accept The
12 Hearing Examiner's proposal because I think he does
13 offer you at least one solution to the problem.

14 If the Commission should conclude
15 otherwise, I would think then urge the Commission, as
16 an alternative, and, perhaps, the Commission could
17 consider this, to order The Hearing Examiner and the
18 parties to conduct an expedited proceeding so this
19 matter might be resolved as quickly as possible, and
20 before the Commission can send in its final report to
21 the FCC.

22 That is all I have to say on this
23 issue.

24 CHAIR McRAE: Well, I don't actually

1 know where it is in our process at this point.

2 Why don't we hold that. We can talk
3 about that when we are dealing on the report.

4 Mr. Myers.

5 MR. MYERS: Three things on this.

6 One, as everybody has told you, The
7 Hearing Examiner, I think, quite appropriately
8 declined to resolve the specifics of the Cavalier,
9 AT&T dispute because it involves, in his view, and,
10 again, quite appropriately, the specific terms of
11 specific contract.

12 And GRIPS has its rationale, I guess,
13 in sort of a cost calculus between reciprocal comp
14 rates and transport rates, and which side is going
15 to, in effect, gain an advantage by paying one or the
16 other. It sometimes informs where you want to
17 interconnect.

18 If you're a reciprocal comp rate is
19 lower than your transport rate, you want to
20 interconnect further away, so they pay transport
21 rather than reciprocal comp.

22 He, in that situation, decided to
23 decline to resolve the specifics dispute.

24 When he turned to the general issue, I

1 think he came to the right conclusion. But I would
2 read his recommendation with a little more nuance.

3 I think what motivated The Hearing
4 Examiner in this particular case was that, he felt,
5 that the GRIPS things had become a take it or leave
6 it proposition.

7 For Verizon, connected at end offices
8 or not, if you don't like it, you bear the cost of
9 initiating an arbitration and pursuing the costs of
10 that, something for a small competitive carrier may
11 not be available.

12 So, what, I think, he was trying to
13 get at, in his conditioning was, in effect, a burden
14 shifting factor that the presumption should be that
15 there is a single point of interconnection within
16 LATA, the CLEC gets to choose that.

17 The presumption is that the physical,
18 P-H, physical point of interconnection is the fiscal,
19 F-I point of interconnection, and if Verizon believes
20 that that's an unfair burden, cost burden to them, it
21 is their obligation to file for an arbitration
22 shifting the cost to them.

23 It doesn't say that. He comes out in
24 a little bit in more absolute terms. But, I think,

1 that is the process he was trying to get at.
2 Negotiations of the GRIPS is not negotiation of the
3 GRIPS in most situations. It is, in effect, Verizon
4 saying, Take it or leave it, or arbitrate it, which
5 puts new competitors in the situation.

6 What he was doing, and, I think, it is
7 consistent with what the Third Circuit case that
8 Ms. Conover cited to you says, the presumption falls
9 with a single point between both the physical and
10 fiscal points of interconnection.

11 And if Verizon wants to do it the
12 other way, they can petition the Commission, and the
13 Commission can consider whether, in effect, cost
14 should be shifted some place else.

15 If you read it that way, I think it is
16 eminently reasonable to proceed forward on the
17 general issue with GRIPS.

18 Finally, again, more of a reporter
19 than an advocate. Again, I report the New Jersey
20 ruling as of last night talks about the single LATA
21 Interconnection point, takes it, finds New Jersey
22 complies because there is physical interconnection.

23 It has agreed, or Verizon has agreed
24 to physical -- P-H, physical interconnection in one

1 contract in New Jersey and rejects -- and, I think,
2 it was Cavalier's assertion in New Jersey and rejects
3 it either as a matter of interconnection or
4 compensation. New Jersey has ground to deny
5 InterLATA in New Jersey.

6 Just as an aside, there is a footnote,
7 Delaware has made the big time, the FCC cites there
8 is a pending proceeding about this in Delaware.

9 CHAIR McRAE: Are there any questions
10 or comments from the Commissioners on this issue?

11 For lack of easier use of the terms
12 GRIPS at this point --

13 COMMISSIONER PUGLISI: Well,
14 Mr. Myers' reading or interpretation of The Hearing
15 Examiner's position, I found quite interesting. It
16 was not the reading I had. I can understand his
17 reading of it.

18 I am curious about the reaction of
19 Verizon to that reading, which, I think, differs from
20 the approach that they have taken, or their reading
21 of it as they have it addressed it in their
22 exceptions.

23 MS. CONOVER: Thank you. Let me
24 address this.

1 I also heard that interpretation.

2 Unfortunately, I don't think that is
3 exactly what The Hearing Examiner said.

4 But, I think, what Mr. Myers explained
5 is really more closely a way the arbitration, or the
6 negotiations process works.

7 Our witnesses, I think, made it very
8 clear, this is not one flavor of GRIPS. There are a
9 lot of different variations.

10 Essentially, what we are talking
11 about, if I can give you an example, let's say you
12 have a customer -- one of our customers, Verizon
13 customers in Dover, making a call to a CLEC number
14 that is in Dover. But the CLEC only has their point
15 of presence, and they have the absolute
16 responsibility and opportunity to choose a physical
17 point of presence. We don't dispute that. They
18 choose a point of presence in Philadelphia, as is
19 their right. They would say, we have, we must, incur
20 the cost to transfer the call from Dover all the way
21 to Philadelphia, which is not a cost we would
22 ordinarily have to incur.

23 What we are saying is, we would like
24 to be able to negotiate, either a place in Dover, or

1 someplace a little bit closer. Someplace that's
2 geographically relevant to do that.

3 But there are many different flavors
4 of GRIPS.

5 What I have a problem with is The
6 Hearing Examiner makes a blank determination, I
7 think, because he believed that this was against
8 current FCC rules, makes a blank determination that
9 we cannot do that.

10 And the exception that he gives is
11 really no exception at all, because, essentially, we
12 can only do it if we can show that the CLECs are
13 negotiating in bad faith and chose a point only to
14 cause us expense, when other alternatives are no more
15 cost to the CLEC.

16 Well, that's never going to be the
17 case. This is always going to be cost sharing.

18 So, I think, what happened in real
19 life, we attempt to negotiate a reasonable
20 provision,, or some reasonable allocation of
21 financial responsibility, looking at what our
22 business is, what the CLEC business is, what the
23 network is that they have and come to a resolution.

24 If we can't get a meeting of the

1 minds, sometimes we bring an arbitration, sometimes
2 the CLEC would bring an arbitration, and this
3 Commission would make a determination.

4 That is the way that the process
5 actually works today.

6 Our problem is, having, essentially,
7 this absolute prohibition, except in a condition with
8 a condition that we could never meet, having this
9 absolute prohibition of our ability to negotiate some
10 more equitable allocation of these transport costs.

11 Again, the transport costs in Delaware
12 are huge. I think if you look at the figures that we
13 submitted in the case, as to the numbers of
14 interconnection trunks, we have proportionally a huge
15 number of interconnection trunks devoted to the CLEC,
16 essentially.

17 And what we're saying is, in order to
18 manage our business, and to manage these costs that
19 we otherwise would not have had, we would like the
20 flexibility to negotiate provisions that we think are
21 equitable.

22 So, I admit, some Commissions have
23 ruled against us. Some Commissions have ruled for
24 us. Some Commissions are considering it. I don't

1 even intend to guess how this Commission might
2 ultimately come out in the interest before you.

3 What we're saying is, here, in this
4 context, we do not believe it is appropriate to have
5 a blanket rule that takes away our flexibility to
6 negotiate some kind of equitable allocation of those
7 financial burdens.

8 MS. IORII: Madam Chair, I understand
9 the Commission's consultant is sitting to my right.
10 He would like to say something to the Commissioners,
11 if that's appropriate.

12 MR. HARTMAN: My name is
13 Paul Hartman. H-A-R-T-M-A-N.

14 I was trying to figure out how this
15 thing was going to work. I always like to know why
16 it is a problem.

17 Where I had to go back, and this is
18 not the case in Delaware, so this is an issue that
19 does not show up in Delaware, but it could be an
20 explanation of why GRIPS.

21 If you have a metropolitan area that's
22 served by more than one Incumbent LEC, and in the
23 case, it would be, for example, a bell company, and
24 what is called an independent. You don't have any

1 independents in Delaware. You have one company.

2 But there are 1,400 of the little
3 suckers around. So, in other states, they are all
4 over the place. Pennsylvania might be one.

5 CHAIR McRAE: We do have Cavalier.

6 MR. HARTMAN: Cavalier is a CLEC.

7 These are ILECs. Incumbent LECs. Real, live
8 Incumbent LECs.

9 CHAIR McRAE: Local competitors.

10 MR. HARTMAN: They have separate
11 franchise areas. They serve part of this town. And
12 I will pick on Verizon. Verizon serves this part of
13 town. And there is something called extended area of
14 service between these two Incumbent LECs. Been there
15 forever. How they settle, it is all over the map.

16 The issue, if you look at it from the
17 independent. Let's say, they're even small, and they
18 might even have a rural exemption, which, again, does
19 not apply to Delaware at all, but this company has a
20 rural exemption that says, I don't have to
21 interconnect with no CLEC. It does not say it
22 exactly that way in the Act. That's how the
23 independents look at it.

24 Well, now you have its local, and

1 Verizon, I will pick on Verizon, not necessarily, but
2 they have Interconnection Agreement with the CLEC for
3 reciprocal comp, which is local traffic, which would
4 include the EAS traffic to this independent.

5 So, suddenly this independent is
6 seeing traffic coming from some unknown entity. It
7 is not their buddy they are used to seeing, Verizon
8 in this case, but someone else. And they have no
9 contractual agreement with these people.

10 So, the issue is, who pays who what.
11 The independent says, I am carrying traffic for
12 someone I don't even know. Somebody owes me some
13 money.

14 Verizon looks at it and says, it ain't
15 me. I'm not the one. It's not my traffic. I'm not
16 paying you any money.

17 The CLEC says, Who are you? I have an
18 agreement with Verizon to terminate all local
19 traffic. It does not differentiate whether it has to
20 be terminated by you or someone else. Have a nice
21 day. See you later. It has been a mess.

22 Then, I listen to what Verizon talked
23 about. I'm not putting words in their mouth. This
24 is how I interpreted it. Where they said, there is a

1 problem in Philadelphia. Well, it is still the same
2 Verizon, but they are really two different
3 companies. Maybe they're not. There is Delaware and
4 Pennsylvania. This is just me thinking about it,
5 unincumbered by the thought process. What is the
6 settlement between Delaware and Pennsylvania?

7 You can say, Well, it's an internal
8 thing. Who cares? It might be more like the
9 independent and the bell company, arguing on who has
10 the money and who does not have the money.

11 So, what I am trying to get to and
12 trying to figure it out, it looks to me, the genesis
13 of GRIPS may have come from a settlement issue, which
14 really from the independent standpoint, has nothing
15 to do with Delaware.

16 But as a concept, certainly, is
17 applicable, perhaps, to other Verizon states.

18 CHAIR McRAE: Well, actually, I
19 believe it does have authority in some specific
20 agreements between Verizon and Cavalier here in
21 Delaware. It is a subject of a proceeding in
22 Delaware.

23 So, it is not a hypothetical at this
24 point. It is contract interpretation issue. Of

1 course, it does bear on this, and the difficulty in
2 sorting it out continues. And I think this even adds
3 to it a little bit more.

4 I appreciate some of the clarification
5 we have gotten. We will end up being here all day
6 dealing with this issue. It may be that the
7 alternative method is to expedite the process on
8 GRIPS, or take some other measures to address it. I
9 think it is entirely too involved to speak to it here
10 with the level of information that we have and absent
11 the record, frankly.

12 I have been indulging questions. But
13 at the same time, it is contributing to a good bit of
14 confusion, frankly.

15 So, unless there are some other
16 comments related to that subject, I will ask that we
17 move onto the next item. Understanding that we
18 ultimately have to address The Hearing Examiner's
19 exceptions in completion, and at that point, we will
20 need to decide what we're going to do with this.

21 For purposes of getting through all of
22 this, I will ask that we move along.

23 I think the next item was Checklist
24 Item 2, which had to do with the rates. I don't know

1 if Mr. Keffer wants to speak to the prices or not,
2 TELRIC compliant. I think there is another part of
3 that Checklist Item 2. That is the first one.

4 There was also wholesale billing that
5 is under Checklist Item 2.

6 Do you want to start with pricing?
7 Please.

8 MR. KEFFER: I will be very brief.

9 We raised exceptions about pricing in
10 order to make the complete record that you can pass
11 onto the FCC.

12 I told you before, that recurring
13 rates are too high and still take a relative
14 competition and need to be reduced, particularly
15 because in other proceedings, you have reduced some
16 of the cost inputs that go into those rates. But you
17 rejected my request to reduce those rates.

18 With regard to the non-recurring
19 charges, I appealed those to the Federal District
20 Court. The Court remanded them to this Commission
21 with instructions that Verizon's non-recurring
22 charges need to be based on the costs an efficient
23 provider would incur using the most modern technology
24 available. You approved non-recurring rates, based

1 on Verizon's embedded technology, with an adjustment
2 to try to reflect efficient use of embedded
3 technology.

4 Again, I am not standing here with any
5 expectation that you're going to reduce either the
6 recurring rates, or the non-recurring rates, but I do
7 feel that I need to inform the Commission that today
8 AT&T will be filing yet another appeal in Federal
9 District Court challenging your findings on the
10 non-recurring charges. Arguing, once again, that the
11 Commission failed to establish non-recurring rates
12 based on forward-looking efficient technology.

13 CHAIR McRAE: Any other parties?

14 Anybody else have any comments on
15 pricing beside AT&T's exceptions?

16 MS. CONOVER: We believe this
17 Commission has adequately addressed it. I have no
18 further comments.

19 CHAIR McRAE: Mr. Padmore.

20 PUBLIC ADVOCATE PADMORE: No.

21 CHAIR McRAE: Mr. Myers.

22 MR. MYERS: I am thankful the
23 Telecommunications Act has provided much more work
24 for lawyers.

1 CHAIR McRAE: Well said. Mr. Keffer's
2 statement confirms that.

3 As we move along, we need a little
4 levity in this proceeding.

5 How about moving then to the billing
6 issue, which is also part of the Checklist Item 2.

7 MR. KEFFER: The exception there
8 relates to the fact -- well, there are two aspects.

9 First, Verizon is leaning on the OSS
10 testing that was done in Pennsylvania. The fact the
11 systems are the same in Delaware as they are
12 Pennsylvania. Well, electronic billing was never
13 tested in Pennsylvania. There is no test that the
14 Commission can locate.

15 There have been problems with the
16 electronic bills that AT&T has received from the
17 little bit of CLEC business that it does. Things
18 like retail charges showing up on the wholesale bill
19 and whatnot.

20 Again, the concern that we raised is,
21 there has been testing of the electronic bill, and
22 the bill continues to reflect shortcomings and the
23 way it is presented. Can't be sorted. Can't be
24 audited.

1 CHAIR McRAE: Did you see the
2 affidavit, or the letter that was filed by Verizon?
3 It is not an affidavit. It was a letter dated June
4 17th. I think it is attached to the exceptions.

5 MR. KEFFER: I think you can tell from
6 my reaction, no.

7 CHAIR McRAE: Well, it was attached.

8 MS. CONOVER: Yes, it was.

9 CHAIR McRAE: I don't know about your
10 copy. It was attached.

11 MR. KEFFER: It never made it to my
12 eyes.

13 CHAIR McRAE: I will let Verizon
14 comment as to its letter.

15 Cavalier, did you?

16 MR. ZITZ: We did not file an
17 exception on that.

18 CHAIR McRAE: Verizon, while
19 Mr. Keffer is looking that over.

20 MS. CONOVER: If I can respond.

21 AT&T did raise a number of issues.
22 They raised the issue that the bills had been
23 improperly formatted. We have fixed that problem. We
24 filed verification to that effect.

1 I would also note that these same
2 kinds of issues were addressed in the New Jersey 271
3 decision that came out last night. Essentially, they
4 concluded that in New Jersey, which uses the same
5 billing system, it was in compliance with the Telecom
6 Act.

7 AT&T also explained that we did not
8 provide the CLEC with accurate wholesale bills
9 because of improper charge for retail services.

10 Again, the FCC, this was never --
11 first of all, this was never identified as a Delaware
12 problem. This was specifically a problem that was
13 found in New Jersey bills. We did not find this in
14 Delaware bills.

15 But in any event, the FCC rejected,
16 essentially, the same claim in New Jersey, where it
17 was raised there, noting that in New Jersey where it
18 actually existed, the problem actually existed, it
19 only involved two to three percent of the bills, and
20 they believe that's an acceptable number because it
21 is really not competitively significant.

22 So, we believe between our
23 verification that we filed, and also the
24 determination of the FCC, which considers some of the

1 same issues that AT&T has just raised, we have
2 clearly met this checklist item and the conditions
3 that were imposed by The Hearing Examiner.

4 CHAIR McRAE: Do the people not
5 accepting have any comments on this?

6 PUBLIC ADVOCATE PADMORE: None.

7 CHAIR McRAE: That's the Public
8 Advocate and Staff.

9 MR. MYERS: Ms. Conover is right.

10 There was some discussion in New
11 Jersey that came out late last night about complaints
12 about billing processes in New Jersey. I've not had
13 a chance to try to work my way through there. It is
14 particularly complicated -- because it is
15 additionally complicated because New Jersey uses the
16 same billing systems, but a different processing, I
17 guess, plan. I am not sure whether Delaware uses the
18 Pennsylvania process, or the New Jersey SOP.

19 MS. CONOVER: We use the Pennsylvania
20 one, which, again, was also affirmed by the FCC.
21 They granted the Pennsylvania 271 proceeding.

22 MR. MYERS: We didn't take exception.

23 COMMISSIONER PUGLISI: I know Staff
24 did not take exception.

1 I guess my question is, whether the
2 letter from Ms. Conover, in Staff's view, satisfies
3 the condition that The Hearing Examiner set forth
4 concerning the compliance on this wholesale billing
5 issue. That's would what I would like to know.

6 AT&T and Cavalier are welcome to chime
7 in any time they want on this.

8 MR. KEFFER: I read the letter. It is
9 very interesting. It is an assertion from Counsel
10 that identified concerns about the billing system,
11 and please trust Verizon, they fixed them.

12 But there is, certainly, no
13 independent verification of that.

14 MS. CONOVER: It was intended to be a
15 verification by me, true, but not as Counsel, but as
16 an officer of Verizon Delaware.

17 I believe there is provision under the
18 code, for example, an acknowledgment can be done via
19 a signed document by an officer of the company.

20 So, it was in that sense that it was
21 signed as a verification.

22 I might add, it was not exactly clear
23 what The Hearing Examiner meant, but he did use the
24 term verification. We did file that as a

1 verification that the fixes had been made, and they
2 were tested and worked.

3 MR. KEFFER: Is Ms. Conover suggesting
4 in addition to general counsel duties, she is now an
5 expert in billing systems?

6 I mean, it's what it is. But it does
7 not prove that anything has been fixed. It is an
8 assertion from Counsel that fixes have been made.

9 Until someone looks at it and conducts
10 an audit, you won't know whether that gives you pause
11 -- 271 recommendation or not.

12 CHAIR McRAE: Isn't that going to come
13 up in the performance assurances? Isn't billing one
14 of the areas that we addressed? Does that not speak
15 to billing issues?

16 MS. CONOVER: There are metrics that
17 cover billing accuracy and billing issues. There
18 are. That's correct. Sort of on an ongoing basis.
19 There will be metrics that deal with billing
20 accuracy.

21 These issues that were raised by AT&T
22 are really down into the nits and lice of the bill,
23 quite frankly. These are things that for system
24 issues that we fixed.

1 I'm not going to represent that these
2 specific issues are, in fact, going to be measured by
3 the billing records. There are, in fact, billing
4 records that measure billing accuracies.

5 COMMISSIONER PUGLISI: And there are
6 penalties, if there is a lack of accuracy.

7 MS. CONOVER: Yes.

8 COMMISSIONER PUGLISI: So, the system
9 may be already in place to address the extent to
10 which there are defects in the billing system on an
11 ongoing basis.

12 MS. CONOVER: Yes.

13 CHAIR McRAE: It maybe that metrics
14 don't go far enough. I recall there are some, and
15 there is a mechanism to address that.

16 MR. HARTMAN: I think the point was,
17 or the question is whether the current metrics will
18 capture what has been certified or verified here. I
19 don't know if that's true.

20 What I heard is, no one else knows if
21 it's true.

22 CHAIR McRAE: I think that's pretty
23 true.

24 AT&T read the letter, and they said,

1 so what. They have not tested it. They don't have
2 the OSS, whatever the metric that was agreed upon. I
3 understand there is more detail to what is being
4 asked for here. Probably, you are not going to know
5 until people applied it and tried it. If the
6 problems continue then --

7 MS. CONOVER: In fact, as part of the
8 verification, we, actually, looked at all Delaware
9 bills in the month of May to verify that, in fact,
10 this issue -- or these issues -- the two that were
11 identified by AT&T were fixed by the system fixes
12 that were implemented by the company in the April,
13 May time frame.

14 In the case itself, we had testified,
15 or our witnesses have testified that we had fixes
16 that either had begun, or were in the process to,
17 essentially, resolve these problems.

18 What we did here, we said, yes, those
19 fixes went into effect during this time period. And
20 we, actually, looked, at the bills, at every single
21 bill to make sure that problem did not recur in
22 Delaware and verified that was the case.

23 CHAIR McRAE: I think the question for
24 the Commission, is this material enough in addition

1 to warrant some action that might preclude the 271,
2 or the continuation of the condition. But, again, I
3 think we have heard the arguments on it.

4 We looked at the bottom line. Is this
5 something we need to address?

6 I think the last issue, as I have it
7 is reciprocal comp, which is also the subject of a
8 proceeding before the Commission.

9 I think AT&T, you raised a point on
10 that, Mr. Keffer, as did Verizon with respect to The
11 Hearing Examiner's requirements.

12 MS. CONOVER: Correct.

13 CHAIR McRAE: AT&T had a point on
14 reciprocal comp, also.

15 MR. KEFFER: It is simply what I said
16 in my opening remarks.

17 How can you find Verizon in compliance
18 with Item 13, if they can unilaterally change the way
19 that they pay reciprocal compensation to AT&T and
20 other CLECs.

21 CHAIR McRAE: Okay. We won't make you
22 talk more, I swear.

23 MR. KEFFER: One of your colleagues
24 looked like he was getting ready to ask me a

1 question.

2 COMMISSIONER PUGLISI: No.

3 CHAIR McRAE: He knows better than
4 that.

5 CHAIR McRAE: Okay. Ms. Conover.

6 MS. CONOVER: If I can address that.

7 Again, this is something that is in
8 the proceeding in the complaint brought by AT&T.

9 We don't believe this is a unilateral
10 modification by Verizon.

11 We believe under our contract, we are
12 not obligated to pay reciprocal compensation for
13 Internet-bound traffic. If anyone made a unilateral
14 exchange, we believe AT&T billed us for
15 Internet-bound traffic improperly. They billed us
16 for the traffic, and we protested and said, We are
17 not going to pay for Internet-bound traffic.

18 That happened two-years-ago. They
19 waited two years to bring the complaint to the
20 Commission. And we will resolve it in good time.
21 And you will decide whether they are right, or we are
22 right.

23 We do not believe this is in any way a
24 unilateral change. We believe that we were enforcing

1 what is the intent of the contract that we would not
2 pay reciprocal compensation on Internet-bound
3 traffic. That is the nub of the dispute.

4 CHAIR McRAE: I have a question for
5 Staff on this, before we move on with the comments.

6 Was it in the GNAPS case we addressed
7 this issue with reciprocal comp? I guess it was in a
8 contractual concept. I don't know if you recall
9 that, offhand.

10 Our interpretation at that time was --
11 from a Commission standpoint -- that reciprocal comp
12 would be paid.

13 In this instance, I am not sure the
14 application is that there's a contract underlying
15 this as well. But I do recall this issue has been
16 before the Commission in the past.

17 I am only assuming that whatever we
18 ordered there is inapplicable because there is a
19 contract here that needs to be interpreted.

20 Otherwise, we have resolved where we
21 have stood on the issue.

22 MS. CONOVER: Yes.

23 MR. MYERS: In the GNAPS case, if I
24 recall correctly, Global Naps chose to opt into

1 another contract, the 1996 contract, with MFS, if I
2 recall.

3 The Commission interpreted the
4 language of that contract and concluded the
5 reciprocal comp provision applied to Internet
6 traffic.

7 Verizon appealed that order and was
8 never resolved by the Courts because GNAPS never
9 exchanged the question traffic in Delaware, and the
10 case went away, and eventually is mute.

11 So, you have spoken to the context of
12 that contract. As everybody agrees, there is an
13 AT&T, Verizon proceeding involving the context of
14 Eastern Telelogic, now AT&T subsidiary, the contract,
15 the terms of that contract called for during the
16 relevant time period.

17 CHAIR McRAE: Do either of you, who
18 did not file exceptions, have comment with respect to
19 the reciprocal comp issue?

20 PUBLIC ADVOCATE PADMORE: No. I dealt
21 with that years ago when I was a Hearing Examiner. I
22 said enough about reciprocal comps.

23 CHAIR McRAE: Mr. Myers.

24 MR. MYERS: I don't know where you

1 pigeonhole this.

2 There is an exception by Verizon of
3 how -- I don't know if you dealt with it in this one
4 or not -- about the cooling off period.

5 CHAIR McRAE: Yes. It is all part in
6 parcel of that whole discussion.

7 MR. MYERS: Do they want to speak to
8 that first?

9 MS. CONOVER: Our sole issue there is,
10 we have an objection to adopting the 60-day cooling
11 off period. If it supersedes the existing contract
12 provisions that are conflicting.

13 If there is no provision in the
14 contract, it probably is a sensible default
15 provision.

16 Where we have a problem is, if it is
17 imposed where there is a conflict in the existing
18 contract.

19 So, what we would say is either omit
20 it entirely, or make it clear that it is only in the
21 absence of an existing provision that deals with the
22 change of law.

23 CHAIR McRAE: Do you have any
24 comments?

1 MR. MYERS: Yes. I think The Hearing
2 Examiner got this one right, as Mr. Keffer would
3 say.

4 I think the posture of what The
5 Hearing Examiner, again, was getting at was a cooling
6 off period so people could invoke the contractual
7 dispute resolution provisions, which may not include
8 timing things, which may, in fact, be ambiguous and
9 so forth.

10 He talks about the 60-day cooling off
11 period to try to figure out what the parties are
12 going to do while they work their way up through the
13 dispute resolution provision.

14 I think that's, probably, something
15 that's not conflicting with contractual terms. But
16 it is consistent and may be an addition to the
17 contractual terms. It gives everybody who has been
18 involved in contractual interconnection a period of
19 time to work through these changes without having a
20 rush to dispute resolution clause.

21 It also gives a period of time to work
22 out the details how you are going to maintain, I
23 don't want to say the status quo, what you are going
24 to maintain as you work your way up through the

1 contract.

2 It is not in this record. But in
3 certain situations, the contract dispute clauses
4 become subject of disputes as to what they require.
5 And, I think, The Hearing Examiner recognized that.

6 So, he, in effect, put in a cease
7 fire, or standstill clause so the people can figure
8 out where they are going to go and invoke the
9 things. If there are disputes about that, work their
10 way through that.

11 CHAIR McRAE: I think we have covered,
12 essentially, all the comments of the parties at this
13 point, the exceptions. I think that is my list. We
14 have gone down every single one of them.

15 I now think we have to look at them in
16 the context of what The Hearing Examiner has
17 recommended -- in The Hearing Examiner's report.

18 If there are no further questions that
19 we want to clarify, we can move on.

20 COMMISSIONER PUGLISI: I have a
21 question.

22 On the last issue that has been raised
23 here, the last point.

24 Ms. Conover, I thought, in her

1 comments said, generally, the contracts will have
2 some provisions in regard to this arbitration issue.

3 I guess I am trying to figure out in
4 my mind is, to what extent does The Hearing
5 Examiner's recommendation really cause a violation of
6 your existing contract agreements without getting
7 into specific agreements.

8 Is it redundant?

9 MS. CONOVER: In many cases it is in
10 direct conflict with provisions that we already have
11 in agreements. That's one of our concerns.

12 If I might say, changes in law go both
13 ways. Sometimes they hurt us. Sometimes they help
14 us. I find it kind of interesting. It may very well
15 be a change of law provision in a contract that says,
16 The change of law goes into effect upon the effective
17 day of the Commission's ruling.

18 Let's say this is a change that
19 benefits the CLECs. We would be, I guess, they would
20 have to say, no, you got to wait 60 days. That, to
21 me, is my problem with this condition that it could
22 very well conflict, in many cases, does conflict with
23 existing contracts that have been filed and approved
24 by this Commission.

1 CHAIR McRAE: It is definitely not
2 redundant.

3 COMMISSIONER PUGLISI: No. It is not.

4 CHAIR McRAE: It precludes certain
5 agreements the parties may have made.

6 I would also comment on this. You are
7 really not dealing necessarily, accept, maybe, in one
8 instance or two, with small concerns.

9 AT&T, I think, is well represented by
10 Mr. Keffer and other parties. This is Verizon. And
11 some of the others, MCI, various people that have
12 appeared before us.

13 I really don't know that the
14 Commission, under those circumstances, can
15 superimpose its judgment over parties negotiating an
16 agreement, that, presumably, have the resources they
17 need to protect their interest.

18 So, for me it is going down an avenue
19 that's somewhat of a concern to how much the
20 Commission intervenes in the negotiations and
21 agreements of parties.

22 I happen to be just speaking for
23 myself there, but it is more than redundant.

24 COMMISSIONER PUGLISI: That's why I

1 asked the redundancy question.

2 If it was just redundant, it would not
3 be an issue. If it is a material item, then I
4 believe it is similar to the one you just expressed.

5 We should not be intervening in
6 contracts --

7 CHAIR McRAE: As a default --

8 COMMISSIONER PUGLISI: -- between
9 knowledgable parties.

10 CHAIR McRAE: The default provision is
11 something else.

12 COMMISSIONER PUGLISI: Oh, yes.

13 CHAIR McRAE: Mr. Myers.

14 MR. MYERS: Two things.

15 One is, I would just sort of remind
16 you, in your Regulation Docket 52, you are coming at
17 this in a different way.

18 You are trying to protect end user
19 consumers when you have these disputes.

20 You charged the Staff to suggest
21 whether it is necessary to have any rules that would
22 regulate the ability to shut off service to the other
23 CLEC. That has not been done yet. It is under
24 consideration. I am not sure it is fleshed out on

1 this record.

2 I do want to recall to you, I think,
3 for example, of what The Hearing Examiner was trying
4 to get at was before you in April, when, in effect,
5 the Conectiv/Cavalier Verizon thing has several
6 dispute resolution provisions in it.

7 What ended up here was a hearing
8 before the Commission about whether, in effect,
9 service was going to be shut off.

10 The Hearing Examiner's recommendation
11 about a stand down period would, in effect, alleviate
12 that situation, or, at least, postponement for 60
13 days where people would have dealt with it in less
14 than a two-week rush in agreement.

15 CHAIR McRAE: I firmly recall that.
16 The shut off issue was more immediate and more
17 emergent.

18 And it may be as part of what comes
19 out of that docket, it does make sense to do this.
20 Part of the work that is being done in that
21 regulation docket -- I guess my question, blanket of
22 doing in the context of this proceeding as a
23 condition going forward -- is a problem for me. That
24 may not be for the other Commissioners.

1 I, frankly, think I could view it in
2 that as an overall plan to protect end users, if that
3 is something that is necessary, then it would,
4 certainly, be something else again.

5 Here, we are being asked to embrace it
6 absolutely regardless of what may exist with the
7 parties, without necessarily knowing that we have the
8 same kind of crisis that we faced in April.

9 So, I mean, again, those are just my
10 observations, and the other Commissioners, certainly,
11 welcome your comments and inputs on the area we
12 discussed.

13 Now, we need to determine how we're
14 going to proceed with The Hearing Examiner's report,
15 which, currently, does contain conditions.

16 We have also heard from the parties
17 with respect to their various issues. We have spoken
18 to the due process Track A.

19 There was also the issue of GRIPS. I
20 am using this term because it is not as much of a
21 mouthful. That was whether, in fact, we want to
22 address this now, or allow the proceeding in which it
23 has been raised to evolve and come before us, or fast
24 track the proceeding.

1 Those were a couple of options that we
2 discussed here.

3 We, certainly, heard again on the
4 pricing issue from AT&T. That's both the
5 non-recurring and the Unbundled Network Element
6 Costs. And we have the billing issue raised by
7 AT&T.

8 I think that in The Hearing Examiner's
9 report, this Hearing Examiner asked for
10 verification. Whether, in fact, that letter
11 satisfies what the parties interest are, or are there
12 other means to address it, that's something else to
13 again consider.

14 And the last issue, which we have just
15 discussed, the reciprocal comp is a matter that is
16 also before the Commission in another proceeding that
17 is pending.

18 So, I think I kind of covered all of
19 the things that were covered today. I think we can
20 look at them in the context of this report.

21 We can first elect to accept The
22 Hearing Examiner report and not address the
23 exceptions, or take the exceptions out and modify the
24 exceptions to our own exceptions or conditions.

1 VICE-CHAIRMAN TWILLEY: You want a
2 motion.

3 CHAIR McRAE: Well, sure.

4 VICE-CHAIRMAN TWILLEY: I move we
5 accept The Hearing Examiner's report as is and not
6 make any changes by reason of these exceptions.

7 COMMISSIONER CONAWAY: I will second
8 the motion.

9 CHAIR McRAE: It has been moved and
10 seconded.

11 All in favor of the motion as
12 presented which include accepting The Hearing
13 Examiner's report with the conditions The Hearing
14 Examiner outlined signify by saying yea.

15 VICE-CHAIRMAN TWILLEY: Yea.

16 COMMISSIONER CONAWAY: Yea.

17 CHAIR McRAE: Opposed?

18 Yea.

19 COMMISSIONER PUGLISI: Yea.

20 CHAIR McRAE: Abstentions.

21 COMMISSIONER LESTER: I abstain.

22 CHAIR McRAE: You have the two yea's
23 and two opposition. You don't have a passing.

24 The motion does not carry.

1 My concern here is, I think I
2 mentioned it, I don't personally feel that we should
3 confuse the issue of the GRIPS of the reciprocal comp
4 in this proceeding.

5 If there is ability for us to
6 expedite, particularly the GRIPS issue before this
7 filing is ultimately made, that would be, certainly,
8 be preferable to me. We could get more of a look at
9 that.

10 I also have a concern about the
11 contractual provision. So, I mean, I am just sharing
12 that. That's my reason for not being able to support
13 completely what The Hearing Examiner has called for
14 in this proceed.

15 COMMISSIONER PUGLISI: I share the
16 Chair's concerns on the contractual aspect.

17 I don't mean to minimize the
18 seriousness of the issues raised by Cavalier, or the
19 issues that are in those two proceedings. They are
20 very serious issues. I think those issues will be
21 addressed in due course, and, hopefully, on an
22 expedited basis for this Commission.

23 I wish we would have addressed those
24 issues already. I don't think they belong as part of

1 the conditions to be set forth in this particular
2 matter. I am just not comfortable with including
3 them here.

4 Again, I recognize their seriousness
5 and hope to be addressing this as expeditiously as
6 possible.

7 The final matter for me is this
8 billing issue. Again, I think that we have other
9 vehicles in place to adequately address the billing
10 issue question. I take those billing issues
11 seriously. But I also have to accept the veracity of
12 Ms. Conover's statement. And that lends sufficient
13 comfort to me that the billing issues are being
14 addressed because the issues are not going to
15 disappear.

16 In my own business, there are always
17 billing issues. You keep them to some acceptable
18 minimum.

19 I think we will address those issues
20 as we go forward with the compliance. That is really
21 where a lot of that belongs.

22 So, I find The Hearing Examiner's
23 report acceptable to me, except I cannot vote in
24 favor of any of the conditions that he has placed.

1 Although, I could accept, if the
2 motion were made, the 60-day cooling off period in
3 those cases, where such a cooling off period was not
4 included as a contractual provision of an existing
5 contract.

6 COMMISSIONER LESTER: That's the way I
7 feel. If we can vote on this without the 60-day
8 cooling off period, I would find it acceptable.

9 CHAIR McRAE: The 60-day cooling as a
10 default?

11 COMMISSIONER LESTER: Well, there is a
12 lot of contractual things that have to be solved
13 here. I don't know if it could be done in 60 days.

14 CHAIR McRAE: Well, whatever motion
15 you like to make -- are you going to offer a motion?
16 You just commented. It was not in the form of a
17 motion.

18 COMMISSIONER PUGLISI: I thought we
19 were having discussion. I can do it in the form of a
20 motion. I could make a motion.

21 I would move to accept The Hearing
22 Examiner's report, absent the conditions he set, but
23 imposing a condition that there be a 60-day cooling
24 off period where such a provision is not already

1 included in the existing contract.

2 CHAIR McRAE: Is there a second to
3 that?

4 VICE-CHAIRMAN TWILLEY: I will second
5 it. I think the matter needs to be resolved today.

6 COMMISSIONER LESTER: I agree with
7 that.

8 VICE-CHAIRMAN TWILLEY: I think the
9 Commissioner's modifications are reasonable.

10 I will second it.

11 CHAIR McRAE: It has been moved and
12 seconded. I think we have a record of what was moved
13 and seconded here.

14 We were, basically, accepting the
15 report without the conditions, except that the 60-day
16 provision would serve as a default provision where
17 none is covered in the existing agreement.

18 All in favor say yea.

19 Yea.

20 COMMISSIONER LESTER: Yea.

21 COMMISSIONER PUGLISI: Yea.

22 VICE-CHAIRMAN TWILLEY: Yea.

23 COMMISSIONER CONAWAY: Yea.

24 CHAIR McRAE: Opposed? Abstentions?

1 That covers it.

2 I thank the Commission, and I want to
3 comment here.

4 This is not to minimize the importance
5 of the GRIPS issues, or the reciprocal comp issue.

6 I am asking Staff today if we could
7 take a look at what our schedule is to make sure that
8 we have an opportunity, as soon as practical, to get
9 to resolution on those issues.

10 MR. KEFFER: I have a question, if
11 it's an appropriate time?

12 CHAIR McRAE: Yes.

13 MR. KEFFER: I understand the decision
14 the Commission just articulated on the record.

15 I also understand that under Delaware
16 law, the decision of the Commission is not final
17 until reduced to writing and issued by the
18 Commission.

19 Verizon has already announced publicly
20 that their intention is to file the 271 application,
21 along with another state on Thursday, June 27th.

22 I am assuming this Commission will not
23 be able to issue a written decision by Thursday, June
24 27th.

1 CHAIR McRAE: You assumed correctly.
2 That is not going to happen.

3 MR. KEFFER: So, an issue before this
4 Commission, and I raise it because this is an issue
5 that came up in New Jersey and had some adverse
6 consequences for Verizon, is Verizon going to be
7 permitted to submit a 271 to the FCC prior to the
8 time this Commission issues its written
9 recommendation on that 271 application?

10 CHAIR McRAE: Well, I would look to
11 our Counsel for some response on that. Because I,
12 frankly, don't know the details of the requirements
13 to that extent.

14 MR. MYERS: Well, I think the question
15 can be answered this way.

16 As a matter of Federal law, and I
17 emphasize that, as a matter of Federal law, there is
18 no delegation of power to you to determine when
19 Verizon files.

20 How the procedural part plays out is,
21 they file, under the FCC rules, under the statute,
22 the FCC has to consult with you. The FCC rules that
23 is done within 20 days after the filing. That is
24 when the FCC expects the report to be filed.

1 I think Staff is anticipating you will
2 have a more full-blown decision available to you for
3 the end of that 20 days, so, can fulfill the 20-day
4 deadline for filing your consultative report.

5 There is no Federal requirement that,
6 in effect, you approve their decision. They didn't
7 come to us and say, We're going to file Thursday. Is
8 that okay? There is no Federal requirement to do
9 that.

10 MS. CONOVER: I think that is my
11 understanding, also. There is no requirement that
12 there be an order from a Federal perspective, from
13 the FCC's perspective from this body. In fact, many,
14 many states have never issued an order.

15 The requirement is that the FCC will
16 come to you and ask for a consultative report, or
17 consultative letter of some sort within 20 days after
18 it being filed.

19 CHAIR McRAE: Okay.

20 MR. KEFFER: The issue I am laying
21 before the Commission is, Is that acceptable to you?

22 Some states have told Verizon, quite
23 pointedly, they don't want them filing their 271
24 application until the State Commission has an

1 opportunity to develop its written recommendation.

2 CHAIR McRAE: Well, I think from the
3 way the proceedings have gone today, and the given
4 the information that is contained in The Hearing
5 Examiner's report, with the modifications the
6 Commission has made, and along with the comments that
7 have been offered in the course of today's
8 proceedings, Verizon has a fair indication of where
9 the Commission is, frankly.

10 I think it has already been recited in
11 documents. What may happen with respect to other
12 proceedings are something else again. I don't know
13 that it will effect the consultative report.

14 COMMISSIONER PUGLISI: Madam Chair. I
15 have a question.

16 And that is, I don't know what the
17 heck -- and maybe we were told this, and I did not
18 pay attention -- what this consultative report is
19 supposed to look like.

20 Does the Commission have a necessity,
21 and, perhaps, we should today, have a resolution to
22 instruct the Staff to prepare such a report for
23 consideration and adoption by the Commission at a
24 specific meeting?

1 CHAIR McRAE: In fact, I can speak
2 with Staff about that.

3 COMMISSIONER PUGLISI: I'm sorry.

4 CHAIR McRAE: It is good that you
5 raised it. We are talking about, in fact, holding a
6 special meeting, which couldn't be resolved until we
7 decided what we were going to do here. It might have
8 all proved unnecessary, but, yes, it could be
9 necessary for us to require Staff to do that.

10 If we are talking a 20-day limit from
11 the time Verizon files, we would, probably, need to
12 have a meeting to act on the report.

13 VICE-CHAIRMAN TWILLEY: When is our
14 next regularly scheduled meeting?

15 MS. NICKERSON: July 9th.

16 VICE-CHAIRMAN TWILLEY: Is that within
17 a reasonable time?

18 CHAIR McRAE: It has not been
19 determined. Verizon has not filed at this point.

20 MS. CONOVER: That's correct. We have
21 not filed yet.

22 MR. KEFFER: Did I mistake the facts?

23 CHAIR McRAE: As far as I know, they
24 have not filed.

1 MS. CONOVER: We have not filed. We
2 are, certainly, in the process. I mean, obviously,
3 this is a huge process of preparing an application.

4 We, obviously, are preparing our
5 application, and assuming things came out well today,
6 we would be filing very, very soon.

7 MR. BURCAT: If we knew the target
8 date of their filing that might make things easier
9 for the Commission to determine.

10 CHAIR McRAE: I think the way our
11 meetings are scheduled, we have a meeting July 9th.

12 MR. BURCAT: July 9th and 23rd.

13 CHAIR McRAE: It would depend on when
14 Verizon filed as to whether there would be another
15 meeting required.

16 So, frankly, at this juncture, it is
17 somewhat up in the air for the Commission.

18 COMMISSIONER PUGLISI: It is not up in
19 the air that the Commission will need such a report
20 pending the application by Verizon.

21 Should we instruct Staff, or doesn't
22 Staff need instruction to go prepare a draft of such
23 a report?

24 CHAIR McRAE: We can, certainly, do

1 that. But Staff normally does that. But we can so
2 direct Staff and do it on the record.

3 But 20 days from whatever date is
4 still an open-ended question.

5 MR. BURCAT: Yes. The problem that
6 Staff would have is when that 20-day period ended
7 because of the Commission's meeting schedule. If
8 that immediately went to the FCC and filed, the next
9 meeting is July 9th, which is a very short turnaround
10 for us.

11 So, we really would like to have some
12 idea as to when this would be due as far as the Staff
13 is concerned. Would it be the 9th?

14 CHAIR McRAE: I see hands from
15 Verizon.

16 MS. CONOVER: It is our intent, it is
17 correct, it is our current intent to file Thursday,
18 the 27th. That's always not etched in stone. That's
19 our intent, as we are sitting here today.

20 Certainly, we will inform this
21 Commission immediately upon filing that we have done
22 so.

23 I think for current purposes, that is
24 a safe assumption.

1 CHAIR McRAE: It would put it in the
2 middle of our two meetings.

3 MS. CONOVER: The range of
4 consultative reports has been broad. You already
5 have a fairly detailed Hearing Examiner's report.
6 So, it may not be as complicated of a process as it
7 ordinarily might be.

8 CHAIR McRAE: I think Staff, probably,
9 can determine that better than I. I don't really
10 have that great a handle on the resources available
11 for this project.

12 But we, certainly, can direct Staff to
13 get started on the report. But what triggers the
14 date, and what we will do at the meeting, has an
15 awful lot to do with Verizon's filing. We may not
16 get that resolved today.

17 COMMISSIONER PUGLISI: Thank you,
18 Mr. Keffer for all of that discussion.

19 MR. KEFFER: I know I have been so
20 helpful through this entire process.

21 COMMISSIONER PUGLISI: You have to
22 me. Seriously, you have.

23 CHAIR McRAE: Actually, you are not
24 leaving the state. Remember, you did inform us of

1 your filing. So, I know that we will be seeing you
2 some more. That also is important.

3 We do have another item of business
4 that has to do with the order for the first part of
5 this docket.

6 VICE-CHAIRMAN TWILLEY: Madam Chair, I
7 move we adopt Order No. 5983.

8 MR. LESTER: Second.

9 CHAIR McRAE: All in favor say yea.

10 COMMISSIONER LESTER: Yea.

11 COMMISSIONER PUGLISI: Yea.

12 VICE-CHAIRMAN TWILLEY: Yea.

13 COMMISSIONER CONAWAY: Yea.

14 CHAIR McRAE: Opposed? Thank you.

15 I declare the meeting adjourned.

16 (The Public Service Commission Hearing
17 was concluded at, approximately, 3:20 p.m.)

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C E R T I F I C A T E

STATE OF DELAWARE:
:
NEW CASTLE COUNTY:

I, Gloria M. D'Amore, a Registered Professional Reporter, within and for the County and State aforesaid, do hereby certify that the foregoing Public Service Commission Hearing was taken before me, pursuant to notice, at the time and place indicated; that the statements of said parties was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the Public Service Commission Hearing is a true record of the statements given by the parties; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this 27th day of June A.D. 2002.

GLORIA M. D'AMORE
REGISTERED PROFESSIONAL REPORTER
CERTIFICATION NO. 119-PS

