

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Petition of Communication :
Options, Inc., for Arbitration :
of Interconnection Rates, :
Terms, and Conditions and : Case No. 08-45-TP-ARB
Related Arrangements with :
United Telephone Company of :
Ohio d/b/a Embarq Pursuant to :
Section 252(b) of The :
Telecommunications Act of 1996. :

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PROCEEDINGS

Before James M. Lynn and Jay S. Agranoff, Hearing
Examiners, and Panel Members, Ms. Robbin R. Russell,
Ms. Michelle A. Green, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-G,
Columbus, Ohio, called at 9:05 a.m. on Tuesday,
October 28, 2008.

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1 INDEX

2 - - -

3 WITNESSES PAGE

4 STEPHEN K. VOGELMEIER

	Direct Examination by Ms. Bloomfield	8
5	Cross-Examination by Mr. Stewart	9
	Redirect Examination by Ms. Bloomfield	38
6	Recross-Examination by Mr. Stewart	54
	Redirect Examination by Ms. Bloomfield	63
7	Examination by Ms. Russell	65
	Examination by Ms. Green	72
8	Examination by Examiner Agranoff	76
	Examination by Examiner Lynn	85
9	Reexamination by Examiner Agranoff	92
	Reexamination by Ms. Green	93
10	Redirect Examination by Ms. Bloomfield	95
	Recross-Examination by Mr. Stewart	98

11

AUGUST H. ANKUM, Ph.D. (Confidential)

12	Direct Examination by Ms. Bloomfield	114
	Cross-Examination by Mr. Stewart	116
13	Redirect Examination by Ms. Bloomfield	181
	Recross-Examination by Mr. Stewart	184
14	Examination by Ms. Green	186

15 - - -

16 COI EXHIBITS ID'D REC'D

17	1 - Prefiled Testimony of Steve Vogelmeier	9	113
----	--	---	-----

18

19	2 - Prefiled Testimony of August H. Ankum, Ph.D., Confidential Version	114	197
----	--	-----	-----

20 2A - Prefiled Testimony of August H. 115 197
Ankum, Ph.D., Public Version

21

22 3 - Prefiled Supplemental Testimony of 116 197
August H. Ankum, Ph.D.,
Confidential Version

23

24 3A - Prefiled Supplemental Testimony of 116 197
August H. Ankum, Ph.D.,
Public Version

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1 Tuesday Morning Session,

2 October 28, 2008.

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4 EXAMINER LYNN: Let's go on the record at
5 this time. The Public Utilities Commission of Ohio has
6 assigned for hearing at this time and place Case No.
7 08-45-TP-ARP in the Matter of Communication Options,
8 Incorporated, for arbitration pursuant to Section
9 252(b) of The Telecommunications Act of 1996. I'm Jim
10 Lynn, one the Attorney Examiners assigned to hear this
11 case, and with me on my left is Jay Agranoff, another
12 one of the Attorney Examiners. We have two Staff
13 members of the Commission present, Michelle Green and
14 Robbin Russell over there.

15 At this time, I'll ask for the appearance
16 on counsel on behalf of Communication Options,
17 Incorporated.

18 MS. BLOOMFIELD: On behalf of
19 Communication Options, Your Honor, the law firm of

20 Bricker & Eckler, Salley W. Bloomfield and Matthew

21 Warnock, W-a-r-n-o-c-k, 100 South Third Street,

22 Columbus, Ohio 43215.

23 EXAMINER LYNN: Thank you. And counsel

24 representing United Telephone Company of Ohio d/b/a

25 Embarq.

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1 MR. STEWART: Joseph R. Stewart, 50 West
2 Broad Street, Columbus 43215.

3 EXAMINER LYNN: Thank you, Mr. Stewart.
4 The hearing is scheduled for two days. There had been
5 some discussion before we went on the record about
6 being able to wrap it up in one day, and we'll keep all
7 options open. Hopefully, we can, and, let's see,
8 regarding the order of witnesses, too, based on
9 discussions we had had prior to our hearing today, COI
10 had indicated that Mr. Vogelmeier will go first and
11 then Dr. Ankum, and Embarq is informing that Mr. Hart
12 will speak first and then Ms. Londerholm will be
13 adopting Mr. Maple's testimony. Am I correct on that?

14 MR. STEWART: Yes.

15 EXAMINER LYNN: Okay. I'm sure you've
16 been through all these proceedings before, but just to
17 run it by you again, as far as the order of things,
18 we'll have the prefiled direct testimony and will be
19 later moving it into admission on the record. We'll

20 have cross-examination, redirect, and recross, and then
21 the Panel will have the opportunity to ask questions,
22 and after the Panel's questions, if counsel for either
23 party believe it's necessary to have some additional
24 questions, that's fine, as long as it's limited in
25 scope to what the Panel's questions were. Let's see.

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1 We've discussed when the briefs will be due. That will
2 be December 3rd and reply briefs December 17th, and
3 we've also had the discussion about what will be a
4 closed record; so I think we covered everything that we
5 need to cover at this point.

6 Does anybody else have any questions?

7 MS. BLOOMFIELD: Yes, Your Honor. We have
8 one matter to take care of, and that is the
9 Confidentiality Agreement that was tendered by Embarq
10 has been signed by Dr. Ankum and me. We have not yet
11 had Mr. Vogelmeier or Miss Engle -- or possibly one of
12 the principals will be here whose name is Steve
13 Halliday, but Embarq has agreed that, with my
14 affirmation, that they will sign the protective
15 agreement and they will keep any protective materials
16 confidential. He's agreed that would suffice for now,
17 and we will get the actual documents signed forthwith.

18 EXAMINER LYNN: That is fine. Thank you
19 for mentioning that. I believe, in that case --

20 anything else, Jay?

21 EXAMINER AGRANOFF: With respect to the

22 briefing schedule that we discussed previously, we

23 would also ask that at the time the briefs are

24 submitted, that the parties could prepare an issues

25 matrix similar to that which has been done in prior

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1 arbitration cases which would delineate the issues as
2 well as the parties' position and then the record
3 citation supported positions that particular parties
4 advocated, and that would assist the Panel for purposes
5 of going back in analyzing the record and rendering a
6 decision.

7 EXAMINER LYNN: Thank you, Mr. Agranoff.

8 If there is nothing else, no other issues to be brought
9 up at this point in time, we can begin with our
10 witness.

11 EXAMINER AGRANOFF: Is there anything
12 else, any motions that counsel is aware of that has not
13 been ruled on as of yet?

14 MR. STEWART: No.

15 MS. BLOOMFIELD: No, Your Honor.

16 EXAMINER LYNN: I wasn't aware of any, and
17 that's why I didn't bring it up. Also, based on
18 discussion we already had, there was no preference
19 between the two parties as to who would go first.

20 Customarily in arbitrations whoever files the
21 arbitration will go first, so we'll start with COI and
22 their witness, Mr. Vogelmeier.

23 MS. BLOOMFIELD: Mr. Vogelmeier will be
24 the first one, Your Honor.

25 EXAMINER LYNN: Mr. Vogelmeier, if you

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1 will come up to the witness stand, please.

2 If you would raise your right hand.

3 STEPHEN K. VOGELMEIER,

4 being by Examiner Lynn first duly sworn, as hereinafter

5 certified, testifies and says as follows:

6 EXAMINER LYNN: Please have a seat.

7 DIRECT EXAMINATION

8 By Ms. Bloomfield:

9 Q. Mr. Vogelmeier, would you state your name

10 again and spell your last name for the record.

11 A. Stephen K. Vogelmeier. It's V, as in

12 Victor, o-g-e-l-m-e-i-e-r.

13 Q. And what is your position with

14 Communication Options? Which I'm going to start

15 referring to as COI because it's easier.

16 A. I'm the president of the company.

17 Q. And did you have prepared under your

18 direction the prefiled testimony that was previously

19 submitted in this case on June 24th?

20 A. Yes.

21 Q. And if I would ask you the questions in
22 that prefiled testimony today, would your answers be
23 the same?

24 A. Yes.

25 Q. Do you have any corrections, additions, or

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1 deletions to your testimony?

2 A. No.

3 MS. BLOOMFIELD: Your Honor, I have
4 nothing further.

5 EXAMINER LYNN: No further questions?

6 MS. BLOOMFIELD: Pardon me?

7 EXAMINER LYNN: Sorry, I didn't hear you.

8 MS. BLOOMFIELD: I don't have any further
9 questions, and Mr. Vogelmeier is ready for
10 cross-examination.

11 EXAMINER LYNN: Thank you.

12 Mr. Stewart.

13 MR. STEWART: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 By Mr. Stewart:

16 Q. Good morning, Mr. Vogelmeier. My name is
17 Joe Stewart. Good to see you again. If you would
18 please turn to Page 3 of your direct testimony?

19 A. Okay.

20 MR. STEWART: Before I proceed, would it
21 be appropriate to have this marked as COI Exhibit 1 in
22 case we're making reference to it?

23 MS. BLOOMFIELD: Is that what you would
24 like to do, Your Honor?

25 EXAMINER LYNN: Yes.

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1 MS. BLOOMFIELD: That's fine. May we call
2 that COI Exhibit 1?

3 EXAMINER LYNN: Okay. That will be Mr.
4 Vogelmeier's testimony, then.

5 EXAMINER AGRANOFF: Let's go off the
6 record for a minute.

7 (Discussion off the record.)

8 EXAMINER LYNN: Back on the record,
9 please.

10 MR. STEWART: Thank you.

11 By Mr. Stewart:

12 Q. Mr. Vogelmeier, is it correct that the
13 payment terms for invoices COI receives from Embarq are
14 that payments are due 30 days after the invoice date?

15 A. Yes.

16 Q. So under the proposed new ICA, Embarq is
17 offering slightly over two weeks as a grace period for
18 COI to make its payments; is that correct?

19 A. That's correct.

20 Q. From month to month is there considerable
21 similarity between the bills that COI receives from
22 Embarq?

23 A. Well, I guess similarly they come in the
24 same box or they're on the same CD. Whether they're --
25 all the same amounts are correct is left open for

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1 discussion.

2 Q. Well, by "similarity," I mean the
3 customers of COI to whom the bills pertain have great
4 overlap from month to month; is that correct?

5 A. Yes.

6 Q. Now, who reviews the bills on behalf of
7 COI?

8 A. We have two people, one primary person
9 that goes through the bill. I look at every one that
10 comes to begin with just to see the overall amounts,
11 what's been charged, credits, and the accounts payable
12 person looks at that, and then we have a staff person
13 that reviews the individual items on every bill.

14 Q. What is the name of that staff person?

15 A. Bonnie McCracken.

16 Q. And what is her background and experience
17 with respect to billing?

18 A. She's -- we've taught her how to look at
19 the bills and see what's -- compare them to the months

20 before, compare the features that the customer is being
21 billed versus what we say they should be billed, that
22 type.

23 Q. And you mentioned, I think, an accounts
24 payable person who looks at the bill. Who is that?

25 A. That's Jenny Dickson.

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1 Q. And what does her review consist of?

2 A. General review of basically what the
3 amounts are, what the charges and credits are and the
4 other charges and credits paid, that type of -- a
5 general review of the amounts.

6 Q. Now, you estimated 126 man hours or woman
7 hours, as apparently is the case here?

8 A. Right.

9 Q. How does that break down between the
10 accounts payable individual and the other person?

11 A. I'd say it's probably 98 percent for the
12 other person and 2 percent for me and the accounts
13 payable person.

14 Q. Physically, how does COI receive its bill
15 from Embarq?

16 A. Some of the bills come paper, some of them
17 come on CD.

18 Q. What sort of mail delivery does COI
19 receive, in other words, regular mail, overnight mail,

20 or something else?

21 A. The bill -- the paper comes regular mail.

22 The CDs come DHL.

23 Q. Overnight delivery?

24 A. I don't know. I didn't check to see if it

25 was overnight or two-day or whatever it was, but --

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1 Q. Does the CD contain the same information
2 that the paper bill contains?

3 A. I believe for the most part. The paper
4 bill is still the CABS side of the IXC billing.

5 EXAMINER AGRANOFF: Just so that the
6 record is clear, when you use those acronyms, do you
7 know --

8 THE WITNESS: IXC is for the long distance
9 side. We have two entities, long distance company and
10 local companies.

11 EXAMINER AGRANOFF: IXC stands for?

12 THE WITNESS: Interexchange Carrier.

13 EXAMINER AGRANOFF: And CABS?

14 THE WITNESS: And CABS is the billing that
15 pertains to that IXC billing or usage billing.

16 EXAMINER AGRANOFF: Do you know the
17 acronym?

18 THE WITNESS: No, not today.

19 MR. STEWART: I think it's Carrier Access

20 Bill.

21 THE WITNESS: Yes.

22 MR. STEWART: Carrier Access Billing

23 System, CABS.

24 By Mr. Stewart:

25 Q. Are you saying that the paper bill

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1 contains billing information that the CD does not?

2 A. No. I believe -- now, it's been changing
3 around the last two or three months because of the
4 different formats everybody wants to send them in, but
5 I believe the CD has everything on it today.

6 Q. On average, how many days after the
7 invoice date does COI receive the CD format of the
8 bill?

9 A. Well, that's relative to what invoice
10 we're talking about. We have invoice dates the 3rd of
11 the month. We used to have, like, three or four
12 invoice dates. Now we have 3rd of the month, the 8th
13 of the month, and I believe it comes in about eight or
14 nine days after the 8th of the month billing, because
15 they consolidated the 3rd month billing on the CD,
16 also.

17 Q. So for a bill with an invoice date on the
18 3rd of the month, you're saying that you receive the CD
19 for that invoice on what day of the month?

20 A. It's about the 15th or the 18th. I think
21 last month we got it on the 19th. This month we got on
22 the 16th or 17th, something like that.

23 Q. So are you saying that invoices, two
24 separate invoices, one dated the 3rd of the month, one
25 dated the 8th of the month, you get the CD for both

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1 those invoice dates on the same date, roughly eight
2 days after the 8th?

3 A. Right. We did get two. They've
4 consolidated them to one, so -- they put everything on
5 one CD, which no matter what the invoice date is, it
6 comes on that CD, which is about the 16th or 17th.
7 I've got a sheet over there that I had them make up all
8 the dates that we received them; so I have them if you
9 want them specifically.

10 Q. Now, is it correct that Embarq has offered
11 COI the opportunity to receive its bills in an
12 electronic format?

13 A. Yes.

14 Q. Do you recall the name of that format?

15 A. FTP.

16 Q. Has COI elected to do that?

17 A. At this point we have, yes.

18 Q. Does that mean COI has begun to receive
19 its bills in electronic format or will that occur in

20 the future?

21 A. We're supposed to have a test file that we

22 can test our software this week. We received some of

23 the CABS billing and usage billing that way, and we've

24 tested those files, but the -- the local bill I

25 requested last week and they thought they'd be able to

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1 get me a test on the local bill this week.

2 Q. Do you know how close to the invoice date
3 COI will receive the billing information once the FTP
4 process is implemented?

5 A. No. I know what I've been told, but I
6 don't -- I haven't seen one yet, so --

7 Q. What have you been told?

8 A. Five days.

9 Q. Does COI utilize any software or other
10 systems to verify the bills it receives from Embarq?

11 A. Our programmer is developing a program for
12 the FTP file. Once we receive that, then it will all
13 be automated.

14 Q. And do you expect that to lessen the time
15 that it takes COI to verify an Embarq bill?

16 A. Sure.

17 Q. Is the system that you plan to use one
18 that you're developing in-house or have you consulted
19 with other CLECs or some other party -- or entity, I

20 should say, for developing this electronic system to

21 review the bills?

22 A. Well, when we first started having this

23 conversation about the FTP billing -- or the transfer,

24 I asked Pam Zeigler if she knew anybody who had this

25 software or how I could do that. She checked around

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1 and said I had to go to Telcordia, so I went to
2 Telcordia, and Telcordia said they don't sell the
3 software. They gave me some names of some people that
4 did sell the software, and that ranged anywhere from 30
5 to \$150,000, and so we decided to develop it in-house.
6 Sometime around the mediations that we had in this case
7 I bought -- the only thing Telcordia would do is sell
8 you the Call Record Layout. They wouldn't sell you the
9 program, so I bought the Call Record Layout, and our
10 developers started working on the software.

11 Q. Pam Zeigler is an Embarq employee?

12 A. Yeah. She's our account manager.

13 Q. What's the name of the programmer who is
14 developing your electronic system?

15 A. Brad Inniger, I-n-n-i-g-e-r.

16 Q. Is he a COI employee?

17 A. No. He's contract.

18 Q. Now, on occasion has Embarq advised COI
19 that a payment is late and that IRES, I-R-E-S, and I'll

20 have to check with someone regarding the meaning of

21 that acronym, is subject to suspension?

22 A. I've had that conversation a couple of

23 times in the ten years, yes.

24 Q. Let me go off the record for a second.

25 (Discussion off the record.)

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1 MR. STEWART: Back on the record. IRES

2 means Integrated Response Entry System.

3 By Mr. Stewart:

4 Q. How does COI currently make payments to

5 Embarq?

6 A. Primarily on a weekly basis.

7 Q. And what medium does COI use to make its

8 payments?

9 A. It's overnight mail to a lockbox.

10 Q. And is that -- does that use a check drawn

11 on your bank?

12 A. Uh-huh.

13 Q. Are you aware of other mechanisms that are

14 available for paying Embarq bills, for example, wire

15 transfer?

16 A. Yes. I'm -- I am aware of that.

17 Q. Is there also a mechanism called ACH?

18 A. Well, that's basically what you're doing.

19 Q. That's, in your mind, the same as a wire

20 transfer?

21 A. No. ACH, you're scanning the check and
22 sending it to our bank in an ACH transaction. That's
23 what you're doing there.

24 Q. Off the record again for a moment.

25 (Discussion off the record.)

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1 MR. STEWART: ACH stands for Automated
2 Clearinghouse.

3 By Mr. Stewart:

4 Q. If you would please turn to Page 5, has
5 COI explored obtaining a Letter of Credit to give
6 Embarq in lieu of a deposit?

7 A. No.

8 Q. And you wouldn't be aware of what that
9 might cost COI to obtain?

10 A. Relatively. You know, we've talked about
11 it, but I have not gotten any specific information.

12 Q. Please look at Line 29 on Page 5. There
13 you say, "There is no risk"?

14 A. Right.

15 Q. What do you mean by "no risk"?

16 A. Well, we pay weekly. We requested that in
17 the bankruptcy in 2000, that we be able to pay weekly.
18 When we came out of the bankruptcy in December of '03,
19 I contacted Pam Zeigler and asked her if it would be

20 okay if we continued to pay weekly. She indicated Tom

21 Grinaldi said that that would be fine, so we continued

22 to pay weekly. It lowers the risk.

23 Q. When a weekly payment is made, that

24 payment applies to an invoice that COI has received

25 roughly 45 days ago?

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1 A. Well, it's relative to when we receive the
2 disks, yeah.

3 Q. So is 45 days a fair approximation?

4 A. I -- I have no idea at this point. I'd
5 have to check on that.

6 Q. Well, is it your belief that COI typically
7 pays an invoice in fewer than 30 days after the invoice
8 date?

9 A. Oh, no. I mean, we have to go through the
10 bills. Historically, you have to understand that I've
11 received about \$2 million in credits for bad billing in
12 ten years, so we look at every item on the bill and we
13 look at everything that comes in.

14 MR. STEWART: Your Honor, I'd move to
15 strike that portion of the answer following the first
16 sentence. I can't repeat it. We could have it read
17 back, but the question had nothing to do with credits
18 and COI's receipt of credits.

19 EXAMINER LYNN: If you could read that

20 back, Valerie.

21 (Question and answer read back.)

22 EXAMINER LYNN: Your objection was to the

23 second sentence?

24 MR. STEWART: Everything following, "Oh,

25 no."

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1 EXAMINER LYNN: I'm sorry. Could you read
2 that back one more time, please?

3 (Answer read back.)

4 EXAMINER LYNN: Your objection is after
5 the "oh, no"?

6 MR. STEWART: Right. The question was
7 directed to the timing of the payments. The "oh, no"
8 answered that question. Everything after that was
9 nonresponsive.

10 MS. BLOOMFIELD: Your Honor, I would
11 disagree. Mr. Vogelmeier was just asked how long it
12 took to review the bills, and his testimony had said
13 and he confirmed here it was 126 hours. He was
14 explaining that it takes a long time to review the
15 billing. He was explaining his answer no, why they
16 couldn't meet the 30 day on the bill date, because it
17 takes three weeks plus just to review it, and he
18 mentioned that he had to take that level of review each
19 time because over the last several years he's had as

20 many as \$2 million worth of credits, which, of course,
21 would not have gone to COI unless COI uncovered the
22 errors and brought them to Embarq's attention; so it
23 really is an explanation of his answer and I think it's
24 a proper explanation.

25 EXAMINER LYNN: We'll grant the motion to

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1 strike, if you can clear that up on redirect. Thank
2 you.

3 MR. STEWART: Thank you, Your Honor.

4 By Mr. Stewart:

5 Q. Mr. Vogelmeier, let's say that COI makes a
6 weekly payment today to Embarq. That payment is for
7 services that Embarq has previously rendered to COI; is
8 that correct?

9 A. Right.

10 Q. And if we assume that COI makes one of its
11 weekly payments to Embarq today, roughly how many
12 dollars then remain outstanding for services that
13 Embarq has already provided to COI but for which COI
14 has not yet paid?

15 A. Okay. Ask that question again.

16 MR. STEWART: Could you read that back,
17 please?

18 (Question read back.)

19 THE WITNESS: Could be 200,000, I guess.

20 By Mr. Stewart:

21 Q. And it could be even more than that,

22 couldn't it?

23 A. I -- I don't know. I'd have to look at

24 the timing and all those issues.

25 Q. Embarq bills COI, I think you indicated,

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1 roughly \$400,000 per month?

2 A. Pretty much, yeah. It's going down, but

3 it's --

4 Q. And if most bills aren't paid in less than

5 30 days, I conclude that at any particular time there

6 is at least roughly \$400,000 outstanding. Is that a

7 fair conclusion?

8 MS. BLOOMFIELD: Your Honor, I have -- I'd

9 like to make it clear what the 30 days refers to. Mr.

10 Stewart, are you talking about 30 days from the bill

11 date or 30 days from the time it's actually received by

12 COI?

13 MR. STEWART: I was referring to 30 days

14 after the invoice date, which is --

15 MS. BLOOMFIELD: The invoice date and the

16 bill date are the same, correct, according to the

17 contract, the proposed ICA?

18 MR. STEWART: That's my belief.

19 MS. BLOOMFIELD: Thank you. I just think

20 we needed that straightened out.

21 EXAMINER LYNN: Thank you.

22 MR. STEWART: You probably have forgotten

23 the question, as probably have I.

24 MS. BLOOMFIELD: Sorry.

25 MR. STEWART: That's all right.

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1 By Mr. Stewart:

2 Q. I think you indicated that on average a
3 monthly bill from Embarq to COI is roughly \$400,000?

4 A. Yes.

5 Q. So if COI typically pays more than 30 days
6 after the invoice date, by that time another month's
7 worth of services will have been provided, again
8 roughly \$400,000; so my conclusion, which I'm asking
9 you whether it's reasonable, is that at any time there
10 is probably a minimum of \$400,000 worth of services
11 that Embarq has provided but that haven't yet been paid
12 for?

13 A. I -- I guess. I -- I don't have any
14 numbers in front of me to even look at to validate
15 that. It's a possibility.

16 Q. Well, the --

17 A. It's relative to when we receive the bill
18 and all those things.

19 Q. Well, is there something in the logic of

20 my question that you take issue with?

21 A. Well, it's relative to how much the weekly

22 check is. Some checks are -- I've signed checks for

23 \$185,000, which would lower that amount that you're

24 talking about. So it's -- you know, like I said, it's

25 in the two fifty, three range somewhere, maybe. It's

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1 all relative to what's been paid at what period of
2 time, that type of thing.

3 Q. Would you agree with me that whenever
4 services have been rendered and in advance of having
5 been paid for, there is some risk that those services
6 won't be paid for?

7 A. Well, I guess to a certain extent, but
8 you're billing a month in advance anyway, so what's the
9 risk to something you haven't provided yet?

10 Q. What portion of COI's bills from Embarq is
11 for services they're being billed in advance as
12 compared to those that are being billed in arrears?

13 A. All the local. Usage type services are
14 billed in arrears, and the CABS bills are billed in
15 arrears; so you're probably looking at about, as I
16 remember my sheet, two eighty-five, three hundred is
17 billed in advance, and maybe three sixty-seven the last
18 month, I think.

19 Q. Are you saying that -- on the average

20 month, then, how much is billed in arrears?

21 A. Forty thousand.

22 Q. And for services billed in advance, am I

23 right in thinking they're billed for 30 days in

24 advance?

25 A. Yes.

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1 Q. So with respect to a service that's billed
2 30 days in advance, if the bill for that is not paid
3 within 30 days, then the service will have been
4 provided in its entirety prior to payments having been
5 made?

6 A. Right.

7 Q. So there again, until payment has been
8 made, there's a risk that it won't be?

9 A. Sure.

10 Q. In fact, these days, that's true even if
11 you were a bank?

12 A. Well, with Embarq, I'm wondering about
13 CenturyTel, so it goes both ways.

14 Q. You haven't had any problems with Embarq
15 or CenturyTel paying bills, have you?

16 A. Embarq paying bills? Yes.

17 Q. Has Embarq defaulted on any bills? Are we
18 owing you any money now?

19 A. No, but they're outside the terms of the

20 contract.

21 Q. So there's always a risk that Embarq might

22 not pay either?

23 A. Yeah. I think that is a bigger risk than

24 me not paying Embarq.

25 Q. What's your basis for concluding that?

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1 A. Because they go outside the contract no
2 matter what they do. I don't have any leverage. I
3 have to pay the bill every month because, as you
4 stated, they'll send me one of those nice little
5 letters, but if they go outside of the terms of the
6 contract, I have no recourse except to be at the Public
7 Utilities Commission, which I've been here multiple
8 times with Embarq.

9 Q. You're not suggesting that Embarq has less
10 financial ability to pay than does COI, are you?

11 A. No. It's just their -- what do I want to
12 say -- their mentality towards adhering to the
13 contracts.

14 Q. Please turn to Page 8. You make reference
15 to an FCC order in Footnote 1. Have you read that
16 order?

17 A. Yes.

18 Q. When did you read it?

19 A. Oh, sometime during our contract

20 negotiations.

21 Q. What inspired you to read that?

22 A. The problem I have with the fact that

23 Embarq's allowing only 10 DS1s, and my perception of

24 what that rule says is that to go to a DS3, I ought to

25 average about 11 DS1s. With Embarq that's not the

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1 case. It's 20 DS1s to get to a rate of a DS3.

2 Q. You're not suggesting that the FCC ruled
3 that the crossover point must be determined based on
4 multiplying the cost of the DS1 and seeing whether that
5 equaled the cost of the DS3, multiplying it by 10?

6 A. No. It's actually 11. Somewhere there
7 there's a breakpoint that it makes sense that you
8 would -- you would buy a DS3 versus continuing to buy
9 DS1s.

10 Q. But the FCC, in your view, did not say if
11 you multiply the DS1 rate by 11, and if that product is
12 not equal to or greater than the rate for a DS3, then
13 the FCC rule doesn't apply?

14 A. No. I think they -- my interpretation of
15 what that says is that they use that as a measure to
16 see what the breakpoint would be between DS1s and
17 utilizing a DS3.

18 Q. You're aware that some years back COI
19 filed bankruptcy?

20 A. Oh, yeah, I'm aware of that.

21 Q. And Embarq was a substantial unsecured
22 creditor in that bankruptcy?

23 A. Well, that's what they portrayed, yes.

24 Q. Did you contest Embarq's Proof of Claim in
25 the bankruptcy proceeding?

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1 A. No. We had a proceeding going on at the
2 PUCO at the time. We went into bankruptcy because of a
3 letter we received from Scott Nolan, and six months
4 prior to that I would argue with him and his people at
5 the billing group that they couldn't bill a UNE-P. He
6 said it was billed properly. He sent me a letter. I
7 filed Chapter 11. We went into bankruptcy. I came to
8 the PUCO for discussion of the overbilling of UNE-P by
9 Embarq.

10 Q. Embarq ended up writing off a
11 substantial -- well, let me state this another way.
12 The bankruptcy resulted in the discharge of a
13 substantial unsecured debt that COI admittedly owed to
14 Embarq; is that correct?

15 A. I never admitted to that. In fact, it
16 depends on how you consider them writing off the debt,
17 because we had a settlement in the latter part of
18 2001. They credited my account for \$1.1 million, and
19 three months kept my account at \$118,000 a month

20 because they couldn't bill the UNE-P; so it's kind of
21 relative to how you determine what's being written off
22 and for what reason.

23 Q. Well, let's back up, then. Do you recall
24 whether Embarq filed a Proof of Claim in the bankruptcy
25 case?

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1 A. Yes.

2 Q. They did file one?

3 A. Yes.

4 Q. Do you recall roughly how much that was
5 for?

6 A. \$448,000.

7 Q. Did Embarq -- I'm sorry. Did COI dispute
8 that Proof of Claim in the bankruptcy proceeding?

9 A. Sure.

10 Q. Did the bankruptcy court rule on what
11 Embarq properly owed -- did the bankruptcy court rule
12 on the amount that COI owed Embarq?

13 A. I don't remember that. I know there was a
14 lot of discussions between the attorneys for Embarq and
15 my attorney and the discussions happening at the PUCO
16 during that period of time.

17 Q. I take it you admit that as a result of
18 the bankruptcy, COI ended up not paying Embarq a
19 substantial number of dollars that it owed Embarq?

20 A. No. The only thing I'll admit to is I
21 agreed to pay them 68,500 over 5 years. The amount
22 that Embarq said we owed I think was pretty well
23 documented that -- in the settlement agreement that
24 they didn't -- we weren't -- Embarq wasn't owed all
25 that money. You gotta bill it right before you're owed

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1 it.

2 Q. Are you saying that COI paid Embarq in
3 full for all services properly billed by Embarq prior
4 to the bankruptcy?

5 A. Yes. We paid what we believed was
6 undisputed amounts.

7 Q. Did you have any discussions with Embarq
8 regarding the cost study that was the basis for the
9 rates contained in the interconnection agreement, the
10 most recent one between Embarq and COI that is now
11 expired?

12 A. During the negotiation of the contract?

13 Q. Ever.

14 A. We talked about it, yeah.

15 Q. Who did you talk with?

16 A. Linda Cleveland.

17 Q. Did you talk to anybody else, Ms.
18 Londerholm, for example?

19 A. I think she was on one of the calls with

20 Linda Cleveland, yes.

21 Q. And Embarq told you, did they not, that
22 the cost study that was the basis for the rates in the
23 expired COI had an error in it?

24 A. She told us on that call that there was an
25 error in that?

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1 Q. Well, I don't want to limit it to any
2 particular call. At one point or another you were told
3 by Embarq that the cost study had an error in it.

4 MS. BLOOMFIELD: Can I get a
5 clarification? I think there's been several cost
6 studies. Are you talking about -- which cost study are
7 you talking about?

8 MR. STEWART: Still the one that was the
9 basis for the rates in the interconnection agreement
10 that is now expired.

11 MS. BLOOMFIELD: You mean the current ICA,
12 the old -- let's call it the old and the proposed. Is
13 that -- do you mean the old one?

14 MR. STEWART: The last one that was signed
15 which is now expired.

16 MS. BLOOMFIELD: Except that it goes on.
17 It's the 2005 ICA?

18 EXAMINER AGRANOFF: It's the one that
19 they're currently operating under?

20 MS. BLOOMFIELD: That's what I was trying

21 to get to.

22 MR. STEWART: Yes.

23 MS. BLOOMFIELD: The one that they're

24 currently operating under?

25 MR. STEWART: Yes.

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1 MS. BLOOMFIELD: Which I think has a date
2 of 2005. Is that the one?

3 MR. STEWART: I believe it is 2005.

4 MS. BLOOMFIELD: Thank you.

5 THE WITNESS: I don't remember that
6 conversation. I remember talking about the fact that
7 they had bought new software, new TELRIC software, it
8 was state of the art, and that's the reason there was a
9 difference between the 2005 agreement and the new
10 rates.

11 By Mr. Stewart:

12 Q. So are you saying you might have been told
13 that and don't recall or do you specifically recall
14 that you were not told that?

15 A. Oh, I could have been told that and not
16 recall it, sure.

17 Q. Did you have any discussions with Dr.
18 Ankum or one of his colleagues with respect to any
19 errors that Embarq mentioned to you regarding the cost

20 study that served as the basis for the rates in the

21 2005 ICA?

22 A. You're back to anytime or prior to filing

23 the arbitration or during negotiation or you're

24 anytime?

25 Q. Anytime.

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1 A. Yes, we talked about it.

2 Q. Did you talk to Dr. Ankum?

3 A. I don't know that I talked to him. There
4 was some other people from his organization on the
5 phone one day.

6 Q. Do you recall what you told them or him or
7 her?

8 A. (Witness shakes head.)

9 Q. No? You have to say, so she can --

10 A. No. No, I don't recall what I told him.
11 My -- my whole issue with the TELRIC pricing was the
12 fact that when we did research, there was no
13 TELRIC-approved pricing in Ohio. I came to the PUCO
14 Staff and asked them about it. They said there was no
15 TELRIC-approved pricing in Ohio for Embarq, and so then
16 we proceeded on from there.

17 MR. STEWART: I move to strike the entire
18 portion of the answer following -- I believe he said
19 no, I don't recall. I didn't ask him about all that

20 other stuff.

21 EXAMINER LYNN: Valerie, can you read that

22 back again, please, with the question?

23 (Question and answer read back.)

24 EXAMINER LYNN: Miss Bloomfield, do you

25 have any thoughts on --

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1 MS. BLOOMFIELD: I don't need the answer,
2 but I'm still not sure what the question was.

3 MR. STEWART: I had asked Mr. Vogelmeier
4 whether he recalled what he told the -- I think as yet
5 unnamed person in Dr. Ankum's group regarding any
6 errors that Embarq had told COI existed in the cost
7 study that was the basis for the rates in the 2005
8 interconnection agreement. The initial part of his
9 answer was no, I don't recall. That was, in my view,
10 the complete answer to the question.

11 EXAMINER LYNN: Miss Bloomfield, do you
12 have any thoughts?

13 MS. BLOOMFIELD: I think he was explaining
14 his answer "no," because he felt that it wasn't
15 necessary to ask that question because he had been told
16 that because Embarq did not have approved TELRIC
17 pricing, he was not obliged to look at or spend money
18 on TELRIC pricing, basically, in a nutshell. That's --
19 again, he was explaining his answer.

20 EXAMINER LYNN: I'll grant the motion to

21 strike.

22 MR. STEWART: I --

23 EXAMINER LYNN: I'll grant the motion to

24 strike. Thank you.

25 MR. STEWART: Thank you, Your Honor.

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1 By Mr. Stewart:

2 Q. When COI bills its customers, how long
3 after the bill date are payments due?

4 A. Fifteen days.

5 EXAMINER AGRANOFF: Is that invoice date
6 or date of receipt?

7 THE WITNESS: It's -- we factor in a
8 delivery time for mail or that type of thing, so
9 it's -- if it was an invoice date, it would be 30
10 days. We have multiple invoice dates through the
11 month, so it's -- we factor in 2 or 3 days for mail
12 delivery and then 15 days after that.

13 By Mr. Stewart:

14 Q. Does COI obtain security deposits from any
15 of its customers?

16 A. Don't know that.

17 Q. I couldn't hear. I'm sorry.

18 A. I do not know of any.

19 Q. Thank you. Do you recall when you

20 retained QSI Consulting to review Embarq's cost study?

21 A. Well, roughly. I don't remember the exact

22 date.

23 Q. Okay. Roughly, then.

24 A. After we had one of the negotiation calls.

25 Q. And Embarq had previously urged COI to

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1 review the Embarq cost study; is that true?

2 A. Yes.

3 Q. And COI had graciously declined to do so?

4 A. Again, there was no point.

5 Q. So that's a yes?

6 A. Sure. Yeah. I didn't see any -- any

7 reason to waste our time having somebody look at

8 something that was not approved.

9 MR. STEWART: May I have three minutes?

10 EXAMINER LYNN: Yes. Off the record for a

11 few minutes.

12 (Discussion off the record.)

13 By Mr. Stewart:

14 Q. Mr. Vogelmeier, do you recall roughly how

15 many months before you retained QSI Embarq offered to

16 make its cost study available to COI?

17 A. How many months before?

18 Q. Before COI retained Dr. Ankum's group.

19 MS. BLOOMFIELD: I'm sorry, between what

20 and what? I'm losing the question.

21 EXAMINER LYNN: If you could repeat your

22 question, Mr. Stewart.

23 MR. STEWART: Sure.

24 EXAMINER LYNN: Thank you.

25

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1 By Mr. Stewart:

2 Q. Roughly how many months before COI
3 retained QSI had Embarq offered to make its cost study
4 available for COI to review?

5 A. A month, maybe a month and a half,
6 something like that, I think. I don't know. I
7 could -- well, yeah. Some -- I don't know what the
8 time frame is, a month and a half, two months,
9 something like that maybe.

10 Q. That's all I have.

11 EXAMINER LYNN: Thank you. At this point,
12 I think we'll take a break, maybe a ten-minute break or
13 so before we do our further examination. Thank you.

14 (Recess taken.)

15 EXAMINER LYNN: Miss Bloomfield,
16 redirect?

17 MS. BLOOMFIELD: Yes, Your Honor.

18 REDIRECT EXAMINATION

19 By Ms. Bloomfield:

20 Q. Mr. Vogelmeier, you were asked a number of
21 questions about the bills that you received from
22 Embarq; is that correct?

23 A. Yes.

24 Q. And did you bring paper copies of those
25 bills with you today?

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1 A. Yes.

2 Q. Of one month's bills?

3 A. Yes.

4 Q. And are they sitting here on the table?

5 A. Yes.

6 Q. Would you just direct --

7 A. It's the white boxes there that have the
8 Embarq symbol on the top.

9 Q. That represents all the billings that you
10 get for a single month; is that correct?

11 A. That's all the local bills, yes.

12 Q. So that doesn't represent absolutely
13 everything or not?

14 A. No. I think that's CABS and the IXC
15 side.

16 Q. So --

17 A. There's an equal amount IXC.

18 Q. So would you estimate that's about 12 to
19 14 inches each, so it would be 28 inches worth of

20 paper?

21 A. Uh-huh.

22 Q. And you were also asked questions about

23 the FTP process; correct?

24 A. Yes.

25 Q. Which is the File --

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1 A. Transfer Protocol.

2 Q. Transfer Protocol. And what is the File
3 Transfer Protocol?

4 A. It's basically what it says. It's a
5 protocol that allows you to transfer files between
6 servers.

7 Q. So you need that protocol in order to get
8 material from Embarq to COI and vice versa; correct?

9 A. Yes. Electronically, yes.

10 Q. Has Embarq told you that if you use that
11 protocol, what format they would be providing the bills
12 in?

13 A. It comes in a BOS-45 format.

14 Q. Is that B-O-S, all in caps, 45?

15 A. Yes.

16 Q. And that is a special kind of format, is
17 it not?

18 A. It's a Telcore standard for ILECs. It's
19 been around for a hundred years.

20 Q. As you indicated, you have to have special

21 software programs to read that; is that correct?

22 A. Yes.

23 Q. And you also indicated that in order to

24 read that, when you did your investigation, that

25 started with advice from Embarq to go to Telcordia, you

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1 found that the prices for software in order for COI to
2 read the BOS-45 format was on the range of between,
3 what was it, 30 and \$150,000?

4 A. Yes.

5 Q. And then knowing that, what you did was
6 you -- you went to -- you testified that you went to
7 Telcordia, you bought the -- part of the package, which
8 was the layout portion of the package, and then you
9 hired a programmer to do the rest of the software so
10 you wouldn't have to pay the 30 to \$150,000; is that
11 correct?

12 A. Right.

13 Q. And did you do an estimate of about how
14 much that was going to cost you if you used your
15 programmer?

16 A. What we felt it would take would be
17 something south of \$20,000, probably in the 15,000
18 range somewhere.

19 Q. And did you ask your programmer to begin

20 that process of programming so that you could accept

21 the BOS-45 format?

22 A. I did that. It took me about three weeks

23 to get the Call Record Layout from Telcordia, but once

24 I received that, then he started on the process.

25 Q. Has it taken several months for him to get

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1 to the point where he's ready to test programs?

2 A. Yes. It's a little more intricate than a
3 lot of other billing types.

4 Q. So, basically, in order to have the bills
5 come more quickly and electronically, you had to
6 make -- a customer, in order to accept the BOS-45
7 format, has to make a substantial investment?

8 A. Right.

9 Q. You were also asked a number of questions
10 about bankruptcy, and I'd like to ask you questions to
11 sort of clarify timingwise what happened. Is it the
12 case that you filed the bankruptcy in approximately the
13 year 2000?

14 A. August 23rd, 2000.

15 Q. And is it your view that you filed the
16 case in part because Sprint, at the time, was claiming
17 some large amounts from COI which COI disputed?

18 A. Yes.

19 Q. And did I understand your testimony to say

20 that you tried to -- you went back and forth with the
21 then person at Sprint about how -- about the dispute
22 and the -- Sprint was adamant, so that's what impelled
23 you to file the Chapter 11?

24 A. Yes. I think everybody at Embarq knows
25 me. I try to do everything I can to stay away from

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1 adversarial proceedings.

2 Q. And then once you filed the Chapter 11,
3 did you ask for mediation of that -- of the Sprint
4 portion of the billing dispute before the PUCO?

5 A. Yes.

6 Q. And, ultimately, did you have a mediation?

7 A. We had several conference calls. There
8 was a person, Becky Donahue, was here for Sprint at
9 that time. She was at the meeting, and several Staff
10 people from the PUCO. It wasn't a -- it wasn't a real
11 mediation, I guess. It wasn't a formal mediation. It
12 was a -- tried to discuss it before we get there.

13 Q. And as far as you know, there was no case
14 number assigned? It was an informal mediation process;
15 correct?

16 A. I think so.

17 EXAMINER AGRANOFF: So the record is
18 clear, if you can just establish the nexus between
19 Sprint and Embarq?

20 MS. BLOOMFIELD: Yes.

21 By Ms. Bloomfield:

22 Q. Is it your understanding, Mr. Vogelmeier,

23 that Sprint is the predecessor company or the name of

24 the company before Embarq?

25 A. Right.

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1 Q. So if I use Sprint, I'm really talking the
2 predecessor of Embarq?

3 A. Right. I agree.

4 Q. Okay. At the conclusion of the informal
5 mediation was there a written settlement?

6 A. Yes.

7 Q. And did the written settlement provide
8 that Sprint was going to credit, Sprint/Embarq was
9 going to credit COI for more than a million dollars?

10 A. It was 1.102, I think was the number.

11 Q. Right.

12 A. 1,102,000.

13 Q. All right. Then returning to the
14 bankruptcy part, the part that was in the bankruptcy
15 court at that time, was there not a settlement reached
16 in the bankruptcy as well?

17 A. Yes.

18 Q. Okay. And did you have conversations with
19 your bankruptcy attorney concerning how that -- the

20 background for that settlement?

21 A. Well, yeah. He was -- he wasn't involved

22 specifically with the PUCO, but that was -- it was all

23 intertwined, and we had conversations with our outside

24 counsel. Sprint had outside counsel handling that,

25 so --

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1 Q. And was it your understanding that
2 ultimately in the bankruptcy portion of the proceeding
3 there was an agreement reached as to a dollar amount
4 that COI would pay to Sprint/Embarq over a five-year
5 period?

6 A. Yes.

7 Q. And that dollar amount was on the order of
8 \$68,000; correct?

9 A. Yes.

10 Q. And is it also your understanding that
11 because of the negotiated settlement, the \$68,000 was
12 not based on a claim, a specific claim number that
13 Sprint put in, but rather they agreed on the rate, the
14 \$68,000, and then knowing what the percentage was going
15 to be, they -- they backed up to a \$680,000 plus
16 number?

17 A. Right. It was pretty much all convoluted
18 with the hearing -- or not the hearing, the discussions
19 with the PUCO and the bankruptcy, and they worked it

20 around to make everybody warm and fuzzy.

21 Q. So you would take issue with anybody who
22 said that originally in the bankruptcy proceeding COI
23 owed Sprint/Embarq on the order of \$680,000; is that
24 correct?

25 A. Oh, I -- yes. I said that.

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1 Q. Okay. You were also asked some questions
2 about the cost studies that were -- that were proffered
3 to you by Embarq during the negotiations. Is it not
4 the case that during the -- during the negotiations and
5 through the time to the present, Embarq proffered three
6 different cost studies?

7 A. I don't remember that, but they could
8 have. We had a lot of discussions about TELRIC, and
9 like I previously testified, I didn't see that it was
10 pertinent to the conversations.

11 Q. When you were first offered the
12 opportunity to look at a cost study that was based on
13 TELRIC pricing, what did you do?

14 A. They sent me a nondisclosure. That's when
15 I came to the -- well, Pam and I looked for
16 TELRIC-approved rates at the PUCO, and we couldn't find
17 that; so I asked the Staff, you know, is there approved
18 rates out there, and they said no.

19 Q. The Staff told you no, that Embarq had not

20 had TELRIC-approved rates; correct?

21 A. They didn't have TELRIC-approved rates in

22 Ohio and everything is negotiated.

23 Q. Okay. So, at that point, did you conclude

24 that it was not your responsibility to disprove a cost

25 study based on TELRIC rates?

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1 A. Right. I didn't see any point in spending
2 the money to disprove something that hadn't been
3 approved to begin with.

4 Q. And are you aware that there was more than
5 one cost study proffered to COI during the -- during
6 the entire negotiation period?

7 A. Well, I don't know during the
8 negotiation --

9 Q. Starting -- go ahead.

10 A. I know there was two, because they sent
11 one and then we spent money having that analyzed, and
12 then they decided that that really wasn't the one.
13 They sent me another one, so I had to pay to have that
14 analyzed; so I know it's been at least two.

15 Q. So if you had -- the initial time that
16 they had first proffered you a cost study, had you
17 gotten a consultant at that point, you would have had
18 the consultant -- you would have spent money on the
19 consultant to look at that cost study; correct?

20 A. Oh, yeah.

21 Q. And then it would have been replaced by
22 another cost study, and you would have had the
23 consultant paid to look at that; right?

24 A. Right.

25 Q. And then for the last one, which is the

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1 one we're looking at now, you had the consultant for

2 that as well; correct?

3 A. Right.

4 Q. So, currently, just so far, you have had

5 your cost consultant look at two different cost

6 studies; correct?

7 A. Right.

8 Q. You had to pay for that; correct?

9 A. Right.

10 Q. And is it still your position that you are

11 not obliged to disprove the TELRIC cost study of

12 Embarq?

13 A. That's my position for sure.

14 Q. And that is because they don't have a

15 Commission-approved TELRIC cost study from which to

16 begin the negotiations --

17 A. Right.

18 Q. -- is that correct?

19 A. Right.

20 Q. Let's return to the bills and payments.
21 You were asked questions about being more than --
22 paying bills more than 30 days from the due date on the
23 bill. Is it not the case that the due date is printed
24 on the bill sometime before the bill is actually pushed
25 out of Embarq to the customer?

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1 A. There is a predetermined bill date printed
2 on the bill for that cycle.

3 Q. But when you -- and you discussed, for
4 example, that currently, although in the past -- I
5 guess it's -- well, let me ask you. In the past would
6 Embarq send you more than one CD each month?

7 A. Well, in the past it was all paper. In
8 the past it was all paper, and then we moved to --

9 Q. CD?

10 A. Get the CD.

11 Q. And then when the CDs were first sent,
12 when they began sending the CDs to you, in the
13 beginning was there more than one CD that Embarq sent
14 to you each month?

15 A. I believe there was two.

16 Q. Was there ever a case when they sent the
17 first CD, that you couldn't read it, so you had to ask
18 for a second CD?

19 A. It came in a format that we couldn't open,

20 so they redid the CD and put it into a different
21 format, a PDF format, and today they send them that way
22 now. For a period of time they were sending both, and
23 we couldn't read the one, but they kept sending it, and
24 then they would send the PDF format, which we used.

25 Q. So that would be why Embarq would say that

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1 over a five-month period you received sixteen CDs, but
2 really -- I mean, because there was more than one sent
3 each month; correct?

4 A. For many months there was more than one
5 sent, yeah.

6 Q. So after you couldn't read the first
7 one -- did this happen more than once that you would
8 get a CD, you couldn't read it, so you had to ask for
9 the CD to be given to you again in PDF form so you
10 could read it?

11 A. Right.

12 Q. Did that happen more than one month?

13 A. Yes.

14 Q. Approximately how many months did that
15 happen?

16 A. Three or four. I wasn't totally involved
17 in -- I got the one I could read.

18 Q. So is this the correct sequence of events,
19 you would get -- finally you would get a CD, and you

20 testified that recently, for example, this past month,

21 you got the CD on the -- last month you said you got --

22 you received the CD on the 19th?

23 A. Yes.

24 Q. Was that the 19th of September or October?

25 A. That was September.

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1 Q. Okay. So you received it on -- September,
2 and is it not -- isn't it the case from your testimony
3 that the bill date -- well, first of all, the bill date
4 is on the invoice; correct?

5 A. Right.

6 Q. And according to your contract, the due
7 date that you are supposed to pay is computed from the
8 bill date?

9 A. Right.

10 Q. And you have 30 days from that bill date?

11 A. Right.

12 Q. So even if you don't -- and if the bill
13 date is on the 3rd, as you -- and you testified that
14 some of the bills were dated the 3rd, that was the bill
15 date, but you received them on the 18th or the 19th.
16 Then already, by the time you received them, 16 days of
17 your -- of the 30-day due date was already past;
18 correct?

19 A. Right, yeah.

20 Q. You were asked a bunch of questions about
21 whether or not you paid within the 30 days of the bill
22 date; correct?

23 A. Right.

24 Q. Okay. If we computed the time from the --
25 if we computed the 30 days from the time that you

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1 actually received the invoices, would there have been
2 many or any times that you would have -- that Embarq --
3 or, excuse me, that COI would have paid -- would have
4 taken longer than 30 days to actually pay the bill that
5 they actually got?

6 A. Yeah, I think there still would have been
7 times where there would have been more than 30 days,
8 but it wouldn't have been many days, I wouldn't think.
9 It's -- well --

10 Q. But it would have been less than -- it
11 would have been less than the time if -- you would have
12 paid more times within 30 days if the 30 days were
13 computed from the time you actually received the bill;
14 is that correct?

15 A. Right.

16 Q. Okay.

17 A. We've had this conversation with them
18 probably for eight years.

19 Q. You were asked questions about whether or

20 not Embarq was -- owed COI money; right?

21 A. Yes.

22 Q. And you testified that yes, they did, and

23 they were late, also; correct?

24 A. That's right.

25 Q. And is it not the case that you've had

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1 several settlements, say, since 2000 through 2008 that
2 settled late -- or settled payments that Embarq owed to
3 COI, but that had not been paid timely?

4 A. I've had one, yes.

5 Q. And during the -- in addition to the \$1.1
6 million that was agreed to in the mediation settlement
7 before the PUCO, from that time to this time,
8 approximately how much credit in -- how much credit has
9 Embarq agreed to pay COI for erroneous bills?

10 A. 900,000, roughly.

11 Q. So altogether --

12 A. 260,000 came in June of '06.

13 Q. So altogether, during this period that
14 we're talking about from 2000 to the present, there
15 have been, in terms of errors and so forth that
16 ultimately COI prevailed on, there's been on the order
17 of \$2 million worth of credits that have been finally
18 agreed to by Embarq to be credited to COI; is that
19 correct?

20 A. Yes.

21 MS. BLOOMFIELD: I don't have any

22 questions, Your Honor. No further questions.

23 EXAMINER LYNN: Thank you.

24 Mr. Stewart, further questions?

25 MR. STEWART: Yes. Thank you, Your

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1 Honor.

2 RECROSS-EXAMINATION

3 By Mr. Stewart:

4 Q. Mr. Vogelmeier, you testified regarding
5 this FTP format and your conversations with Telcordia.
6 When I was cross-examining you, I understood that what
7 Telcordia was going to charge you a lot of money for
8 was software that would enable you to analyze the FTP
9 bill as opposed to something that would just enable you
10 to read it. Did I understand you correctly?

11 A. No. The only thing Telcordia would supply
12 was the Call Record Layout.

13 Q. Let me back up, then. When you get the
14 FTP bill, what do you need in order to be able to read
15 it?

16 A. We need software to be able to read the
17 BOS-45 layout.

18 Q. What is the BOS-45 layout?

19 A. That's what Telcordia said these records

20 are being sent in. It's a protocol -- or a record
21 layout or a billing format that ILECs have sent between
22 themselves for years.

23 Q. So are you saying that without purchasing
24 software from Telcordia, COI would not be able to open
25 and read the FTP bill?

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1 A. Right.

2 Q. And --

3 A. Let me back up. You can open it, but it's
4 just a mass of records. You can't -- you don't -- you
5 don't know what it means.

6 Q. And what was the charge from Telcordia to
7 be able to understand what the bill said?

8 A. Telcordia wouldn't provide that. They do
9 not provide the software they told me. They provided
10 the Call Record Layout, and they gave me names of a
11 couple of companies that have developed software that
12 would sell that software to me, and that would be in
13 the range of 30 to \$150,000 when I checked with those
14 companies.

15 Q. And are you saying that that software is
16 necessary in order to merely read the bill?

17 A. That's what they told me, yeah.

18 Q. So without buying special software, your
19 testimony is that the FTP bill can be open, but after

20 you open it, you're unable to interpret it?

21 A. That would be correct, yeah.

22 Q. When COI filed bankruptcy, how many

23 creditors besides Embarq were there listed in the

24 bankruptcy petition?

25 A. Oh, I don't know, 40, 50 maybe.

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1 Q. Did all those other creditors get paid in
2 full?

3 A. No. You're not allowed to do that. I
4 wanted to do that, but there was an issue with the
5 Embarq side of it, so --

6 Q. Are you claiming that Embarq somehow
7 prevented you from paying other creditors?

8 A. No. You have to treat all creditors
9 equally, and because of the PUCO proceeding and credits
10 going on and the filings, Proof of Claim filings by
11 Embarq, it was real tough to tell somebody that we owed
12 them \$35 that we couldn't pay them in full.

13 Q. So the creditors get about ten cents on
14 the dollar?

15 A. Pretty much, the ones that were there.
16 There was a lot of creditors that weren't even
17 included. We didn't owe them anything.

18 Q. Was it your understanding that if your
19 negotiations with Embarq were unsuccessful and you went

20 to arbitration with Embarq, didn't you expect Embarq to

21 introduce a TELRIC cost study?

22 A. Well, actually, that -- that's where we

23 were in the negotiation process. I mean, that's --

24 that's where -- they were going to introduce a TELRIC

25 study, and, you know, I'm -- I'm trying to understand

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1 why at this point in time, but --

2 Q. You understand that in the arbitration the
3 Commission would be setting interim rates based on the
4 best available evidence?

5 A. Sure.

6 Q. Did you have any reason to believe that
7 Embarq would not submit a TELRIC cost study and argue
8 that's the best available evidence?

9 A. Oh, no. That's what they said they were
10 going to do.

11 Q. Your counsel asked you to identify a big
12 stack of paper representing one month's bills. When
13 your employees review the Embarq bills, do they look at
14 the CD or the paper?

15 A. Today they're looking at the CD because we
16 don't receive that paper, I don't believe, of a local
17 bill. We've been changing our profile to get where we
18 need to be, and the discussion we're having over FTP
19 was discussed in a mediation call, and I pretty much

20 thought we knew where we were going here, but --

21 Q. Is it your testimony that once your people
22 get this software developed to analyze the FTP bill,
23 that will enable COI to review the bills for accuracy
24 more quickly?

25 A. Well, that's generally what their

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1 conclusion was the whole conversation, yeah.

2 Q. That's your hope and belief right now?

3 A. I'm hoping I can send disputes within two
4 hours of receiving bills.

5 Q. Are you also hoping to be able to pay the
6 bills within 30 days of the invoice date?

7 A. That was the -- well, we have an adjusted
8 time period in there, but that was -- I'm told I'm not
9 supposed to talk about the mediation, so --

10 Q. Now, on redirect you were asked regarding
11 a situation in September of this year where an invoice
12 date was September 3 or 4, I believe, but the actual
13 receipt of the CD was September 18th. Do I have that
14 right?

15 A. On that CD we have invoice cycles that are
16 the 3rd of the month and the 8th of the month. Now,
17 they consolidated some of them. There's some in
18 between, and I think we had some dates past the 8th,
19 but they consolidated a bunch of them into the 8th, and

20 I think they left one bill on the 3rd, if I remember

21 what they told me is correct, yes.

22 Q. For the invoice dated September 3, when,

23 if ever, did COI receive the paper copy of that

24 invoice?

25 A. In the past or this month?

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1 Q. On September 3 of '08.

2 A. We get it on CD right now, today.

3 Q. So are you saying COI doesn't receive
4 paper anymore at all?

5 A. CABS bills come on paper. We are also
6 getting CABS -- CABS and usage are coming on paper.
7 CABS and usage are being sent on an FTP basis. The
8 local bills aren't being sent that way today because I
9 have to change my profile, and so we're getting CABS
10 and usage paper and -- well, actually, we're getting
11 CABS, usage on paper, CD, and FTP.

12 Q. The invoice dated September 3, '08, to
13 which you refer, what was that invoice for?

14 A. It's a local bill. It's either resale
15 UNE-P or UNE.

16 (Discussion off the record.)

17 THE WITNESS: UNE-P or UNE, U-N-E,
18 Unbundled Network Elements, and UNE-P is Unbundled
19 Network Elements Platform.

20 By Mr. Stewart:

21 Q. In what format did you receive the bill

22 with the September 3, 2008, invoice date?

23 A. CD.

24 Q. So the only medium on which you received

25 that September 3, '08, bill was the CD that you

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1 received about September 18?

2 A. Right. You've got to put this in
3 context. We have had multiple conversations over the
4 last five months about doing away with the paper, we're
5 trying to make Embarq more efficient and cost effective
6 here, so we're getting rid of the paper and getting to
7 CDs or FTP, and so a lot of the paper has gone away,
8 but not all of the paper has gone away. We're moving
9 to try to get everything to FTP, is the bottom line.

10 Q. Historically, and if you want to answer
11 this differently based on the different types of
12 services, that's fine, what's the average number of
13 days between an invoice date and the date that you
14 receive either a paper or CD bill?

15 A. It's basically been about the same, 13 to
16 15 days after the first of the month. Most of the
17 billing is on the 3rd, so on the 15th, 13th, the 15th,
18 and the CDs are coming the 15th to the 18th, something
19 like that. Last month was kind of strange. I don't

20 know why it was so late last month. So the paper and
21 the CD are basically coming on the same -- same time
22 frame. You'd think the CD, once they ran the program,
23 the CD could be developed and shot out, but I don't
24 know what they have to do to get to the CD process.

25 Q. Had you stated previously that the time

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1 between the invoice date and the date upon which COI

2 received a bill was four to five days?

3 A. Just now or some other time?

4 Q. Anytime. Not today.

5 A. No. We -- again, there was a prior

6 discussion about the FTP, and we talked about once that

7 was established, it would be four or five days.

8 (Discussion off the record.)

9 By Mr. Stewart:

10 Q. I think you testified that you've been

11 having conversations with Embarq for a number of years

12 regarding their billing processes?

13 A. (Witness nods head.)

14 Q. When did Embarq propose to you the FTP

15 electronic billing?

16 A. We started talking about it, I don't know,

17 either during the negotiation or during one of those

18 discussions after the negotiations.

19 Q. Spring of this year sound right?

20 A. Yeah.

21 Q. Now, I think you said that over maybe the
22 last ten years you've received about \$2 million worth
23 of credits from Embarq for bills?

24 A. Right.

25 Q. And I think you've also testified that on

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1 a monthly basis Embarq bills COI \$400,000?

2 A. Yeah, and in the past it's been higher,
3 but it's -- totally for CABS and everything, it's about
4 400.

5 Q. So, historically, would an approximate
6 yearly average of billing from Embarq to COI be in the
7 neighborhood of 5 to 6 million?

8 A. I think it would be closer to 4 1/2 or 5,
9 but -- 400,000 a month gets you to 4.8.

10 Q. Well, the reason I used a higher number
11 was I think you said that in the past it was more than
12 400,000 a month.

13 A. I think it was about 750,000. The bill
14 has dropped about \$75,000 a month since June of '06.

15 Q. Okay. So during those years when the
16 monthly billing was 750,000, the annual billing --

17 A. No. The yearly amount was \$750,000
18 higher. The monthly never got to 750. It was 440,
19 450, whatever it worked out, something.

20 Q. So a fair approximation would be \$5

21 million a year?

22 A. Right.

23 Q. Over 10 years, that's \$50 million?

24 A. Right.

25 Q. Have you discussed with other CLECs their

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1 bill review processes?

2 A. Yes.

3 Q. What have you been able to learn in terms

4 of how they do it which might be an improvement over

5 how COI does it?

6 A. Well, most of them are moving to an

7 FTP-type process.

8 EXAMINER LYNN: Mr. Stewart, that would be

9 CLEC as in Competitive Local Exchange Carrier, for the

10 reporter?

11 MR. STEWART: Yes. Thank you, Your

12 Honor. That's correct. I have no further questions.

13 MS. BLOOMFIELD: Your Honor, I just have a

14 clarification question here.

15 REDIRECT EXAMINATION

16 By Ms. Bloomfield:

17 Q. Mr. Vogelmeier, we've been talking

18 about -- is it your understanding that FTP or the File

19 Transfer Protocol is really a pipe between the server

20 of COI and the server of Embarq; correct?

21 A. Right. It's an IP tunnel.

22 Q. Right. So the pipe, the FTP, would not

23 have to be used exclusively for BOS-45 protocol,

24 correct, or format; right?

25 A. We have companies that send PDF files FTP.

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1 Q. But currently do you have a pipe in place?

2 A. Yes.

3 Q. Okay. In the past have you asked Embarq
4 to send you PDF versions of the bills through the FTP?

5 A. Yeah. I asked that initially, yeah.

6 Q. And currently has Embarq told you the only
7 thing they would send through this pipe is the BOS-45
8 format?

9 A. Right. That's what they said.

10 Q. So, theoretically, you could have gotten
11 everything you got on your CDs that took so long, you
12 could have gotten those on the FTP; correct? That's
13 the pipe?

14 A. Yeah.

15 Q. And how long has your FTP been in place?

16 A. Oh, I don't know. Probably two months,
17 something like that, by the time we got through the
18 testing and making sure the pipe worked and all those
19 kind of things.

20 Q. And it is your testimony that while you
21 requested PDF format to go through that pipe, they
22 wouldn't give it to you?

23 A. I suggested that if they were in a hurry
24 for me to get my bill, that would be an alternative.

25 Q. Thank you. No further questions.

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1 EXAMINER LYNN: We'll take questions from
2 the Panel. Miss Russell, do you have any questions for
3 the witness?

4 EXAMINATION

5 By Ms. Russell:

6 Q. Mr. Vogelmeier, I'm going to go to the
7 issues list just to get some questions out of the way
8 that you probably have an answer to for me.

9 A. Okay.

10 Q. I'm going to Issue 8, talking about the
11 definition of DS1.

12 A. Okay.

13 MS. BLOOMFIELD: Your Honor, may I give
14 him an issues list? I'm not sure he's got it.

15 MS. RUSSELL: Sure.

16 MS. BLOOMFIELD: Are you looking at the
17 one from the 28th, the May 28th issues list?

18 MS. RUSSELL: We have the 28th issues
19 list.

20 MS. BLOOMFIELD: That's the one I have. I

21 want to make sure we're looking at the same one.

22 (Discussion off the record.)

23 EXAMINER LYNN: We have a May 30th. Mr.

24 Vogelmeier, on the bottom of your sheet does it say May

25 28 or May 30th?

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1 THE WITNESS: It says June 23rd -- oh, it
2 has May 28th on the top.

3 EXAMINER LYNN: On the top, okay. I think
4 we're all looking at the same thing, then.

5 MS. BLOOMFIELD: Yes. I think that's when
6 it was printed.

7 EXAMINER LYNN: It says "last updated."

8 MS. BLOOMFIELD: Let me look on his and
9 see if that's got the same thing.

10 (Discussion off the record.)

11 By Ms. Russell:

12 Q. I'm going to ask you about Issue 1 and
13 Issue 8 together. They're both definitions of DS1.

14 A. Okay.

15 Q. Would you be opposed to taking the
16 definition out of Section 45.61 which is Issue 8,
17 taking that definition out of that section since it's
18 already in Issue 1 in the definitions section of the
19 agreement?

20 A. I'd have to look at it based upon the
21 entire -- I'm not -- right today I don't know for sure
22 what's all contained in that section, but -- I can sure
23 look at that.

24 Q. Okay.

25 EXAMINER AGRANOFF: Miss Russell, so the

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1 record is clear, what you're asking the witness
2 questions about is contained in the issues list that
3 was included as part of the arbitration packet that was
4 filed with the Commission?

5 MS. RUSSELL: Correct.

6 EXAMINER AGRANOFF: Okay.

7 By Ms. Russell:

8 Q. Okay. Let's move -- I'm going to ask you
9 a few questions about line conditioning.

10 A. Okay.

11 Q. Is COI aware that the FCC has held that an
12 ILEC, or Incumbent Local Exchange Carrier, can recover
13 the cost of line conditioning from the
14 telecommunication carrier requesting the line
15 conditioning?

16 A. I've been told that, yes.

17 Q. Are you aware that on the -- in the 2005
18 agreement that you're currently working out of that
19 there is a charge for line conditioning on that price

20 list?

21 A. Yes.

22 Q. Has COI ever been charged a line

23 conditioning charge?

24 A. It started in October of '07. Prior to

25 that there was no conditioning charges for DS1s, only

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1 ADSL circuit.

2 Q. Do you know how much COI was charged?

3 A. I think we're in the range of right now 22
4 to \$25,000. We're charged to have all the load coils
5 which have to come off, but all the bridge taps, they
6 take all the bridge taps off of the circuit for a DS1.

7 Q. Okay. What is COI's position on line
8 conditioning assuming from this hearing that we find
9 that Embarq's proposed rates do not include line
10 conditioning?

11 A. Well, I guess my struggle here is that
12 we've gone so many years that the interpretation of the
13 contract was one way and today it changed. So the
14 arguments in the -- if you read those sections of the
15 DS1, sections of the -- the contract is not specific to
16 circuits that are under 18,000 feet. It is very
17 specific to circuits over 18,000 feet, so my -- my
18 original contention is that in the pricing that they're
19 charging and the installation they're charging for a

20 DS1, that the conditioning is included.

21 Q. Okay. If it's found that the condition is
22 not included, what will COI's position be then with
23 regard to the charge for line conditioning?

24 A. Well, we've had multiple conversations
25 about the fact that they delivered the T1s on HDSL

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1 technology, and that technology was developed for
2 ILECs, so they wouldn't have to take bridge taps off of
3 all the circuits out there to provide a DS1. So, you
4 know, along with the fact that I think they're already
5 billing me for the conditioning part of it, they're
6 also using HDSL technology, which they're delivering
7 that T1 and they don't have to totally condition it.
8 There might be times they do -- or there might be times
9 they might have to. There's a lot of times, based on
10 the information that I've received, that it's not
11 required, but I'm still billed for it, and I have no
12 way to validate whether they do the job or not. So
13 that's -- the HDSL technology is -- allows you to leave
14 bridge taps on based upon the number of feet from the
15 CO and the number of pairs you're using. HDSL can be
16 two-wire, four-wire.

17 Q. So based on the length of the line, if it
18 was over 18,000 feet, would COI be opposed to paying a
19 line conditioning charge as compared to being under

20 18,000 feet?

21 A. Well, the way I read the agreement, it's

22 not specific. It doesn't say anything about line

23 conditioning under 18,000 feet. It does say -- it is

24 specific over 18,000. We don't put in -- I would say

25 there's one percent of the circuits we put in that are

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1 over 18,000 feet.

2 Q. Okay. Do you disagree with the rates that
3 you're being charged for line conditioning?

4 A. Well, I don't know about the rate. I
5 can't validate it. The prequalification that I get
6 back from Embarq says HDSL technology on the bottom. I
7 know that they don't have to take all the line
8 conditioning off. Mr. Maples, in his testimony, said
9 that, and so, you know, I know they don't have to do
10 that. Are they doing it to provide my circuit? I have
11 no way of validating that at all.

12 Q. Okay. Issue 11 proposing to strike the
13 word excessive out of the -- let me see exactly.
14 "Conditioned loops are loops from which excessive
15 bridge taps" -- are removed, I'm just saying you want
16 to remove the word "excessive." Are you implying that
17 Embarq should remove all bridge taps or that they
18 currently are removing all bridge taps?

19 A. I've been told that that's a policy of

20 Embarq to remove all bridge taps, and we've, in fact,
21 been billed for all the bridge taps being removed even
22 though it's HDSL technology. I think the change in
23 that language was because we know that all of them
24 don't have to be taken off.

25 Q. COI does not believe that all bridge taps

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1 need to be removed to make a line DSL capable?

2 (Discussion off the record.)

3 THE WITNESS: Was there a question there I

4 can answer?

5 By Ms. Russell:

6 Q. Does COI believe -- I think you answered

7 it before. You said you don't believe that all bridge

8 taps need to be removed to make a line DSL capable?

9 A. Right. We checked with the manufacturer.

10 Embarq's using that manufacturer. So, you know, it's

11 pretty common knowledge at this point in time.

12 Q. Has COI ever ordered loop make-up

13 information from Embarq?

14 A. We're required to do a prequalification on

15 the -- order a prequal. report on a circuit that we put

16 in. However, that has only been to decide whether it

17 is -- we want to accept the charges or not, when we're

18 talking about DS1 through Embarq.

19 Q. Was COI charged for that loop make-up

20 information?

21 A. Don't know about that. If it was, it

22 wasn't enough for me to worry about, considering the

23 conditioning was anywhere from \$100 to \$1,000 at times.

24 Q. Thank you. I have no further questions.

25 EXAMINER LYNN: Miss Green.

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1 MS. GREEN: Yes.

2 EXAMINATION

3 By Ms. Green:

4 Q. Mr. Vogelmeier, does COI purchase
5 four-wire loops from Embarq?

6 A. Well -- UNE loops or UNE-P loops?

7 Q. Yes, four-wire ones.

8 A. Four-wire UNE loops?

9 Q. Yes.

10 A. Not today, no.

11 Q. Okay. Does COI purchase DS1 loops from
12 Embarq?

13 A. Yes.

14 Q. Yes. Okay. In the current
15 interconnection agreement that is now expired, which
16 bands, rate bands, does COI purchase the DS1 loops out
17 of?

18 A. It was normally in Bands 2 and 3.

19 Q. Can you estimate a percentage of the DS1

20 loops that are purchased out of Bands 2 or 3? Say, for
21 example, you have 10 percent you purchase in Band 2, 20
22 percent you purchase in Band 3, just a rough estimate.

23 A. I don't know. There would be more in Band
24 2 than Band 3.

25 Q. Okay.

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1 A. Band 2 is the most cost effective.

2 Q. In the interconnection agreement that's
3 being proposed in this arbitration, which bands would
4 that correspond to currently, in this new
5 interconnection agreement? As far as in your old
6 interconnection agreement, you purchased out of Bands 2
7 and 3. Would that still be Bands 2 and 3 in this
8 current interconnection agreement that's in this
9 arbitration?

10 A. I've had a tough time interpreting it. We
11 started out with four bands, and now they're talking
12 about three bands, so it's -- it's -- it's always going
13 to be Band 2, I think, because Band 1 is Cincinnati
14 Bell. Band 2 is us, and then whatever lies in those
15 other areas.

16 Q. So, from your interpretation, it would be
17 at least in Band 2 in the proposed interconnection
18 agreement; correct?

19 A. Yes.

20 Q. Your Issue No. 10 in regards to the DS1

21 transport loop cap, based off of your testimony on

22 Pages 8 and 9, what exactly are you asking the

23 arbitration Panel to modify?

24 A. Well, I think that -- that transition from

25 a DS1 to a DS3 has to be more cost effective. On the

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1 other side -- I'll give you an example. DS1 transport
2 from Lima to Delphos is \$132. DS3 transport on the
3 CLEC side is \$5,200. It's about 20 T1s. Now --

4 EXAMINER LYNN: You said 20 TYs?

5 THE WITNESS: T1s.

6 EXAMINER LYNN: T1s?

7 THE WITNESS: Yes. DS1 and T1, I'll use
8 that term kind of interchangeably, but the breakpoint
9 is about 20. For me, it doesn't make sense to do that,
10 because I'm looking for an alternative carrier to do
11 that. For Embarq, they're going to lose the revenue,
12 so it kind of doesn't make sense for them, but their
13 pricing is kind of in their own world today, so --

14 By Ms. Green:

15 Q. Okay. So just for clarification, the
16 FCC's breakpoint, we'll say, is 10. More than 10 DS1,
17 a CLEC should be able to purchase a DS3?

18 A. Right.

19 Q. But you are under the belief that it

20 should be 20 DS1s to purchase before you move over to a

21 DS3; is that correct?

22 A. Well, I put that number in there because

23 the rationale that I was being told from the Embarq

24 people was just as extreme the other direction. I

25 think it ought to be in the 11 to 13 range that a DS3

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1 is cost effective. Historically, I've done business
2 with United Telephone and Sprint and then Embarq. On
3 the access side, break even on DS3s are 11 to 13.
4 That's just the way it always normally is. Now that
5 it's a CLEC issue, the cost of that fiber going between
6 Lima and Delphos has gotten very expensive.

7 Q. So you're asking us to modify that cap
8 point, then?

9 A. Right. I mean, it helps both sides,
10 because I'm going to find some other way to get there.
11 They lose the revenue and -- but that's --

12 Q. Just a couple of more questions. In Miss
13 Londerholm's testimony, she states on Page 47, Line 13,
14 that COI's current interconnection agreement with
15 Verizon, that COI pays a rate of \$160, I think it's 53
16 cents -- sorry. I've got it here. It's \$160.31. Does
17 Verizon utilize a rate band system, also?

18 A. To some extent, not as -- as extensive
19 than what Embarq does.

20 Q. Okay. So this rate that Miss Londerholm

21 quotes in her testimony, is that a correct rate?

22 A. That's the rate that's contained in that

23 interconnect agreement that we've had just as long as

24 Embarq. However, we don't use that product, and we've

25 never negotiated that rate.

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1 Q. Okay.

2 A. It's kind of like Cincinnati Bell not

3 negotiating the DS1 rates in the current agreement.

4 They don't use it.

5 Q. Okay. So the rate that's in her

6 testimony, COI does not purchase those loops from

7 Verizon?

8 A. Right.

9 Q. That's all the questions that I have.

10 EXAMINER LYNN: Thank you, Miss Green.

11 Mr. Agranoff, if you're ready, you can

12 proceed with your questions.

13 EXAMINATION

14 By Examiner Agranoff:

15 Q. Good morning, Mr. Vogelmeier.

16 A. Good morning.

17 Q. My questions are going to predominately

18 focus on Issue 2. The first thing I just want to

19 clarify is with respect to your customer base. Are you

20 dealing strictly with business customers?

21 A. It's about 95 percent business and 5

22 percent residential.

23 Q. But the billing issue that we've been

24 discussing this morning is inclusive of both the

25 residential as well as the business customer base?

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1 A. Oh, sure. There's some of the residential
2 that fall in that category, too.

3 Q. Earlier, I think it was with respect to
4 questions that Mr. Stewart had asked, you were talking
5 about billing in arrears versus billing in advance?

6 A. Yes.

7 Q. Can you just clarify for me again what
8 category of services are being billed in advance versus
9 those that are being billed in arrears?

10 A. Any usage-based billing is billed in
11 arrears, and local line costs, features, all those
12 kinds of things are billed in advance.

13 Q. And if I understand your testimony with
14 respect to the issue of billing, COI is advocating
15 status quo?

16 A. Yes, uh-huh.

17 Q. Now, I was a little confused after reading
18 your testimony that you prefiled in this case and then
19 listening to your answers that you gave this morning.

20 If I read correctly, in your prefiled testimony you
21 discussed the fact that COI receives 10 bills from
22 Embarq on a monthly basis?
23 A. There's close to 14 invoices that come on
24 the CDs or -- there's -- in that box over there, one of
25 the boxes, there's multiple invoices in that box.

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1 Q. Okay. But when you say you receive
2 multiple invoices, you don't receive 10 separate bills,
3 though, on 10 separate days?

4 A. No. They used to be, like, four different
5 days, and there would be multiple bills come on that
6 billing date. They've consolidated this in the last
7 three months, for whatever reason they were doing it.

8 Q. And your prefiled testimony was premised
9 off of what was being done previously or what was done
10 subsequent to the change that you're discussing?

11 A. What we've done previously.

12 Q. Okay.

13 A. We're still in that process, and they're
14 moving things around; so, you know, it's tough to
15 figure out for sure what it's going to end up, but --

16 Q. Can you turn to Page 3 of your prefiled
17 testimony? Are you there?

18 A. Yes.

19 Q. If you go to Line 7, the middle of the

20 line where you discuss, "Each month Embarq renders to

21 COI ten bills" --

22 EXAMINER LYNN: Are you there?

23 THE WITNESS: On Line 7?

24 By Examiner Agranoff:

25 Q. It begins on Line 7, in the middle.

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1 A. Page 3?

2 Q. Page 3.

3 A. "Some background for our position" --

4 Q. No.

5 MR. STEWART: The next sentence.

6 THE WITNESS: Each month Embarq renders
7 ten COI bills?

8 By Examiner Agranoff:

9 Q. Correct.

10 A. Part of seven, most of eight. Okay.

11 Q. What I'm trying to do is somehow reconcile
12 what your prefiled testimony says and give context to
13 that somehow in relationship to what is actually
14 occurring today. Is this -- was this written based on
15 what was happening or is this based on what is
16 happening?

17 A. Well, we've been in a transition, so when
18 this was written, it was based upon what had happened
19 and what was -- what was going on at that point in

20 time. We've been moving to -- and they've been moving
21 billing dates around. I think the last month was the
22 first month that we had just to January 3rd and they --
23 not January. A 3rd bill date and an 8th of the month
24 bill date. I think last month was the first month they
25 finally moved all that around to get there.

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1 Q. So today, currently, if you were to
2 explain in your testimony as to what Embarq renders to
3 COI, it would be two bills?

4 A. Well, on a CD there's -- they have
5 multiple invoices, one box of bills, so there's
6 still -- there's still the same bands, billing account
7 numbers. They've just changed the bill date they're
8 due. So we still have the same amount of billing
9 account numbers, but they've moved around the date that
10 they print them and send them out, so we're still
11 getting the same amount of invoices or billing account
12 numbers.

13 Q. So you're still getting ten?

14 A. Roughly, yeah.

15 Q. But you're getting them on two CDs?

16 A. Well, today -- last month we got them on
17 one CD, so we're getting there. We're getting
18 consolidated, but --

19 Q. And these ten bills, can you explain the

20 manner in which they are configured, based on time

21 period, customers?

22 A. Well, there's three distinct local bills.

23 There's a UNE-P bill. There's a resale bill, and

24 there's a UNE bill, but there's more bills that they've

25 put in other bands for some reason. I don't -- I don't

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1 know the logic of why we have bands that -- and I have
2 a sheet that pretty much shows all that. The primary
3 bills are UNE-P, resale, and UNE, but there must be
4 seven or eight other bills that are smaller that come
5 that are on different bands. I don't know why -- I
6 think the resale, they put some of the resale on
7 another band because they had too many to go on and so
8 they start another band. I don't know the logic of why
9 we get little pieces and parts on other bands. We just
10 try to keep track of them.

11 Q. Now, you indicated that you are currently
12 engaged in the testing for the electronic billing?

13 A. Right. I requested a test file last week,
14 and Pam Zeigler said that she talked to her people and
15 they'd be sending me a test file this week.

16 Q. Okay. And you indicated that the
17 electronic billing was going to accelerate the time
18 frame or shorten the time frame from the invoice date
19 to the receipt date?

20 A. Right.

21 Q. And if I heard you correctly, I think you
22 said that would bring it down to approximately a
23 five-day interval?

24 A. That's what Embarq has stated is kind of
25 the outside date. It ought to be only five days or

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1 less to get that, is my understanding, so --

2 Q. And that is in comparison to what is
3 currently occurring, which, if I understood your
4 testimony correctly, is approximately a 15-day
5 interval?

6 A. Right.

7 Q. Is COI committed to using the electronic
8 billing assuming the technical testing was successful?

9 A. Oh, sure. I've -- in another discussion I
10 think I agreed to that.

11 Q. Can you give me some sense on a percentage
12 basis what percentage of the bills that you're
13 receiving you have found discrepancies in that have
14 required remediation from Embarq?

15 A. Required mediation?

16 Q. Remediation.

17 A. Remediation. Well, we send disputes every
18 month. June, June '06, one of the vice-presidents at
19 Embarq got involved in it. He actually, from what he

20 told me, had somebody go through and check every item
21 on all of our bills, and from that point the problems
22 haven't been as dramatic.

23 Q. Okay. But can you give me some sense of
24 what percentage of a bill you had within the last month
25 that you didn't pay?

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1 A. For the most part, we pay all the bills.
2 We get them back as credits. Now, with the exception
3 of the conditioning, we haven't done that. But with
4 the exception of the period of time the bankruptcy when
5 the bill was so dramatic, that's -- June of '06, we
6 disputed the bill. We got roughly \$300,000 in credits,
7 because we went ahead and paid the bill.

8 Q. Would COI be agreeable to utilizing that
9 exact type of an approach to paying the bills in their
10 entirety on an ongoing basis with the expectation that
11 you would receive credits for those issues that you
12 raise as being possible errors?

13 A. It becomes an economic question. If you
14 get a bill for \$177,000 for a resale bill and \$50,000
15 of it's wrong, I'm not going to pay the \$50,000. If
16 you get a bill for \$177,000 and you got \$4,000 wrong,
17 I'll pay it and get the credit back so I don't have to
18 have a conversation; so it becomes an economic thing,
19 you know, and for the most part, we've always gotten

20 credits for the billing, billing issues. Now, like I
21 said, we haven't paid some of the conditioning charges,
22 because I think that is --

23 Q. But that's more of a philosophical issue
24 rather than a billing error issue?

25 A. Well, it appears to be, but the testimony

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1 on their side kind of backs up my philosophical point

2 of view, so --

3 Q. What other ILECs does COI deal with?

4 A. AT&T, Verizon, a ton of the little ILECs.

5 I mean, most of that is on the IXC side. Like I said,

6 we started doing business with United Telephone in

7 somewhere around late '91 or early '92. So there's all

8 kinds of companies out there that from the

9 Interexchange Carrier side we do business with. We

10 have three negotiated agreements, one with Verizon, one

11 with Embarq, and one with -- now I think it's --

12 Ameritech is on the agreement, but it's AT&T.

13 Q. And what type of billing arrangements do

14 you have with them with respect to the issue of bill

15 payment?

16 A. Same thing.

17 Q. Same parameters?

18 A. Uh-huh. Yeah, we haven't -- we've had the

19 discussion with Embarq for years, but we've never had

20 the real issue until the last -- this contract came
21 up. Everybody understood the time frames and everybody
22 worked within it, and it didn't seem to be a big issue.

23 Q. You had some discussion with Mr. Stewart
24 with respect to Embarq's payments to COI. To your
25 knowledge, that is not a matter currently before the

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1 Commission in this proceeding?

2 A. No. We resolved that. We have a
3 settlement agreement for that.

4 Q. That's all I have.

5 EXAMINER LYNN: Thank you, Mr. Agranoff.

6 EXAMINATION

7 By Examiner Lynn:

8 Q. Mr. Vogelmeier, I'll have some questions,
9 and then we'll be able to wrap things up and you can
10 actually take a seat somewhere else.

11 A. Okay.

12 Q. I'll be focusing on the issues list,
13 indicating Issue 7 about the security deposits and your
14 testimony concerning those. On Page 5 of your
15 testimony, and it's Line 10, you're mentioning that COI
16 has made what you call "steady substantial weekly
17 payments" to Embarq. Is it typically the case that COI
18 is making some sort of payments weekly?

19 A. For the most part, yes.

20 Q. Okay. And when you do so, are you -- how
21 often are you paying a bill in part because you're
22 disputing part of it versus how often are you able to
23 pay it in full?

24 A. Well, like I said, the only thing that I
25 know lately that we have not paid are the conditioning

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1 charges. We -- we normally pay the bill, send the
2 thing, the paperwork to the dispute people, and then we
3 get, you know, a credit basically.

4 Q. Thank you. If you go to Page 6 of your
5 testimony, let's see, Line 19, 18 and 19, you were
6 mentioning that, "There is no need for a security
7 deposit from COI because COI has proven its financial
8 responsibility for ten years." Now, earlier in your
9 testimony today and also when I was reading the
10 testimony of Embarq's witness, Mr. Hart, there was some
11 reference made to the time when COI had to file for
12 bankruptcy, and I was trying to reconcile your
13 statement about how COI proved its financial
14 responsibilities for ten years with the fact that you
15 had to file for bankruptcy. Could you help me
16 reconcile those two things again?

17 A. Well, in my mind the only reason I was
18 into bankruptcy is because they, Embarq, wouldn't
19 discuss the billing issues. That's -- there was no

20 other need to be there other than that. We were paying
21 everybody else. There wasn't any need to be in the
22 bankruptcy other than that.

23 Q. The bankruptcy, then, was filed to resolve
24 some of those billing issues you're saying?

25 A. Well, when I talked to our -- when I hired

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1 the bankruptcy attorney, I explained the whole scenario
2 to him, and he said, well, you know, if they're not
3 going to talk to you, they're not going to hold off
4 until they look at the bill, see if it's right, then
5 that's you're only choice. Then you can use your
6 regulatory past to work on the billing issues and the
7 bankruptcy helps that process.

8 Q. All right. Thank you. Let's see. Page 7
9 of your testimony, this would be on Lines 19 and 20,
10 you stated that Embarq -- you had indicated on Lines 19
11 and 20, "Embarq withheld payment of invoices from COI
12 for four months without issuing a dispute of any
13 type." When did that occur? You didn't really
14 elaborate there.

15 A. That was in March -- April or -- April,
16 May, or June. I think it's May of this past year, of
17 2007.

18 Q. I see. Thank you. Has that kind of issue
19 come up frequently with Embarq, where they wouldn't end

20 up paying invoices from COI?

21 A. Well, my biggest struggle was the fact

22 that -- I had two issues with that. Number one, they

23 didn't notify me, and, number two, when they did, they

24 operated outside the terms of the contract, and that

25 seems to be something that happens quite regularly,

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1 that the contract is good for me, but it's not
2 necessarily good for them.

3 Q. When you say "operated outside the terms
4 of the contract," can you explain what you meant by
5 that?

6 A. Well, in that specific instance, you're
7 supposed to pay any undisputed charges. They said they
8 were all disputed. I'm saying it can't be all
9 disputed. You know, there's got to be something there
10 that's good, so --

11 Q. All right. Thank you for those comments.
12 Let's see. This would also be on Page 7 of your
13 testimony. I can't find the line number right now, but
14 you were referring to the amount of the -- in deposits
15 that Embarq was seeking from COI and you were referred
16 to the amount as "staggering" being asked for. When I
17 looked at the proposed language from both parties in
18 the issues list, though, you were both saying that
19 security deposits would be subject to a minimum level

20 of \$10,000. In other words, you were -- you were going
21 to require the same thing of Embarq as they were
22 requiring of you.

23 A. Right.

24 Q. Again, if you felt whatever Embarq was
25 seeking as a security deposit was unreasonable, what do

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1 you feel is reasonable and how to approach that matter?

2 A. I have a real struggle with the whole
3 security deposit concept because -- like I said, I went
4 into business November 15th of 1990. We started
5 service with United Telephone in late '91, early '92,
6 no security deposit was required. It became a CLEC in
7 1998. No security deposit was required. We went
8 through two and a half years of bankruptcy, came out of
9 bankruptcy, no security deposits required. That would
10 have been a big area that you would have thought
11 something would have showed up. And now we're
12 negotiating a new contract, and all of a sudden after
13 ten years they're at risk. I have a real struggle with
14 that, because I paid -- the only thing -- ultimately,
15 all I want them to do is send me a good bill, send it
16 on time, and I'll pay it. That's all I've ever asked.
17 I've had all kinds of conversations with people.
18 That's all I want. It's a real simple process. They
19 can send it to me overnight. They can FTP it. I don't

20 care how I got it as long as I have time to review it,

21 and I'll pay the bill.

22 Q. My impression based on what you said there

23 is that COI is proposing security deposit language

24 because -- primary because Embarq is requiring it of

25 COI? You want it to be reciprocal?

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1 A. Well -- right. And when you take the
2 issue in June, they were outside the terms of the
3 contract. They didn't send me a dispute. When they
4 did send it, they said well, we've overpaid you, so we
5 don't have to pay what's good. Well, the contract
6 doesn't say that. It says you pay what's undisputed.
7 It doesn't matter if they made a mistake and overpaid
8 me, because you don't know that's the case; so that's
9 the -- that's the point, you know, and every day
10 Embarq's outside the contract at some level. Monday
11 they were outside the terms of the contract, and it
12 doesn't seem to be an issue with them. There's no --
13 there's no recourse that COI has against Embarq for
14 being outside the terms of the contract. Live by the
15 contract. I live by it. It works out pretty well.

16 Q. So you're thinking that -- you referred to
17 Embarq being outside of the contract periodically, so
18 you're thinking, therefore, COI better require a
19 security deposit of Embarq as well?

20 A. Well, sure. I wanted some compensation
21 for their -- for their inability to work within the
22 terms of the contract.

23 Q. All right. Finally, and this came up
24 earlier in some of your testimony, too, the issue about
25 the Letter of Credit.

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1 A. Right.

2 Q. Did I understand you correctly that you
3 had not given much consideration to the Letter of
4 Credit or you didn't really understand what it involved
5 or -- what was your answer on that again?

6 A. It relates back to the same -- when you're
7 looking at a deposit, and I provided -- they've
8 provided me service for ten years. I have no other
9 carrier that I have a Letter of Credit with, and most
10 of the issues that we've been sitting at the PUCO over
11 the last years is because they've billed me improperly;
12 so I'm having a little struggle with me giving them
13 anything to pay on time. I do it. All they have to do
14 is send me a bill. It's real simple.

15 Q. So whether it be a security deposit,
16 Letter of Credit, anything of that nature, you're --
17 you would object because you feel COI has paid in a
18 timely manner and so forth?

19 A. Right. I try to work with those people

20 any time I can to resolve whatever the issues are.

21 That's --

22 Q. Thank you. Believe it or not, I have no

23 further questions.

24 A. Okay.

25

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1 REEXAMINATION

2 By Examiner Agranoff:

3 Q. I did have one further question, Mr.
4 Vogelmeier, getting back to the testing of the
5 electronic billing. What is your projected timetable
6 for having that completed?

7 A. Once I get that file this week and if the
8 software works, we're probably looking at the next
9 month bill dates as being ready to implement that.
10 I'm -- you know how software is and developing it, so
11 I'm saying we're probably a month out. It won't take
12 that long to fix whatever we have to fix to be able to
13 read it, but -- and then there's -- I got to change the
14 profile and then the Embarq people have to start
15 sending it that way, so I don't know whether that fits
16 in their time frame or not, but I'm thinking a month or
17 a month and a half at the latest we ought to be able to
18 do that.

19 Q. Assuming that all works as expected, would

20 you be able then to live with the expedited time frames

21 that are being proposed by Embarq?

22 A. Yeah. I -- yes. We've had this

23 discussion in another venue, and we kind of already

24 said that that's where we'd be, so --

25 Q. Thank you.

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1 EXAMINER LYNN: Miss Green, you had one
2 additional question?

3 MS. GREEN: Yes, a clarifying question.

4 REEXAMINATION

5 By Ms. Green:

6 Q. I believe I had asked you earlier a
7 question and you had stated that COI mostly purchased
8 their DS1 loops from Band 2 out of Embarq.

9 A. (Witness nods head.)

10 Q. And I believe you had said, I'm just
11 clarifying, I believe you had said that you are unable
12 to determine which band you would still be purchasing
13 out of in their proposed interconnection agreement,
14 you're not sure if that's still Band 2?

15 A. Well, I think it still remains Band 2. I
16 just don't know whether it's going to be Band 3 or --
17 like I said, they changed it from Band 3s -- or changed
18 from a four-band schedule to a three-band schedule, and
19 I'm -- I haven't done the research to see totally where

20 we will be buying those.

21 Q. Okay. When COI purchases DS1 loops, do
22 you know prior to actually placing the order which band
23 it would fall into?

24 A. Oh, yes.

25 Q. Okay. And in the current interconnection

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1 agreement that you have with Embarq that's now expired,
2 are you able to explain how that rate band system was
3 structured?

4 A. Oh, sure.

5 Q. Could you tell me that, please?

6 A. Well, it's based upon wire centers, so we
7 look at the wire center, and if it's cost effective,
8 then we buy in that wire center; if it's not, you
9 don't.

10 Q. And as far as the rate bands, are they
11 grouped by a certain area in the current
12 interconnection agreement that's expired or --

13 A. It's wire centers.

14 Q. Are they, like, wire centers that are in a
15 certain area that are grouped together or are --

16 A. No, not really. It's all over the Embarq
17 area. They group certain cities based upon whatever
18 they do with their pricing or whatever, so --

19 Q. And how does that rate band system in the

20 current interconnection agreement differ from what's in

21 the proposed? In your mind, how is that different?

22 A. It brings -- well, if you have four bands,

23 four or five bands in some cases and you go to a

24 three-band system, it moves people around that might

25 have been cost effective in the bands that aren't cost

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1 effective anymore.

2 Q. So the basis is the wire centers have been
3 moved around from the current bands that were in your
4 current interconnection agreement?

5 A. Right.

6 Q. They're now in different bands in the
7 proposed agreement?

8 A. Right.

9 Q. That's all I have.

10 EXAMINER LYNN: Any need for clarifying
11 questions from either party? Miss Bloomfield first.

12 MS. BLOOMFIELD: Yes.

13 REDIRECT EXAMINATION

14 By Ms. Bloomfield:

15 Q. I do have a couple clarifying questions
16 for you. Isn't it the case, Mr. Vogelmeier, that COI
17 is not disputing that the FCC says that a carrier can
18 recover for conditioning, merely that it is COI's
19 position that Embarq has already recovered for

20 conditioning in certain circumstances?

21 A. Right, right.

22 Q. And you were asked a number of questions

23 about the number of bills. I just want to clarify.

24 Currently, today, when you got your CD, it contained

25 PDF files; correct?

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1 A. Yes.

2 Q. And there were a number of bills, there
3 were a number of documents that were in PDF form;
4 correct?

5 A. Right.

6 Q. And each of the -- and a number of
7 those, there were -- these documents represented
8 separate bills? There might have been multiple pages,
9 but you had a number of separate bills in that PDF?

10 A. Right.

11 Q. Is it the case that there is a separate
12 bill for each rate band for some services?

13 A. No, they're not -- they're not based on
14 rate bands. Like I said, on the local side, there's
15 three major bills, and about seven or eight others that
16 I'm not sure why they got started, but --

17 Q. But they are listed as a separate invoice?

18 A. Yeah, separate band, yes.

19 Q. And you were asked a question about the

20 interval, the interval that will occur once the BOS

21 format is pushed through from Embarq to COI on the FTP

22 pipe; correct?

23 A. Uh-huh.

24 Q. And is it the case, then -- so the

25 interval we're talking about, are we not, or that you

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1 responded to has to do with the fact that in that case,
2 the bill date that you will receive in BOS-45 format
3 through the FTP pipe will be approximately five days
4 prior to the time that you receive BOS format through
5 the FTP pipe; correct?

6 A. Ask that again.

7 Q. There's the five-day period that we're
8 talking about?

9 A. Right.

10 Q. You are still going to have the invoices
11 in whatever format -- in the format that they are
12 received, which is the BOS-45?

13 A. Right.

14 Q. They are still going to be -- that bill
15 date is still going to be five days before you actually
16 get the BOS-45 format through the File Transfer
17 Protocol; is that correct?

18 A. Yes.

19 Q. So that's the five-day interval you were

20 talking about?

21 A. That's right. Mr. Hart and I talked about

22 that in different conversations.

23 Q. That's it.

24 EXAMINER LYNN: All right. Mr. Stewart.

25 MR. STEWART: Thank you, Your Honor.

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1 RECROSS-EXAMINATION

2 By Mr. Stewart:

3 Q. Mr. Vogelmeier, is it your understanding
4 that different rate bands are based on Embarq's cost to
5 provide the service in the various rate bands and
6 that's the basis for dividing them up?

7 A. Well, that's what I've been told, yeah.

8 Q. Do you have any basis for thinking
9 differently?

10 A. You know, when you look at wire center
11 density on some of the ones that are included in higher
12 bands, I don't know how they got there, but I'm not an
13 inside-Embarq person.

14 Q. And you're not a cost-study person either;
15 right?

16 A. No, no. I just look at Lima and the mall
17 area that's close to Lima is a \$500 loop under the
18 new -- under the new category, and it's fed fiber ring
19 from the Lima main, and, you know, Lima is in a Band 2

20 area; so we have a real struggle getting there, but I

21 understand that fiber is just as expensive as copper,

22 so --

23 Q. You don't understand that your expert, Dr.

24 Ankum, has taken issue with the appropriateness of

25 putting certain areas in particular rate bands even

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1 though we can probably agree he's disputed the overall
2 cost analysis?

3 A. What I do agree is he is the cost-study
4 person, so he -- he appears to know what he's talking
5 about based on other issues or other areas that he's
6 testified.

7 Q. Well, I'm sure he appreciates that
8 answer. My question, though, was do you understand
9 that Dr. Ankum has taken issue with the rate banding
10 concept and whether certain exchanges -- or certain
11 wire centers should be in different rate bands? He
12 hasn't done that, has he?

13 A. I've read a lot of the documents --

14 MS. BLOOMFIELD: Your Honor, may I insert
15 an objection here? Mr. Stewart is asking Mr.
16 Vogelmeier questions about what our expert has
17 testified to. He's supposed to limit his direct -- or
18 cross rather to what was asked by the Panel members. I
19 don't think we're even close. I don't think it's

20 appropriate that Mr. Vogelmeier is supposed to
21 interpret what Dr. Ankum has said. I think this is
22 totally inappropriate, and I move to strike the
23 question.

24 MR. STEWART: Well, if I may be heard?

25 EXAMINER LYNN: Please.

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1 MR. STEWART: Mr. Vogelmeier certainly
2 testified in response to questions from the Panel or
3 the Attorney Examiners taking issue with the
4 appropriateness of having wire centers in certain rate
5 bands, and that was within the last five minutes. So
6 based on that, I think it's fair for me to ask him why
7 he takes issue with that. He said he's not a
8 cost-study person. So if he doesn't take issue with it
9 based on something he knows, then presumably he takes
10 issue with it based on something else, and the only
11 something else that it could be, to my knowledge, is
12 Dr. Ankum's testimony, so it's a fair area of inquiry
13 to ask him about that; otherwise, then his testimony
14 should come out on this whole rate band appropriateness
15 issue.

16 MS. BLOOMFIELD: May I respond, Your
17 Honor? I don't think the question had to do with
18 appropriateness. The questions that were asked was,
19 was there a change in rate bands. He answers yes.

20 That's about all he got. Then he was asked for some
21 examples, which he did his best to recall, period. I
22 don't think the word appropriate was mentioned anywhere
23 in his answers, and Mr. Stewart has taken those
24 questions and tried to put a value on them, quote,
25 appropriate, an appropriate overlay, which was never

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1 part of the questions and never part of his answer, and
2 I think that -- I think he's loading the question that
3 has nothing to do with anything that the witness was
4 asked by the Panel members.

5 MR. STEWART: Well, my recollection is
6 that Mr. Vogelmeier mentioned a wire center near Lima,
7 the name of which I couldn't quite understand, but he
8 was saying that he didn't understand why that wire
9 center which is close to Lima, which is Rate Band 2, I
10 believe, should have a \$500 loop rate; so he certainly
11 was arguing that a particular wire center was in the
12 wrong rate band.

13 MS. BLOOMFIELD: He said he didn't
14 understand it.

15 EXAMINER AGRANOFF: Why don't we do it
16 this way, Mr. Vogelmeier, what is the basis on which
17 you stated your opposition to some of the rate band
18 structure?

19 THE WITNESS: Well, from my perspective,

20 it boils down to the facilities, fiber connectivity
21 much more efficient than copper, those types of things,
22 and when you have a city -- well, an entity that's
23 close to a large metropolitan area, it doesn't make
24 sense to me that that cost would now increase five
25 times. Having other discussions with Embarq over the

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1 years, they seem to move these cities around kind of
2 wherever they want to move them, and it doesn't
3 necessarily relate to any cost factor; so that's the
4 struggle I have with it. Now, if this was Huntsville,
5 which probably has 600 homes and one grain elevator, I
6 could understand that, but Elida, where you have the
7 Lima mall, all kinds of businesses, it doesn't seem to
8 fit in my mind that all of a sudden that cost goes up
9 five times.

10 EXAMINER AGRANOFF: Mr. Stewart.

11 By Mr. Stewart:

12 Q. Your answer to Mr. Agranoff suggests that
13 your disagreement with the banding of a particular wire
14 center is based on a lack of understanding and a
15 feeling rather than your having reviewed any hard
16 evidence that might actually bear on the actual costs.
17 Is that a fair characterization?

18 A. No. I think it probably is a fact that I
19 haven't reviewed any of the Embarq costing mechanism,

20 but like I said, rationally it just doesn't make sense
21 to me. I can't imagine that copper in Elida, with the
22 mall, is that expensive.

23 Q. Well --

24 A. Now, the first question you asked me was
25 about his reviewing the cost study and that kind of

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1 thing. I have no idea how he's getting the way he's
2 getting to it. I'm just telling you that there's
3 certain areas that, well, it was \$97 in the old
4 contract and now it's 500 for a loop. I can understand
5 that if there's two houses in the area and they gotta
6 go ten miles to get there, but --

7 Q. But you haven't reviewed any empirical
8 data to support your intuitive belief that the rate
9 banding doesn't make sense to you?

10 A. No, no. I've looked at, what, eight years
11 of contracts, and basically the contracts have been
12 pretty much the same up to this one, and most of the
13 people that are testifying have been in those positions
14 over the eight years, so you kind of wonder why the
15 price went up now. Couldn't figure it out eight years
16 ago.

17 Q. On Page 7 you were asked some questions
18 regarding a contract between Embarq and COI, and you
19 were stating that Embarq was operating outside the

20 contract. That contract to which you were referring is
21 a contract separate from the interconnection agreement
22 that we're arbitrating here today?

23 A. No.

24 Q. It's not?

25 A. No.

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1 Q. I thought you answered a question of Mr.

2 Agranoff's that was --

3 A. Reciprocal comp is part of the

4 interconnection agreement.

5 Q. Okay. Then what was the contract that is

6 separate from the interconnection agreement that was

7 the basis for your answer to Mr. Agranoff that --

8 A. I have not talked about any other

9 contract.

10 Q. Well, perhaps you and I both misunderstood

11 Mr. Agranoff. I thought he asked you whether that was

12 the agreement we're arbitrating here today, and I

13 understood you to say no.

14 A. He asked me about other issues of -- he

15 asked me about that reciprocal comp for that settlement

16 agreement. That settlement agreement in that part of

17 the dispute is not part of the arbitration. It is part

18 of the ICA agreement.

19 Q. Okay.

20 EXAMINER AGRANOFF: Just so that I can now
21 get some understanding, since I was the one that
22 generated the question, the question I had asked of you
23 was whether or not issues that you were alleging that
24 Embarq is in violation of, whether or not those issues
25 are to be addressed in the context of this proceeding.

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1 THE WITNESS: No, no. They're part of the
2 interconnection agreement, but they're not part of this
3 proceeding.

4 By Mr. Stewart:

5 Q. You made reference to interconnection
6 agreements with Verizon, AT&T. Starting with Verizon,
7 how many days after the invoice date is COI's payment
8 due to Verizon?

9 A. I think it's 30 days.

10 Q. What, if any, consequence is there for
11 going beyond the 30 days with respect to Verizon?

12 A. Haven't been.

13 Q. Does their interconnection agreement give
14 them the right to charge COI interest?

15 A. Late charges.

16 Q. One and a half percent?

17 A. I don't know.

18 Q. Is the same true for AT&T, 30 days beyond
19 which COI incurs a late charge?

20 A. Could be. I haven't looked at those

21 specific sections of the agreement.

22 Q. Has either Verizon or AT&T sought a

23 security deposit?

24 A. No.

25 Q. Do you know roughly what the average

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1 monthly billing is for each of them to COI?

2 A. No. AT&T is 40,000. Verizon is maybe a
3 hundred.

4 Q. A lot smaller than Embarq?

5 A. Well, I'm trying to get Embarq there.

6 Q. I think it was Ms. Green's question, but
7 in any event, it had to do with Embarq's billing of
8 line conditioning under the current, most recent, now
9 expired interconnection agreement. For a certain
10 period of time Embarq did not bill COI for certain line
11 conditioning; is that right?

12 A. Yes.

13 Q. And then Embarq started billing COI for
14 line conditioning?

15 A. Right.

16 Q. And Embarq -- didn't Embarq tell COI that
17 they made a mistake and failed to bill it before?

18 A. Well, they started billing it. Then I
19 disputed it. That -- that was -- that's what they

20 said, right.

21 Q. So Embarq was admitting to a mistake in
22 billing, namely failure to bill something that they
23 claimed they had the right to bill?

24 A. It depends on how you read the contract.

25 Q. Well, I'm not asking you to rule on the

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1 merits of the dispute. I'm just asking you whether

2 that's what Embarq said.

3 A. Embarq said they should have been billing,

4 that's right.

5 Q. Now, given your testimony about how often

6 Embarq makes a mistake in billing, why is it so hard

7 for you to accept they made that mistake?

8 A. It's not tough. It's not tough to

9 accept. I mean, you have all the same people in place

10 doing both the jobs, and Embarq might want to look at

11 that.

12 Q. You mentioned -- again, I couldn't

13 understand the name of one of the exchanges, but I

14 think you talked about a route from Lima to Delphos?

15 A. Right.

16 Q. Then you were comparing a transport rate

17 in two different situations. Did I hear that right?

18 A. Lima to Delphos was the TRRO conversation

19 about transport.

20 EXAMINER AGRANOFF: Just so that the
21 record is clear as to what the acronym TRRO stands for?
22 THE WITNESS: I don't know that one.
23 MR. STEWART: Let's try Triennial Review
24 Remand Order.
25

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1 By Mr. Stewart:

2 Q. Okay. What two rates were you comparing,
3 if you recall, in that part of your testimony?

4 A. On the Lima/Delphos?

5 Q. Yes.

6 A. That was a discussion about what the
7 breakpoint was for DS3 based upon 10 or 11 T1s.

8 Q. And I thought you said that one particular
9 transport rate was X, but another one was multiples of
10 that?

11 A. Right. The DS1 transport from Lima to
12 Delphos is \$132 a month. The price I got for a DS3 was
13 \$5,200 a month on the CLEC side. Now, I can go on the
14 access side and buy that same DS3 for \$2,600 a month.

15 Q. From Embarq?

16 A. From Embarq.

17 Q. So you're saying that Embarq --

18 A. The cost is higher. Their cost is higher
19 if it comes to my fill load by way of the CLEC Tariff

20 instead of the Access Tariff.

21 Q. You talked a bit about bridge taps and the
22 need for their removal. Do you recall that?

23 A. Yes.

24 Q. Were you saying that in a number of
25 situations it's not necessary for Embarq to remove all

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1 the bridge taps?

2 A. That's correct.

3 Q. Is it your testimony that Embarq takes the

4 position that Embarq needs to remove all the bridge

5 taps in every situation?

6 A. That's correct. I have an e-mail from my

7 account manager. They discussed it with Judy Crowe,

8 and Judy Crowe says they take them all off, and they

9 even take them all off for Embarq when Embarq does a

10 T1.

11 Q. I'm sorry, when --

12 A. When Embarq does a T1 for their customer,

13 they take all the bridge taps off.

14 Q. So then your argument is Embarq is

15 removing bridge taps that it might not need to and

16 charging COI for that activity?

17 A. Right. There are two issues. They're

18 taking off ones they don't need to, and I have no way

19 to validate whether they do the work at all.

20 Q. Did you read Mr. Maples' testimony?

21 A. I read -- a long time ago I read it. I

22 read through some of it yesterday in regard to the

23 conditioning.

24 Q. Do you recall that Mr. Maples was taking

25 the position that Embarq does not believe all bridge

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1 taps need to be removed?

2 A. Yeah, that's kind of what I got from his
3 testimony.

4 Q. Doesn't that agree with what you're saying
5 now, that not all bridge taps need to be removed?

6 A. It's agreeing with what I'm saying. It's
7 not agreeing with the way you bill me.

8 Q. So, then, you're agreeable -- and not only
9 agreeable, but you would prefer that Embarq not remove
10 excessive bridge taps?

11 A. You based the --

12 Q. Or only remove excessive bridge taps. I
13 misspoke.

14 A. You remove the bridge taps based upon the
15 line length and the length of the bridge tap and how
16 far it is from the CO.

17 Q. COI does not want Embarq to remove all
18 bridge taps if that's not necessary?

19 A. Right. We -- we buy UNE loops, and we're

20 allowed to tell them what bridge taps to take off and
21 which ones to not. We buy DS1 loops. We're not
22 allowed to tell them that. The only thing we're
23 allowed to do is say do you want to go for the \$600 to
24 have them all taken off or not.

25 Q. So you're claiming that Embarq acts

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1 inconsistently with what Mr. Maples has suggested is
2 the proper way to do this -- or you're not -- you can't
3 validate it, so you're not sure?

4 A. Well, I mean, he's testifying under oath,
5 so I'm taking him for what he's saying. The other side
6 of it, I can't validate if I -- if they're going to
7 take them all off, that they don't go out and take off
8 the ones they have to provide the service and bill me
9 for the rest.

10 Q. Well, in fact, don't you have to take
11 pretty much everything on faith? You don't even have a
12 way to validate there's a bridge tap on the circuit, do
13 you?

14 A. Not today. We will in about another week.

15 Q. How will you do that?

16 A. Test equipment.

17 Q. You're going to go out and test the
18 circuits?

19 A. Uh-huh.

20 Q. So then this -- I'm sorry. Go ahead.

21 A. We'll be able to test every circuit that
22 comes in to us for length, bridge taps, load coils.

23 Q. And will that enable COI to determine
24 which ones absolutely have to be removed?

25 A. That will validate whether the prequal. is

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1 correct or not. See, you have two issues here. In my
2 mind, you have two issues. You have conditioning
3 that's being taken off because that's the way Judy
4 Crowe said that they were supposed to be done. She's
5 the guru, and so -- and Mr. Maples said technology --
6 it doesn't have to be that way with that technology.
7 Well, I agree with that, with that technology. So you
8 have the issue of should they be taken off or shouldn't
9 they and which ones after that should be taken off, and
10 the ones after you decide whether there's some to be
11 taken off are based upon length, length of the bridge
12 tap, and what the distance is from the CO for those
13 bridge taps.

14 Q. So if your testing demonstrates that,
15 let's say, two of the four bridge taps properly should
16 be removed, then COI is okay with paying for that?

17 A. Well, I guess.

18 Q. Is that a yes?

19 A. Sure.

20 Q. Okay.

21 A. I'll go with that one. I'll give you one

22 there.

23 Q. Well, thank you. That's all I have.

24 (Witness excused.)

25 EXAMINER LYNN: All right. Thank you.

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1 We'll go off the record now -- I'm sorry. We need a

2 motion for Exhibit 1.

3 MS. BLOOMFIELD: Right. Your Honor, I

4 would move that Mr. Vogelmeier's prefiled testimony

5 which I believe was made on June 24th be marked as -- I

6 think it's already been marked as COI Exhibit 1, and I

7 move that it be admitted into the record.

8 EXAMINER LYNN: Mr. Stewart, any

9 objections?

10 MR. STEWART: No objection.

11 EXAMINER LYNN: All right. That will be

12 admitted into evidence, then. Thank you. Now we'll go

13 off the record.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 (Lunch recess taken.)

16 EXAMINER LYNN: Back on the record, then.

17 Everyone welcome back. We'll be proceeding to COI's

18 next witness, Dr. Ankum, and I'll swear him in and then

19 I'll make a comment about confidential parts of his

20 testimony and how we will be handling that. Dr. Ankum,

21 if you would raise your right hand, please.

22 AUGUST H. ANKUM, Ph.D.,

23 being by Examiner Lynn duly sworn, as hereinafter

24 certified, testifies and says as follows:

25 EXAMINER LYNN: Thank you. We'll now be

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1 entering a closed part of the record, so anyone who has
2 not signed or otherwise verbally agreed to the
3 confidential parts of the agreement would be asked to
4 leave the room at this point in time.

5 Having said that, are you ready to go
6 ahead with your questions?

7 MS. BLOOMFIELD: Yes, Your Honor. We have
8 already called to the stand Dr. August Ankum.

9 DIRECT EXAMINATION

10 By Ms. Bloomfield:

11 Q. I wonder if you would state again your
12 name and spell your last name for the record, please.

13 A. August H. Ankum, and Ankum is spelled
14 A-n-k-u-m.

15 Q. By whom are you employed and in what
16 capacity?

17 A. QSI Consulting. I'm Senior
18 Vice-President.

19 Q. Were you engaged by COI for purposes of

20 this arbitration?

21 A. Yes.

22 Q. And did you -- is this testimony, which we

23 can now mark as COI Exhibit 2 which states Prefiled

24 Testimony of August H. Ankum, Ph.D., is this your

25 testimony?

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1 A. Yes, it is.

2 Q. And if I would ask you the same questions
3 today, would your answers be the same?

4 A. Yes, they would be.

5 Q. Do you have any additions, deletions, or
6 corrections to this testimony?

7 A. No, I don't.

8 MR. STEWART: Excuse me.

9 EXAMINER LYNN: What about the
10 supplemental?

11 MR. STEWART: Well, no. I was going to
12 ask there's a confidential and then a public version,
13 and I wasn't sure which one to mark as Exhibit 2.

14 MS. BLOOMFIELD: May I make a suggestion
15 that we mark the -- first of all, to make it clear for
16 the record, we're only talking about his confidential
17 version at this point. I am assuming that the public
18 version would, what, also be marked Exhibit 2, the one
19 that was filed on June 24th?

20 EXAMINER AGRANOFF: Actually, it would be
21 my preference that we would mark the public as Exhibit
22 2A.

23 MS. BLOOMFIELD: 2A. Then we have
24 supplemental testimony that was filed later on August
25 20th, and how would you like that marked, Your Honor?

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1 EXAMINER LYNN: Exhibit 3, then.

2 MS. BLOOMFIELD: Exhibit 3 and 3A?

3 EXAMINER LYNN: Yes.

4 MS. BLOOMFIELD: The 3 will be the
5 confidential, and 3A will be the public version.

6 By Ms. Bloomfield:

7 Q. Is the prefiled supplemental testimony
8 that was filed August the 20th, 2008, is that also your
9 testimony Dr. Ankum?

10 A. Yes.

11 Q. Likewise, if I would ask you the questions
12 from the supplemental today, would your answers be the
13 same?

14 A. Yes, they would be.

15 Q. And do you have any corrections,
16 additions, or deletions to this?

17 A. No, I don't.

18 MS. BLOOMFIELD: That's it. Dr. Ankum is
19 ready for cross-examination.

20 EXAMINER LYNN: Mr. Stewart, you may

21 proceed.

22 MR. STEWART: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 By Mr. Stewart:

25 Q. Good afternoon, Dr. Ankum.

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1 A. Same to you.

2 Q. Let's start with COI Exhibit 2, the
3 confidential version of your testimony of June 24th.
4 Directing your attention to Page 4, Lines 4 to 5, being
5 Table 1, is it correct that all the information in
6 Table 1 was reproduced in your supplemental testimony?

7 A. Yes.

8 Q. Okay. May we agree to delete Table 1 on
9 Page 4, then, from the direct testimony?

10 A. Are you asking me or --

11 EXAMINER LYNN: Because it's duplicated in
12 the supplemental?

13 (Discussion off the record.)

14 EXAMINER AGRANOFF: What's the harm, Mr.
15 Stewart, in leaving it in for purposes of the context
16 of Exhibit 2?

17 MR. STEWART: Well, perhaps none. If we
18 can agree that if I ask a question about something
19 that, say, appears in the direct and also appears in

20 the supplemental, that I don't have to refer to both

21 testimonies in connection with the question.

22 EXAMINER AGRANOFF: I don't see why there

23 would be a problem with the understanding that when

24 you're asking the question, it applies to any location

25 in which such information would be contained.

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1 MR. STEWART: Okay. Is that fair --

2 okay. Then we need to go through that exercise.

3 By Mr. Stewart:

4 Q. Please look at Page 6, Line 16 -- or, I'm

5 sorry, 13 through 16 of the direct. There you suggest

6 that possibly having a small company engage in a TELRIC

7 proceeding would be a barrier to entry. Do you see

8 that section?

9 A. Yes.

10 Q. All right. Are you aware of any court or

11 commission having so held that -- requiring a CLEC to

12 participate in a TELRIC proceeding would be a barrier

13 to entry?

14 A. Not in this specific language, but the

15 intent, I would say yes, and I think I'd refer back

16 to -- actually, I'm not referring to this necessarily,

17 but I've been advised by counsel that this Commission

18 has expressed in some form that a small company like

19 COI is not required to engage in a full-fledged TELRIC

20 proceeding with a company such as Embarq.

21 Q. Please look at Page 8 of your direct.

22 Now, the table at the top of that page contains rates

23 from -- for both Embarq and AT&T in various states for

24 each of those companies, Embarq and AT&T, and various

25 bands?

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1 A. Yes.

2 Q. Directing your attention to the AT&T in
3 Ohio rate bands, have you done any comparison between
4 the AT&T rate bands and the Embarq rate bands with
5 respect to customer density?

6 A. Yes. And you want me to explain?

7 Q. Well, let me ask another question or two
8 and then perhaps. Now, Rate Band 3 for AT&T Ohio is
9 their most rural rate band; is that correct?

10 A. That's correct.

11 Q. And I think on Lines 3 through 6 you
12 compare Embarq's rates in Band 1, which you say are
13 Embarq's lowest, for the denser rate band, noting that
14 those are higher than AT&T's rate in rural areas. So I
15 take it, then, the comparison is between Embarq Rate
16 Band 1 and AT&T Ohio Rate Band 3?

17 A. The comparison is more general. Given
18 that we don't have approved TELRICs for Embarq, we need
19 to do some red-face tests to see are the rates that

20 Embarq or the costs that Embarq has proposed, do they
21 fall within a ballpark of what is reasonable, and one
22 of the things that I'm proposing that the Commission
23 does is to look at rates for companies that do have
24 proposed TELRICs, and I am offering to give to the
25 Commission the AT&T rates, which, of course, are the

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1 old SBC rates, and as the Commission and the judges
2 know, we've spent many, many months going through those
3 cost studies, and while nobody would claim that they're
4 perfect, at least they have been subject to a
5 Commission review many times, and so I think they can
6 serve as a reasonable standard. Now, the question is
7 can you do a direct apples-for-apples comparison, and I
8 think what you're asking me about is the differences in
9 the two companies.

10 Q. Well --

11 A. What I am proposing to you is not just --

12 EXAMINER AGRANOFF: Doctor --

13 By Mr. Stewart:

14 Q. Let me just try to make this a little more
15 specific and perhaps briefer. Comparing AT&T Ohio Rate
16 Band 3 to Embarq Rate Band 1, do you know what the
17 customer densities are for each of those, how they
18 compare?

19 A. I can look those up. I don't have the

20 numeric numbers off top of my head for any of those
21 companies. If you ask me qualitatively, the rural
22 areas for AT&T are the standard rural areas which are
23 low density, and the Embarq Band 1 are more the centers
24 of the cities and, therefore, urban.

25 Q. So is it your belief that AT&T Ohio Rate

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1 Band 3 is denser than Embarq Rate Band 1?

2 A. No. The other way around. The AT&T Rate
3 Band 3 would be fairly sparse, i.e., high cost, and so
4 I'm doing the most conservative comparison. I'm
5 comparing the highest cost situation of AT&T, and then
6 I'm telling the Commission, look, even the highest cost
7 areas of AT&T are lower than the cheapest facilities in
8 Embarq's studies; therefore, that tells me that
9 something is wrong. That doesn't pass the red-face
10 test.

11 Q. Is it your testimony that the average loop
12 blank in AT&T Ohio Rate Band 3 is greater than the
13 average loop blank in Embarq Rate Band 1?

14 A. I would expect, yes.

15 Q. Do you know for sure or is that something
16 you --

17 A. Well, that's in the nature of the way that
18 these rate bands are constructed. For AT&T, which
19 operates in the rural parts of Ohio, the Rate Band 3 is

20 supposed to capture those rural areas, and rural areas
21 are characterized by low density and long loop blanks,
22 and the metro area for Embarq is not supposed to be the
23 pure rural areas, but are supposed to be closer in
24 areas in the cities.

25 Q. I understand the general principle, but

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1 did you compare and confirm that, in fact, the average
2 loop blank for AT&T Ohio Rate Band 3 is greater than
3 the average loop blank for Embarq Rate Band 1?

4 A. I can't qualify it for you, but my answer
5 is the same as I just stated.

6 Q. Well, but the question was at some point
7 did you check and compare?

8 A. I did not have the proprietary studies of
9 AT&T available to me, but this is based on my 15 years
10 of expertise and particular expertise with the SBC
11 studies that the Staff and MCI and AT&T, prior to
12 having merged with SBC, having spent many months
13 reviewing those studies, and I think I have a decent
14 feel for the AT&T studies.

15 MR. STEWART: I'm going to move to strike
16 everything after that portion of the answer that said
17 he was not able to compare the actual quantitative
18 data.

19 EXAMINER LYNN: I'd ask that the question

20 and answer be read back.

21 (Question and answer read back.)

22 EXAMINER LYNN: Mr. Stewart, what part was

23 it you wanted to strike again?

24 MR. STEWART: Well, the question had to do

25 with whether Dr. Ankum knows for a fact that the

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1 average loop blank is longer in AT&T Rate Band 3 than
2 Embarq Rate Band 1, and the very first sentence, I
3 think was just one sentence of the answer, Dr. Ankum
4 said he didn't have access to the AT&T data so from
5 that -- well, that answered the question. The
6 inferential answer is he cannot know. The rest of it
7 is just speculation and not responsive.

8 MS. BLOOMFIELD: Your Honor, I don't
9 think -- I think Mr. Stewart mischaracterized the
10 question. The question was did you review, and he said
11 no, but. He's explaining his answer, and he is
12 explaining why he believed, given all the constraints,
13 it wasn't even necessary for him to review it because
14 he was very familiar with it in the past. I think that
15 is a legitimate explanation of his answer, and the
16 answer should stand. It was not the question that Mr.
17 Stewart said it was. He was -- I believe he should be
18 allowed to explain his answer.

19 (Discussion off the record.)

20 EXAMINER LYNN: I'll let the answer stand

21 as is. Thank you.

22 MR. STEWART: Thank you, Your Honor.

23 By Mr. Stewart:

24 Q. Dr. Ankum, what was your source for the

25 rates you show in Table 3 for AT&T Ohio?

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1 A. Those were constructed under my
2 supervision. I believe they came out of existing UNE
3 tariffs.

4 Q. One of your colleagues did that, then?

5 A. Yes.

6 Q. Who was that?

7 A. Dr. Denney.

8 Q. I'm sorry, what was the last name?

9 A. Dr. Denney, D-e-n-n-e-y.

10 Q. Did you look at any interconnection
11 agreements between COI and Ameritech?

12 A. No, I have not.

13 MR. STEWART: Off the record for a second.

14 (Discussion off the record.)

15 MR. STEWART: Back on the record. I think
16 to expedite some matters, we may be able to stipulate
17 to some rates that are in the currently effective
18 interconnection agreement between Ameritech Ohio and
19 COI.

20 MS. ENGLE: I need to see the front of

21 it.

22 MR. STEWART: (Indicating.)

23 (Discussion off the record.)

24 EXAMINER LYNN: Are you ready to go back

25 on the record, Mr. Stewart?

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1 MR. STEWART: Yes.

2 By Mr. Stewart:

3 Q. On Line 4 of Page 8 you use the word
4 "essentially." How are they different?

5 A. Line 4?

6 Q. Yes, Page 8, Line 4.

7 A. Of the direct?

8 Q. Yes, confidential version of the direct.

9 It says, starting at the start of Line 4, "Higher rates
10 for essentially the same facilities."

11 A. That's on my Line 3. I might have printed
12 off my testimony from a different copy, but for future
13 reference, our lines, our spacing is slightly off, but,
14 yes, I do use the term "essentially."

15 Q. How did you -- how do the facilities
16 differ?

17 A. I would think they're very much the same
18 in terms of their functionality. A DS1 would be a DS1.

19 Q. Would you agree with me that AT&T has

20 greater scale economies than does Embarq?

21 A. Yes.

22 Q. Wouldn't those scale economies serve to

23 lower AT&T's costs even in AT&T's rural areas?

24 A. Yes, generally they would.

25 Q. If you would please turn to Page 14.

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1 A. Yes.

2 Q. Now, telecommunication companies' costs
3 vary over time, do they not?

4 A. Yes.

5 Q. Might go up, might be going down?

6 A. Yes.

7 Q. Do you know the vintage of the cost study
8 that was done that produced the costs shown in your
9 Table 5, which is back, I'm sorry, on Page 13?

10 A. Not off the top of my head, if you have
11 the information, which I presume you do. It's
12 somewhere in my testimony.

13 Q. Please turn to Page 18. You make a
14 reference there to "invisible programming" on Line 16.
15 What do you mean by that?

16 A. What I mean by that is that the -- that
17 there is a set of algorithms in calculations that lie
18 at the core of the model that you can't inspect. You
19 can't see exactly what is happening. By contrast -- to

20 illuminate the answer, by contrast, if you use Excel,
21 you can see in Excel -- if the formulas are in Excel,
22 you can see exactly what is being calculated by what
23 and what is being computed, so that you can follow the
24 logic of the model, and "invisible" means that part of
25 the logic that lies at the core of the model is not

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1 visible.

2 Q. Are you familiar with Microsoft Access?

3 A. Yes.

4 Q. What is that?

5 A. It's a Microsoft product that deals with
6 data management on a larger scale than the ordinary
7 Excel.

8 Q. And is that part of the Embarq cost study?

9 A. Yes.

10 Q. And were you able to access any -- or all
11 parts of the cost study that were in Microsoft Access?

12 A. No. We were able to access the portions
13 that were in the ordinary Microsoft Excel.

14 Q. So are you saying that there was nothing
15 in the Embarq cost study in Microsoft Access or that
16 you weren't able to determine that?

17 A. That information was not accessible.

18 Q. Were you able to open all the workbooks in
19 the Embarq cost study?

20 A. In the Excel component of it, yes.

21 Q. Does that mean that you were not able to
22 open workbooks that were in the Microsoft Access
23 portion of it?

24 A. It's not a matter of opening them up,
25 but -- like the model -- the way that the model was

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1 provided to us, as I explain in my supplemental
2 testimony, it was not an executable model that you
3 could run. It came, in fact, with files that listed,
4 as I indicate in my -- as you review my supplemental
5 testimony, because I explained there were log files
6 that had hundreds of error messages in there.

7 Q. Did you alone undertake the analysis and
8 review of the Embarq cost study or were you assisted by
9 one or more of your colleagues?

10 A. I was assisted by Dr. Denney that I
11 mentioned earlier and very early on by Mr. James
12 Webber, W-e-b-b-e-r.

13 Q. What functions did Mr. Webber perform?

14 A. Inside QSI or with respect to this
15 proceeding?

16 Q. With respect to the Embarq cost study.

17 A. He generally looked at the model outputs
18 and results early on. The larger share of the analysis
19 was done by Dr. Denney and myself.

20 Q. What did Dr. Denney do with respect to the
21 analysis of the Embarq cost study as contrasted with
22 what you did?

23 A. It was a joint product, so I'm not sure
24 that we can separate out what she did and what I did.
25 The way that typically these type of analyses take

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1 place is that you deal with a large model and a complex
2 issue, and you work through it together and you use
3 each other as a sounding board as you're working
4 through the analysis; so I'm not sure I can parse that
5 out for you.

6 Q. Do you know whether the amount of time
7 each of you, you and Dr. Denney spent working on the
8 Embarq Cost Model, how that amount of time compared?

9 A. She's so much more diligent than I am. I
10 think the intention was 50/50, but I wouldn't be
11 surprised if it was 60/40, with her spending 60 percent
12 and me spending 40, much like the stock market that we
13 were talking about earlier, getting distracted, but I
14 think the intention was 50/50.

15 Q. Please turn to Page 24. Do you know when
16 Embarq first offered to make its cost study available
17 to COI?

18 A. I don't. And let me ask you which cost
19 study, the one that was filed or the one that QSI

20 reviewed first?

21 Q. Well, let's start with the one that QSI

22 reviewed first.

23 A. My answer is as I stated, I don't really

24 know. The second one, of course, that was actually

25 filed, the first time we saw that was when it was

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1 filed.

2 Q. Were you told that COI had declined to
3 sign a nondisclosure agreement in order to receive the
4 cost study that QSI first reviewed?

5 A. I have no knowledge beyond what was
6 discussed this morning on the witness stand with the
7 COI witness, and I understand that COI didn't think
8 that they needed to engage in an expensive undertaking
9 of reviewing studies that weren't TELRIC studies.

10 Q. Speaking of expense, I take it QSI is
11 being paid for their endeavors on behalf of COI here?

12 A. Yes, we are.

13 Q. How much are they being paid?

14 A. We have two contracts. The first
15 contract, I believe, was for 24,000, which pertained to
16 the preparation of my direct testimony which was
17 expanded on the Cost Model that was provided to us, but
18 substantially discarded by Embarq. Then when Embarq
19 presented an entirely new cost study, we had to engage

20 in a new contract that was for 16,000 given the
21 compressed time period, but nevertheless a significant
22 new review was needed for that supplemental contract;
23 so in total 40,000, in two phases.

24 Q. Would you agree that the cost study filed
25 with Ms. Londerholm's direct testimony was very similar

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1 in methodology to the cost study that QSI first

2 reviewed?

3 A. In some regards yes, and in some

4 significant regards no. Of course, in the regard that

5 matters most to the client, which is ultimately the

6 prices that come rolling out of those models, the

7 results, of course, are very different, and so while in

8 some sense certain components of the model are the

9 same, the ultimate outcome was so significantly

10 different that it warranted basically extending the

11 contract and reengaging in Sherlock Holmes type of

12 activities of seeing where the bodies were buried.

13 Q. The price differences that resulted from

14 the newer model were primarily driven by changes in

15 inputs, were they not? Perhaps I should say different

16 inputs.

17 A. Well, I can't really say that since in

18 both filings there are underlying studies that are

19 simply not there, like studies relating to the annual

20 charge factors, studies relating to labor expenses, and
21 so there's a limited extent to which you can ascertain
22 the differences between models in that regard.
23 Further, there are, of course, significant
24 reclassifications in terms of the rate bands that make
25 a huge impact, so that's an additional change in the

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1 model that is not related to inputs; so I can't say
2 that those are the only differences, as you presented
3 it to me.

4 Q. Well, I didn't say they were the only
5 differences. I was just suggesting that the change in
6 the inputs was the primary cause for the different
7 prices.

8 A. How do you qualify "primary"?

9 Q. Greater than half.

10 A. I don't think so, by that -- judged by
11 that criterion.

12 Q. You said that it's difficult to know
13 because some of the aspects of the new model and some
14 of the aspects of the first model you couldn't gain
15 visibility to. Is that a fair characterization of what
16 you said?

17 A. Yes. Among other reasons, yes.

18 Q. For those things, those areas that were
19 invisible, did you make any inquiry of Embarq to ask

20 Embarq what underlaid -- underlay those areas that you

21 couldn't see?

22 A. It was my understanding that when we

23 received the testimony and the new study, that we

24 received permission to do supplemental testimony, but I

25 don't think that we could do additional discovery, so

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1 the answer is -- well, it's neither a no or a yes. I
2 never thought we had a possibility of doing discovery
3 in -- the time frame in which we used to turn around
4 the supplemental testimony, I don't think would have
5 allowed for much discovery regardless.

6 Q. For the Cost Model QSI first reviewed, I
7 think you indicated there were parts of it that were
8 invisible, did you try to discover what was not visible
9 to you either formally or informally, formally through
10 discovery or informally by seeing if you could talk to
11 the Embarq cost people?

12 A. I have participated in many cost
13 proceedings, and I -- I don't recall any situation
14 where you can just pick up the phone and talk to the
15 other party's cost analyst and say let's have a cup of
16 coffee and work this out. So I don't know exactly what
17 we did ask. I didn't review the discovery that was
18 exchanged, but it didn't even occur to me to do the
19 reasonable thing in a way, but it just -- it just never

20 happens, and I think the reason it never happens is

21 because there is never a two-way street there

22 unfortunately.

23 Q. Please look at Page 27 of your direct.

24 What are the differences between a four-wire loop and a

25 two-wire loop apart from the additional two loops?

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1 A. That's basically it.

2 Q. Aren't there some other, I'll call them,
3 facilities used to provision the two-wire loop and a
4 four-wire loop?

5 A. What are you thinking of?

6 Q. Well, can you think of anything?

7 A. Well, the -- when you used the phrase
8 loop, do you mean a couple wires or the loop as a
9 configured circuit?

10 Q. I'll use your definition. I'm not trying
11 to trick you. Let's go back. What makes up the
12 two-wire loop?

13 A. Depending on how it is provided, there are
14 many different ways in which you can provide it, but it
15 typically starts in the central office, running off a
16 main distribution frame, running over a feeder facility
17 that may or may not be -- well, let's assume that it's
18 copper and you go through a feeder distribution
19 interface. Then the loop extends over the distribution

20 facility, hits the drop -- well, a piece of equipment

21 before that, but then the drop, and then you go into

22 the customer premises. That's the general notion.

23 Q. Okay. Is there a line card involved?

24 A. Yes.

25 Q. Where does that fit in?

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1 A. The line card would be on the switch.

2 Now, to make a -- to create a functioning circuit, now
3 the unbundled loop, when it is provided by -- let's say
4 that Embarq offers the unbundled loop to COI. It would
5 be COI that provides the line card on the switch, so
6 that wouldn't be part of the loop, but would you say is
7 it part of creating a functioning circuit, the answer
8 would be yes.

9 Q. So, in your view, then, the cost of the
10 line card would not be a proper part of costing out the
11 loop, to sell the loop as an Unbundled Network Element?

12 A. If you're talking about the line card in
13 the switch -- for example, I believe that COI is
14 purchasing UNE-P from you. There the line card would
15 be part of the service that you offer, and, therefore,
16 COI appropriately compensates you for that facility; so
17 it depends on the circumstance.

18 Q. For the two-wire or four-wire loop is
19 there a different line card than the one you've just

20 been talking about?

21 A. It depends on how the facility is

22 provided, whether it's over copper or over fiber.

23 Q. Do you know how the cost of the line card

24 for a two-wire loop compares to the cost of the line

25 card for the four-wire loop?

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1 A. Not off the top of my head.

2 Q. And I don't mean to ask you to give me a
3 number, but is it your belief that the cost of the line
4 card for a four-wire loop is more than twice as much as
5 the cost of the line card for the two-wire loop?

6 A. Twice would be the upper limit, I would
7 presume, but chances are it would be less, but it could
8 be twice, if you could duplicate it, but I wouldn't
9 think you could duplicate it.

10 Q. On Page 27, in Table 8 you list a ratio of
11 four-wire and two-wire loop rates for various
12 interconnection agreements. You list the COI current
13 ICA and in parentheses "2/5." Did you review a cost
14 study that purported to be the basis for the rates that
15 were in the COI Interconnection Agreement 2/5?

16 A. Which column is that? My copy is a little
17 fuzzy.

18 Q. Starting with the band column, fifth
19 column over to the right.

20 A. No, I did not.

21 Q. Please turn to Page 28. Do you believe --

22 excuse me. I direct your attention to Lines 3 through

23 7. Are there, to your mind, any legitimate

24 explanations that could produce the result that you

25 describe there as rational -- irrational? And let me

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1 be more specific, because you actually have two
2 situations there.

3 A. Uh-huh.

4 Q. The first one is where the cost of the DS1
5 is lower than the cost of a four-wire loop. You
6 describe that result as irrational, and my question is
7 can you think of legitimate reasons why such a result
8 could attain and not be irrational?

9 A. Yes. It could be on a more limited scale
10 than the 21 wire centers, but, yes, you could have that
11 situation if you're comparing the DS1 loop that is
12 based on fiber versus four-wire loops that are mostly
13 copper.

14 Q. Could that anomalous result also be caused
15 by demand differences that result in different scale
16 economies for the two services?

17 A. Yes and no.

18 Q. Let's go with yes.

19 A. First. Then I'll explain the no. Yes,

20 within your model, and it has to do with the fact that
21 you used actual fills, which has to do with the degree
22 of utilization of the facility, and in your model you
23 use the actual level of utilization, which means that
24 the spare capacity that is floating around in the
25 network, the cost of which then in your model falls on

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1 the facility that actually is being used, so the more
2 spare there is, the more expensive are the units that
3 you're actually selling; so that dynamic exists within
4 your model. And now the no. I don't think it should
5 exist, but the Commission has found, and you have read
6 my testimony where I explained that, but as the
7 Commission has found, you should not be using your
8 actual fills. It should be a hypothetical fill,
9 forward-looking or a fill consistent with TELRIC, in
10 which case that dynamic is -- should be taken out of
11 the model. So, yes, it exists in your model, but, no,
12 it shouldn't exist in the TELRIC model.

13 Q. Are you saying that if one utilizes the
14 appropriate fill factors, appropriate in your view,
15 this anomalous result could not be produced by
16 differing scale economies based on different demands
17 for the two services?

18 A. Not within the range that exist given that
19 you're dealing with a joint network provided by

20 Embarq. If there were two completely distinct
21 companies offering this, operating under different
22 circumstances, each having their own independent
23 network, then those kind of demand qualities or the
24 differences in how many qualities are demanded would
25 have an impact on costs through the economies of scale

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1 that you're alluding, but this is the same company
2 that's purchasing in bulk, whatever that bulk is, but
3 it's purchasing in bulk from its manufacturers, and
4 whatever its negotiating position is with its
5 manufacturers, that's what it is for most of their
6 facilities, and there is still a good portion of these
7 networks that are jointly maintained through the same
8 outside field technicians, et cetera, et cetera; so
9 within the same company I don't see this difference
10 being possible due to demand differences.

11 Q. Greater demands -- or a greater demand for
12 DS1 services and a lesser demand for four-wire loop
13 changes the allocation of certain costs between those
14 two services, does it not?

15 A. Probably not in terms of percentage. In
16 real terms it may. For example, the markup for sharing
17 common costs let's say were 20 percent. The 20 percent
18 would apply to a four-wire loop, a DS1 loop and still
19 be 20 percent. Now, it's the underlying qualities that

20 will then translate into different nominal dollars; so
21 in that sense, yes, but as a percentage, no, and it
22 truly wouldn't explained the price difference.

23 Q. What shared costs do you see between the
24 DS1 service and the four-wire loop service?

25 A. The general share in common costs, which

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1 in the Embarq model is a percentage markup --

2 Q. Let's exclude common costs and just talk

3 about shared -- well, do you agree with me that shared

4 costs are a different animal than common costs?

5 A. Conceptually, yes.

6 Q. Let's exclude common for the time being

7 anyway. What costs, in your view, are shared between

8 the DS1 and the four-wire loop?

9 A. I'd have to review your model to trace

10 that back.

11 Q. Are there certain electronics that are

12 shared?

13 A. They wouldn't show up as shared costs that

14 would be directly assigned in the TELRIC study.

15 Q. Well, putting aside the electronics, then,

16 based on your answer, in talking about a cost, whatever

17 it might be that is shared between the two, if the

18 demand for the DS1s was a thousand units and for the

19 four-wire loop two units, in that situation, wouldn't

20 the shared cost allocation be considerably different

21 than if the demand were equal for the two services?

22 A. I think my answer is the same as I

23 previously gave, that percentagewise chances are they

24 would stay the same, but in nominal dollars, they would

25 obviously differ since the underlying quality is

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1 different.

2 Q. Thank you. Please turn to Page 30. Let's
3 look at the column for the residential retail rate in
4 Table 9. Did you include the subscriber line charge in
5 the residential retail rate?

6 A. I'm not sure. Again, this was prepared
7 under my supervision, and I would have to check that.

8 Q. Do you know whether the -- what Embarq
9 called -- do you know what the IAF is for Embarq?

10 A. IAF?

11 Q. IAF, like Indian Africa Frank.

12 A. That's what the acronym stands for?

13 Q. No. It's a mnemonic so you can know the
14 letters I'm saying.

15 A. No, I don't.

16 Q. So I take it, then, you wouldn't know
17 whether that was included in the rate either?

18 A. I don't know.

19 Q. Now, in providing residential basic local

20 exchange service, there are costs for switching and

21 transport; correct?

22 A. Yes.

23 Q. And there are also revenues derived from

24 those costs?

25 A. Yes.

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1 Q. And it appears to me that you included
2 neither the cost nor any revenues resulting from the
3 switching and transport functions or your colleague, I
4 assume?

5 A. Well, there's no switched access, if
6 that's what you're talking about. Switch access
7 revenues are not included.

8 Q. That's what I thought.

9 A. Right. We're trying to come as close as
10 we can to an apples-to-apples comparison, that in its
11 barest form, you want to look at a local exchange
12 service, that loop facility going out to the central
13 office and comparing to what COI would be paying if it
14 were to purchase a two-wire loop. So it's doing again
15 some sanity check to see are the loop costs produced by
16 the loop Cost Model, how do they stack up against what
17 we see Embarq doing in the marketplace.

18 Q. But the point I take it you're making here
19 in alleging that Embarq violates the pricing rule, the

20 rule that you're addressing there doesn't speak in
21 terms of pricing residential retail service above the
22 cost of the two-wire loop, does it? And what I'm
23 suggesting is that to determine whether this rule is
24 being violated, one would need to look at the various
25 costs of providing basic local exchange service, which

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1 you previously agreed include switching and transport,
2 and the revenues that are derived from the services
3 that those costs allow Embarq to provide.

4 A. I'm not -- I don't read that in the
5 Commission's rule. That may be how the Commission ends
6 up interpreting it, and I imagine if you have to
7 litigate it, I suppose you will argue it that way.

8 What I'm trying to do here is to take one of those cost
9 components, not all of them, but just one, and compare
10 that one cost component, which is the loop, and say
11 this is one of the components of your local service,
12 and that one component already gets you into
13 difficulties, because that one component is already
14 significantly higher than your tariff service; so right
15 there you have a problem. Now, the problem can have,
16 as I explain, can have two sources. Either you priced
17 your retail service too low or, and this is what I
18 think, your cost study has produced costs that are too
19 high, but either way, there is -- something doesn't fit

20 there.

21 Q. In many places in your testimony you

22 discuss percentage increases.

23 A. Yes.

24 Q. Now, if a barrel of oil costs \$100 today

25 and costs \$110 tomorrow, the price has gone up \$10 and

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1 the percentage increase in the price of the barrel of

2 oil in that situation is 10 percent.

3 A. Yes.

4 Q. So the methodology that's appropriate to

5 determine the percentage increase is to look at the two

6 prices, subtract the smaller, which is the earlier,

7 since we're assuming an increase, from the greater, and

8 then divide that difference by the original price?

9 A. Within the context of your example, I have

10 no problem with what you're doing.

11 Q. Well, just as a general -- methodology may

12 be too fancy a word, but simple math, isn't that the

13 right way to calculate the percentage increase?

14 A. To calculate a percentage increase, if

15 that's how you phrase it, yeah, and that's how you

16 present it, yes. That's how you would calculate it --

17 Q. So if someone --

18 A. -- within that phraseology.

19 Q. Fair enough. So if someone says the price

20 of oil has increased 10 percent, that fits the \$100 to

21 \$110?

22 A. Yes.

23 Q. Okay. Now, if you would look at Table 10

24 on Page 32, at the top there, the two-wire loop, the

25 column -- there's a column, third one in, I suppose,

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1 "COI Current ICA," \$35.69. Then the next column over
2 is the Model, \$51.45. Now, the increase between
3 those -- or the difference rather between those two
4 rates is approximately -- well, just under \$16, by my
5 math, and using the methodology we just talked about,
6 the percentage increase would be approximately 44
7 percent; correct?

8 A. Yes.

9 Q. And so when you say "increase over"
10 current rates, that's not quite what you really should
11 have said, is it?

12 A. That's correct. Throughout the testimony
13 I think we fairly consistently used "increase to," and
14 you're correct, and I'd like to make this correction in
15 this table, and it occurs on three lines where it says,
16 "Increase over Current COI Rates," and it should be
17 increase to current COI rates, i.e., it's --

18 Q. Well, I suggest --

19 A. -- 140 percent -- 144 percent --

20 (Discussion off the record.)

21 By Mr. Stewart:

22 Q. I apologize. I didn't mean to interrupt.

23 Go ahead.

24 A. It's 144 percent, the current rate being

25 100 percent, and the proposed rate then that you're

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1 talking about would be 144 percent.

2 Q. I would suggest that even using the word
3 increase is still not the best way to say it. What is
4 correct to say is that the increase was 44 percent and
5 that the model rate is 144 percent of the COI current
6 ICA rate. Isn't that the accurate way to say it?

7 A. No. I'm perfectly comfortable with "to."

8 Q. And say it again how you would prefer to
9 have that read.

10 A. Increased to current COI rates.

11 Q. Equals 144 percent?

12 A. Yes. In other words, it increases to
13 current COI rates at 144 percent. In other words, the
14 current rates are 100 percent. Current rates are 100
15 percent of the current rates, and your proposal
16 increases that to 144 percent of the current rates.

17 Q. All right. That's a fair statement.

18 A. Now, your phraseology would have been fine
19 except that it's embedded in my testimony and I used

20 the other convention, and once you start mixing
21 conventions, you get into trouble; so for consistency
22 sake, I'd like to stick with what I just suggested as a
23 correction, if I may.

24 Q. I would suggest that we'll see in other
25 points in your testimony where you did use -- you mixed

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1 conventions instead of what I would regard as the
2 correct way.

3 A. We'll correct those hopefully, because
4 it's not my intention to create confusion there. There
5 shouldn't be.

6 Q. I was confident it was not intended to
7 mislead.

8 A. Thank you.

9 Q. In fact, if you look at Table 11 on Page
10 34, those changes are described using a different
11 convention, and what I would submit is the clearer way
12 to say it, if you look at the middle slot there,
13 "Weighted Average Rates as Percent of COI's Current
14 Rate," the first one there, two-wire, it says 113
15 percent, and that would reflect, I hope you would agree
16 with me, a 13 percent increase over the current rate?

17 A. Yes. And that table we just corrected is
18 interpreted in exactly that same way.

19 Q. Although the language used is different?

20 A. Well, if you want to correct the previous
21 table to reflect this language, I'm perfectly
22 comfortable with that, if that clears it up. I'm not
23 trying to be unnecessarily difficult. I just want to
24 make it as clear as possible.

25 Q. Okay. Now, on Page 35, Lines 8 and 9, you

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1 refer to a price increase for copper cable, and the
2 observed increase is not 144 percent, but the new price
3 is a hundred and -- I'm sorry. I said 144. I meant to
4 say 148. The new price is 148 percent of the earlier
5 price?

6 A. Yes.

7 Q. Okay.

8 A. Per that previous statement.

9 Q. Now, one of your tests to examine or
10 evaluate the validity of the Embarq rates that are
11 proposed by the model you were reviewing in your direct
12 testimony is to -- and basically what you did was start
13 with the rates in the current interconnection
14 agreements -- agreement and then apply the various
15 inputs, these -- and I apologize for not knowing the
16 nomenclature here -- inflation indices to inflate
17 inputs based on the change of the cost of those inputs
18 over time?

19 A. Generally, yes.

20 Q. That's a fair statement?

21 A. Yes.

22 Q. I'm not trying to trick you here. As part
23 of that exercise, it's an implicit assumption that the
24 rates in the current interconnection agreement are
25 correct?

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1 A. Not really. It's a little bit more

2 complex.

3 Q. If the rates in the current

4 interconnection agreement were grossly overstated, then

5 applying these inflation indices would produce another

6 rate that was grossly overstated; fair enough?

7 A. Yes.

8 Q. And we could remove grossly from that

9 example, and it would still be true. By the same

10 token, if the rates in the current ICA were understated

11 applying these inflation indices, and we'll assume

12 these inflation indices are right for purposes of this

13 discussion, that would produce rates that were

14 similarly understated?

15 A. Yes, generally speaking. I see you don't

16 like it when I agree with you.

17 Q. If we struck the "generally," I'd be

18 happier, but I'm not going to ask you the question that

19 I'm tempted to ask you. Thanks. Let's turn to Page

20 46. Now, you criticize Embarq's cost study for several
21 reasons here on Page 46, and I take it your answer
22 would be the same as when I asked you earlier did you
23 make any effort to contact Embarq or ask your attorney
24 to ask me to contact an Embarq person to try to clear
25 up any of this stuff, and it didn't happen for whatever

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1 reasons?

2 A. The answer is slightly different. We
3 didn't receive a cost study, but then in addition to
4 that, my answer is the same as previously stated, but I
5 think it's important to differentiate in one instance
6 we did get it. With respect to the current charges for
7 the DS1 and four-wire loops, a cost study was
8 produced. I don't think there's a cost study for the
9 loop conditioning, the non-recurring charges.

10 Q. We can put away the direct for the
11 moment.

12 EXAMINER LYNN: Let's go off the record
13 for a minute.

14 (Discussion off the record.)

15 EXAMINER LYNN: I take it you're finished
16 with your questioning for the time being?

17 MR. STEWART: On direct.

18 EXAMINER LYNN: Now you're going to go
19 into the supplemental?

20 MR. STEWART: Yes.

21 EXAMINER LYNN: Why don't we take a little
22 break.

23 (Recess taken.)

24 EXAMINER LYNN: Let's go back on the
25 record, please. Mr. Stewart, any questions that you

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1 might have about Exhibit 2A, I believe, the
2 supplemental -- 3A. Pardon me. My apologies.

3 MR. STEWART: I have the confidential
4 version of the supplemental as COI Exhibit 3. Is that
5 right?

6 EXAMINER LYNN: You're correct. Thank
7 you.

8 By Mr. Stewart:

9 Q. Dr. Ankum, do you have COI Exhibit 3
10 before you, your confidential supplemental?

11 A. Yes.

12 Q. Please turn to Page 5, Table 2, the Embarq
13 new model and proposal for the four-wire loop shows
14 there as (redacted), and that constitutes a (redacted)
15 percent increase over the current ICA rate of
16 (redacted); is that right?

17 A. Yes.

18 Q. And, similarly, on the DS1, the (redacted)
19 rate of the EQ new model is an increase of (redacted)

20 percent over the COI current ICA rate of (redacted)?

21 A. Yes. And the other percentages in that

22 table would be similarly interpreted.

23 MS. BLOOMFIELD: I couldn't hear you.

24 THE WITNESS: I said the other percentages

25 in that table should be similarly interpreted.

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1 By Mr. Stewart:

2 Q. Namely by taking out 100 percent and
3 characterizing the remainder as the increase?

4 A. Over, yes.

5 Q. On Page 6 of your supplemental testimony
6 in several points you discuss the sustainability of the
7 CLEC business in certain wire centers; correct? And if
8 you need a reference, Line 13 and also Line 2.

9 A. Yes.

10 Q. Would you agree that there's no legal
11 requirement that the prices resulting from a cost study
12 must be prices that enable a CLEC to succeed or, to put
13 it in your terms, sustain its business?

14 A. I don't think that is quite true. If you
15 want me to explain.

16 Q. Well, let me ask it a different way. Can
17 you suggest any authority, FCC, state commission, that
18 suggests that cost-based rates must necessarily result
19 in a rate that enables the CLEC to sustain its

20 business?

21 A. I think that the FCC in, for example, its

22 local competition order is talking about the

23 pro-competitive intent of the Telecommunications Act of

24 1996. Now, prices for Unbundled Network Elements

25 should be set at TELRIC, but given that we don't have

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1 TELRIC costs in the record, the Commission will look, I
2 would hope, at what is going on in this negotiation in
3 a broader context of the Telecommunications Act of
4 1996, and within that broader context I think a
5 consideration of how rates are evolving over time and
6 whether the proposed increases are consistent with the
7 sustainability of local exchange competition I think is
8 something that should definitely concern the
9 Commission, and I think also -- I don't want to call it
10 a legal requirement, but -- of course, I'm not a lawyer
11 and I -- that's the main reason, but I think it's
12 appropriate within the context of the 1996 Act.

13 Q. If the Commission established a rate based
14 on TELRIC principles and that rate, for whatever
15 reason, turned out to be one that CLEC couldn't sustain
16 its business pursuant to, isn't that just unfortunate?
17 I mean, the object is to set cost-based rates, and if
18 they don't work, they don't work for the CLEC?

19 A. As long as the Commission is assured that

20 rates are indeed based on valid TELRIC costs, then I
21 think the fact that a particular CLEC may not be able
22 to conduct business is unfortunate, but should not
23 necessarily alter the Commission's decision.

24 Q. Fair enough. In fact, CLECs have been
25 going out of business regularly?

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1 A. They go out of business sometimes or come
2 back into business, yes.

3 Q. I take it you've conducted a lot of cost
4 studies yourself?

5 A. Yes.

6 Q. Have you both analyzed other people's and
7 also developed your own?

8 A. Yes.

9 Q. And is there a model you use when you
10 develop your own cost study?

11 A. The cost studies that QSI has done and
12 I've been involved in, I believe all of them, they
13 typically are ground up cost studies, where we look at
14 the specific facilities and services offered by
15 whatever the client may be, but by the telephone
16 company for whom we're doing the cost study, and so
17 there's no generic study that we use. We build them
18 custom-made, so to speak.

19 Q. So, then, you don't use, for example, the

- 20 Hatfield Model or one of the other big-name models?
- 21 You use your own unique model?
- 22 A. Typically not. QSI may have used one of
- 23 those models in some instances, but generally speaking,
- 24 if we do a cost study, we tailor it to the specific
- 25 network and services of the client.

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1 Q. Have you done dozens, hundreds, or -- how
2 many, roughly?

3 A. Reviewed, that would be in the hundreds.
4 Build would be in the dozens.

5 Q. When you built one, have you ever made a
6 mistake?

7 A. I'm sure we have.

8 Q. Are you familiar with CALIX, C-A-L-I-X,
9 Digital Line Card?

10 A. I've heard of it, but I couldn't answer
11 any questions about specifics.

12 Q. Now, did both you and your colleague
13 experience the phenomenon you described in certain
14 places as being invisible, where you can't get behind
15 the calculations that the Embarq Cost Model makes?

16 A. Yes. Like we couldn't get the new
17 model -- for example, we couldn't get the new model to
18 run, and as I've already explained, there were log
19 files that stated -- that gave all the error messages.

20 Q. Now, is there a specific type of error
21 message that one gets when the model won't run as
22 opposed to an error message that one gets that means
23 something else? The model runs, but the error message
24 refers to something else?

25 A. Well, I would find either one troubling,

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1 but since we couldn't run the model, I don't know what
2 variations in error messages there are.

3 Q. Well, you refer to a couple of different
4 types. If you look at Page 14, at the top, Lines 1
5 through 5, you refer to several different error
6 messages, the first one being, "Operation is not
7 supported for this type of object." What does that
8 mean?

9 A. I have no idea.

10 Q. So was that an error message your
11 colleague received and told you about?

12 A. No. This is in the log file, and you can
13 read it.

14 Q. Okay. So you saw it, but you don't know
15 what it connotes --

16 A. Right.

17 Q. -- denotes? Is that also true for, "Data
18 type conversion error"?

19 A. Yes.

20 Q. And I like this one, "Microsoft Jet Engine
21 could not find the object." Do you know what that
22 means?

23 A. I know we chuckled over that.

24 Q. Okay. Now, when you got those error
25 messages, did that stop the study from running?

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1 A. Well, the -- we ran the model, we tried to
2 run it, and it never came to a solution. It didn't
3 solve. We let it run, and it just never really -- it
4 kept running, so we never got a resolution of the model
5 run.

6 Q. I see. Now, is it correct that certain
7 error messages aren't particularly important and could
8 result, for example, when -- when a field is left blank
9 and there may be another field for the same cost that's
10 filled in, for example, you might have two different
11 brands of a line card and the line card cost field for
12 one brand is filled in, the other field is left blank.
13 When that field is left blank, that can produce an
14 error message; correct?

15 A. Not in the models that I typically look
16 at, but I don't know with respect to this particular
17 model. An error message is disturbing. It tells you
18 that something is in error. That's what the purpose of
19 the error message is.

20 Q. Sometimes when you run a cost model, one

21 gets a warning; is that correct?

22 A. Most of the cost models that I have

23 analyzed are just Excel based, and you don't get

24 warning messages or error messages in those. You can

25 trace through the model and see where, you know, the

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1 calculations are all the way to the inputs, and there
2 are no warning messages that pop up.

3 Q. I apologize if you already answered this,
4 but did you say both you and your colleague had this
5 same experience, not just your colleague?

6 A. We worked on it jointly; so, in that
7 sense, yes.

8 Q. Did you have any discussions with Mr.
9 Vogelmeier regarding the cost studies?

10 A. We've had a number of conference calls
11 generally about the case in which we talked about all
12 aspects of the case, including, you know, the cost that
13 we were reviewing and our preliminary take on those
14 cost studies. I don't recall details of that.

15 Q. Did Mr. Vogelmeier ever discuss with you
16 any information he received from Embarq regarding the
17 cost study that underlay the current ICA rates?

18 A. I don't recall.

19 Q. Now, with respect to two-wire loops and

- 20 DS1 loops and shared costs, is construction cost a
- 21 shared cost for those two services, for example, the
- 22 cost of burying the loops?
- 23 A. Could be.
- 24 Q. Is that how the models you design handle
- 25 the cost of burying the two loops, as a shared cost

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1 between them?

2 A. If they share facilities, we would find
3 some way of allocating those costs to the extent they
4 share.

5 Q. So sometimes construction costs are shared
6 between the two-wire and the four-wire?

7 A. Could be.

8 Q. Do you know whether, in the Embarq model
9 that was part of Miss Londerholm's testimony, whether
10 construction costs are shared costs between the
11 two-wire and the DS1 loop?

12 A. I don't think it would be readily apparent
13 from the model. I would have to dig in deeper with
14 that specific question in mind.

15 Q. Now, if two-wire demand increases and DS1
16 loop demand increases, then would that result in a
17 greater allocation of the shared construction costs to
18 the DS1?

19 A. Probably not within your model, because

20 the model is costing out your network as it exists, and
21 there's so much spare facility in your network, that
22 the increases in demand would just be absorbed by the
23 spare capacity that's available, and I don't see the
24 model picking that up and sharing of facilities or the
25 shared costs.

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1 Q. In a forward-looking model would you say

2 the same thing?

3 A. It depends on how you -- again, this goes

4 back to the discussion we had this morning about fill

5 factors, how you employ your fill factors, and if you

6 have an appropriate TELRIC model consistent with this

7 Commission's findings where you do not base your fill

8 on your actual fill but on a theoretical fill, then you

9 could get some of that dynamic, but your model follows

10 a different convention, where you use actual fill, and

11 so I don't see that dynamic playing out necessarily.

12 Q. Well, what fill percentage did you

13 recommend? I have forgotten. Sixty-some percent?

14 Yes, Page 15, and it appears -- there at the bottom of

15 Page 14 you say, "Embarq's New Model uses fill factors

16 ranging from (redacted) percent and (redacted)

17 percent," and then you refer to Commission-approved SBC

18 fill factors, 61.87 percent and 69.14 percent. Now,

19 let's look at the lower ranges of each, between

20 (redacted) and (redacted), roughly a 9 percent change
21 in fill factor. Why does that percentage change in the
22 fill factor change or, I guess in your view, rebut the
23 proposition that a greater percentage of the shared
24 costs would be allocated to DS1 loops as that demand
25 increases and the demand for two-wire loops decreases?

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1 A. Again, this is -- this is in part
2 conjecture because we don't have the model in front of
3 us and you're asking me just some general questions
4 about what I anticipate may happen in, one, the TELRIC
5 model and, two, the Embarq model. Those are two
6 distinct cost situations. Now, with respect to the
7 Embarq model -- and then you're referring me here to
8 the fills, the actual fills that are listed on Page 15,
9 as opposed to the fills that the Commission approved
10 for SBC, the Commission approved the fills for SBC,
11 i.e., those fills are fixed, and so when demand figures
12 begin to move around, it drives costs through the model
13 because the fill factors don't adjust. With the Embarq
14 model, fill factors are an output, and so you begin to
15 increase demand on the network, but if that demand is
16 just accommodated by the existing spare, it just
17 increases the fill, but the allocation between the
18 different types of loops is really driven by what your
19 existing network is. So if the existing network and

20 existing number of loops don't change, the only thing
21 you're changing is the utilization of those loops, but
22 the number of these loops may be invariant to demand.
23 Then there's really no reason in the model to
24 necessarily change the allocation.

25 Q. Does your conclusion there depend upon the

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1 ability to accommodate the entirety of the increased
2 demand with the existing plant?

3 A. In part, yes.

4 Q. How much of a part? I mean --

5 A. Well, given that -- again, qualifying my
6 answer here by saying that we don't have the model
7 specifics in front of us, and so I don't want to make
8 absolutist or absolute statements or categorical
9 statements because it's all contingent on -- it's all
10 contingent on me here on the stand giving my intuition
11 about the model without having the model in front of
12 me.

13 Q. Excuse me a second.

14 (Discussion off the record.)

15 By Mr. Stewart:

16 Q. Is it correct that four-wire loops are in
17 pretty low demand by COI?

18 A. I have no primary knowledge of that. I
19 heard the discussion this morning, and I believe that

20 Mr. Vogelmeier indicated that there were some, but I

21 don't have primary knowledge.

22 Q. In general, is a four-wire loop much in

23 demand compared to, say, DS1?

24 A. It depends on the entity. I can't answer.

25 Q. Did you examine the rates that COI pays to

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1 Verizon for DS1 services?

2 A. My understanding is that they don't really
3 purchase DS1 from Verizon, but I did not examine those
4 rates other than through the testimony of Embarq where
5 those rates, I believe, were tendered.

6 Q. Now, you acknowledge that certain rates in
7 the Embarq new model actually went down?

8 A. Yes, I believe so.

9 Q. Probably, if you look at Page 9, Table 3,
10 the new model's four-wire rate is roughly ten percent
11 lower than the CBT rate. Do you see that?

12 A. I'm actually looking at Page 5, which is
13 comparing the current rates with Embarq's newly
14 proposed rates. Actually, I don't think that those
15 rates are going down. I was thinking about some of the
16 loop conditioning charges, I believe, went down, but
17 those aren't non-recurring charges.

18 Q. Well, if you look on Page 5, Table 2, the
19 total for four-wire is lower under the Embarq new model

20 than it is under the CBT 12/7 Interconnection

21 Agreement?

22 A. Yes.

23 Q. Turn back to Page 11 if you would,

24 please.

25 A. Yes.

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1 Q. Now, you theorize on Lines 3 through 8
2 that certain price increases would occur with certain
3 expectations based on copper cables, the price
4 increase, the fact that it's a -- you state that it's a
5 more prominent input for four-wire loop than it is for
6 a DS1 loop. Do you see that?

7 A. Yes.

8 Q. Now, again, if you're comparing price
9 increases from an existing interconnection agreement to
10 the Embarq current Cost Model, the expectation that you
11 express here is dependent upon there being an accurate
12 relationship between the cost and the existing current
13 interconnection agreement? In other words, if the
14 relationship between the four-wire loop costs and the
15 DS1 loop costs in the existing interconnection
16 agreement is out of whack, then what you expect to
17 happen here might not happen when an accurate cost
18 study is done?

19 A. Well, I think ultimately what would shed

20 light on all of this would be an approved TELRIC
21 study. In the absence of that, all we can look at is
22 whether proposed changes make sense in light of the
23 changes in the underlying inputs.

24 Q. Well, I don't think you really answered
25 the question. If the initial prices and the

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1 relationship between them were -- out of whack is not a
2 very good way to say it, is it -- wrong, then the
3 expectation that you express here might well not apply?

4 A. I think the concern would still apply. I
5 would think that the rates in the current ICA extend in
6 some relationship to the underlying Cost Model that has
7 been maintained by Sprint and now Embarq, that there's
8 a genesis in that model, and even though I imagine the
9 changes could have taken place in that model, I think
10 the movement of proposed prices over time should still
11 be informed by the changes in the underlying input
12 prices, and so the overall concern I think is still
13 valid and is informative. It should inform the
14 Commission's decision-making.

15 Q. But if one were to assume that an error
16 was made in an earlier cost study, then, as we talked
17 about before the break and in your direct testimony,
18 using an inflater or inflation indices to get to a new
19 rate really wouldn't work right because it would be the

20 garbage in, garbage out function? I think you said

21 that was generally true earlier.

22 A. Give me a second. I think the

23 hypothetical revolves around the notion that somehow

24 that in the current ICA, that this relationship between

25 the four-wire loop and DS1 loop is just grossly

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1 distorted, and if that were so, I think all of us would
2 be able to look at these rates and see something very
3 disturbing, but I think the relationship between the
4 four-wire loop and the DS1 loop in the current ICA,
5 that relationship doesn't seem particularly
6 disturbing. If you go back to my direct testimony,
7 Page 8, where I'm introducing the AT&T rates which
8 present the four-wire rates as well as the DS1 rates
9 for AT&T, the relationship between the four-wire rates
10 and the DS1 rates in COI's current ICA move in the same
11 direction as AT&T's. There doesn't seem to be any
12 notion or any reason to believe that the current ICA
13 rates, that that relationship you're talking about is
14 out of whack, quote-unquote.

15 Q. I want to return for a moment to the
16 invisible programming issue. Now, the Embarq Cost
17 Model has a number of workbooks that are between the
18 beginning and the end. That may not be technical
19 cost-study language, but do you understand what I'm

20 saying?

21 A. Yes.

22 Q. Okay. And did you -- were you able to

23 open all the workbooks?

24 A. I don't know what the full extent of the

25 workbooks are. We never got the model to run, and you

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1 can't look at the exact algorithms that drive the
2 model. There's a black box component.

3 Q. Does the black box component exist because
4 you can't open the particular workbook or one or more
5 workbooks?

6 A. I think the -- well, I mean, of course,
7 there's a limit to which I can answer that question. I
8 mean, I couldn't get the model to run or we couldn't
9 get the model to run, and surely not within the
10 expedited time periods without the benefit of discovery
11 and asking where the problem may be; so, you know, to
12 be honest, I can't really tell you. It's part of the
13 problem of dealing with -- examining this Cost Model in
14 a compressed time period.

15 Q. From what you're saying, and I've never
16 run a cost model, it sounds as though if you can't make
17 the model run, that prevents one from opening the
18 various workbooks. At least that's what I take you to
19 be saying. Is that right?

20 A. Not really.

21 Q. Okay. You said you couldn't get the model

22 to run, and I thought that was the reason for your

23 answer you couldn't look at all the workbooks, but I

24 must have misunderstood you.

25 A. Well, I'm not really sure what you're

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1 referring to about "all the workbooks." The model is
2 an executable file and it sets itself up, and then, you
3 know, you just hit various buttons to get the model to
4 run in different scenarios, and then the model does its
5 thing.

6 Q. Well, my understanding is that the
7 workbooks contained intermediate steps that get you
8 from -- that ultimately get you to the cost output. Is
9 that a fair characterization?

10 A. Conceptually, yes.

11 Q. And so based on that understanding, isn't
12 it correct that in order to get as much information
13 about what the model is actually doing and the
14 assumptions it's making and the algorithms it's using,
15 one must look at the workbooks that constitute these
16 steps getting to the output; is that --

17 A. Well, conceptually --

18 Q. -- roughly right?

19 A. Yes.

20 Q. Okay. So, then, it seems to me in order
21 to gain as much visibility to all the assumptions and
22 data a model is using, one would need to look at each
23 of the workbooks; is that correct?

24 A. The calculations in the algorithm of the
25 model are not readily observable, so to speak. You

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1 can't just -- if you have an Excel sheet, you can use
2 the audit functions in Excel and it will lead you from
3 cell to cell. Like there's a function called Trace
4 Precedent, and by using this function, it will tell you
5 each cell is linked to previous cells, and if you
6 follow through that, you can trace all the calculations
7 all the way from start to finish -- or from finish to
8 start rather. You go backwards. With the model
9 presented by Embarq, you can do that. There is --
10 there are output workbooks from which you can glean a
11 certain amount about the model is -- you know, and what
12 we have been able to unravel and presented in our
13 testimony, but it comes a point where you just can't
14 look inside the heart of the model, what it's doing.

15 Q. So, then, it sounds as if what you're
16 saying is even if one were able to and did open all the
17 workbooks, you wouldn't be able to accomplish the level
18 of analysis that you believe is appropriate?

19 A. Not with what we have received, so --

20 Q. And, again, I apologize --

21 A. Ultimately, of course, one can. You know,
22 given enough time and resources, obviously one can
23 analyze what's going on, but not within the time frame
24 we have and with what has been presented to us.

25 Q. Did you say you were able to and did open

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1 all the workbooks or did you not say that?

2 A. Well, we've opened everything that was
3 presented to us.

4 Q. Was there anything you tried to open that
5 wouldn't open?

6 A. Everything that was given to us we could
7 open.

8 Q. Thanks.

9 (Discussion off the record.)

10 By Mr. Stewart:

11 Q. Did you draft the Interrogatories that --
12 or did QSI draft the Interrogatories that COI sent to
13 Embarq?

14 A. We drafted some.

15 Q. Okay. Interrogatory 12, and I'll read it
16 to you, although I'm happy to show it to you, it says,
17 "Regarding the 28 workbooks in folder LMA titled
18 LMAII 1 through LMAII 28 as they appear after the setup
19 file was run," and the Interrogatory then goes on to

20 state, "Please confirm or deny that all or some of
21 these workbooks (the versions contained on the model
22 CD) are not generated by the model run that produced
23 the recurring cost estimates for loops in Ohio in this
24 case. Please fully explain your answer." I take it
25 that that's the Interrogatory that probably came from

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1 you or one of your colleagues as opposed to COI?

2 A. Yes.

3 MS. BLOOMFIELD: Your Honor, can we ask
4 that Dr. Ankum have a chance to look at that? We don't
5 have it, and it's a pretty long Interrogatory.

6 EXAMINER LYNN: It is long.

7 MR. STEWART: (Indicating.)

8 THE WITNESS: Yes, I've read it.

9 By Mr. Stewart:

10 Q. May I have that for a second?

11 A. Yes.

12 Q. Now, in the response to that
13 Interrogatory, Embarq states -- did you read the
14 response, also?

15 A. Yes.

16 Q. Okay. Embarq states this, "Embarq
17 confirms that these workbooks are not" -- quote --
18 "generated" -- end quote -- "by the model run. Please
19 refer to file titled Loop Module Methodology.doc

20 starting on Page 23 to understand how the module runs

21 and uses these workbooks." Did you follow that

22 instruction or do you know if your colleague, Dr.

23 Denney, did?

24 A. Well, first, that's not the entire

25 answer. The first part of the answer is an objection

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1 that the information is not relevant; right?

2 Q. That is correct.

3 A. Okay. Now, secondly, we asked for a full

4 explanation, and there was -- is that one or two

5 sentences? So that's Point 2, and Point 3, yes, and

6 this kind of illuminates my point that the -- well,

7 yes, we did go through the model documentation and we

8 read the model documentation. My point is that the

9 workbooks that were presented to us do not represent

10 the inherent algorithm of the model, and that's why

11 we're being referred to the Microsoft Word document

12 that is explaining what the model does, but that

13 explanation is -- will only get you there part of the

14 way. To see what a model does you need to see the

15 underlying algorithm, so you can trace that two plus

16 two is indeed four.

17 Q. So I take it you're saying that you

18 referred to the file titled Loop Module

19 Methodology.doc, and even after you did that, that was

20 insufficient to enable you to understand how the module

21 runs and uses the workbooks?

22 A. Yes, and that's my point.

23 Q. Okay. The proposal that you make for

24 Embarq's rates -- this is Table 1 on Page 3 of your

25 supplemental direct -- do those proposed monthly

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1 recurring charges include loop conditioning costs?

2 A. They don't include rates, but the

3 intention is that they do include the -- that they

4 include compensation for loop conditioning, yes,

5 consistent with, I believe, the current ICA.

6 Q. I didn't quite hear the first part of your

7 answer. You said they don't include rates?

8 A. That's right, the compensation for costs.

9 Q. Are you meaning to say that they don't

10 include a separate rate for loop conditioning in there,

11 but overall your intent was to cover the cost of loop

12 conditioning?

13 A. Yes.

14 Q. Now, my understanding is that QSI did not

15 do its own cost study in order to determine the cost of

16 loop conditioning; is that correct?

17 A. That's correct.

18 Q. Did your study of the Embarq model reveal

19 to you that Embarq removed over (redacted) from

20 non-recurring rates?

21 A. I think I addressed what is being removed

22 on Page 21, and I refer to Miss Londerholm's discussion

23 of that, and it appears to us that the costs that are

24 being removed associated with non-recurring activities

25 pertain to the drop, and I discuss that in the last

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1 paragraph on Page 21. Given that loop conditioning
2 doesn't pertain to the drop element but to, you know,
3 the non-drop portion of the loop, it seemed to us that
4 the necessary adjustments have not been made, and,
5 therefore, the costs must still be in the model.

6 Q. All right. On Line 17 of 21, in that
7 answer, the only answer in which you talk about loop
8 conditioning, you're careful to use the word "appear."
9 I take it you used "appear" because it wasn't evident
10 in looking at the model whether loop conditioning costs
11 were excluded; is that fair?

12 A. Yes. To perfectly ascertain it, you would
13 need discovery or deposition.

14 Q. Here again QSI did not make an inquiry to
15 try to clarify that?

16 A. My answer is the same as it was previously
17 to that question.

18 Q. Going back to Page 12, Line 5, it's the
19 third line in that paragraph, it indicates -- our

20 pagination is different.

21 A. Excuse me, which page?

22 Q. Twelve. The paragraph starts on my Line 3

23 with the words, "To summarize," the number there,

24 (redacted) percent, this is another situation where the

25 actual increase is, according to my calculation,

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1 (redacted). So my question is whether you would agree
2 with that change?

3 A. Yes, I would agree with that.

4 Q. And similarly, below that on Line 11, the
5 DS1 loop counts increased to (redacted), as opposed to
6 "by (redacted)"; is that right?

7 A. Yes, I would agree.

8 Q. If you look -- please look at Page 14,
9 Line 14 where you state, "The New Model builds
10 (redacted) lines to each housing unit." I don't know
11 whether you can do this now, but if you would refer to
12 the input page definition, the number of lines per each
13 housing unit is actually (redacted), is it not?

14 A. I can't ascertain that. I give a precise
15 reference, so I think we can both look that up.

16 (Discussion off the record.)

17 By Mr. Stewart:

18 Q. Please look at Page 16, your table there
19 looks at economic lives, and this is -- well, the

20 general subject of depreciation; correct?

21 A. Yes.

22 Q. Is it fair to say that over time

23 depreciation rates have increased for the accounts that

24 you show here, with the result being that economic

25 lives are shorter now than they used to be?

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1 A. I don't think that's true in general. For
2 example, I don't think that buildings is really -- is
3 necessarily changing, where lives become shorter for
4 that category, so it kind of depends.

5 Q. Okay. Well, let's take buildings out,
6 because they're, at least to my mind, not a
7 particularly telecommunications specific asset. For --
8 well, we can go through this one by one. For aerial
9 copper, is it your belief that economic lives have
10 shortened over the past 10 to 15 years?

11 A. I provide two benchmarks for the
12 Commission, which is the SBC Approved and the FCC
13 Synthesis Model depreciation rates. To do a review of
14 depreciation rates, you need to, you know, do an
15 extensive study with life cycles for the particular
16 facilities or a particular product. I don't want to do
17 that just on the witness stand here. It's a
18 conjecture. I think the two benchmarks that I'm
19 comparing to and I think my point is that Embarq did

20 not support its depreciation rates, and if you compare
21 them to what the Commission has previously approved is
22 shorter, but I haven't done my own depreciation study,
23 which is, you know, a specialization I don't have, to
24 do an independent study, depreciation lives.

25 Q. Are you generally familiar with

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1 depreciation rates as they've been approved by
2 Commissions and the FCC over the last 10 to 20 years?

3 A. I've looked at them, yes.

4 Q. And so are you saying you don't have an
5 opinion about whether over time economic lives for
6 things like copper cable, telephone poles, have
7 generally gotten shorter?

8 A. I don't think that you can generally say
9 that. I think there has been a -- in part a movement
10 due to the introduction of competition that may have,
11 you know, caused regulators to take different dynamics
12 into account that may shorten economic lives, but most
13 of that took place after 1996, and now this new
14 paradigm where there is competition and some of those
15 adjustments that might have caused economic lives to
16 shorten I think would have well played out at this
17 point.

18 Q. It's fair to say that as competition
19 increases, that tends to shorten the economic lives?

20 A. For some facilities it may. For others it

21 may not.

22 Q. Is it fair to say that increased

23 competition in telecommunications doesn't result in

24 longer economic lives for any asset that you could

25 identify?

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1 A. Not necessarily. If you have poles, poles
2 are still being used, and the onset of competition,
3 particularly through cable that uses poles to the same
4 extent that a telephone company does, that particular
5 facility -- and poles is listed here somewhere --

6 Q. Third up from the bottom.

7 A. Yeah. The introduction of competition or
8 the development of competition doesn't necessarily
9 impact the economic life of that facility because
10 competitors as well as the incumbent use that facility.

11 Q. Well, again, let's -- poles aren't a
12 particularly high tech area. But copper, over the
13 years hasn't the useful life of copper declined given
14 the advent of the use of fiber in the network?

15 A. I think that's probably true to some
16 extent. On the other hand, I think the incumbents have
17 found that competitors still like copper, and where
18 companies like Verizon and AT&T, that are overbuilding
19 the networks, their existing networks with fiber, they

20 are actually maintaining copper facilities precisely
21 because this new demand has emerged from competitive
22 carriers; so where Verizon might initially have removed
23 copper facilities, they now leave those facilities in
24 place. In fact, there are many proceedings across the
25 country that involve precisely that issue, where copper

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1 facilities are being maintained against the will of an
2 incumbent and thus lengthen the economic lives.

3 Q. Now please turn to Page 18. Look at Lines
4 5 through 9, and you talk about Account 6613 Product
5 Advertising, and I understand what you say the
6 Commission said to SBC, but is it your belief that
7 there are not wholesale advertising costs?

8 A. Well, I'm not saying there are no
9 wholesale advertising costs so much as that they --
10 they're not costly related to the Unbundled Network
11 Elements, the UNE loops that a company like COI is
12 purchasing from you.

13 Q. What facilities or services do you think
14 properly incur wholesale advertising costs?

15 A. I think there may be some special access
16 products that possibly you could make an argument for
17 that you're competing against Competitive Access
18 Providers and that to be able to compete with those,
19 that you want to be out there advertising your

20 facilities, but there is no substitute for -- well,
21 there -- it is a monopoly element that COI is coming to
22 you with a request for these facilities. I think it's
23 coming to you not because you advertised for it, but
24 COI is coming to you because it needs those facilities,
25 and you're required to make them available under the

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1 act, which is widely available to everybody, so it

2 doesn't need to be advertised that it is available.

3 Everybody knows that it should be available.

4 MR. STEWART: Your Honor, I think I'm

5 almost done. May I have a few minutes?

6 EXAMINER LYNN: Sure.

7 EXAMINER AGRANOFF: Yes.

8 (Discussion off the record.)

9 MR. STEWART: I am done.

10 EXAMINER LYNN: Please go ahead.

11 MR. STEWART: No more questions at this

12 time.

13 EXAMINER LYNN: What we'll do at this

14 point is take a break, and then you can do your round

15 of questioning; okay?

16 MS. BLOOMFIELD: Yes.

17 EXAMINER LYNN: Thank you. Ten minutes

18 again, back by four.

19 (Recess taken.)

20 EXAMINER LYNN: Back on the record,

21 please, and Miss Bloomfield.

22 MS. BLOOMFIELD: Yes, Your Honor. I just

23 have a few questions.

24

25

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1 REDIRECT EXAMINATION

2 By Ms. Bloomfield:

3 Q. Dr. Ankum, this is to clarify the record.

4 There was a lot of discussion about CDs, the model CD,

5 workbooks, et cetera, and isn't it the case that you

6 could open the various -- some at least, some of the

7 files on the CD that you received with Miss

8 Londerholm's testimony?

9 A. Yes. Actually, more than that. We could

10 open all of the files. It's not the files themselves

11 don't open. It's rather that the files are not the

12 totality of the model.

13 Q. Fine. Is it true that for those -- for

14 those -- some of those files that are called workbooks,

15 those are -- those are essentially Word documents, some

16 of them at least; correct?

17 A. Well, the -- there are Excel-based

18 workbooks that are related to the model, and then there

19 are additional files that are model documentation

20 files, and those are in Microsoft Word. They just give
21 descriptions of what the model does, et cetera, et
22 cetera; so of the module -- none of the model logic is
23 explained in the Microsoft Word document.

24 Q. So you were able to open -- as you
25 mentioned, you were able to open the files in the CD;

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1 you just weren't able to make the program work?

2 A. That's right.

3 Q. And you also indicated that some of the

4 workbook files didn't appear as complete as you would

5 like to see them -- I shouldn't say that, but where the

6 workbook files, particularly the Word-based workbooks,

7 they have sufficient information for you to verify the

8 cost of service study?

9 A. Yes. The Excel-based workbooks do not

10 give you access to the underlying algorithms, the

11 calculations that drive the reconstruction, the

12 hypothetical reconstruction of the network that takes

13 place in the model. You can't see that in the

14 Excel-based workbook. The Microsoft Word documents

15 will describe the logic of what is going on in the

16 model, but short of seeing the actual equations that

17 are being carried out so that you can trace from Excel

18 workbook to Excel workbook exactly what is taking

19 place, you simply can't verify the model.

20 Q. Was the information that was in the
21 various files on the CD sufficient for you to support
22 your conclusions in this case?

23 A. Yes. My testimony is based on what we
24 were able to see, as well as, of course, I have
25 discussions there about comparisons between different

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1 scenarios, et cetera, et cetera, that are almost
2 independent off the model, but the discussions about
3 the model go back to the worksheets and the workbooks
4 that we're able to inspect, and so there is a certain
5 amount that you can understand about the model and that
6 I have discussed in my testimony, but, again, the
7 underlying algorithm you can't see.

8 Q. Mr. Stewart gave you some discovery
9 responses that Embarq had given back to COI. Isn't it
10 the case that those discovery responses referred not to
11 the CD that is part of Miss Londerholm's testimony, but
12 rather the prior CD of the Cost Model that has now been
13 abandoned?

14 A. That's correct.

15 Q. And you testified, did you not, that
16 because of the supplemental testimony time frame and
17 the fact that the discovery had closed, you were not
18 able to get additional information, additional
19 information about the CD that was attached to Miss

20 Londerholm's testimony; correct?

21 A. That's correct.

22 Q. That's all I have.

23 EXAMINER LYNN: Mr. Stewart, do you have

24 any questions?

25

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1 RECROSS-EXAMINATION

2 By Mr. Stewart:

3 Q. The one discovery question and answer that
4 we discussed when I was speaking with you earlier, are
5 you saying that was not applicable to the new model CD?

6 A. That question pertained to the old model
7 CD, and that answer pertained to the old model CD. We
8 did not have discovery on the new model.

9 Q. I appreciate that the question was asked
10 with respect to the earlier CD and you got it before
11 you got the new model CD, but what I'm asking is
12 whether that question and answer were applicable to the
13 new model CD. In other words, let's say you hadn't
14 received the earlier model and had just received the
15 model that was attached to Ms. Londerholm's testimony.
16 Would you have asked that particular question and would
17 the answer have been helpful?

18 A. Well, you're asking me would you have
19 answered the question in the same way, and, of course,

20 I don't know what you could have answered.

21 Q. I'm not asking you that.

22 A. Part of the answer seemed to be germane --

23 if that's what you're asking. The new model CD does

24 have loop -- does also have Cost Model documentation in

25 there, so to some extent I imagine there might have

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1 been an overlap if we asked you for something specific
2 about the old model, and I don't necessarily know what
3 you would have answered. That's up to you.

4 Q. No, I don't mean to -- I didn't mean to
5 ask you to speculate on what we would have answered,
6 but was the answer that we looked at germane to the new
7 model?

8 A. Well, it informed our understanding of the
9 new model, but, again, I think in all fairness, you
10 were asking me to speculate, even though you're saying
11 that you're not asking me to speculate, but --

12 Q. Well, I don't mean to ask you to
13 speculate. Did you do for the new model what that
14 answer suggested be done for the earlier model?

15 A. Well, the -- as I recall the question,
16 it's asking you about certain worksheets and workbooks
17 and it's asking whether those are generated by the
18 model run, and it's asking you to explain that, and
19 with respect to the old model, you said that they're

20 not generated by the model run. Now, I used that
21 answer to inform my understanding of the new model,
22 but, of course, on my part that is in part conjecture
23 since I never got to ask that question of you.

24 Q. Well, the answer suggests referring to the
25 file titled Loop Module Methodology in order to

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1 understand how the module runs and uses the workbooks.

2 Was that reference one that was meaningful for the new

3 model and --

4 A. That particular component, yes, and that's

5 what I'm trying to differentiate.

6 Q. So for the new model you would have

7 referred to the Loop Module Methodology to gain

8 understanding?

9 A. Yes, but there's another component to that

10 question and answer.

11 Q. That's all.

12 EXAMINER LYNN: Any other questions?

13 Miss Green, do you have any questions?

14 EXAMINATION

15 By Ms. Green:

16 Q. From an engineering perspective, what is

17 the difference between a DS1 loop and a four-wire loop

18 with regard to the provisioning requirements for each?

19 A. Well, I mean, they may be using different

20 network components, if that's what you're asking
21 about. Like the DS1 loop could be riding over fiber.
22 The four-wire loop that COI is asking about is going to
23 be a copper loop, so the implication is they are both
24 for how you would cost them out, but also how to
25 provision them.

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1 Q. In regards to your discussion of the fill
2 factors, did you do any fill factor adjustment to the
3 cost study model based upon the concerns you have
4 raised in your testimony?

5 A. No. I made no adjustments to the model
6 for a number of reasons. First, we were never able to
7 run the model. Secondly, I don't really want to make
8 recommendations based on an unexamined model. The
9 model hasn't been approved by the Commission. Within a
10 two-week time frame there's no way that anybody can
11 really verify the functioning of that model. I also
12 believe that the model doesn't really produce rational
13 and consistent results; so we never tried to modify the
14 model. Instead, we presented an alternative proposal
15 that simply takes the existing rates in COI's
16 interconnection agreement and then asked the question
17 how much would those rates have gone up in view of
18 increases in input prices, and we went to the Bureau of
19 Labor Statistics and Bureau of Economic Analysis, and

20 they present inflation factors for the various loop
21 components. We used that to estimate by how much the
22 rates in COI's ICA would have gone up, and that's our
23 counterproposal that is before the Commission.

24 Q. That's all I have.

25 A. Thank you.

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1 EXAMINER LYNN: Miss Russell, any
2 questions?

3 MS. RUSSELL: No.

4 EXAMINER LYNN: Mr. Agranoff, any
5 questions on your part?

6 EXAMINER AGRANOFF: The only question I
7 have is one of clarification, and I'm not sure whether
8 or not the witness would be the individual that would
9 know this information or whether or not counsel would
10 be best able to provide this, and that's simply with
11 respect to the interconnection agreements that Dr.
12 Ankum used for comparison purposes, I would like to
13 know the case numbers for those interconnection
14 agreements and the dates on which the Commission
15 approved them.

16 MS. BLOOMFIELD: Would we be able to
17 provide those at a later time? I don't have them.

18 EXAMINER AGRANOFF: Sure.

19 MS. BLOOMFIELD: I believe that QSI pulled

20 those, so I'm not sure which ones they are, but we can

21 certainly get them for you.

22 EXAMINER AGRANOFF: What I was looking at

23 offhand was the ones referenced in Table 10 of Dr.

24 Ankum's direct testimony. Specifically it was on Page

25 32.

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1 MS. BLOOMFIELD: That was the only table,
2 Your Honor? That was the only table where you wanted
3 to know the --

4 EXAMINER AGRANOFF: Yes.

5 MS. BLOOMFIELD: Thank you.

6 EXAMINER LYNN: Any more questions that
7 you have?

8 EXAMINER AGRANOFF: No.

9 (Discussion off the record.)

10 EXAMINER LYNN: Then we're close to
11 wrapping things up, but before we do, Ms. Bloomfield
12 and Mr. Stewart, would you have any questions based on
13 what the Panel had asked, any clarification questions?

14 MS. BLOOMFIELD: No, Your Honor.

15 EXAMINER LYNN: Mr. Stewart.

16 MR. STEWART: No.

17 EXAMINER LYNN: No questions.

18 (Witness excused.)

19 EXAMINER LYNN: Thank you, everyone.

20 We'll resume tomorrow at nine. Before we do, we need
21 to have a motion for exhibits.

22 MS. BLOOMFIELD: I would move at this
23 point that COI Exhibits 2, 2A, 3, and 3A, which are the
24 first confidential and then public versions of Dr.
25 Ankum's original direct testimony and then his

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1 supplemental testimony be admitted.

2 EXAMINER LYNN: All right. Mr. Stewart,
3 no objections on that?

4 MR. STEWART: I do not object.

5 EXAMINER LYNN: That means you want to go
6 home; right?

7 MR. STEWART: No. It means that I don't
8 predict that an objection would be worthwhile.

9 EXAMINER LYNN: Not at this time of day.
10 Okay. Now we actually can close things for the day,
11 and we will be back here at 9:00 a.m. tomorrow.

12 (Discussion off the record.)

13 EXAMINER LYNN: Exhibits 2A and 3A will be
14 late filed because we need to determine what will be
15 disclosed to the public and what will not.

16 EXAMINER AGRANOFF: For the --

17 MS. BLOOMFIELD: I'm sorry, I'm not
18 following that.

19 EXAMINER AGRANOFF: The public versions of

20 Dr. Ankum's two pieces of testimony are going to be
21 basically created after you and Mr. Stewart have the
22 opportunity to go back and see what can be released
23 into the public record.

24 MS. BLOOMFIELD: Can we go off the
25 record?

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1 EXAMINER AGRANOFF: Sure.

2 (Discussion off the record.)

3 EXAMINER LYNN: Then I guess that would be
4 it, and we are closed for today, finally.

5 (Thereupon, the hearing was concluded at
6 4:23 p.m.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is

3 a true and correct transcript of the proceedings taken

4 by me in this matter on Tuesday, October 28, 2008, and

5 carefully compared with my original stenographic notes.

6
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8

Valerie J. Sloas, Registered
9 Professional Reporter and Notary
Public in and for the State of
10 Ohio.

11 My commission expires June 8, 2011.

12 (VJS-517)

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