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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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AT&T OHIO, : CASE NO. 06-1509-EL-CSS
:
Complainant, :
:
v. :
:
THE DAYTON POWER AND LIGHT :
COMPANY, :
:
Respondent. :

**THE DAYTON POWER AND LIGHT COMPANY'S DESIGNATION AND
SUMMARIES OF ANN KENDALL'S DEPOSITION TESTIMONY**

Pursuant to Ohio Admin. Code § 4901-1-21(F), The Dayton Power and Light Company ("DP&L") requested that AT&T Ohio designate one or more of its employees, officers, agents or other persons to testify on its behalf on various topics. DP&L's Notice of Depositions, July 14, 2007 (copy attached at Exhibit 1). AT&T Ohio designated Ann Kendall ("Ms. Kendall") as the person authorized to speak on Topic No. 4 of DP&L's Notice of Depositions: "The costs that AT&T Ohio would incur if it had the responsibility to approve and maintain third-party communication circuits on DP&L's poles." Id. at p. 2.

Pursuant to Ohio Admin. Code § 4901-1-21(N) and Ohio R. Civ. P. 32(A)(2), DP&L designates the following portions of the August 7, 2007 deposition of Ms. Kendall in lieu of live testimony as if DP&L had called Ms. Kendall as a witness at the hearing in this action. DP&L has filed a complete copy of Ms. Kendall's deposition transcript and exhibits, and summarizes the designated portions as follows:

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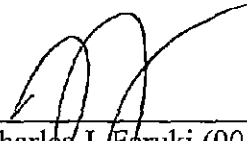
1.	Introduction of Ms. Kendall. Ms. Kendall is the Associate Director of Outside Plant Engineering Services at AT&T Ohio. She is responsible for "managing a team of six managers and one nonmanagement person, who are responsible for all activities related to joint agreements with [AT&T Ohio's] electric company partners."	Page 4, Lines 20-25; Page 5, Lines 1-3 and 11-19
2.	Electric utilities and AT&T Ohio are partners who have common objectives, meeting the needs of customers in the most efficient and economical way.	Page 13, Lines 15-16; Page 14, Lines 4-19
3.	Concerning third-party attachments, permitted means licensed.	Page 24, Lines 13-25; Page 25, Line 1
4.	AT&T Ohio would need to conduct a survey to determine the appropriate ownership level on joint use poles.	Page 29, Lines 10-25; Page 30, Lines 1-3
5.	AT&T has not done a survey of poles to determine appropriate ownership level in the DP&L service territory.	Page 30, Lines 4-6
6.	DP&L used the method set forth in Section 11.202 of the Operating Routine to calculate its invoices to AT&T Ohio	Page 38, Lines 13-19 and 21; Page 66, Line 25; Page 67, Lines 1-4
7.	AT&T Ohio identified a year and a half ago that it purportedly has the responsibility to approve third-party communication circuits on DP&L poles.	Page 41, Lines 9-11, 17 and 19-25; Page 42, Line 1; Page 49, Lines 8-13
8.	AT&T Ohio did not take any steps to notify third parties that AT&T Ohio had the responsibility to approve attachments to DP&L's poles.	Page 43, Lines 19-24
9.	AT&T Ohio would incur costs to administer third-party attachments to DP&L's poles associated with: (1) acceptance of the applications; (2) any necessary engineering work; and (3) make ready work.	Page 44, Lines 24-25; Page 45, Lines 1-16
10.	Ms. Kendall has no knowledge of AT&T Ohio permitting attachments by third parties to DP&L-owned poles at any time since 1930.	Page 49, Lines 3-7
11.	AT&T Ohio does not intend to reimburse DP&L for costs that DP&L incurred to process applications for attachments of third parties to DP&L's poles.	Page 49, Lines 14-18

12.	Ms. Kendall would have expected prior managers at AT&T Ohio to have read the Operating Routine.	Page 51, Lines 24-25; Page 52, Lines 1-5
13.	Ms. Kendall would have expected prior managers at AT&T Ohio to have asserted AT&T Ohio's rights under the Operating Routine.	Page 52, Lines 6-9 and 12-13
14.	Paragraph 1.308 of the Operating Routine does not say anything about the allocation of revenues.	Page 52, Lines 15-22
15.	The form letter (Exhibit 25) dated December 1, 2004 from AT&T Ohio to third parties interested in attaching to the communications space on DP&L poles regarding AT&T Ohio's alleged right to administer poles was not sent.	Page 55, Lines 1-12 and 21-25; Page 56, Lines 1-8
16.	Ms. Kendall does not know whether "signal circuits" mentioned in the form letter (Exhibit 25) dated December 1, 2004 from Michael Welch to third-party applicants referred to telegraph circuits when they were in use.	Page 56, Line 25; Page 57, Lines 1-5
17.	AT&T Ohio failed to submit objections to prior DP&L invoices as required pursuant to 1942 Supplemental Agreement Art. XII between DP&L and AT&T Ohio.	Page 61, Lines 3-25; Page 62, Lines 1 and 3
18.	One of the purposes of the Operating Routine was to interpret the intent of certain sections of the 1930 Joint Pole Use Agreement and the 1942 Supplemental Agreement.	Page 65, Lines 12-25; Page 66, Lines 1-19 and 23-24
19.	Ms. Kendall was unaware of the information produced by DP&L indicating that there was fewer than one third-party attachment per DP&L-owned joint use pole.	Page 75, Lines 1-5

OF COUNSEL

Randall V. Griffin (0080499)
Chief Regulatory Counsel
The Dayton Power & Light Company
MacGregor Park
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7221
Telecopier: (937) 259-7813
E-Mail: randall.griffin@dplinc.com

Respectfully submitted,



Charles J. Faruki (0010417)
Jeffrey S. Sharkey (0067892)
FARUKI IRELAND & COX P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, OH 45402
Telephone: (937) 227-3705
Telecopier: (937) 227-3717
E-Mail: cfaruki@ficlaw.com

Jack Richards (admitted pro hac vice)
Douglas J. Behr (admitted pro hac vice)
Thomas B. Magee (admitted pro hac vice)
KELLER AND HECKMAN LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001
Telephone: (202) 434-4100
Telecopier: (202) 434-4646
E-Mail: richards@khlaw.com

Attorneys for Respondent
The Dayton Power And Light Company

CERTIFICATE OF SERVICE

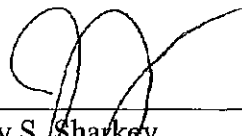
I certify that a copy of the foregoing The Dayton Power and Light Company's Designation and Summaries of Ann Kendall's Deposition Testimony has been served via electronic mail, upon the following counsel of record, this 31st day of August, 2007:

Michael T. Sullivan, Esq.
Kara K. Gibney, Esq.
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606

Jon F. Kelly, Esq.
Mary Ryan Fenlon, Esq.
AT&T OHIO
150 East Gay Street, Rm. 4-A
Columbus, OH 43215

Attorneys for Complainant
AT&T OHIO

Werner L. Margard III, Esq.
Assistant Attorney General
PUBLIC UTILITIES COMMISSION OF OHIO
180 East Broad Street
Columbus, OH 43215-3793



Jeffrey S. Sharkey

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

* * *

AT&T OHIO,

Complainant,

v.

CASE NO. 06-1509-EL-CSS

THE DAYTON POWER AND

LIGHT COMPANY,

Respondent.

* * *

Telephonic deposition of ANN KENDALL,
Witness herein, called by the Respondent for
cross-examination pursuant to the Rules of Civil
Procedure, taken before me, Beverly W. Dillman, a
Notary Public in and for the State of Ohio, at
150 East Gay Street, Fifth Floor Conference Room,
Columbus, Ohio, on Tuesday, August 7, 2007, at
9:28 o'clock a.m.

* * *

<p>1 EXAMINATIONS CONDUCTED Page 2</p> <p>2 BY MR. FARUKI:.....4</p> <p>3 BY MR. SULLIVAN:.....72</p> <p>4 BY MR. FARUKI:.....74</p> <p>5 EXHIBITS MARKED</p> <p>6 (Thereupon, Kendall Exhibit Number 37 was</p> <p>7 marked for purposes of identification.).....57</p> <p>8 (Thereupon, Kendall Exhibit Number 38 was</p> <p>9 marked for purposes of identification.).....69</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 MR. FARUKI: Why don't we go on the</p> <p>2 record. In addition to the usual stipulations</p> <p>3 about the fact that the witness may sign out of</p> <p>4 the presence of this notary and that we are</p> <p>5 waiving notice, Mike, we have also stipulated</p> <p>6 that this agreement -- or this deposition may be</p> <p>7 taken by telephone, and that our court reporter</p> <p>8 may swear the witness, even though the witness is</p> <p>9 out of state; is that correct?</p> <p>10 MR. SULLIVAN: That's correct.</p> <p>11 MR. FARUKI: Thank you.</p> <p>12 Go ahead and swear the witness,</p> <p>13 please.</p> <p>14 ANN KENDALL</p> <p>15 of lawful age, Witness herein, having been first</p> <p>16 duly cautioned and sworn, as hereinafter</p> <p>17 certified, was examined and said as follows:</p> <p>18 CROSS-EXAMINATION</p> <p>19 BY MR. FARUKI:</p> <p>20 Q. Ms. Kendall, would you tell us your</p> <p>21 full name and where you live, please.</p> <p>22 A. Sure. It's Ann Kendall, and I live</p> <p>23 in Colgate, Wisconsin.</p> <p>24 Q. By whom are you employed?</p> <p>25 A. By AT&T.</p>
<p>1 APPEARANCES: 3</p> <p>2 On behalf of the Complainant:</p> <p>3 Mayer, Brown, Rowe & Maw LLP</p> <p>4 By: Michael T. Sullivan</p> <p>5 Attorney at Law</p> <p>6 71 South Wacker Drive</p> <p>7 Chicago, Illinois 60606-4637</p> <p>8 On behalf of the Respondent:</p> <p>9 Faruki, Ireland & Cox, P.L.L.</p> <p>10 By: Charles J. Faruki</p> <p>11 Attorney at Law</p> <p>12 500 Courthouse Plaza, S.W.</p> <p>13 Ten North Ludlow Street</p> <p>14 Dayton, Ohio 45402</p> <p>15 On behalf of the Public Utilities</p> <p>16 Commission of Ohio:</p> <p>17 Marc Dann, Attorney General,</p> <p>18 State of Ohio</p> <p>19 By: Werner L. Margard, III</p> <p>20 Assistant Attorney General</p> <p>21 Public Utilities Section</p> <p>22 180 East Broad Street, Ninth Floor</p> <p>23 Columbus, Ohio 43215-3793</p> <p>24 * * *</p> <p>25</p>	<p>1 Q. What's your current position? 5</p> <p>2 A. Associate director of outside plant</p> <p>3 engineering services.</p> <p>4 Q. That's a mouthful.</p> <p>5 We are doing this by telephone, so</p> <p>6 any time you cannot understand me -- I am Charlie</p> <p>7 Faruki, and we met a few minutes ago when we</p> <p>8 placed the call -- but any time you cannot</p> <p>9 understand me, please let me know.</p> <p>10 A. Okay. I will.</p> <p>11 Q. Would you tell us your duties and</p> <p>12 responsibilities as associate director of outside</p> <p>13 plant engineering services.</p> <p>14 A. Sure. I am responsible for managing</p> <p>15 a team of eight managers and one nonmanagement</p> <p>16 person, who are responsible for all activities</p> <p>17 related to joint agreements with our electric</p> <p>18 company partners.</p> <p>19 Q. So the scope of your duties and</p> <p>20 responsibilities encompasses joint use agreements</p> <p>21 with electric companies?</p> <p>22 A. Yes.</p> <p>23 Q. Does it encompass or include joint</p> <p>24 use agreements with any other kinds of companies;</p> <p>25 in other words, nonelectrics?</p>

<p>1 A. No.</p> <p>2 Q. So just for clarity for my record,</p> <p>3 such entities as cable television companies, for</p> <p>4 example, would not be within your scope?</p> <p>5 A. No.</p> <p>6 Q. I am correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And within whose scope would such</p> <p>9 attachments be, or such contracts be?</p> <p>10 A. That responsibility falls under</p> <p>11 George Hess, has responsibility for all structure</p> <p>12 access related activities.</p> <p>13 Q. Where is he located?</p> <p>14 A. He is located in Waukesha,</p> <p>15 Wisconsin.</p> <p>16 Q. How long have you had your current</p> <p>17 position?</p> <p>18 A. I have had -- now, I am going to</p> <p>19 answer this kind of in two ways, in a way. I</p> <p>20 have had just the joint use team for about two</p> <p>21 years. Prior to that, since 2002, January of</p> <p>22 2002, I had responsibility for joint use and</p> <p>23 structure access and two other teams as well.</p> <p>24 Q. Do those other teams -- or did those</p> <p>25 other teams have anything to do with joint use?</p>	<p>1 Q. Would you tell me your educational</p> <p>2 background, please.</p> <p>3 A. Very little college, just a few</p> <p>4 college courses, and high school.</p> <p>5 Q. After those courses then, would you</p> <p>6 trace your job history for us.</p> <p>7 A. Sure. I started in June of 1970</p> <p>8 with Wisconsin Bell, and held a clerical position</p> <p>9 in Yellow Pages advertising.</p> <p>10 In 1975, I moved on to be a customer</p> <p>11 instructor. I was a staff assistant, which was</p> <p>12 still a clerical position. Let me give you the</p> <p>13 dates. I can give you exact dates.</p> <p>14 Q. Well, approximations are fine.</p> <p>15 A. Okay. After that I went on to work</p> <p>16 in PBX engineering, and I was there until, oh,</p> <p>17 probably the early '80s.</p> <p>18 And then in the early '80s, I went</p> <p>19 to official services, where we were responsible</p> <p>20 for all internal communications services, and</p> <p>21 held a number of clerical positions there.</p> <p>22 In 1985, I was promoted to</p> <p>23 management, and I managed the official services</p> <p>24 billing center during that time, and held a</p> <p>25 number of managerial positions in official</p>
<p>1 A. No, they did not.</p> <p>2 Q. Okay. When did you have the joint</p> <p>3 use team only, as you described?</p> <p>4 A. It's been about two years.</p> <p>5 Q. So this is August of '07. It would</p> <p>6 be the summer of '05?</p> <p>7 A. Yeah, about that time.</p> <p>8 Q. What caused the change for structure</p> <p>9 access to be separated or split off?</p> <p>10 A. We actually did some restructuring</p> <p>11 and moved some of the personnel to direct report</p> <p>12 to the general manager, whereas they had been</p> <p>13 reporting to me before.</p> <p>14 Q. To whom do you report today?</p> <p>15 A. I report to Jed DeBor.</p> <p>16 Q. I am sorry, the last name?</p> <p>17 A. D E capital B O R.</p> <p>18 Q. And the first name?</p> <p>19 A. Jed, J E D.</p> <p>20 Q. How long have you reported to him?</p> <p>21 A. Since March of 2004, thereabouts.</p> <p>22 You know what, actually, that's wrong. It would</p> <p>23 be -- I have to think of when my old boss left.</p> <p>24 It would have been 2002, about that time frame, I</p> <p>25 started reporting to Jed.</p>	<p>1 services, as voice consultant, managed the</p> <p>2 official services business office, was</p> <p>3 responsible for resource management and systems</p> <p>4 support, still in official services.</p> <p>5 And left there in 1994, and at that</p> <p>6 time I took an outside crew that was responsible</p> <p>7 for installation and maintenance of all special</p> <p>8 circuits and enhanced business-type services for</p> <p>9 our large customers.</p> <p>10 And in 1996, I was the force load</p> <p>11 manager for the State of Wisconsin, for all of</p> <p>12 the enhanced and custom business technician field</p> <p>13 groups.</p> <p>14 And then in 199 -- I want to say '97</p> <p>15 or '98 -- I think it was '97, actually, I went to</p> <p>16 the repair center, where we were responsible for</p> <p>17 answering and receiving all business and consumer</p> <p>18 trouble reports the customers called in.</p> <p>19 In 1999, I was promoted to the</p> <p>20 operations manager for the repair center, here in</p> <p>21 Wisconsin, was responsible for a team of a</p> <p>22 hundred repair reps and managers.</p> <p>23 And left there in about March of</p> <p>24 2000, and was the area manager for pronto</p> <p>25 construction until December 31st of 2001.</p>

<p style="text-align: right;">10</p> <p>1 And January 1st of 2002, I took on 2 responsibility as the associate director of 3 outside plant engineering, and had responsibility 4 for the team associated with joint use, structure 5 access, right-of-way, and the customer growth 6 group. 7 Q. Okay. Let me interrupt you there. 8 We have been joined, just so you know, by Vern 9 Margard, from the Attorney General's Office. 10 MR. FARUKI: Good morning, Vern. 11 THE WITNESS: Good morning, Vern. 12 MR. SULLIVAN: Good morning. 13 MR. MARGARD: Good morning. 14 MR. FARUKI: We have Ann Kendall on 15 the phone, who is running through a description 16 of her job history. 17 MR. MARGARD: Thank you. 18 (Record read.) 19 BY MR. FARUKI: 20 Q. Before I interrupted you, Ann, were 21 you finished with your answer? 22 A. Yeah, that was -- and, actually, 23 that goes into what we previously talked about, 24 when did I take on responsibility just for joint 25 use.</p>	<p style="text-align: right;">12</p> <p>1 construction team, when I was the area manager, I 2 was called in a deposition for a technician, who 3 reported to one of my supervisors, who was going 4 through a divorce, and primarily asked to address 5 his wages, and why he was no longer working as 6 much overtime as he had been in the past. 7 Q. Have you ever given any testimony 8 that relates to the joint use area of your 9 responsibilities? 10 A. No. 11 Q. All right. Have you ever -- whether 12 or not you have testified live -- have you ever 13 prepared or sponsored testimony in a Public 14 Utilities Commission or Public Service Commission 15 proceeding? 16 A. No. 17 Q. For how long has Grace Sury reported 18 to you? 19 A. Directly, she has reported to me 20 since 2006. Indirectly, since January of 2002. 21 Q. And by indirectly, you mean she 22 reported through someone else? 23 A. Yes. 24 Q. And who was that? 25 A. I am sorry, could you repeat the</p>
<p style="text-align: right;">11</p> <p>1 Q. Yes. 2 A. And that was like, you know, toward 3 the end -- it was actually more towards the end 4 of 2005 that I just had that team. 5 Q. Where you only had the joint use 6 team? 7 A. Correct. 8 Q. So instead of summer, it would be 9 toward the end of -- 10 A. Yeah, it was closer to the end of 11 the year. 12 Q. Okay. So I take it until January 1, 13 2002, your job responsibilities did not include 14 joint use issues; is that right? 15 A. That's right. 16 Q. What did you do to prepare for your 17 deposition? 18 A. I reviewed -- what I did is I 19 reviewed the interrogatory that I responded to 20 last week, took a look at that, and that was 21 probably just about it. 22 Q. Have you given testimony before? 23 A. I have been deposed before. 24 Q. In what sort of matter? 25 A. It was when I was part of the pronto</p>	<p style="text-align: right;">13</p> <p>1 question? 2 Q. Yes. I was asking who was that 3 through whom she reported indirectly? 4 A. Okay. At that time she reported to 5 Diana Bachem. Would you like me to spell that? 6 Q. Yes, please. 7 A. B A C H E M. 8 Q. So the reporting chain was Grace 9 Sury to Diana Bachem to you? 10 A. Yes. 11 Q. And during the period of time 12 starting in January 2002, can you distinguish for 13 us your scope of responsibilities from those of 14 Grace Sury. 15 A. Grace was directly responsible for 16 contact with our electric company partners, 17 interacting with our internal network teams, 18 whether it would be engineering, construction, 19 the outside field forces and other work groups. 20 And she was -- and still is -- that primary 21 contact who has day-to-day interaction with those 22 groups, and responsible for managing the joint 23 agreements and assisting with any issues or 24 escalations, as required. 25 My responsibilities were to coach</p>

14

1 and assist her area manager at the time, and they
 2 would -- Diana would engage me as issues needed
 3 my attention.
 4 Q. Why did you use the term our
 5 electric company partners?
 6 A. Because that's what they are. We
 7 have joint relationships with them, and I view
 8 that to be a partnership.
 9 Q. What do you mean by that?
 10 A. That we work together.
 11 Q. With regard to joint -- to the
 12 subject of joint use of poles, do you view that
 13 your company and the electric company partners
 14 have common objectives?
 15 A. For the most part, I would say yes.
 16 Q. What are those?
 17 A. To meet the needs of our customers
 18 in the most efficient way and the most economical
 19 way.
 20 Q. In meeting the needs of your
 21 customers in the most efficient and economical
 22 way, are there certain principles that you follow
 23 in the joint use area?
 24 A. Primarily, we want to ensure that we
 25 are using our assets to the benefit of our

15

1 customers; that as an example, we are not sending
 2 dual pole leads; that we are using those assets
 3 that are available to each of us to meet the
 4 needs of our customers' service needs.
 5 Q. And do you have a view as to how, in
 6 achieving that objective, when you say -- I will
 7 withdraw that. Let me give you a better
 8 question.
 9 When you're talking about using your
 10 assets to the benefit of the customers, that is
 11 an objective or a goal that both you and/or your
 12 company and the electric company would have in
 13 common; is that right?
 14 A. Yes.
 15 Q. The -- what role, if any, have you
 16 played in negotiation of joint use contracts with
 17 electricians?
 18 A. It will depend. But, generally, the
 19 joint use manager is responsible for negotiating
 20 those agreements, and engages me more on an
 21 advisory basis, as needed.
 22 Q. Would it be accurate to say that you
 23 give review and approval to the contracts, but
 24 don't negotiate them?
 25 A. That would be true.

16

1 Q. With regard to the joint use
 2 agreement with the Dayton Power & Light Company,
 3 can you tell me your earliest involvement with
 4 that?
 5 A. To my recollection, it was sometime
 6 in 2004.
 7 Q. What occasioned your involvement?
 8 A. When we were notified of the desire
 9 to discuss a new rental rate, I was involved at
 10 that time, and notified that we were going to be
 11 involved in meetings. And by we, I mean Grace,
 12 and at that time the area manager that she was
 13 reporting to.
 14 Q. Miss Bachem?
 15 A. No. At that time it was Michael
 16 Welch.
 17 Q. Prior to that time, had you had
 18 occasion to read the joint use agreement with
 19 DP&L?
 20 A. No.
 21 Q. You have since?
 22 A. I have since.
 23 Q. Once you were notified of the desire
 24 of DP&L to have a new rental rate, tell me what
 25 you did, as opposed to other people. What was

17

1 your involvement, in other words?
 2 A. Actually, my involvement was simply
 3 to understand what Grace and Mike had developed
 4 as a plan for negotiation, and what they expected
 5 to address with Dayton Power & Light, and to just
 6 be aware of their discussions and their meetings.
 7 MR. FARUKI: Read that answer back,
 8 please.
 9 (Record read.)
 10 BY MR. FARUKI:
 11 Q. And what did you understand to be,
 12 in your words, what they expected to address with
 13 Dayton Power & Light?
 14 A. Negotiating a rental rate.
 15 Q. Anything else? Was there anything
 16 else?
 17 A. That was the primary scope of the
 18 meetings was to negotiate a rental rate.
 19 Q. Were you in any of the meetings
 20 yourself?
 21 A. I was not in any of the initial
 22 meetings. I joined some conference calls in
 23 2005.
 24 Q. And why did you join?
 25 A. At that time Mike -- we were -- Mike

18

1 was going to be moving on to a different
2 position, and I became more involved in those
3 discussions.

4 Q. And what were the issues that you
5 were involved with in those discussions?

6 A. Discussing what would be an
7 appropriate rental rate, based on both parties'
8 costs.

9 Q. And in that connection, did you
10 examine AT&T's costs?

11 A. I did not.

12 Q. Do you know if anybody did?

13 A. I don't know that for sure.

14 Q. In view of the way you phrased the
15 answer, let me ask you, to your knowledge, did
16 anyone within AT&T examine AT&T Ohio's costs for
17 that purpose?

18 A. I don't -- I don't know that. At
19 that time, I don't know.

20 Q. Okay. Since that time, has anyone
21 from AT&T done so?

22 A. Yes.

23 Q. And who was that?

24 A. Grace Sury.

25 Q. Was that at your direction?

19

1 A. Grace received the costs from Dayton
2 Power & Light and began reviewing them. I don't
3 know that I would say it was at my direction.

4 Q. Let me ask a different question.
5 Since that time, since you became involved, has
6 anyone from AT&T, to your knowledge, examined not
7 DP&L's costs, but AT&T's costs, in connection
8 with an appropriate rental rate?

9 A. Grace has looked at them and
10 reviewed them.

11 Q. Have you seen them?

12 A. I have seen them. I have not looked
13 at them in detail.

14 Q. Have you attempted to make any
15 comparison of AT&T's costs or the rate they
16 produce with DP&L's costs or the rate they
17 produce?

18 A. I have not personally done that.

19 Q. Have you seen the results of that
20 work?

21 A. Yes, I have.

22 Q. And in what form was that?

23 A. It was in a spreadsheet form.

24 Q. Prepared by whom?

25 A. By Grace.

20

1 Q. And do you know when that was,
2 approximately?

3 A. It would -- it was last year for
4 sure. I couldn't tell you a time frame.

5 Q. That's fine. But it was in '06, in
6 other words?

7 A. Yes.

8 MR. FARUKI: Mike, I will make a
9 request for that. As I sit here, I don't know
10 the document she is referring to, so I will make
11 a request for it. If it's been produced, just
12 let me know that.

13 MR. SULLIVAN: Okay.

14 BY MR. FARUKI:

15 Q. Now, there was a period of time when
16 DP&L and AT&T Ohio were discussing a rental rate,
17 but failed to reach agreement; is that right?

18 A. Yes.

19 Q. Do you know why the two companies
20 did not reach agreement?

21 MR. SULLIVAN: Objection,
22 foundation.

23 BY MR. FARUKI:

24 Q. Do you know why the two companies
25 did not reach agreement? You may answer.

21

1 A. Okay. We -- we just could not come
2 to terms on what costs should be included in
3 developing the agreement, and we could -- Dayton
4 Power & Light was not willing to move off of \$45.

5 Q. And during those discussions, what
6 was the figure that AT&T was proposing?

7 MR. SULLIVAN: Charlie, I am going
8 to object, to the extent that you're asking the
9 witness to testify about the parties' settlement
10 discussions. To the extent these are settlement
11 discussions, they are not admissible at the
12 hearing.

13 And so I am not sure what the point
14 in asking the -- her to recount what the -- what
15 the various negotiating positions of the parties
16 were.

17 MR. FARUKI: Well, I haven't done
18 that. And the settlement discussions have to
19 have arisen after a dispute occurs, which is why
20 I am asking her for the timing of them.

21 MR. SULLIVAN: Well, I will let her
22 answer, but we are not waiving any objection we
23 have --

24 MR. FARUKI: I understand.

25 MR. SULLIVAN: -- that settlement

<p>22</p> <p>1 discussions and negotiations are not admissible. 2 You can go ahead and answer, Ann. 3 THE WITNESS: Okay. We initially 4 proposed \$7 per pole. And Dayton Power & Light 5 did not accept that. We then came back and 6 proposed -- and I don't have the exact number, 7 but it was around \$22, \$23 per pole. And that 8 was not accepted either. 9 BY MR. FARUKI: 10 Q. Do you remember when that was that 11 you proposed the figure in the range of 22 or 23? 12 A. It was -- it was either sometime in 13 2000 -- 2005-2006 time frame. I don't recall the 14 exact dates, but it was within that time frame. 15 Q. Changing subjects, do your 16 responsibilities -- or let me give you a time 17 frame for that. Since you became associate 18 director of outside plant engineering services, 19 have your responsibilities included anything to 20 do with pole inspections? 21 A. No. 22 Q. And have your responsibilities 23 included anything to do with third-party 24 attachments to a joint use pole that would be 25 jointly used by AT&T Ohio and DP&L?</p>	<p>24</p> <p>1 A. I will tell you what I know about 2 them. They include the name of the attaching 3 party, the number of attachments, the date that 4 the request to attach was made, the date that we 5 permitted the attachment, when the field survey 6 was completed, if any make-ready work was 7 required, billing information. 8 Q. As you used the term make-ready 9 work, what do you mean? 10 A. Any work required on AT&T's 11 structure to make room for a third party to 12 attach to a pole. 13 Q. In a previous answer you talked 14 about the date that you permitted the attachment. 15 What does that mean? 16 A. That would be the date when -- if 17 there was any make-ready work -- that was 18 completed, and we told the third party that they 19 were now able to attach to the pole; or it could 20 be the completion of a field survey that 21 determined that there was capability to attach to 22 the pole as is. We would then provide the third 23 party with a permit that would allow them to 24 attach. 25 Q. Okay. So permitted means licensed?</p>
<p>23</p> <p>1 A. Yes. 2 Q. And what do your responsibilities 3 entail in that regard? 4 A. Now, they don't anymore. But up 5 until -- the time that the structure access team 6 reported to me, I had an area manager responsible 7 for that management and nonmanagement team that 8 was responsible for administering the structure 9 access process. 10 Q. So you correct me if I get the dates 11 wrong, that would be from the period of time in 12 January of '02 until when? 13 A. Until around the end of 2005. 14 Q. Does AT&T Ohio have particular 15 policies about how to handle third-party 16 attachments to joint use poles? 17 A. In what respect? 18 Q. Well, for example, has AT&T kept 19 records of third-party attachments to joint use 20 poles? 21 A. Yes. 22 Q. And what are those records called? 23 A. Those are called structure access 24 records. 25 Q. And how detailed are they?</p>	<p>25</p> <p>1 A. Yes. 2 Q. Have you had -- have you 3 participated in discussions with DP&L about the 4 ownership split or balance between the parties? 5 A. Yes. 6 Q. What has been your involvement in 7 that? 8 A. We -- I was in meetings where we 9 discussed what the appropriate ownership level 10 should be. 11 Q. With whom were these meetings? 12 A. They were with Georgene Dawson and 13 Paul Guglielmetti -- 14 Q. Yes. 15 A. -- and Pat Swanke. 16 Q. When were they? When were these 17 meetings? 18 A. Let's see, last -- last year we did 19 have some -- one in August that was a 20 face-to-face meeting. Prior to that they were 21 telephone conference calls. 22 Q. When did a dispute arise between 23 DP&L and AT&T Ohio about the split in ownership 24 percentage? 25 A. I don't recall.</p>

26

1 Q. In the meetings that you described,
2 what did you say -- and this is you personally
3 say, not AT&T -- on that subject of an ownership
4 split?

5 A. Okay. I -- I asked Dayton Power &
6 Light if they would be willing to consider a less
7 than 50/50 level of ownership, based on space
8 used by AT&T on the -- on jointly used poles, and
9 I asked them if they would be willing to consider
10 something less than 60/40.

11 Q. Did you give a reason for that
12 request?

13 A. Yes.

14 Q. Which was?

15 A. I explained to them that based on
16 the space that we currently use on a pole, space
17 that is currently used by the electric company,
18 and communication space that is used by third
19 parties as well, that the appropriate level of
20 ownership should be based on that concept.

21 Q. What does that mean in terms of
22 specifics?

23 A. It means that we take a look at what
24 the usable space is on a pole, what each party is
25 using, in addition to third party attachers, and

27

1 base the level of ownership on that criteria.

2 Q. Is that what is called for by the
3 agreement between AT&T Ohio, or its predecessor
4 companies, and DP&L?

5 A. The current agreement does not talk
6 about that kind of a split.

7 Q. Do you have that kind of a split
8 with any other electric?

9 A. The kind that we have with Dayton
10 Power & Light or what we have suggested?

11 Q. I am sorry, my question was not
12 clear. Let me reask it.

13 Do you have the kind of split that
14 you have just described, not the one with DP&L,
15 but the one based on usable space, as you have
16 just described, with another electric company?

17 A. We have agreements with other
18 electric companies that are less than 50/50.

19 Q. And were those agreements based on
20 the usable space concept that you described a
21 minute ago?

22 A. I would have to look at the
23 agreement itself to see how it's actually stated,
24 so I can't answer that honestly, if that's
25 exactly how it's stated in the agreement.

28

1 Q. I understand. Who developed this
2 idea; was it you?

3 A. No.

4 Q. Who was it? Do you know who it was?

5 A. Yeah, I am just -- it has actually
6 come about through discussions with our team in
7 general. I don't know that it was developed
8 here, but it came through our team's discussions
9 about what would be an appropriate level of
10 ownership, based on space that we use. I don't
11 know who exactly suggested it.

12 Q. Who is the team that you're
13 describing when you say that?

14 A. It would be my joint use team.

15 Q. Can you name them? Tell us their
16 names.

17 A. It would be Kathy Richardson, Grace
18 Sury, Kathy Boyce.

19 Q. B O Y C E?

20 A. B O Y C E, yes.

21 Q. Anyone else?

22 A. At the time -- at the time that we
23 had the discussions, the early-on discussions,
24 those three were the primary players in the team.
25 Other people have come in after that time, who

29

1 were not part of those discussions.

2 Q. Can you tell us the job titles or
3 responsibilities of the two Kathys, Kathy
4 Richardson and Kathy Boyce?

5 A. Sure. They are both joint use
6 managers, and they are responsible for the same
7 thing that Grace is responsible for, day-to-day
8 interaction with the AT&T construction/
9 engineering teams and various electric companies.

10 Q. When you say that you think that the
11 appropriate level should be based on usable
12 space, can you quantify what that usable space
13 is?

14 A. It's going to be based on how much
15 space AT&T is actually occupying in the
16 communications space on that pole.

17 Q. And you don't mean to do this on a
18 pole-by-pole basis, do you? I take it what you
19 mean is that AT&T would use X number of inches or
20 feet on the pole?

21 A. Right. It would be an average.

22 Q. And what is that number?

23 A. I don't know -- without looking at
24 every pole and quantifying it, I don't know what
25 it would be.

30

1 Q. So to calculate it would require a
2 survey, is that what you mean?
3 A. Yes.
4 Q. Has such a survey been undertaken?
5 A. **Not in the Dayton Power & Light**
6 **area, but in other areas, yes.**
7 Q. What other areas would that be?
8 A. **We completed surveys in the Indiana**
9 **area, two specific areas in Indiana in which**
10 **surveys were completed.**
11 Q. And do the results of those -- I
12 will withdraw that.
13 What was the objective of those
14 surveys?
15 A. **The objective of the survey was to**
16 **identify the attachers on the poles, to identify**
17 **the number of poles that the electric company**
18 **owns, joint poles, and the number of joint poles**
19 **owned by AT&T, and to identify the space that was**
20 **used -- the communications space used on the**
21 **pole.**
22 Q. So did those surveys result in a
23 specific figure or figures for communications
24 space on the pole?
25 A. **Used by AT&T?**

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1 Q. Yes, ma'am.
2 A. **Yes. Yes, they did.**
3 Q. And what was that figure?
4 A. **It was about one and a half feet.**
5 Q. Was that in both surveys?
6 A. **To my knowledge, yes.**
7 Q. When were these surveys done?
8 A. **One was completed in 2006, and I**
9 **believe the other in 2005.**
10 Q. Do you know how many poles were in
11 each?
12 A. **Not off the top of my head.**
13 Q. Can you tell me -- I don't need a
14 specific figure -- but was it what you consider a
15 large number, or were these small samples?
16 A. **The one was a large number, was a**
17 **large area. The other one was not a large area;**
18 **it was probably a small to medium area.**
19 Q. Do you know if the area surveyed and
20 the types of poles were similar to those in joint
21 use with DP&L?
22 A. **I don't know that.**
23 Q. Who did the survey?
24 A. **Osmose was the company that did the**
25 **survey for us.**

32

1 Q. And what section of Indiana was
2 this?
3 A. **It would have been southern Indiana.**
4 Q. Do you know if the -- if the
5 topography or ground conditions in the area there
6 were similar to those in the DP&L service area,
7 where you have joint use poles?
8 A. **No, I don't know that.**
9 Q. Now, are you conversant with the
10 agreements with DP&L and AT&T Ohio in this case?
11 A. **I have read the agreement. I know**
12 **to find what I need to in the agreement. I could**
13 **not speak to it without refreshing my memory**
14 **about certain things. But, you know, there are**
15 **other things that I am probably more conversant**
16 **of than others.**
17 Q. Do you believe that Grace Sury is
18 more familiar with them than you are?
19 A. **Yes.**
20 Q. Are you involved in the billing --
21 either the generation of invoices or review and
22 approval of invoices between DP&L and AT&T?
23 A. **Grace would review the invoices and**
24 **she would approve them, and engage me only if**
25 **there was an issue that needed to be addressed.**

33

1 Q. And have there been issues on which
2 she had to engage you with regard to billing?
3 A. **Yes, when we received the invoice**
4 **for the \$45 per pole.**
5 Q. And what was your involvement with
6 that?
7 A. **We discussed if we had agreed to**
8 **that rental rate with Dayton Power & Light, and**
9 **what we were going to pay Dayton Power & Light.**
10 Q. Up until that invoice, had you been
11 involved in review of any of the other invoices?
12 A. **No.**
13 Q. Going back to the pole split or
14 balance for a minute, are there any problems
15 caused for AT&T by a 50/50 pole balance?
16 MR. SULLIVAN: **Objection, form.**
17 BY MR. FARUKI:
18 Q. Go ahead.
19 A. **Okay. Yes.**
20 Q. What would those be?
21 A. **AT&T does not use 50 percent of the**
22 **pole, and our basis for suggesting a lower**
23 **ownership level is based on what percent of that**
24 **pole we actually do use and get benefit from.**
25 Q. Okay. Anything else?

34

1 A. No. That would be it.

2 Q. Are you aware of whether there are
3 provisions in the agreements with -- between DP&L
4 and AT&T that indicate that the companies should
5 be sharing the number of poles equally, or
6 approximately equally?

7 A. I am aware of language that I
8 believe speaks to a reasonable balance of
9 ownership.

10 Q. And what does that mean to you?

11 A. That means reasonable, based on
12 space used and needed by the parties.

13 Q. So you're aware -- are you saying
14 you're aware of no language in the agreements
15 that would point toward an equal or a 50/50
16 sharing?

17 A. No.

18 Q. Okay.

19 A. That's not how I would interpret
20 reasonable.

21 Q. But how about other provisions of
22 the agreement, are you aware of any --

23 A. No.

24 Q. -- that -- okay.

25 As to the method of payment -- I am

35

1 sorry, let me rephrase that.

2 As to the method of calculating how
3 much is to be billed on an invoice, have you had
4 involvement with that, other than perhaps in the
5 preparation for your deposition?

6 A. Could you be more specific?

7 Q. Sure. You're aware that each year,
8 DP&L has been sending an invoice to AT&T Ohio, or
9 its predecessors, for a fee based on the number
10 of poles contacted?

11 MR. SULLIVAN: Objection,
12 foundation.

13 BY MR. FARUKI:

14 Q. Unless Mike instructs you not to
15 answer, you can go ahead and answer. He is
16 preserving his record with an objection.

17 A. Okay.

18 Q. So you're aware that there are
19 annual invoices?

20 A. I am sorry?

21 Q. You're aware that there are annual
22 invoices between DP&L and AT&T?

23 A. Yes.

24 Q. And are you aware of the basis on
25 which they have been calculated?

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1 A. Yes.

2 Q. And is your awareness of that only
3 as a result of this proceeding, and getting ready
4 for your deposition and so on, or were you
5 involved with that prior to that happening?

6 A. I was aware that the invoices were
7 prepared and the rental was -- was based on a net
8 value.

9 Q. By net value, do you mean that
10 instead of the companies each sending a check to
11 the other, they would simply net the totals of
12 what was contacted, so only one check would be
13 sent?

14 A. Yes.

15 Q. Other than that fact, are you aware
16 of how the invoices were being calculated?
17 Again, prior to getting ready for your
18 deposition.

19 A. Well, I am aware that -- I mean,
20 that that's how we received the invoices, based
21 on the difference between the two values.

22 Q. Okay. Take a look, if you want to
23 examine -- I think, in your e-mail, you have got
24 some attachments of exhibits, and if you want to
25 click on the one that has the first five

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1 exhibits.

2 MR. SULLIVAN: Charlie, as you know,
3 Ann is here pursuant to a 30(b)(5) designation.
4 And while I have given you a lot of latitude thus
5 far, hardly any of your questions relate to the
6 topic she is here to testify to. She is not here
7 to testify about the meaning of the agreement,
8 she is here to testify about Topic 4. And that
9 was the understanding of the scope of her
10 designation for the deposition.

11 Like I said, I have given you some
12 latitude, but we have now been going on for 45
13 minutes on topics that are not related to that
14 topic.

15 MR. FARUKI: Well, I disagree with
16 your characterization, but I understand what
17 you're saying. I have a couple more questions on
18 this.

19 MR. SULLIVAN: I will continue to
20 give you some latitude, but at some point we need
21 to move on to the topic that she is designated
22 for.

23 MR. FARUKI: I appreciate that.

24 BY MR. FARUKI:

25 Q. Okay. Ms. Kendall, would you take a

38

1 look at what's marked as Exhibit 4 in your
2 attachment. And that would be a document that's
3 labeled operating routine. And just let us know
4 when you have that one.

5 **A. Okay. I am just getting there.**

6 **Okay, I have got it.**

7 Q. Take a look at Page 17.

8 **A. Okay. I am there.**

9 MR. FARUKI: Vern, do you have one
10 of these?

11 MR. MARGARD: I think so. Go ahead.

12 BY MR. FARUKI:

13 Q. On Page 17, ma'am, in particular,
14 Section 11.202, tell me when you have had a
15 chance to read that one to yourself.

16 **A. Okay.**

17 Q. Is this the method that has been
18 used to calculate the invoices that have been
19 sent from DP&L to AT&T?

20 MR. SULLIVAN: Objection.

21 THE WITNESS: Yes.

22 MR. SULLIVAN: Objection,
23 foundation.

24 BY MR. FARUKI:

25 Q. Do you recognize the operating

39

1 routine as one of the documents that you have
2 reviewed, as part of your discussions with Grace
3 Sury and DP&L?

4 **A. It has been used.**

5 Q. And you recognize it as part of the
6 agreement between AT&T Ohio, on the one hand, and
7 DP&L on the other?

8 MR. SULLIVAN: Objection, calls for
9 a legal conclusion. She can state her
10 understanding.

11 BY MR. FARUKI:

12 Q. Is that your understanding?

13 **A. Can you repeat the question, please?**

14 Q. Sure. Is it your understanding that
15 the operating routine, Exhibit 4, is one of the
16 documents that is part of the agreement between
17 your company and DP&L?

18 MR. SULLIVAN: Same objection.

19 THE WITNESS: Yes.

20 BY MR. FARUKI:

21 Q. Would you take a look at a different
22 set of exhibits -- well, I tell you what, take a
23 look at Exhibit Number 1, to start with, which is
24 the notice of deposition that I had you look at
25 before we were on the record, just to make sure

40

1 you could open your attachments and identify
2 exhibits.

3 **A. Okay. All right. I have that.**

4 MR. FARUKI: And, Mike, to shorten
5 this up, she is the designee for the company on
6 Topic 4; is that right?

7 MR. SULLIVAN: That's correct.

8 MR. FARUKI: And only on Topic 4?

9 MR. SULLIVAN: Correct.

10 BY MR. FARUKI:

11 Q. And is that your understanding as
12 well, ma'am?

13 **A. Yes.**

14 Q. What did you do to prepare yourself
15 to testify about the costs that AT&T Ohio would
16 incur, if it had the responsibility to approve
17 and maintain third-party communication circuits
18 on DP&L's poles?

19 **A. I reviewed our current structure
20 access process and the costs associated with
21 applications by third parties.**

22 Q. When you say you reviewed the
23 current structure access process, what documents
24 would have contained that process?

25 **A. I looked at the structure access**

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1 **website, which is a public website, and reviewed
2 that documentation.**

3 Q. Anything beyond what's on the
4 website?

5 **A. No.**

6 Q. What's the website address for that?

7 **A. I can get it for you. The website
8 address is asac -- A S A C -- Ameritech.com.**

9 Q. And does AT&T consider today that it
10 has the responsibility to approve third-party
11 communications circuits on DP&L poles?

12 MR. SULLIVAN: Could you read that
13 back, please?

14 (Record read.)

15 MR. SULLIVAN: Thank you.

16 Go ahead, Ann.

17 THE WITNESS: Okay. Yes.

18 BY MR. FARUKI:

19 Q. And for how long has it considered
20 it had that responsibility?

21 **A. We identified this approximately a
22 year and a half ago.**

23 Q. So this is summer of '07, so you're
24 saying the beginning of '06?

25 **A. About that time frame. Somewhere in**

42

1 there.

2 Q. And what caused you to identify it
3 then?

4 A. I was alerted to it by Grace, after
5 going through the agreement, that that was
6 something that AT&T was responsible for, based on
7 the terms and conditions in the agreement.

8 Q. And what did you do about it, once
9 you had that awareness, if anything?

10 A. We -- Grace and I together had
11 approached Dayton Power & Light and made them
12 aware that that language was in the agreement.

13 Q. And so what steps did you take, if
14 any, to fulfill that responsibility?

15 A. We didn't -- we did not take any
16 action on that. We brought it to Dayton Power &
17 Light's attention, but did not act on it.

18 Q. Leaving aside the fact that you did
19 not act on it, there were steps that could have
20 been taken to ready the company to discharge that
21 responsibility; is that correct?

22 MR. SULLIVAN: Objection, form.
23 Go ahead.

24 THE WITNESS: Yes.

25 BY MR. FARUKI:

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1 Q. And what steps would those have
2 been?

3 A. To contact the third parties on
4 those poles and make them aware that all future
5 requests would be managed by AT&T, rather than
6 Dayton Power & Light.

7 Q. Any other steps that could have been
8 taken to fulfill or carry out that
9 responsibility?

10 A. Not that I am aware of.

11 Q. What consideration did you -- and by
12 you, I don't mean only you personally here -- but
13 you or people on your team make of whether or not
14 you should notify third parties that were
15 contacting the poles?

16 A. We really wanted to work that out
17 with Dayton Power & Light during our settlement
18 negotiations.

19 Q. So did you take any steps -- well, I
20 will withdraw that.

21 Had you -- did you notify any third
22 parties that AT&T considered it had that
23 responsibility?

24 A. Not to my knowledge.

25 Q. Was that a conscious or deliberate

44

1 decision not to do so?

2 A. It was a conscious decision, based
3 on the fact that we were in negotiations with
4 Dayton Power & Light at the time.

5 Q. Now, if you had the responsibility
6 to approve and maintain third-party
7 communications circuits, what actions would that
8 entail AT&T taking?

9 A. We already have a process in place
10 with our structure access team to accept the
11 applications and to process them, and we would
12 manage them as we manage ours today.

13 Q. There are costs, of course, to that
14 process; is that right?

15 A. Can you repeat your question,
16 please?

17 Q. Yes, ma'am. There are costs that
18 the company would incur in going through that
19 process, aren't there?

20 A. Yes.

21 Q. Are you familiar with those costs?

22 A. Can you be specific about the costs
23 you're talking about?

24 Q. Well, let me ask it broadly. What
25 costs are incurred by the company in going

45

1 through the process for structure access?

2 A. We have a group that accepts the
3 applications and puts the applications into a
4 system, sends the information to engineering to
5 do a field survey. A field survey would be
6 required in some cases, make-ready work may be
7 required, and there would be costs associated
8 with those -- those tasks.

9 Q. So I think you're defining or
10 identifying three separate pieces of work, if I
11 can call them that; one, acceptance of the
12 applications; two, any necessary engineering
13 work; and, three, make-ready work; is that right?

14 A. Yes.

15 Q. Is there anything else?

16 A. Not to my knowledge.

17 Q. Are the charges for these standard
18 charges, or are they time and materials charges,
19 or something else?

20 MR. SULLIVAN: Objection, form. Why
21 don't you take them one at a time, because the
22 answer differs for each.

23 MR. FARUKI: That's fair.

24 MR. SULLIVAN: I believe.

25 MR. FARUKI: I would love to

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1 cross-examine you, but I will just ask another
2 question.

3 BY MR. FARUKI:

4 Q. With regard to acceptance of
5 applications, how are those charges done?

6 A. There is an application fee that is
7 due at the time of the application. In addition
8 to that, there is a field survey fee, based on
9 the number of poles that are being surveyed, that
10 the attacher is requesting to attach to, and
11 those fees are payable up front with the
12 application.

13 And once the field survey is
14 completed, if there is any engineering and/or
15 make-ready work required, those are billed either
16 on a time and material basis or per an agreement
17 with the third party based on a per-job basis.
18 So it could vary; but, generally, it's a time and
19 material.

20 Q. Do you know what the first fees are
21 that you mentioned; namely, the application fee
22 and the field survey fee, based on the number of
23 poles?

24 A. Sure. The application fee is \$200,
25 and the field survey fee is \$55 per pole.

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1 Q. Now, the same sorts of tasks that
2 you have described of applications, engineering
3 and make-ready work are necessary regardless of
4 which company, DP&L or AT&T, would be requested
5 to do the work; is that right?

6 A. I am not clear what -- I am not
7 clear of your question.

8 Q. If DP&L, instead of AT&T, was
9 contacted by a third party that wanted to attach
10 to the poles, then DP&L would also have to do the
11 application work, the engineering work and
12 make-ready work; is that correct?

13 A. I don't know what DP&L's process is.
14 I can only speak to AT&T's.

15 Q. So you -- well, you're not saying
16 that you believe that DP&L would have no costs
17 when it did this work, do you?

18 A. I could only guess that they will
19 have costs. I don't know how they manage their
20 process, compared to what AT&T does.

21 Q. I am not asking you how they manage
22 their process. But in order to allow a third
23 party onto a pole owned by any company, doesn't
24 the pole have to be examined to see whether it
25 can carry the load of the new attachment?

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1 A. I would believe so.

2 Q. And doesn't the company that owns
3 the pole, and is the recipient of the request
4 from a third-party attacher, have to do something
5 to process that application?

6 MR. SULLIVAN: Objection, form.

7 THE WITNESS: Whoever is designated
8 as responsible for those attachments permitted in
9 the communications space would be responsible for
10 that.

11 BY MR. FARUKI:

12 Q. And so for how many years do you
13 believe that AT&T has had this responsibility?

14 A. For whose poles?

15 Q. With regard to DP&L.

16 MR. SULLIVAN: Objection, form.
17 Go ahead and answer.

18 THE WITNESS: The terms of the
19 agreement indicate that AT&T -- that that would
20 be AT&T's responsibility.

21 AT&T has not permitted any
22 attachments on DP&L poles.

23 BY MR. FARUKI:

24 Q. Since when?

25 A. To my knowledge, since I have been

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1 here. So 2002 on, I am not aware of it. Prior
2 to that, I can't speak to that.

3 Q. Okay. Just so my record is clear,
4 you have no knowledge of AT&T permitting
5 attachments by third parties to DP&L-owned poles
6 at any time since 1930; is that right?

7 A. I am not aware of it.

8 Q. And you said that it was at the
9 beginning of 2006 that it was identified that
10 AT&T had the responsibility to approve
11 third-party communications circuits; is that
12 right?

13 A. Thereabouts, yes.

14 Q. And once that was identified, was it
15 your expectation that you would reimburse DP&L
16 for the work that had been done to allow third
17 parties to get on its poles?

18 A. No.

19 Q. Because?

20 A. Because DP&L should have recovered
21 those costs from the third parties.

22 Q. Was there any effort made to
23 determine why this discovery of a responsibility
24 at the beginning of 2006, or thereabouts, had not
25 been done earlier?

<p>50</p> <p>1 A. No.</p> <p>2 Q. Are you familiar with the language</p> <p>3 of the agreement that relates to the</p> <p>4 responsibility you're talking about?</p> <p>5 A. About managing the signal</p> <p>6 communications in that space, in the</p> <p>7 communications space?</p> <p>8 Q. Yes, ma'am.</p> <p>9 A. I am familiar with it.</p> <p>10 Q. Do you know what agreement it's in?</p> <p>11 A. I could find it for you.</p> <p>12 It's actually on Page 4 of the</p> <p>13 operating routine, and it's Item 1.308.</p> <p>14 Q. The operating routine is a document</p> <p>15 from 1952; is that right?</p> <p>16 A. I will tell you in a second if it</p> <p>17 is.</p> <p>18 Q. I am looking at the first page, if</p> <p>19 that's easier, where it says at the bottom:</p> <p>20 Prepared jointly by the Dayton Power & Light</p> <p>21 Company and the Ohio Bell Telephone Company,</p> <p>22 December 1952 --</p> <p>23 A. December 1952, yes.</p> <p>24 Q. Yes. And under the operating</p> <p>25 agreement, is it your position that AT&T has had</p>	<p>52</p> <p>1 in the various years, would have been expected to</p> <p>2 have the pertinent manager read this agreement?</p> <p>3 A. I would expect that they would have</p> <p>4 knowledge of it, know where to find it, and, you</p> <p>5 know, be aware of the agreement.</p> <p>6 Q. And beyond that, they would be</p> <p>7 expected to protect or assert any rights that the</p> <p>8 telephone company intended to assert; is that</p> <p>9 right?</p> <p>10 MR. SULLIVAN: Objection, form,</p> <p>11 foundation.</p> <p>12 THE WITNESS: Yeah, as they</p> <p>13 identified various issues, yes.</p> <p>14 BY MR. FARUKI:</p> <p>15 Q. Now, in Page 4 that you mentioned a</p> <p>16 couple of minutes ago, of the operating routine,</p> <p>17 the Section 1.308, you have that in front of you?</p> <p>18 A. Yes, I do.</p> <p>19 Q. This does not say anything about</p> <p>20 allocation or -- well, I will leave it at that --</p> <p>21 allocation of revenues, does it?</p> <p>22 A. This does not.</p> <p>23 Q. The -- did AT&T Ohio do anything,</p> <p>24 from the December 1952 period through 2005, to</p> <p>25 provide communications circuits at the cost and</p>
<p>51</p> <p>1 this responsibility at least since this operating</p> <p>2 routine was signed?</p> <p>3 A. It appears that way, yes.</p> <p>4 Q. Do you believe that it was AT&T's</p> <p>5 responsibility to discover this fact before</p> <p>6 approximately the beginning of '06?</p> <p>7 MR. SULLIVAN: Objection, form.</p> <p>8 THE WITNESS: Yeah, I don't have an</p> <p>9 opinion on that.</p> <p>10 BY MR. FARUKI:</p> <p>11 Q. Certainly AT&T had a copy of the</p> <p>12 operating routine all those years; right?</p> <p>13 A. To my knowledge, yes.</p> <p>14 Q. And there were, for many years,</p> <p>15 joint use managers within AT&T who were</p> <p>16 responsible for administering the agreement</p> <p>17 between DP&L and AT&T?</p> <p>18 A. Yes.</p> <p>19 Q. Would you have expected the joint</p> <p>20 use managers to be familiar with the provisions</p> <p>21 of this operating routine?</p> <p>22 A. I would expect them to be familiar</p> <p>23 with it, not know it by heart.</p> <p>24 Q. Well, would you also expect that the</p> <p>25 telephone company, AT&T Ohio or its predecessors</p>	<p>53</p> <p>1 expense of the telephone company for third</p> <p>2 parties?</p> <p>3 MR. SULLIVAN: Objection,</p> <p>4 foundation.</p> <p>5 You can go ahead and answer, if you</p> <p>6 can.</p> <p>7 THE WITNESS: Yeah, can you repeat</p> <p>8 the question, please?</p> <p>9 MR. FARUKI: Sure. I will have Bev</p> <p>10 do it. She can do a better job.</p> <p>11 (Record read.)</p> <p>12 THE WITNESS: On whose poles?</p> <p>13 BY MR. FARUKI:</p> <p>14 Q. DP&L poles.</p> <p>15 A. Not that I am aware of.</p> <p>16 MR. SULLIVAN: At a good breaking</p> <p>17 point, may we take a break?</p> <p>18 MR. FARUKI: Yeah, we can do that</p> <p>19 now. Why don't we take a break. You want to say</p> <p>20 ten minutes, so everybody can go to the rest</p> <p>21 room?</p> <p>22 MR. SULLIVAN: Yes.</p> <p>23 MR. FARUKI: We can go off the</p> <p>24 record.</p> <p>25 (Thereupon, an off-the-record</p>

<p>1 discussion was held.) 2 (Recess taken.) 3 MR. FARUKI: Why don't we go back on 4 the record. 5 BY MR. FARUKI: 6 Q. Let me ask a different question. If 7 you would, take a look at Exhibit 25, which is 8 one of the exhibits that was e-mailed to you, and 9 is, I will represent to you, a copy of a form 10 letter dated December 1, 2004, of a single page, 11 from Michael Welch, that was produced by AT&T in 12 the discovery in this case. If you would, let us 13 know when you have it. 14 MR. SULLIVAN: Actually, my 15 understanding was it was produced by you guys in 16 discovery. 17 MR. FARUKI: I am sorry. 18 MR. SULLIVAN: The copy would 19 have -- has a DP&L Bates number on it. 20 MR. FARUKI: I stand corrected. 21 Thank you. 22 MR. SULLIVAN: I don't know if we 23 also produced it, but -- 24 MR. FARUKI: I thought so. 25 BY MR. FARUKI:</p>	<p>54 1 or SBC at the time -- 2 Q. Right. 3 A. -- when they were attaching to 4 Dayton Power & Light poles, in the communications 5 space, signal or communications circuits. That's 6 why it was written. 7 Q. Is it correct that it was not sent? 8 A. To my knowledge, it was not. 9 Q. Were you involved in discussions -- 10 even if you didn't see the text of it, were you 11 involved in discussions at the time about such a 12 letter? 13 MR. SULLIVAN: Are you asking 14 internal or -- 15 BY MR. FARUKI: 16 Q. Yes. 17 A. I don't recall, at the time, hearing 18 about this. 19 Q. Do you know why it was not sent? 20 A. I don't know that. 21 Q. At the time, Michael Welch was in 22 the area of the company that was responsible for 23 third-party attachments? 24 A. Yes. 25 Q. Is it accurate -- and I am looking</p>
<p>55 1 Q. But tell us, at least, when you have 2 that first. 3 A. Okay. And you said it was 25? 4 Okay. 5 Q. 25. And it's December 1, '04. 6 A. I see it. 7 Q. Okay. Just so we are looking at the 8 same sheet of music, it's addressed to company 9 name, company address. Is that the one you have? 10 A. Yes. 11 Q. Have you seen this letter before? 12 A. Just recently I saw this. 13 Q. You would not have seen it in the 14 December '04 period of time? 15 A. Yeah, I don't recall seeing this 16 letter. 17 Q. Tell me when you have had a chance 18 to look at it. 19 A. Yeah, I don't recall seeing it at 20 that time frame. 21 Q. Do you know why -- excluding 22 anything you were told by counsel -- do you know 23 why it was prepared? 24 A. I know why it was prepared. It was 25 prepared to alert third parties to contact AT&T,</p>	<p>56 1 at the phrase signal or communications 2 circuits -- that signal circuits represented 3 telegraph circuits, when those were in use? 4 A. I don't know if, specifically, those 5 fell under signal. 6 Q. That's all the questions I have on 7 that. 8 Take a look at what you should have 9 in your attachments as Exhibit 37. While you get 10 that, I will have our court reporter mark one to 11 attach to the transcript. 12 (Thereupon, Kendall Exhibit Number 13 37 was marked for purposes of identification.) 14 THE WITNESS: Okay. I have it. 15 BY MR. FARUKI: 16 Q. Exhibit 37 is a single page copy of 17 an invoice. Would you tell us if you have seen 18 this before? 19 A. Yes, I have. 20 Q. And would you describe what this 21 document is. 22 A. This is a document reflecting a 23 value associated with overpayment by AT&T of 24 joint use rent to Dayton Power & Light, and also 25 recovery of the rent from third-party attachments</p>

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1 on Dayton Power & Light's poles -- signal and
 2 telecommunications attachments on poles that AT&T
 3 was also an attacher.
 4 Q. Your name is at the bottom of this
 5 document?
 6 A. Yes.
 7 Q. What was the OSPE abbreviation?
 8 A. Outside plant engineering.
 9 Q. Did you create this document?
 10 A. No, I did not.
 11 Q. Did you ask that it be created?
 12 A. I did not ask that it be created,
 13 but I was involved in the discussion to create
 14 it.
 15 Q. And with whom was that discussion?
 16 A. Grace Sury and myself discussed
 17 this.
 18 Q. And what was the purpose of the
 19 invoice?
 20 A. It was to present to Dayton Power &
 21 Light, to make them aware of the terms and
 22 conditions in the agreement and/or operating
 23 routine that related to how pole rentals should
 24 be calculated, and the overpayment that AT&T
 25 incurred, as well as the rentals for third-party

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1 attachments on jointly used poles -- Dayton
 2 Power & Light jointly used poles.
 3 Q. Who created it?
 4 A. You know what, I don't know for sure
 5 who created this.
 6 Q. Was this provided to DP&L?
 7 A. It was presented to Dayton Power &
 8 Light August -- I believe August of last year.
 9 August 24th, in fact, of 2006.
 10 Q. And do you know how the calculations
 11 on the page were made?
 12 A. From my understanding, they were
 13 based on rental paid from 1995 to 2005, based on
 14 our overpayment, based on a net versus an excess
 15 pole value. And the third-party rental was based
 16 on one and a half attachments per joint use
 17 Dayton Power & Light pole that AT&T was attached
 18 to.
 19 Q. Okay. Why don't we take these
 20 separately, it might be a bit easier. With
 21 regard to the overpayment of joint use rent, this
 22 says from 1995 to September 2005. Why was 1995
 23 chosen?
 24 A. My recollection was that we looked
 25 at a ten-year period of time, based on how far

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1 back we believed we could go based on statute of
 2 limitations. That's my recollection of that
 3 period of time.
 4 Q. And this was -- this \$287,000 figure
 5 was to -- or was intended to recoup revenue that
 6 had been paid under invoices sent by DP&L; is
 7 that right?
 8 A. It was intended to recoup rent paid
 9 by AT&T to Dayton Power & Light.
 10 Q. And the rent paid by AT&T to Dayton
 11 Power & Light, that you're talking about, was
 12 rent that was paid pursuant to the invoices that
 13 DP&L sent?
 14 A. Yes.
 15 Q. Was it supposed to be -- and, again,
 16 I am talking about the item designated
 17 overpayment of joint use rent -- was that item
 18 intended to be done in accordance with all of the
 19 terms of the agreement?
 20 A. It was meant to be done based on the
 21 language in the agreement that addressed -- and
 22 actually, I believe, it's actually the operating
 23 routine, and I would have to verify that -- but
 24 that addressed payment for rent on excess poles.
 25 Q. Is that the language that we looked

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1 at earlier about how an invoice was calculated?
 2 A. No, it is not.
 3 Q. Take a look at Exhibit 3, which is
 4 the supplemental agreement. And you will need to
 5 tell us when you have Exhibit 3 in front of you.
 6 A. Okay. Just about there.
 7 Q. Take your time.
 8 A. Okay. I have it.
 9 Q. Is the language that you're
 10 referring to the first paragraph of Article XI
 11 Roman XI?
 12 A. Yes.
 13 Q. Now, turn the page of this exhibit,
 14 and you see on Page 2, the second full paragraph
 15 begins as follows: Every such statement,
 16 including the statement first above provided for,
 17 shall be deemed to be correct, unless written
 18 notice of errors claimed to exist therein shall
 19 be given within 60 days from the receipt of such
 20 statement, to the party submitting the statement,
 21 by the party to which the statement was
 22 submitted. Have I read that sentence correctly?
 23 A. Yes.
 24 Q. You did not comply with that
 25 provision in presenting, to use your word, this

<p>62</p> <p>1 invoice, did you?</p> <p>2 MR. SULLIVAN: Objection, form.</p> <p>3 THE WITNESS: Not to my knowledge.</p> <p>4 BY MR. FARUKI:</p> <p>5 Q. Okay. And, in fact, there was no</p> <p>6 written notice in the language that I just quoted</p> <p>7 on Page 2 of the supplemental agreement that had</p> <p>8 been given with respect to the invoices that</p> <p>9 you're now claiming to have been overpaid; is</p> <p>10 that right?</p> <p>11 MR. SULLIVAN: Objection.</p> <p>12 Objection, foundation.</p> <p>13 THE WITNESS: Not to my knowledge.</p> <p>14 BY MR. FARUKI:</p> <p>15 Q. Go back to Page 1, in the Article XI</p> <p>16 language, we earlier looked at Page 17 of the</p> <p>17 operating routine, about how the amount owing</p> <p>18 would be calculated; do you recall that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And did you give any consideration</p> <p>21 to the language from the operating routine, on</p> <p>22 Page 17, in preparing this invoice that's Exhibit</p> <p>23 37?</p> <p>24 MR. SULLIVAN: I am going to object,</p> <p>25 to the extent it would require you to divulge</p>	<p>64</p> <p>1 Q. And then the operating routine was</p> <p>2 approximately ten years later, 1952?</p> <p>3 A. That's correct.</p> <p>4 Q. So what consideration did you give</p> <p>5 these -- of these two dates, 1942 and 1952, in</p> <p>6 considering the invoice that you prepared or had</p> <p>7 prepared in Exhibit 37?</p> <p>8 A. Yeah, my recollection was that we</p> <p>9 looked at the dates on this, and also looked at</p> <p>10 the language in both, and based on that, came up</p> <p>11 with the excess number of poles as the right</p> <p>12 calculation for -- for determining pole rental.</p> <p>13 Q. That calculation that you made -- I</p> <p>14 will rephrase that.</p> <p>15 The overpayment of joint use rent</p> <p>16 that this invoice seeks is not done in accordance</p> <p>17 with the operating routine, Section 11.202; is</p> <p>18 that right?</p> <p>19 MR. SULLIVAN: Objection. Calls for</p> <p>20 a legal conclusion.</p> <p>21 BY MR. FARUKI:</p> <p>22 Q. Go ahead.</p> <p>23 A. Yeah, I don't know that for sure. I</p> <p>24 mean, I would have to go -- I would have to look</p> <p>25 at it, but I don't know that.</p>
<p>63</p> <p>1 conversations with your attorneys. You can</p> <p>2 answer, excluding any conversations you had.</p> <p>3 BY MR. FARUKI:</p> <p>4 Q. Well, none of my questions ask for</p> <p>5 any communications with your counsel. So I agree</p> <p>6 with Mike. Exclude that.</p> <p>7 And my question is: Did you give</p> <p>8 any consideration, aside from perhaps talking to</p> <p>9 a lawyer, to the language in the operating</p> <p>10 routine that we looked at, when preparing the</p> <p>11 invoice that is Exhibit 37?</p> <p>12 A. We looked at the dates on the</p> <p>13 agreements and considered that.</p> <p>14 Q. And what do you mean by that?</p> <p>15 A. The date on the supplemental</p> <p>16 agreement.</p> <p>17 Q. Okay.</p> <p>18 A. And the date on the operating</p> <p>19 routine.</p> <p>20 Q. Okay. And the date on the</p> <p>21 supplemental agreement is 1942; right? I am just</p> <p>22 looking at the last page, where it says, in</p> <p>23 witness whereof, et cetera, the officers execute</p> <p>24 this 30th day of September, 1942?</p> <p>25 A. Right. Yes.</p>	<p>65</p> <p>1 Q. What consideration did the dates</p> <p>2 play in this? I mean, the supplemental agreement</p> <p>3 is 1942; the operating routine, 1952. I don't</p> <p>4 understand why you're saying that you considered</p> <p>5 the dates of these two with regard to the</p> <p>6 overpayment calculation.</p> <p>7 A. I probably should have been more</p> <p>8 clear, that we looked at the dates and we looked</p> <p>9 at the language in both of those items, and</p> <p>10 determined that this was something that -- that</p> <p>11 applied.</p> <p>12 Q. Well, why don't you go to the</p> <p>13 operating routine, which was Exhibit 4.</p> <p>14 A. Okay.</p> <p>15 Q. And tell us when you have that.</p> <p>16 A. Okay. I have it.</p> <p>17 Q. And in particular, the first page</p> <p>18 after the table of contents --</p> <p>19 A. Okay.</p> <p>20 Q. -- has a Section 0.101.</p> <p>21 A. Yes.</p> <p>22 Q. You will see -- well, read that to</p> <p>23 yourself first.</p> <p>24 A. Okay. I am done.</p> <p>25 Q. That paragraph begins by saying that</p>

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1 the purpose of the instructions contained in this
 2 operating routine is to adapt the principles of
 3 the 1930 joint pole use agreement and the 1942
 4 supplemental agreement. Do you see that?
 5 **A. Yes.**
 6 **Q.** It says it's going to adapt the
 7 principles of those two agreements, quote, to the
 8 day-by-day joint pole operations, to convey to
 9 the operating forces the essential information
 10 necessary for a uniform application of such
 11 principles, and to interpret the intent of
 12 certain sections of the agreement, end of quote.
 13 Have I read that correctly?
 14 **A. Yes.**
 15 **Q.** So you -- when you read the
 16 operating routine, you recognize that one of its
 17 purposes is to interpret the intent of certain
 18 sections of the 1930 joint pole use agreement and
 19 the 1942 supplemental agreement?
 20 **MR. SULLIVAN:** Objection, form.
 21 Calls for a legal conclusion.
 22 **BY MR. FARUKI:**
 23 **Q.** Is that your understanding?
 24 **A. That's my understanding.**
 25 **Q.** And is it correct that the invoices

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1 that DP&L sent to AT&T, from 1995 to 2005, for
 2 joint pole use, were calculated in accordance
 3 with the operating routine, Section 11.202?
 4 **A. Yes.**
 5 **Q.** Let me turn then to the other item
 6 on Exhibit 37, which was the invoice. I will
 7 wait until you get back to 37.
 8 **A. Okay. I am there.**
 9 **Q.** With regard to the recovery of
 10 revenue for signal and telecom attachments from
 11 1995 to 2005, do you know how that
 12 million-five-ninety-four was calculated?
 13 **A. I can give you the general concept,**
 14 **was taking one and a half attachments per Dayton**
 15 **Power & Light pole, times a rental rate, times X**
 16 **number of years.**
 17 **Q.** In your consideration of this
 18 invoice, did you have any conversation with Grace
 19 Sury, excluding, again, anything with a lawyer,
 20 about whether AT&T had waived its rights to this
 21 amount?
 22 **A. We never discussed that we had --**
 23 **whether or not we had waived our rights to that**
 24 **amount.**
 25 **Q.** Did it ever occur to you whether

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1 that would have occurred?
 2 **A. No.**
 3 **Q.** The 1.5 figure, where did you get
 4 that?
 5 **A. That actually came in a discussion**
 6 **Grace and I had over lunch with Georgene Dawson,**
 7 **in Dayton, where Georgene offered that Dayton**
 8 **Power & Light was prepared to acknowledge one and**
 9 **a half third-party attachers on Dayton Power &**
 10 **Light jointly used poles.**
 11 **Q.** When was this?
 12 **A. It was in March -- March of last**
 13 **year. March of 2006.**
 14 **Q.** And tell me, as best you recall,
 15 what she said about the one and a half figure.
 16 **A. What she said was that Dayton**
 17 **Power & Light was prepared to acknowledge one and**
 18 **a half third-party attachers in the**
 19 **communications space on their -- on Dayton**
 20 **Power & Light poles on which AT&T was attached.**
 21 **Q.** Did she tell you what the basis of
 22 the number was?
 23 **A. No, she did not.**
 24 **Q.** Did she tell you whether she was
 25 guessing?

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1 **A. No, she did not.**
 2 **Q.** The -- was this part of your
 3 settlement discussions?
 4 **A. No, it was not.**
 5 **Q.** And did the one and a half -- did
 6 you ask what the basis for it was?
 7 **A. No.**
 8 **Q.** Let me ask you to look at Exhibit
 9 38. And I am going to have our court reporter
 10 mark one as well.
 11 **A. Okay, I have it.**
 12 **(Thereupon, Kendall Exhibit Number**
 13 **38 was marked for purposes of identification.)**
 14 **BY MR. FARUKI**
 15 **Q.** Take a look at -- well, I will
 16 withdraw that.
 17 This is one of AT&T's discovery
 18 responses, and I am just interested in the one
 19 with your name, Interrogatory 4.
 20 **A. Okay.**
 21 **Q.** Do you have that handy?
 22 **A. I have it.**
 23 **Q.** Early in the deposition, when I
 24 asked you what you did to prepare, you said you
 25 had reviewed an interrogatory for which you were

<p>1 responsible and with your name on it. Is this 2 the one?</p> <p>3 A. Yes.</p> <p>4 Q. And did you prepare the answer or 5 the information for the answer to this?</p> <p>6 A. Yes, I did.</p> <p>7 Q. Does this interrogatory response set 8 forth all of the items of cost or expense that 9 your company would incur when a third party 10 attaches to an AT&T Ohio pole?</p> <p>11 A. To my knowledge.</p> <p>12 Q. These costs are current?</p> <p>13 A. Yes.</p> <p>14 Q. For how far back does the company 15 maintain records of what the costs would have 16 been?</p> <p>17 A. We have data back to, I believe, 18 19 -- well, I am going to say 1999, I believe.</p> <p>19 Q. The -- how long have each of these 20 fees, the structure access fee of \$200 and the 21 field survey fee of 55, been the case?</p> <p>22 A. Since 1998.</p> <p>23 Q. And on the second page, the records 24 review charge of \$80 an hour, for a minimum of 25 two hours, for how long has that been so?</p>	<p>70</p> <p>1 MR. SULLIVAN: I bet Kent Currie can 2 answer that question for you tomorrow.</p> <p>3 MR. FARUKI: It's not a major 4 question, so -- Mike, I think that's all I have 5 got at this time.</p> <p>6 Ms. Kendall, thank you very much.</p> <p>7 THE WITNESS: You're welcome.</p> <p>8 MR. FARUKI: I don't know if Mr. 9 Margard has any questions.</p> <p>10 MR. MARGARD: I do not, thank you.</p> <p>11 MR. SULLIVAN: I actually have a 12 couple questions.</p> <p>13 MR. FARUKI: Okay.</p> <p>14 MR. SULLIVAN: Ann, it's Mike 15 Sullivan.</p> <p>16 DIRECT EXAMINATION</p> <p>17 BY MR. SULLIVAN:</p> <p>18 Q. When you were discussing with Mr. 19 Faruki your conversation with Grace and Georgene 20 Dawson, Mr. Faruki asked you if Ms. Dawson had 21 indicated whether she was guessing, when she 22 mentioned the 1.5 attachers per pole. Do you 23 recall that question?</p> <p>24 A. Yes.</p> <p>25 Q. Did Ms. Dawson say she was guessing?</p>
<p>71</p> <p>1 A. To my knowledge, 1998.</p> <p>2 Q. That's all I have on that one.</p> <p>3 MR. FARUKI: Off the record a 4 minute.</p> <p>5 (Thereupon, an off-the-record 6 discussion was held.)</p> <p>7 MR. FARUKI: Okay. Back on the 8 record.</p> <p>9 BY MR. FARUKI:</p> <p>10 Q. Would you take a look at Exhibit 31, 11 please.</p> <p>12 A. Sure.</p> <p>13 Q. Have you seen this cost study 14 before?</p> <p>15 A. I have not seen this cost study.</p> <p>16 Q. Do you know whether -- this one is 17 dated 1996, as you can see from the first page. 18 Do you know if it's been updated?</p> <p>19 A. I don't know for sure. Some of the 20 costs in here are still applicable today. I 21 don't know that they all are.</p> <p>22 Q. Take a look at Page 6.0, just 23 something I don't understand. It refers to a TIC 24 test. Can you tell me what that is?</p> <p>25 A. I do not know what that is.</p>	<p>73</p> <p>1 A. No, she did not.</p> <p>2 Q. Okay. And then earlier on, you 3 talked about whether AT&T had taken any steps to 4 license third-party attachers who had signal or 5 communications circuits. Do you recall that 6 discussion with Mr. Faruki?</p> <p>7 A. Yes.</p> <p>8 Q. To your knowledge, has Dayton 9 Power & Light ever contacted AT&T to tell AT&T 10 that Dayton had received a request by a third 11 party to attach a signal or communication circuit 12 to one of its poles, and that it was sending that 13 third party on to AT&T?</p> <p>14 A. To my knowledge, they have never 15 contacted us.</p> <p>16 Q. Okay. And did Dayton ever contact 17 you, seeking reimbursement for costs it claims 18 that it incurred licensing third-party 19 communications or signal circuit attachers?</p> <p>20 A. No.</p> <p>21 Q. And then Mr. Faruki asked you some 22 questions about steps that AT&T had taken to 23 license third-party communication or signal 24 circuit attachers, since coming to the conclusion 25 that it was AT&T, and not DP&L, who ought to be</p>

<p>74</p> <p>1 licensing those attachers. Do you recall that 2 conversation? 3 A. Yes. 4 Q. And you indicated you raised that 5 topic with Dayton Power & Light? 6 A. Correct. 7 Q. And why is it that AT&T didn't, at 8 that time, tell Dayton to begin sending 9 third-party attachers that contact Dayton over to 10 AT&T, if they were signal or communication 11 circuit attachers? 12 A. We felt that because we were in the 13 midst of negotiations, that that would be part of 14 our negotiations, and something that we would 15 discuss thoroughly in that process, and opted 16 not -- not -- not to ask third-party attachers to 17 contact us, or Dayton Power & Light to send them 18 our way; that we felt that that was something we 19 could deal with during our negotiations. 20 MR. SULLIVAN: Thank you. That's 21 all I have. 22 MR. FARUKI: A few questions on 23 those topics. 24 RECROSS-EXAMINATION 25 BY MR. FARUKI:</p>	<p>76</p> <p>1 attachments to joint use poles while it was going 2 on? 3 A. I am not aware of that. 4 Q. Have you read Grace Sury's 5 deposition? 6 A. I have not read Grace's deposition. 7 Q. So when you say that your -- you're 8 not aware of requests -- I will withdraw that. 9 Your testimony is not that AT&T was 10 unaware of third parties attaching, instead your 11 testimony is that you personally were unaware of 12 it; is that right? 13 MR. SULLIVAN: Objection, 14 mischaracterizes her testimony. 15 MR. FARUKI: Well, it isn't. She 16 just said that. 17 MR. SULLIVAN: That's not what she 18 said. 19 MR. FARUKI: Read my question back. 20 (Record read.) 21 MR. SULLIVAN: Same objection. 22 THE WITNESS: Yeah, I am not aware 23 that AT&T was aware, and I am not aware. 24 MR. FARUKI: Okay. Let me take a 25 minute and I will find the document.</p>
<p>75</p> <p>1 Q. Are you aware of information that 2 was produced in discovery in this case indicating 3 that, in fact, data shows fewer than 1.5 4 attachments per pole on the DP&L joint use poles? 5 A. I am not aware of that. 6 Q. And, specifically, data that shows 7 fewer than 1.0 attachments, third-party 8 attachments, on average, to DP&L poles? 9 A. I am not aware of that either. 10 Q. You said you never received a 11 request from DP&L -- I will withdraw that. 12 You told Mr. Sullivan a minute ago 13 you had not received a request from DP&L with 14 regard to requests from third-party attachers; do 15 you recall that? 16 A. Yes. 17 Q. You are aware that Time Warner Cable 18 undertook a significant upgrade of its 19 facilities, in which it placed cable television 20 attachments on numerous joint use poles of DP&L; 21 is that right? 22 A. I am not aware of that. 23 Q. Are you aware of the documents 24 produced in this case that indicate that AT&T 25 knew of the Time Warner upgrade and the</p>	<p>77</p> <p>1 BY MR. FARUKI: 2 Q. Take a look at Exhibit 23, which I 3 will represent to you is an e-mail chain produced 4 by AT&T in this case. Tell us when you have 5 that. 6 A. Okay. 7 Q. You can look at any of this you 8 like, of course, but I am just going to ask about 9 the first -- well, last, I guess, e-mail, the one 10 at the top of the page, from Judith Dahlke, dated 11 September 16, in which in the fourth paragraph, 12 the report is as follows: In my last 13 conversation with Steve Herman, I advised I could 14 send out a violation letter pertaining to safety 15 attachments, but Steve is telling me he cannot 16 tell me where Time Warner has attached, quote, 17 just all over the Dayton area, end of quote. Do 18 you see that? 19 A. Yes, I do. 20 Q. So it's really beyond your knowledge 21 as to what cable television or other third-party 22 attachments in -- on DP&L joint use poles that 23 AT&T was aware of; right? 24 A. I don't have firsthand knowledge of 25 that.</p>

<p>78</p> <p>1 Q. In fact, you don't have any 2 knowledge of that; isn't that true? 3 MR. SULLIVAN: Objection to form. 4 THE WITNESS: Can I clarify your 5 question? 6 BY MR. FARUKI: 7 Q. Sure. 8 A. Your question is do I have any 9 knowledge that there are any third-party 10 attachers on Dayton Power & Light poles? 11 Q. No. I -- no. Your counsel was 12 trying to get, through testimony from you, as to 13 facts about third-party attachments. And my 14 questions are designed to show that aside from 15 the document I am showing you, you don't have 16 knowledge yourself of whether AT&T knew about 17 third-party attachments. So let me ask you 18 this -- 19 MR. SULLIVAN: Objection to the 20 form, and mischaracterizes -- 21 MR. FARUKI: Well, I haven't asked a 22 question yet. 23 MR. SULLIVAN: Well, you have 24 mischaracterized the questions I asked. I 25 haven't asked her anything about her knowledge of</p>	<p>80</p> <p>1 and act on the right you say was discovered in 2 early 2006 with regard to third-party 3 attachments; is that right? 4 MR. SULLIVAN: Objection to form. 5 THE WITNESS: Yeah, I don't have an 6 opinion on that. I don't know what their 7 knowledge of the situation was. 8 MR. FARUKI: Okay. I think that's 9 all I have got. 10 MR. SULLIVAN: Great. We will 11 reserve signature. 12 MR. FARUKI: Ms. Kendall, thank you 13 for your patience. 14 (Thereupon, an off-the-record 15 discussion was held.) 16 (Thereupon, the deposition was 17 concluded at 11:42 o'clock a.m.) 18 19 20 21 22 23 24 25</p>
<p>79</p> <p>1 attachers. All I asked her was whether she had 2 any knowledge of Dayton Power & Light contacting 3 AT&T saying they had questions. 4 MR. FARUKI: I think your question 5 went beyond that. 6 BY MR. FARUKI: 7 Q. Let me ask you this: Is it accurate 8 that you don't know to what extent AT&T was aware 9 of third-party attachers wanting to come onto 10 DP&L poles at any time since you have had these 11 joint use responsibilities? 12 MR. SULLIVAN: Hold on. Could you 13 read that back, please. 14 (Record read.) 15 MR. SULLIVAN: Object to form. Go 16 ahead and answer. 17 THE WITNESS: Yeah, I am not aware 18 to the extent that anyone else at AT&T was aware. 19 BY MR. FARUKI: 20 Q. Okay. And with regard to the e-mail 21 we are looking at, and the knowledge of one AT&T 22 person telling another that Time Warner is 23 attaching all over the Dayton area, you're not 24 expressing any opinion here on whether any of 25 these AT&T people had some responsibility to know</p>	<p>81</p> <p>1 I, ANN KENDALL, do hereby certify 2 that the foregoing is a true and accurate 3 transcription of my testimony. 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Dated _____</p>

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1 STATE OF OHIO)
2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Beverly W. Dillman, a Notary Public
4 within and for the State of Ohio, duly
5 commissioned and qualified,

6 DO HEREBY CERTIFY that the above-named
7 ANN KENDALL, was by me first duly sworn to
8 testify the truth, the whole truth and nothing
9 but the truth.

10 Said testimony was reduced to writing by
11 me stenographically in the presence of the
12 witness and thereafter reduced to typewriting.

13 I FURTHER CERTIFY that I am not a
14 relative or Attorney of either party, in any
15 manner interested in the event of this action,
16 nor am I, or the court reporting firm with which
17 I am affiliated, under a contract as defined in
18 Civil Rule 28(D).

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1 IN WITNESS WHEREOF, I have hereunto
2 set my hand and seal of office at Dayton, Ohio,
3 on this _____ day of _____, 2007.
4

5 BEVERLY W. DILLMAN, RPR, CRR
6 NOTARY PUBLIC, STATE OF OHIO
7 My commission expires 3-7-2012
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