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Case Numbers: 93-1758-TP-CSS

Date: 02/02/2010

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Author: Terry Tindel at USCOLHQ4
Date: 2/21/97 03:56 PM
Priority: Normal
TO: Don Kermin at USDETHQ2
TO: Mike Finley at USCINHQ1
TO: Jack Roettenberger at USDETHQ3
TO: Debbie Roeger at USCOLHQ2
TO: Mike Benvenuti at USCOLHQ2
TO: Allan Mitchell at USCOLHQ2
Subject: RESELLER STRATEGY - PROPRIETARY

Confidential Document Produced Subject to
Protective Order Entered in Westside Cellular
v. AirTouch USDC Case No. 1:97 CV 0376

----- Forwarded w/Changes -----
Author: Terry Tindel at USCOLHQ4 1/31/97 08:22 AM

TO: Don Kermin at USDETHQ2
TO: Jack Roettenberger at USDETHQ3
TO: Mike Finley at USCINHQ1
TO: Mike Benvenuti at USCOLHQ2
TO: Debbie Roeger at USCOLHQ2
TO: Allan Mitchell at USCOLHQ2
Subject: RESELLER STRATEGY

----- Message Contents -----

P R O P R I E T A R Y

Upgrades from our meeting on 2/19. This should be used for verbal discussion with your Indirect Managers and is not for publication.

----- Forward Header -----

Subject: RESELLER STRATEGY
Author: Terry Tindel at USCOLHQ4
Date: 1/31/97 08:22 AM

Since a channel shift mix in the direction of resellers is a critical element to meeting our 1997 COA target and confusion exists as to what our strategy should be, here's a shot at a strategy statement that, after catch-balling with you, can be passed along to our Indirect Manager.

Why the Sudden Interest?

- 1) FCC rules now give us greater flexibility in dealing with resellers
- 2) with new PCS licenses, there will be a glut of spectrum; they're targeting resellers (MCI/Nextwave deal for 10 billion minutes)
- 3) as penetration increases, some resellers have a unique ability/willingness to reach segments that we can't/don't want to
- 4) with telecom convergence and the advent of bundling, there are more interested parties
- 5) low COA, potentially very good margins

Are Resellers Friends or Foes?

- 1) friend:
 - * are distributors of our products; we need them
 - * we're the FCC license-holder & ultimately responsible for the radio service
- 2) foe:
 - * we compete for the same customers; they are free to market their services as they wish; bear in mind the antitrust considerations of ANY dealings with them on their retail service/equip pricing; AVOID!
 - * if not exclusive, there's no loyalty; free to move lines at their whim

Should We Recruit Resellers?

- 1) first remember that we can not turn away any prospective reseller who meets our credit requirements and accepts our standard terms/conditions
- 2) we want to recruit resellers who:
 - * fill a geographic or customer segment niche that we don't have

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- * are "aggregators" of bundled services since we've decided not to get into the bundling game (we won't be a bundler, but want to be a part of someone else's bundle
 - * want to be exclusive
 - * have \$\$\$ and marketing savvy and similar business strategies and values as we do
- 3) we don't want to recruit resellers who:
- * are attempting to build a base of customers to transfer to their on network when constructed
 - * won't reach the critical mass necessary to be successful

What Level of Support Should We Provide To Our Resellers?

- 1) enough to ensure that they're successful (exclusive resellers only):
 - * 1-time training & orientation
 - * billing support
 - * product (as available)
- 2) but remember that our wholesale pricing assumes that they bear the full costs of selling & administration
- 3) channel managers will retain responsibility for managing A/R; however, Cust Ops will monitor & send red flags in order to provide objectivity

With this direction and an updated reseller agreement, it's my expectation that Legal will now become less involved in managing this channel.

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v. AirTouch, USDC Case No. 1:97 CV 0376*

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PUBLIC UTILITIES COMMISSION

STATE OF OHIO

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JAN 21 1999

DOCKETING DIVISION
PUCO

Westside Cellular, Inc.,
dba Cellnet,

Complainant,

vs.

GTE Mobilnet, Inc., et al.,

Respondents.

Case No. 93-1758-RC-CSS

Deposition of Michael Yoder, a witness herein, called
by Westside Cellular, Inc., dba Cellnet, for examination under
the statute, taken before me, Deborah J. Holmberg, Registered
Merit Reporter and Notary Public in and for the State of Ohio,
pursuant to notice and stipulations of counsel hereinafter set
forth, at the offices of Hahn, Loeser & Parks, 10 West Broad
Street, Columbus, Ohio, on Tuesday, December 8, 1998, beginning
at 3:03 o'clock p.m. and concluding on the same day.

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1 APPEARANCES:

2 ON BEHALF OF WESTSIDE CELLULAR, INC., DBA CELLNET:

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17 Deborah L. Roeger, Esq.
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24 Also Present:

25 Michael Tricarichi

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S T I P U L A T I O N S

- - -

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2
3 It is stipulated by and among counsel for the
4 respective parties herein that the deposition of Michael Yoder,
5 a witness herein, called by Westside Cellular, Inc., dba
6 Cellnet, for examination under the statute, may be taken at this
7 time and reduced to writing in stenotype by the Notary, whose
8 notes may thereafter be transcribed out of the presence of the
9 witness; that proof of the official character and qualification
10 of the Notary is waived; that the witness may sign the
11 transcript of his deposition before a Notary other than the
12 Notary taking his deposition; said deposition to have the same
13 force and effect as though the witness had signed the transcript
14 of his deposition before the Notary taking it.

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I N D E X

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WITNESS

PAGE

Michael Yoder
Examination by Mr. Hart

5

EXHIBITS

MARKED

Yoder Deposition Exhibit No. 1 -
Two-page document dated 1-31-97

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1 MICHAEL YODER

2 of lawful age, being by me first duly placed under oath, as
3 prescribed by law, was examined and testified as follows:

4 EXAMINATION

5 BY MR. HART:

6 Q. Would you please state your full name?

7 A. Michael Yoder.

8 Q. And what's your address?

9 A. Home address?

10 Q. Yeah.

11 A. 5758 Dalymount Drive.

12 Q. Is that Columbus?

13 A. Dublin.

14 Q. You don't have a far commute.

15 A. No, I don't.

16 Q. Okay. You're currently employed with AirTouch?

17 A. Yes.

18 Q. What's your position?

19 A. I'm the Director of Pricing, Planning and Analysis.

20 Q. You are Diane Koskey's boss?

21 A. I was up until about a month ago. She's moved on to
22 another position.

23 Q. Director of Pricing, Planning and Analysis?

24 A. Uh-huh.

25 Q. Is Diane Koskey still with the company?

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- 1 A. Yes.
- 2 Q. What is she doing now?
- 3 A. She is -- Her title is Manager of Channel Analysis.
- 4 Q. Okay. Your current position is Director of Pricing,
- 5 Planning and Analysis. How long have you been with AirTouch?
- 6 A. For almost ten years.
- 7 Q. Ten years.
- 8 Were you originally with the CCI group?
- 9 A. Yes.
- 10 Q. Okay. What did you start working as?
- 11 A. I started as Budget -- At the time they called it Budget
- 12 Director.
- 13 Q. When was that?
- 14 A. That was in 1989.
- 15 Q. What were you after that?
- 16 A. I went to Manager of Operational Accounting.
- 17 Q. What year?
- 18 A. That was still in the December of '89 time frame.
- 19 Q. Are you a CPA?
- 20 A. No.
- 21 Q. Okay. What did you do after that?
- 22 A. After that was -- What was the title of the position? It
- 23 was a senior analyst title in the Quality Assurance Department.
- 24 Q. Then what did you do? How long were you in that position?
- 25 A. The Manager of Operational Accounting was just for about

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1 six months; and then the senior analyst position was from --
2 that would be in about the middle of 1990 up through partial
3 1994, and then I was the Manager of Pricing and Promotion.

4 Q. For how long?

5 A. That would have been till about '96.

6 Q. Then what?

7 A. And then took the promotion piece away, and I was Manager
8 of Pricing, and now I'm Director of Pricing. They gave me those
9 titles.

10 Q. You were Budget Director in '89, Manager of Operational
11 Accounting in '89 for six months and --

12 A. About six months.

13 Q. -- then you became a Senior Analyst --

14 A. Yeah.

15 Q. -- from '90 to '94?

16 A. Right. Only till '95. It was November of '95 when I
17 became the director. So that Manager of Pricing and Promotions
18 was only until 1995, November of '95.

19 Q. Pricing and Promotions, November of '95?

20 A. Yeah.

21 Q. Then you became Manager of Pricing, right? Because you
22 told me you dropped the Promotion.

23 A. I can't remember this stuff anymore.

24 Q. Best of your knowledge.

25 A. November of '95 when I became a director, so the '94 time

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1 date must be the wrong one where I was just for a very brief
2 period of time doing both pricing and promotions.

3 Q. Sometime between '94 and November '95, you held the
4 position of Manager -- Pricing Manager or Manager of Pricing,
5 right?

6 A. Uh-huh.

7 Q. Okay. Not as concerned with the times as with what you
8 were doing.

9 Can you tell me as Manager of Pricing and Promotion what
10 you were doing?

11 A. At that point there were two people, one was working on
12 pricing and one would have been working on whatever the
13 promotions were at the time. We took input from the field, from
14 the promotion side, on what we thought might work, and at that
15 point in time it was mostly discounting off of equipment, and
16 the pricing side is pretty much the same thing we're doing now
17 with pricing; it hasn't changed much.

18 Q. So the promotion side, if you put a promotion out on the
19 marketplace, how would that work, through an ad?

20 A. Yes.

21 Q. Okay.

22 A. My group was responsible for creating what the financial
23 piece of it would have been. There was another communications
24 side that would have produced whatever advertising or those
25 kinds of things. We were strictly the analytical side.

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1 Q. You dealt with the numbers?

2 A. Yes.

3 Q. You weren't concerned with what it was going to visually
4 look like to the public, correct?

5 A. Correct.

6 Q. Was that as -- Let me strike that.

7 Was that with respect to retail pricing and promotions or
8 would that have also involved reseller promotions?

9 A. When I was doing promotions, pricing had very little to do
10 with it, the service. At that point in time, phones were not
11 free, so instead of paying \$100 for a phone, the promotion might
12 be you would pay \$50 for the phone, or we would set up a plan
13 where it was two-ninety-nine a month for some number of months.
14 We did not get into price promotions when I was in that
15 position.

16 Q. You did equipment promotions only?

17 A. At that point in time, that's all that was needed in the
18 marketplace.

19 Q. Okay. That would have been equipment promotions with
20 respect to end users?

21 A. Yes.

22 Q. Did you deal at all with equipment sales to resellers?

23 A. No.

24 Q. Not at all?

25 A. No.

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1 Q. Okay. So you're dealing with -- you're dealing with the
2 promotions with respect to equipment when you first get into
3 this job as Manager of Pricing and Promotion --

4 A. Yes.

5 Q. -- correct?

6 What's the pricing aspect of that? Are you pricing the
7 equipment?

8 A. Pricing of the equipment was done by a separate group. We
9 were strictly doing the pricing plans for our customers.

10 Q. For your promotions that you were offering to your
11 customers?

12 A. Not promotions, it was --

13 Q. All pricing --

14 A. -- whatever the pricing plan would have been, and it would
15 have been the roaming price, reseller pricing, but it was not
16 equipment pricing, and there was no promotional aspect to the
17 price.

18 Q. Okay. So you were Manager of Pricing and Promotion. The
19 promotion aspect of it dealt only with equipment, correct?

20 A. Uh-huh. Yes.

21 Q. She can't take head nods.

22 A. I'm sorry.

23 Q. And the pricing aspect of it dealt with all pricing except
24 equipment?

25 A. Yes.

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- 1 Q. Okay. That would be pricing to resellers?
- 2 A. Yes.
- 3 Q. For the company?
- 4 A. Yes.
- 5 Q. Okay. And pricing for the end users?
- 6 A. Yes.
- 7 Q. Okay. And then how did your job change when you became
- 8 just Manager of Pricing, you just lost all the promotion
- 9 aspects?
- 10 A. There were two changes that got made. One was taking away
- 11 the promotional aspect. The pricing had gotten large enough on
- 12 its own that there was more need for more emphasis there, and
- 13 also there was another piece of employees that were doing
- 14 reporting for subscriber statistics that were reporting for me.
- 15 So to -- It was a reorganization; they looked at who had what
- 16 skill sets, what people they had left, who should be doing what
- 17 pieces, and kind of shuffled the deck a little bit, and what I
- 18 was left with was the pricing and the subscriber reporting.
- 19 Q. Okay. You still would have been responsible for pricing at
- 20 the retail level?
- 21 A. Yes.
- 22 Q. And how about for resellers as well?
- 23 A. Yes.
- 24 Q. Okay. And then currently, as Director of Pricing, Planning
- 25 and Analysis, how does your job differ from what you were doing?

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- 1 A. One level up. I've got a manager working for me doing the
2 pricing, there's a manager working for me doing the subscriber
3 reporting, and there's a manager working for me who does our
4 competitive intelligence and market research work.
- 5 Q. Who is that?
- 6 A. Corwin Milligan.
- 7 Q. And the person that was doing the pricing, was that the job
8 that Diane Koskey had?
- 9 A. Yes.
- 10 Q. Okay. She's been replaced currently now?
- 11 A. Yes.
- 12 Q. By who?
- 13 A. Her name is Susan Doan.
- 14 Q. She was with the company for a while; Susan Doan isn't a
15 new employee?
- 16 A. Yes, that's correct.
- 17 Q. Okay. So you were dealing with pricing -- When you were
18 senior analyst, were you dealing with pricing issues?
- 19 A. No.
- 20 Q. How about as Manager of Operational Accounting?
- 21 A. No.
- 22 Q. As Budget Director?
- 23 A. No.
- 24 Q. When you were the Manager of Operational Accounting, can
25 you tell me what you did? It was only a short stint there, six

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1 months.

2 A. I had responsibility for the Payroll Department, Sales
3 Audit Department, and inventory control area.

4 Q. Did you have -- Were you involved at all in the preparation
5 of any financial documents, income statements?

6 A. Journal entries, no income statements, nothing like that,
7 just journal entries for my group.

8 Q. Okay. So you were in the low end of the low level?

9 A. Yes.

10 Q. You were taking source documents and making the journal
11 entries?

12 A. Yes.

13 Q. And they essentially find their way into the ledger from
14 what you do, right?

15 A. Yes.

16 Q. So the first time that you're involved with any pricing
17 then starts in -- sometime in '94?

18 A. Yes.

19 Q. Okay. Can you tell me how you -- what analysis was done in
20 rolling out a pricing plan in '94 for resellers?

21 A. In '94 for resellers. It hasn't changed significantly to
22 now for resellers.

23 Q. Okay. Tell me what it is then.

24 A. We will look at the plan basically -- I take that back. We
25 have made a bit of a change.

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1 Q. Okay.

2 A. In 1994, our plan was we had to make sure that we met --
3 This is the way it was communicated to me. We wanted to make
4 sure we were meeting our legal requirements to make sure that
5 the resellers had an opportunity to have a rate lower than
6 anything we had for our retail customers.

7 Q. Diane Koskey described that as you had at least one rate
8 among all the rate plans that was lower; is that accurate?

9 A. Correct. Yes.

10 Q. Okay. Go ahead.

11 A. Because we have plans for our retail customers that are
12 designed for low-end customers, medium, high, all kinds of
13 different segments, we did the same thing with the reseller
14 pricing at that point where we had different plans to choose
15 from.

16 So we would basically do the modeling to say, given our
17 pricing and given the pricing that's available to resellers, is
18 there any place where there's an issue of them not being able to
19 get a rate lower than what our retail customers could get.

20 Q. That changed sometime in '96?

21 A. It changed -- Yes, it changed. I thought it was kind of a
22 dramatic change, but it did change in '96.

23 Q. Tell me about that.

24 A. In '96, the word that came to us was that to legally meet
25 our requirements at this point -- What I was told was that as

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1 long as the retail -- reseller could come in and buy any retail
2 plan that we had, and that what rates we chose to charge the
3 resellers was a business decision, and we took the opinion that
4 at that point in time in 1997, we thought that it was a good
5 idea to make sure we thought the resellers were a viable channel
6 and we wanted to make sure we had pricing so that they could be
7 successful.

8 Q. When you say "successful", how do you define that?

9 A. Since I don't have any access to their cost structures or
10 what anything costs them, it was basically looking at that table
11 that we had before that showed at all these different usage
12 levels here's the premium or discount that they basically have,
13 and try to make sure we stayed at least at that much in the
14 majority of the usage levels. Some usage levels got a little
15 bit better, a few got a little bit worse, but, in total, we
16 wanted to make sure we were no worse off in there, and today
17 it's actually much lower than we were then.

18 Q. Okay. Are you familiar with the rate plan called Reseller
19 Exclusive or Reseller Exclusive II?

20 A. Yes.

21 Q. Tell me about that plan. What does that plan do?

22 A. That was a plan that at the time we were trying to come up
23 with ways, again, to make it so that resellers would be a part
24 of our future, and the plan was to offer net discounts if
25 resellers would grow, and we would give this exclusive thing --

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1 if they chose to bring all their business our way, we could
2 create this exclusive rate plan and that would give a deeper
3 discount.

4 Q. Is that a rate plan that you've offered to resellers?

5 A. It -- There was an implementation package that went out on
6 that, yes.

7 Q. All right. Do you know if it -- Are you familiar with any
8 problems with that plan, if the FCC --

9 MS. TRAFFORD: Again, if there's a legal issue, any
10 conversations you had with your attorney, it's privileged.

11 BY MR. HART:

12 Q. Finding out what you know. You're familiar, are you not,
13 you made filings with the FCC dealing with that plan? Are you
14 not familiar with those?

15 A. I don't do any filings.

16 Q. You don't know anything about those. Not that you made any
17 filing, but you don't know that your company has been to the FCC
18 regarding that plan?

19 A. I am aware that there have been questions asked about that
20 plan.

21 Q. Is that plan a plan that's available today to resellers?
22 Can a reseller come in and take that plan as we sit here?

23 A. A reseller that would walk in, no.

24 Q. Not available.

25 How about an existing reseller?

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1 A. Not at this point.

2 Q. You're waiting -- What you told the FCC, you're waiting to
3 see what they say, is that --

4 A. I didn't tell them anything. I don't know what they were
5 told.

6 Q. Specifically, then, you're not offering the plan today?

7 A. Right.

8 Q. Do you know whether your own resale -- your own retail
9 operations are being billed under the Reseller Exclusive II
10 plan?

11 A. No, I don't know that.

12 Q. You don't know one way or the other?

13 A. Our own retail organizations?

14 Q. Is that a foreign concept to you, billing of your own
15 retail operations?

16 A. It's not something that -- Yeah, I think it's not exactly
17 clear to me what you're talking about.

18 Q. Okay. Do you -- you come up -- You're part of the group
19 responsible for pricing to resellers --

20 A. Yes.

21 Q. -- correct?

22 Are you responsible -- Are you the top person responsible
23 for that, or is Mike Benvenuti?

24 A. Ultimately, Terry signs off on rate plans.

25 Q. Terry Tindel?

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1 A. Terry Tindel.

2 Q. Okay. So when you come up with a proposed rate plan, you
3 send it up the chain; goes from you to somebody else?

4 A. That's correct.

5 Q. Okay. Would that be Benvenuti?

6 A. Yes.

7 Q. Goes from him to Tindel?

8 A. Yes.

9 Q. Okay. The plans that you come up with, how do you
10 determine -- You told me that you wanted to come up with some
11 rate that would -- Well, I don't want to put words in your
12 mouth, but you're coming up with some rate based on what you
13 think the reseller's needs are; is that what you're telling me?
14 At least, in part, that's one part of the analysis?

15 A. Yes. What my impression would be, yes.

16 Q. What else goes into the analysis to determine what the
17 reseller rate is going to be?

18 A. At this point, it would be a financial discussion where we
19 would look at -- if we're going to make a change to the
20 resellers -- what revenue will we get in the future compared to
21 what revenue are we getting now. It's a judgment call made to
22 determine whether or not we think that there will be enough
23 growth in the reseller channel to pay back the revenue that we
24 would be giving up by making some kind of a price decrease.

25 Q. So you're looking at the amount of money that you expect to

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1 get back from a reseller?

2 A. We're looking at -- I mean, we don't have a way to look
3 into the future.

4 Q. Right.

5 A. So what we basically look at is we look at that dollar
6 amount. If I change the rates today and everything stays the
7 same as it is today, how much revenue -- how much less revenue
8 will I get in the future than I've gotten now, and then it's a
9 judgment call that I would make, that Mike Benvenuti would make,
10 that Terry Tindel would make, to say, "Do we think that giving
11 up this kind of -- Do we think there is a way that a reseller
12 could grow their business enough to pay back that loss?"

13 Q. Okay. So in other words, you're taking existing reseller
14 business, you're coming up with a rate, and you're taking the
15 new rate and you're saying, "All right. Here is the existing
16 reseller business. What's this going to do if we project that
17 out into the future on the existing business? What's it going
18 to cost us?"

19 A. How much less revenue will we take in.

20 Q. How much less revenue will you take in?

21 A. Correct.

22 Q. So then you know what's going -- what your hit's going to
23 be, or what you expect the hit's going to be, then you just try
24 and determine how long it's going to take to pay it back.

25 A. "I expect" is not quite right the word there. I don't

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1 expect to take the hit. What we're trying to do, because I
2 can't really know what a reseller is going to do with the new
3 rates, our anticipation is that if I put this new, lower rate
4 out there, it will generate interest and there will be growth.
5 Whether it's zero, whether it's ten percent, whether it's
6 double, it's hard for me to say. That's where, you know, we
7 kind of have to rely on judgment, whether we think it seems like
8 it's a reasonable increase that we would be looking at to get
9 the revenue back that we had before.

10 Q. Okay. Before you institute a plan for a reseller -- I take
11 it you've been involved in all plans that have gone out to
12 resellers since you started in this pricing capacity in '94?

13 A. Yes.

14 Q. Okay. The plans that you send out for resellers, do you
15 ever -- do you ever do a determination as to how that fits into
16 your retail accounting --

17 A. No.

18 Q. -- or what it would do to your retail side of the
19 operations --

20 A. No.

21 Q. -- from a profit and loss perspective?

22 A. No.

23 Q. So it's never -- it's not a factor? You're not concerned
24 at all about what's going to happen to the bottom line of your
25 retail operations if you have a separation of wholesale and

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1 retail? You don't do an analysis to determine what's going to
2 happen at the end of the day on the retail side?

3 A. No.

4 MR. TRICARICHI: I don't think that has a number on
5 it.

6 MR. HART: Okay. This doesn't have a number on it,
7 but let me just look at it for a second.

8 (Pause.)

9 I'm going to mark this. It doesn't have a number.
10 Kathleen, this is a document you gave to me in the -- in the
11 federal case in Cleveland.

12 MS. TRAFFORD: Have you got another copy?

13 MR. HART: I'm not even going to have a copy for
14 myself. You can look over my shoulder. You can have my only
15 copy of it.

16 MS. TRAFFORD: If it's only two pages, can we just
17 make one?

18 MR. HART: Yeah, we can make one.

19 BY MR. HART:

20 Q. While he's doing that, I'll ask you some other things.

21 Are you involved at all in the pricing for your retail
22 operations?

23 A. Yes.

24 Q. Okay. Those would be the prices that your retail
25 operations charge on the market --

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- 1 A. Yes.
- 2 Q. -- charge out in the field?
- 3 A. Yes.
- 4 Q. Okay. Are you involved -- If you have an income statement,
5 okay, and your retail customers are pumping money into the
6 company, they're paying their bills, money is coming in, okay --
- 7 A. Okay.
- 8 Q. -- does retail operations pay for the airtime that they
9 sell to the retail customers?
- 10 A. I don't know.
- 11 Q. You're not responsible at all for the price that the retail
12 operations would be paying to your wholesale operations for that
13 service?
- 14 A. I'm not familiar with that, no.
- 15 Q. Do you know of any pricing people within the company that
16 would be responsible for that element of pricing?
- 17 A. No, I don't.
- 18 Q. You're unfamiliar with that?
- 19 A. Yes.
- 20 Q. Okay. Are there any other areas of your company that
21 you're familiar with that deal with pricing issues?
- 22 A. Pricing of the equipment, phones that go to customers, is
23 still handled by another area.
- 24 Q. Okay. How about any other airtime sales?
- 25 A. No.

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1 Q. Okay. Do you know if there's anybody there that ever
2 calculates what the price from your wholesale side to your
3 retail side is going to be?

4 A. I'm not aware of one.

5 Q. Okay. Ever heard of the term "promotional rates versus
6 promotions"?

7 A. Yes.

8 Q. Okay. What's the difference between a promotional rate and
9 a promotion?

10 A. A promotional rate would be a rate plan that was developed
11 that lasts for a short period of time, a limited period of time,
12 that once a customer purchases that rate plan or chooses that
13 rate plan, they can stay on that rate plan as long as they would
14 like to stay on that rate plan. It's a pro- -- It's a rate --
15 It's a regular pricing plan that has a monthly recurring charge,
16 it has a rate per minute, and may or may not have bundled
17 minutes included.

18 MR. HART: I have to stop for just a second.

19 (Pause.)

20 (Record read back as requested.)

21 BY MR. HART:

22 Q. How does the promotion differ?

23 A. A promotion in my mind would be more global. It could be
24 as simple as offering a promotional rate plan; it could be
25 adding additional minutes to an existing plan; it could be

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1 giving the benefit of a lower rate per minute on a plan. There
2 are many different aspects that could be given as a promotion.

3 Q. Okay. When you're talking about promotions -- You're
4 responsible -- Your area is responsible now for promotional
5 pricing?

6 A. We are responsible to create rate plans; so if a
7 promotional rate plan is needed, we would create that rate plan.

8 Q. Okay. How about promotions?

9 A. No.

10 Q. There would be no interplay between your area and whoever
11 creates promotions so if a rate is out there on a promotion
12 somebody knows what's going on?

13 A. No.

14 Q. Not at all?

15 A. There's -- The only involvement we have right now is
16 promotions will get developed by the promotional group, and
17 our -- the pricing group will be asked to help them, figure out
18 which of our current existing rate plans should get which of the
19 promotional offers that might have been developed.

20 Q. How about concessions, is that something that you deal
21 with?

22 A. No.

23 Q. Who deals with that?

24 A. That would be in the sales group. Concessions to
25 customers, new customers, would be in the sales group.

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1 Q. How about --

2 A. If there is some kind of save situation, a competitive save
3 situation, Customer Ops.

4 Q. Okay. That's -- Ever have a concession for a reseller?

5 A. I'm not involved with anything like that.

6 Q. You're not involved with concessions at all?

7 A. No.

8 Q. You don't come up with the amounts of concessions?

9 A. No.

10 Q. Okay. You don't come up with what the concessions are
11 going to be?

12 A. No.

13 Q. You don't have any involvement whatsoever?

14 A. No.

15 Q. When you're -- When you're going to institute a rate plan
16 to the public, do you take into account what -- what concessions
17 you've given out to the public?

18 A. They're taken into consideration. The salespeople will
19 come to us and say, "Here's the situation. We think that we may
20 be running into a competitive situation where concessions may be
21 needed". We will look at it and investigate it to determine
22 whether a new rate at a lower rate is needed in the competitive
23 environment.

24 Q. As opposed to what, whether they can just go ahead and
25 offer the concession to the one customer?

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1 A. I have no control over whether they would do that.

2 Q. You have no authority to tell them they can or can't?

3 A. No.

4 Q. All right. I want to step back for a second. I asked you
5 a few minutes ago about rates for retail operations. I want to
6 make sure we're on the same page here.

7 When I used the term "retail operations", you answered the
8 question, but what do you understand that term to mean, "retail
9 operations"?

10 A. My interpretation of that is the rate plans that we offer
11 to customers through our rate -- our retail operations.

12 Q. Okay. In Ohio, there's a concept of wholesale versus
13 retail operations. Are you familiar with that at all?

14 A. No.

15 Q. Okay. Are you familiar with -- You've never done any
16 models? Just want to make sure. I asked you this question
17 before in a different way. I want to make sure we're on the
18 same page. If I take a reseller -- A reseller buys its minutes
19 from AirTouch, right?

20 A. Yes.

21 Q. The reseller will have different costs that will then -- it
22 will then incur; it will have billing, it will have customer
23 care, it will have sales and marketing.

24 A. Yes.

25 Q. Okay. Those will be costs that will be associated. So

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1 once a reseller buys its minutes from you, it then has -- it
2 will sell the minutes to the public at whatever rate it chooses
3 to do that. Are you with me?

4 A. Yes. I understand that.

5 Q. Okay. The reseller's going to look at -- do a
6 profitability analysis starting out with whatever revenue that
7 they take in from their customers, and then they're going to
8 have a cost item for what it cost them to purchase the service.

9 A. Okay.

10 Q. Okay. Then it will have the expenses, and at the bottom
11 line it will have a profit or a loss, okay?

12 A. Okay.

13 Q. When you do your profitability analysis on rate plans, do
14 you take into account -- do you do a model like a reseller would
15 have, taking your retail sales, and then the cost to your retail
16 side for those sales, and then the expenses that are associated
17 with it? Can you do -- Do you do the same model?

18 A. The model we have starts with the rate plan that we would
19 choose and what the revenue would be from that rate plan and
20 backs out the costs of doing business that are shown -- backs
21 out the cost of us doing business.

22 Q. Would you have an element of the cost for the purchase of
23 airtime?

24 A. No.

25 Q. So whereas a reseller's model would have a cost for this

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1 airtime, would be actually purchasing the airtime, you're
2 telling me that in your model you don't have -- you don't have
3 any cost element in there for the airtime, what it's going to
4 cost to purchase the airtime to determine the profitability at
5 the end of the day?

6 A. In the current model we use there is a component that deals
7 with the cost of operating our network. It's not shown as a
8 cost to buy a minute from -- from the network, it's just,
9 "Here's the cost of operating our network".

10 Q. That would be the cost to operate the switches?

11 A. Correct.

12 Q. Okay. Doesn't translate to a minute rate -- rate per
13 minute; in other words, it's the same rate?

14 A. It's a rate per customer per month.

15 Q. You don't go -- In figuring out the number, you don't take
16 the rates that would be offered to resellers and plug it into
17 that number as the cost for your own operations in determining
18 profitability?

19 A. Say that again.

20 Q. You don't go -- In determining what cost numbers you're
21 going to put as the cost element for service, you don't go back
22 and figure out what you're charging resellers and plug that
23 number into your cost element, do you?

24 A. No.

25 Q. Okay. When you say you have a price per customer per

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1 month, what does that reflect? What is that?

2 A. Now we're getting into territory where I'm not that
3 knowledgeable. This is a model that has been created.

4 Q. Who's the person who would be knowledgeable about that?

5 A. The model was created by our corporate finance group.

6 Q. Who is that? Who would be the person?

7 A. Tammy Giovanni is the person that I know who worked on
8 developing the model.

9 Q. Okay. So you don't know what's in that model or what's not
10 in the model as we're sitting here today?

11 A. No. I mean, a hundred percent, no.

12 Q. All right. But you do know you don't go back and -- you
13 don't look at the impact -- you don't take the reseller rate and
14 look -- at the end of the day look at what the impact will be on
15 your retail bottom line?

16 A. My understanding of the model, and I was on a team that
17 helped create it originally, it's been modified a few times
18 since, it's supposed to represent a snapshot of the costs of our
19 company doing business and what that would look like on a net
20 present value basis for a customer.

21 Q. For the entire company?

22 A. For what's represented on -- Actually, it is. It's the
23 retail number on our financial statement.

24 Q. Your audited financial statement?

25 A. Uh-huh. Yes.

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1 Q. And the expenses that you use for that, are those the total
2 expenses that would flow into your audited financial statement?

3 A. When it was first created, that's true. I have not been
4 involved with the last two or three changes to that model.

5 Q. As far as the last you knew, it would be all your expenses?

6 A. Yes.

7 Q. You didn't separate those out as wholesale/retail when you
8 were involved?

9 A. We did not.

10 Q. It was a total?

11 A. We did not.

12 Q. Okay. That's true, right; it's a total?

13 A. When I was involved in it, that's correct.

14 Q. When you were involved in it; the last time you saw the
15 model.

16 Is this something that's written down somewhere?

17 A. Is what something that's written down somewhere?

18 Q. The profitability analysis that you're doing.

19 A. I guess I'm still puzzled about when you say "written down
20 someplace".

21 Q. Let me ask it this way: You do a profitability analysis
22 with every reseller rate. Is that something that's written down
23 somewhere?

24 MS. TRAFFORD: You said "reseller rate". Are you -- I
25 thought you were talking about retail.

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1 BY MR. HART:

2 Q. Reseller rate.

3 MR. TRICARICHI: No, go both -- go both ways.

4 BY MR. HART:

5 Q. Wit the retail rate you do a profitability analysis to
6 determine what it's going to do for your company, right?

7 A. Yes. There is a place in that model where we plug in what
8 we think the revenue per subscriber will be and we make one or
9 two other slight modifications and a number pops out of that
10 model that we use to compare it to other rate plans.

11 Q. Earlier, you told me that you do the same thing with
12 reseller rates, you determine what it's going to do to your
13 bottom line; is that what you told me?

14 A. Not using that model. It's just a different model. What
15 we do with resellers, we just determine what our revenue stream
16 would have been and what our revenue stream will be.

17 Q. When you're doing your retail rates, are those documents
18 that would be written -- Would you write this stuff down when
19 you're doing this analysis? Is there papers that reflect all of
20 this, what you're talking about, this profitability analysis?

21 A. There's a computer model that we would plug the numbers
22 into. That number that comes out is put into our package that
23 gets created that would go to Mike and would go to Terry for
24 their approval.

25 Q. What's that called?

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1 A. It's simply called a pricing proposal.

2 Q. Pricing proposal.

3 So that's a proposal that you make and you give it to Terry
4 Tindel --

5 A. Yes.

6 Q. -- ultimately.

7 A. Yes.

8 Q. That shows you what you expect your revenues to be based on
9 given pricing and what your bottom line should be?

10 A. The model on that model -- on that proposal, it will show
11 what the potential lost revenue will be if there's no change in
12 anybody's usage or no extra customers, here's what it could
13 potentially cost us in revenue, and there would be a net present
14 value figure, one number that would be on the sheet.

15 Q. Now, the analysis that you do for resellers when you have a
16 resale rate, you just told me that you do an analysis to
17 determine the revenue --

18 A. Yes.

19 Q. -- what the revenue's going to be with no additional
20 minutes being used.

21 A. Yes.

22 Q. And then with additional minutes?

23 A. We don't do any analysis with additional minutes, we just
24 look at it to see is this something that we think the trade-off
25 is reasonable. If the revenue decline that I'm going to do for

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1 a reseller is so large that the reseller channel would have to
2 quadruple, then there's a pretty big chance we won't get the
3 money back. It's a judgment call.

4 Q. But ultimately, you're comparing that with -- with what's
5 offered to the public, at least in the pre '96 time frame?

6 A. Yes. Still.

7 Q. Still.

8 Would you agree the retail rate then drives what the
9 wholesale rate is going to be?

10 A. Yes.

11 Q. You need to first make a determination what you're going to
12 do with retail because you have to be competitive in the
13 marketplace, correct?

14 A. Yes.

15 Q. And so you make your determination there, and at that point
16 you determine whether the company can maintain profit with
17 whatever rate you're going to offer to the end user, correct?

18 A. Yes.

19 Q. That's correct?

20 A. Yes.

21 Q. Then, from that, once you've determined that and you set
22 out your pricing, then you look back at what the wholesale rates
23 should be -- what the rates should be to a reseller?

24 A. Yes.

25 Q. And make it so that -- What do you do? What's the thought

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1 process then at that point? Are you just trying to see where it
2 falls with respect to what your retail rate is?

3 A. Yes.

4 Q. Okay. Diane Koskey told me there'll be at least one rate
5 within -- within all the rate plans that a reseller could fit
6 into; is that accurate?

7 A. At this point, that's not the consideration. At this
8 point, the consideration -- Are you talking still about back
9 then?

10 Q. Pre '96.

11 A. Yes.

12 Q. That would have been the consideration?

13 A. Yes.

14 Q. Post '96, you're not doing that consideration any longer
15 because you're assuming the reseller takes any retail rate plan?

16 A. Correct.

17 Q. Okay. What if a reseller doesn't want a retail rate plan
18 but wants the rate that you're charging yourself internally, how
19 does the -- how does the reseller get priced?

20 A. I'm not familiar with the concept of charging ours
21 internally.

22 Q. Are you the only person that would be responsible for
23 setting the -- not you, but is it your department that's
24 responsible for setting the reseller rate?

25 A. Yes.

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1 Q. Okay. There's not another department out there that sets
2 the reseller rate?

3 A. Correct.

4 Q. So you're telling me that if a reseller comes to you and
5 says, "Look, we're not being charged what you're charging
6 yourself", do you have any ability to check?

7 A. No.

8 Q. Why not?

9 A. Until today, I didn't even know there was a distinction.

10 Q. Okay.

11 A. I'm not familiar with the concept of us charging ourselves.

12 Q. Mr. Yoder, I want to talk about Reseller II again for just
13 a minute.

14 You said --

15 MR. TRICARICHI: Exclusive.

16 BY MR. HART:

17 Q. Reseller Exclusive II.

18 Do you have copies of that rate plan?

19 A. With me, no.

20 Q. Have you ever had --

21 MR. TRICARICHI: We have them. It's in the --

22 BY MR. HART:

23 Q. Before I get into the rate, what was the -- tell me the
24 analysis that went into devising the Reseller Exclusive II. How
25 did that come about?

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1 A. The analysis?

2 Q. Yeah. What happened? You were there, right?

3 A. Yes.

4 At that point in time we were trying to come up with ways
5 to make it more attractive for the resellers to do business and
6 we came up with two different layers that we could add to the
7 rate plans that we had in place at the time. One of them said
8 that if you add growth, if you grow, we will give you deeper
9 discounts, and if you choose to bring all of your business to
10 us, we will give you a deeper discount. The percentages were
11 just, you know, what seemed reasonable; just trying to keep it a
12 nice, round number.

13 Q. I'm going to hand you what is numbered 2608 on the bottom
14 right-hand corner. This is one of your company's documents that
15 was just given to us recently.

16 Does that reflect Reseller Exclusive II as you know it to
17 be?

18 A. I'd have to say off the top of my head, I don't know. I'm
19 familiar that the rate plan exists. We have so many rate plans,
20 to remember all of the details off the top of my head, I
21 couldn't.

22 Q. I think it's over here, the same document. Which one are
23 you -- 2608. No, it's not here. Reseller -- It's certainly
24 showing a description of RS Exclusive II. Do you see that?

25 A. Yes.

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1 Q. You just don't know what the monthly rate is -- on the
2 Reseller II is for Cleveland?

3 A. Right.

4 Q. Or the peak and off-peak?

5 A. Correct.

6 Q. How about for any of the markets? How about Columbus?

7 A. I don't -- I'm not going to sit here and swear to it,
8 because it's just not something at the top of my memory.

9 Q. But that's -- As we spoke about earlier, that's really not
10 something that's been made available to resellers?

11 A. Pardon?

12 Q. That's not a rate that's available to resellers nor has it
13 been?

14 MS. TRAFFORD: Are you asking now or has it ever been?

15 THE WITNESS: Has it ever been?

16 BY MR. HART:

17 Q. Yeah.

18 A. Quite honestly, I don't know. I know we created it and our
19 department's moving a hundred miles an hour, and when it's
20 created and my work is done, I move on to the next project. To
21 be quite honest, I'd have to go do some digging to find out
22 exactly the dates and times and if it was offered and did any of
23 the reseller managers send it out, and that kind of thing.

24 Q. The document that I just showed you, 2608, shows it from
25 1-1-97 to the end of the year. Does that help you?

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1 A. No, it doesn't. I still would hate to sit here and say
2 under oath that that absolutely, in fact, was or was not ever
3 offered to a reseller.

4 Q. Okay. Do you know whether it was ever offered to Cellnet?

5 A. No, I don't.

6 Q. Okay. Do you know whether -- Well, you do know it's not in
7 place today for resellers?

8 A. Right.

9 MR. HART: This is the document that I referred to
10 earlier that I said we'd get copies of.

11 MR. TRICARICHI: This is the original. Hang on to the
12 exhibit.

13 MS. TRAFFORD: Are you going to mark it?

14 MR. HART: Yeah. Let's mark this one.

15 - - -

16 Thereupon, Yoder Deposition Exhibit No. 1
17 was marked for purposes of identification.

18 - - -

19 BY MR. HART:

20 Q. Okay. This is Exhibit 1. You can look at either this one
21 or that one; doesn't really matter to me. I have a copy of it
22 here.

23 Now, you're not -- This is an e-mail. Looks like an
24 e-mail -- at least one e-mail that was forwarded. You're not
25 listed on the e-mail. Do you see that?

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- 1 A. Yes.
- 2 Q. Have you ever -- Taking a look at this, have you ever seen
3 it before?
- 4 A. No.
- 5 Q. Do you know if there was ever any sales meeting -- or, not
6 sales meeting. Do you know of any meeting in which the items
7 that are in this document, Exhibit 1, were discussed?
- 8 A. I do not know.
- 9 Q. The last page says, "What level of support should we
10 provide to our resellers?" Do you see that?
- 11 A. I see it.
- 12 Q. And it says, "No. 1. Enough to ensure that they're
13 successful (exclusive resellers only)". Do you see that?
- 14 A. I see that.
- 15 Q. Have you ever been made aware of that statement before?
- 16 A. No.
- 17 Q. It's the first time you've ever seen or heard of that?
- 18 A. Yes.
- 19 Q. This is authored by Terry Tindel.
- 20 A. It was authored at his work station.
- 21 Q. Your boss is Mike Benvenuti, right?
- 22 A. Yes.
- 23 Q. He got a copy of this, at least based on the -- on the
24 title of the page. We don't know if he received it, but he was
25 copied on it, correct?

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1 A. Correct.

2 Q. Did you ever speak with him about that?

3 A. No.

4 Q. This is -- As Mike does point out for me, the date is
5 1-31-97. Did you ever have any meetings to discuss Reseller
6 Exclusive II before it was introduced?

7 A. I was in meetings before it was introduced, yes.

8 Q. Regarding that plan?

9 A. Regarding this plan, no.

10 Q. No, no, regarding Reseller Exclusive II.

11 A. Yes.

12 Q. When you say "this plan", Exhibit 1 really isn't a plan, is
13 it?

14 A. Well, my interpretation was what level of support should we
15 provide to resellers as a plan. That was what I was
16 interpreting you were meaning. Just asking if I was involved in
17 the Reseller Exclusive II, yes, I was involved in meetings
18 discussing that plan.

19 Q. Who else was in those meetings? How many meetings were
20 there, let me say it that way?

21 A. I don't know. We have many meetings. We had meetings
22 with -- The definition of "meeting" could be the people that
23 work for me that are working on it to try to figure out if it's
24 the right price point or the right percentage that we're giving.
25 It could be meetings with people in the sales group to see if

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1 this is what we really want to do. I know there would have been
2 at least several meetings, both internally and at least one with
3 the sales group, to say, "Here's something we think we can do".

4 Q. Who would have been involved with it from the sales group?

5 A. I'd be guessing. I mean, who would have been, I don't
6 know.

7 Q. When you say "the sales group", why would the sales group
8 be involved?

9 A. The vice-presidents of sales are still responsible for
10 sales hitting objectives in their particular areas, whether it's
11 from all channels of distribution or --

12 Q. Including resellers?

13 A. Yes.

14 Q. The Reseller Exclusive II, can you tell me whose idea that
15 plan was? I mean, who came up with that?

16 A. I don't know.

17 Q. Wasn't you?

18 A. Was not me.

19 Q. Somebody else?

20 A. Yes.

21 Q. Do you know if it was somebody else in your department?
22 Was it from outside your department?

23 A. I don't -- I would be guessing.

24 Q. Was it Tindel; do you know?

25 A. I would be guessing. I don't know.

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1 Q. All right. I'm going to test your memory a little bit; you
2 tell me if you don't know. I'm not doing this to harass you.

3 A. Okay.

4 Q. Was it Benvenuti?

5 A. I do not know. I mean, it was -- it's one of those things
6 we had -- As I said, we were having meetings and ideas were
7 thrown about of how can we -- how can we make the resellers a
8 more important part of the business.

9 Q. What was the point of having it exclusive versus a
10 nonexclusive plan?

11 A. I think it was just a way to say that this was a reseller
12 who's committed to us, and people who are committed to us in
13 this particular fashion, we think that we can incent them to
14 grow their business.

15 Q. Well, an exclusive plan would not allow a reseller to move
16 his business either, correct?

17 A. I can't imagine -- I don't know. I'm not the lawyer, so
18 I'm not sure what kind of contracts they would have already
19 signed.

20 Q. Well, if it's exclusive, you're assuming it's going to be
21 exclusive to you, are you not?

22 A. Yeah.

23 Q. Was that something that was discussed?

24 A. Exclusive to us, I mean, but I'm not sure -- I was never in
25 a meeting that went any further than said exclusive. Now, how

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1 we were going to define "exclusive", I was not involved in that.

2 Q. Was the idea of keeping a reseller captive to you ever
3 discussed?

4 A. Keeping them captive? Not to my knowledge.

5 Q. In essence, making sure that a reseller didn't move his
6 business to somebody else, was that ever discussed in coming up
7 with exclusivity?

8 A. Not to my knowledge.

9 Q. You were never involved in any meetings where that was
10 discussed?

11 A. No.

12 Q. Have you ever had any conversations with anybody within the
13 company regarding keeping resellers exclusive to the company?

14 A. No.

15 Q. Never?

16 A. No.

17 Q. And in developing the Reseller Exclusive II, that was never
18 discussed?

19 A. Not keeping them.

20 Q. I don't mean keeping them. I mean, you certainly want to
21 maintain your profitability as a company, correct?

22 A. Yes.

23 Q. It's clearly in your best interest to keep your customer
24 base, no?

25 A. It's in the best interest of a company to do that, yes.

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1 Q. Okay. Certainly would rather see a reseller keep their
2 business with you than take their business elsewhere?

3 A. Well, I mean, we're talking business school kind of
4 concepts.

5 Q. Right. I'm not trying to trick you.

6 A. I would agree with that, yes.

7 Q. Was that ever discussed?

8 A. No.

9 Q. Was keeping the business with you as opposed to letting it
10 go somewhere else, was that one of the things that was discussed
11 in coming up with this exclusive plan?

12 A. To my knowledge, the exclusive plan was more of a reward
13 than a gate. It was not meant to keep people, it was meant as
14 a -- If people are going to be loyal to us, we're going to give
15 them a rate. That's the only thing I remember about it. Same
16 thing with the ones that intended to grow their business with
17 us, we were going to give a break through the -- through the
18 discounts for growth.

19 Q. If they took -- If they started their business with you,
20 was it the intent of the Reseller Exclusive II plan that if they
21 brought you the business that they had to keep the business with
22 you in order to maintain that plan?

23 A. That was not part of the discussion when we were coming up
24 with the exclusive plan.

25 Q. I mean, ultimately, is that how it was rolled out; is that

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1 how the plan works?

2 A. You'll have to say that again because, again, I want -- I
3 don't want to sit here and say a theoretical thing.

4 Q. You were involved in implementing the Reseller Exclusive II
5 plan?

6 A. Yes.

7 Q. My question is: When you implemented the Reseller
8 Exclusive II, it would have the effect, would it not, of keeping
9 the customers with you, because they'd get a different rate if
10 they didn't stay with you?

11 A. If a reseller thought that was the way to go and chose that
12 plan, yes, that would happen. I'm not sure what's in the
13 contracts for the resellers today that would say whether or not
14 how easy it is for them to move their base. I'm not that
15 familiar with how that would work today.

16 Q. I'm just talking about the Reseller Exclusive II plan as
17 you rolled it out.

18 A. Okay.

19 Q. It went from you to Benvenuti?

20 A. Correct.

21 Q. To Tindel?

22 A. Yes.

23 Q. When it left you, the Reseller Exclusive II plan, that plan
24 had a lower rate if you stayed on exclusive with AirTouch,
25 right?

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1 A. Correct.

2 Q. Okay. And it was significantly lower, at least five
3 percent, correct?

4 A. I don't remember the exact percent, but it was five -- it
5 was at least five.

6 Q. Okay. And you were telling me at no point did you discuss
7 that maybe as any benefit, side benefit, or otherwise, it would
8 allow the customers to stay with you? You're telling me that
9 was never discussed at any time with anybody?

10 A. It was developed as a reward for -- in our minds for
11 loyalty. If a reseller was going to choose to be exclusive with
12 us and loyal to us, we were going to reward them.

13 Q. What happens if a reseller was going to be loyal to you and
14 take the Reseller Exclusive II plan, and then they decide they
15 want to leave you, what happened to the rate? Did they have to
16 pay you back?

17 A. I don't know that we -- Like I said, at that point the
18 whole definition of exclusivity came up and we stepped out of
19 the picture and went on to our next project.

20 Q. Who dealt with that issue then?

21 A. I don't know.

22 Q. You said, "...we stepped out of the picture". Did somebody
23 else step into the picture?

24 A. It was a discussion that was left with the Legal
25 Department, and at that point I'm not sure who would have picked

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1 it up.

2 Q. Last you knew, it went to Legal?

3 A. Yes.

4 Q. You haven't had it back yet?

5 A. No.

6 Q. Okay. That's why it's not a pricing plan today?

7 A. Correct.

8 Q. Now, if your own operations are being charged at the
9 Reseller Exclusive II plan -- Well, we'll just find that out,
10 won't we? We'll look at accounting. You don't know that your
11 own operations are being charged the Reseller Exclusive II rate?

12 A. I don't know.

13 (Pause.)

14 Q. Look at Page 2520.

15 MR. TRICARICHI: The pile to your left.

16 BY MR. HART:

17 Q. In the pile right there (indicating).

18 (Pause.)

19 Are you there?

20 A. I have 2520.

21 Q. Okay. Have you ever been made aware of this particular
22 rate plan?

23 A. No, I don't. No, I'm not.

24 Q. How about at the top, it has "Special Promotional Service
25 Offering". Is that something that you've ever been made aware

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1 of? Do you see it?
2 A. Yes, I see it.
3 Q. Okay.
4 A. I'm not familiar with it.
5 Q. You've never been familiar with it? You don't know what it
6 is?
7 A. Right.
8 Q. Never seen it before.
9 You were -- You were with the company in '93; you were
10 there since '89, right?
11 A. Yes.
12 Q. Did you have any involvement with -- Well, do you have any
13 idea what your customer base was in '93?
14 A. No. I'd be guessing.
15 Q. Okay. Are you familiar with -- Do you know whether there
16 was -- there were any customers of yours that would have had
17 100,000 access numbers?
18 A. I'm -- I don't know.
19 Q. No idea?
20 A. No.
21 Q. You know today any customers of yours that have 100,000
22 access numbers?
23 A. I don't know that.
24 Q. Never been brought to your attention?
25 A. No.

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- 1 Q. I'm going to show what had been marked in Diane Koskey's
2 deposition as Exhibit 1.
- 3 A. Okay.
- 4 Q. Those are Powerband rates. Those are digital?
- 5 A. They're digital rates, yes.
- 6 Q. You're familiar with those rates?
- 7 A. Yes.
- 8 Q. You were involved in that pricing --
- 9 A. Yes.
- 10 Q. -- plan --
- 11 A. Yes.
- 12 Q. -- that's in front of you?
- 13 A. Yes, I was.
- 14 Q. Okay. That is on the retail end, correct?
- 15 A. Yes.
- 16 Q. It was introduced in November of '97?
- 17 A. Yes.
- 18 Q. November 24th?
- 19 A. Yes.
- 20 Q. Do you know when it was introduced to resellers?
- 21 A. The exact date, no. It was months after this. I don't
22 remember the exact date.
- 23 Q. Were those plans available to -- When did those plans
24 become available to resellers?
- 25 A. Technically, November 24, 1997.

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1 Q. They could have taken service under those plans?

2 A. Yes.

3 Q. Did you let them know that?

4 A. Did I personally? No, I did not.

5 Q. In November, November of '97, did anybody with the company
6 let the resellers know they had pricing that was available to
7 them?

8 A. I don't know.

9 Q. Is it one of your job functions to let the resellers know
10 what the prices are to them?

11 A. No, that is not one of my job functions.

12 Q. Whose job is that?

13 A. Job of the reseller managers.

14 Q. Who would that be?

15 A. I'm -- They're in the sales group. I -- Truthfully, at
16 this point I don't know what their names are. I know who the
17 person in Michigan is, but that person wouldn't have dealt with
18 us at this point in time.

19 Q. November of '94 Powerband rates.

20 MS. TRAFFORD: '94?

21 MR. HART: '97, I'm sorry.

22 BY MR. HART:

23 Q. If we asked for those rates under those rate plans and we
24 were denied, what would be the explanation for that?

25 A. I don't know.

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1 Q. No idea?

2 A. No.

3 Q. You're sure -- You're testifying under oath that those were
4 available to resellers?

5 A. The only explanation I have that would say you could not
6 get this is there was a requirement to get digital rates you had
7 to have a digital handset.

8 Q. If we didn't have the digital handsets, we couldn't do it?

9 A. We would not let anyone have the digital rates. The policy
10 was without the digital handset, you can't have a digital price
11 plan.

12 Q. How would we know about the digital handsets?

13 A. I don't know. On our own personal customers, we would look
14 at the ESN phone to match, to make sure it was a digital phone.
15 I don't know how we would have done it for you, for the
16 reseller.

17 Q. You wouldn't have known what our ESNs were, would you?

18 A. I don't. I have no access to something like that.

19 Q. Where would a reseller get the digital handsets before you
20 get them?

21 A. I don't know.

22 Q. You're sitting here today, you're testifying under oath
23 that those rates that are sitting in front of you were available
24 to resellers at that period of time; you know that to be a fact?

25 A. Under the policy -- I don't know that for a fact, because

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1 I'm not the one that would have been the person standing in a
2 center or anywhere else when a reseller would come in and ask
3 for that service.

4 Q. Okay.

5 A. The policy would have said that they could come in and have
6 a digital handset and get these digital rates.

7 Q. When did the policy -- So a reseller could get the digital
8 handset and the digital rates?

9 A. I don't see why they wouldn't.

10 Q. How about concessions?

11 A. I don't know. If there was a competitive offer.

12 Q. If there wasn't a competitive offer?

13 A. There shouldn't have been a concession.

14 Q. Ever, for any of your customers?

15 A. I have no idea. I'm not involved with concessions.

16 Q. How do you know a reseller shouldn't get it then?

17 A. I don't know that they shouldn't. I'm just saying if there
18 was a competitive offer.

19 Q. The rate plan that you have in front of you -- Well, strike
20 that.

21 You testified that there was a change in the policy
22 regarding what was available and what wasn't available to
23 resellers; is that right?

24 A. What was available and what wasn't available to resellers?

25 Q. You testified the reseller could get any retail rate plan.

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- 1 A. Yes.
- 2 Q. When did that come into being?
- 3 A. That was -- I'm guessing. I think it was about the year
- 4 before this; maybe it was November of '96.
- 5 Q. Okay. What happened before that?
- 6 A. What happened before that? In regard to what specifically?
- 7 Q. What were resellers entitled to?
- 8 A. The reseller rate plans that were available.
- 9 Q. Only?
- 10 A. Yes.
- 11 Q. Okay. At the time that the reseller rate that you have --
- 12 I'm sorry, the reseller rate. The digital rates that you have
- 13 in front of you, do you know what the wholesale rates were at
- 14 that point?
- 15 A. Off the top of my head, no.
- 16 Q. Do you know if they were higher?
- 17 A. I would say that in some places of usage they would have
- 18 been lower.
- 19 MR. TRICARICHI: Would you like to give him the sheet?
- 20 Here's all the wholesale rates. Would you please tell us where
- 21 that would be?
- 22 MS. TRAFFORD: Can we have one person ask the
- 23 questions?
- 24 BY MR. HART:
- 25 Q. Look through your rate sheets. We've got -- I'm unaware of

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1 that being the case, but if you -- I figured you would know that
2 off the top of your head, but you don't. We have all the rate
3 plans. They're sitting next to you. Can you find any that
4 would be lower?

5 MS. TRAFFORD: What he has sitting next to him is 1993
6 and 1994 tariffs.

7 MR. HART: And the '94 -- '93 went into '94 and then
8 we have later years here.

9 MR. TRICARICHI: '95, '96, '97.

10 MR. HART: They're all there.

11 MR. TRICARICHI: They're all there.

12 MR. HART: I mean, these are the rates for all years,
13 all times.

14 THE WITNESS: Are you assuming I have that piece of
15 paper?

16 MR. TRICARICHI: Look underneath there.

17 THE WITNESS: I'll keep going.

18 MR. TRICARICHI: Look in the back of that one right
19 there (indicating).

20 BY MR. HART:

21 Q. These were just provided to me by your counsel, so I've got
22 them and you have them.

23 MS. TRAFFORD: He doesn't have them.

24 BY MR. HART:

25 Q. Here, you can have mine. Just give them back when you're

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1 done. We've got a few minutes.

2 MR. TRICARICHI: We're looking at -- What we're
3 looking at specifically --

4 BY MR. HART:

5 Q. These are all rate plans that you produced.

6 MR. TRICARICHI: \$100 for 1,000 minutes.

7 THE WITNESS: What was -- You want me to find you
8 what?

9 BY MR. HART:

10 Q. The question that I had for you was: I know of no reseller
11 rate -- wholesale rate that was lower than the Powerband rates
12 at that period of time, and you told me you didn't know if that
13 was the case. I can't find any in the rate plans that you have
14 there. If you can find one, I want to know what it is. Those
15 are the --

16 A. In the Powerband rates --

17 MR. TRICARICHI: Take the thousand minutes for \$100.

18 BY MR. HART:

19 Q. If we use that as an example.

20 A. I don't know if I can find one. You asked me if I could
21 find any. I can find one. It's only \$15 for 40 minutes and
22 Powerband 40 is 34.99.

23 MR. TRICARICHI: Thousand minutes for \$100.

24 THE WITNESS: That I don't know. I can do the math
25 here for a while.

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1 BY MR. HART:

2 Q. Do you know -- Isn't that something you would have done?
3 Wouldn't you have made that analysis when you introduced the
4 rate?

5 A. No.

6 Q. You just went through and told me a minute ago that when
7 you -- you know how your retail rates relate to your wholesale
8 rates.

9 A. Before I forget.

10 Q. You're saying you didn't do that in '96 and '97, right?

11 A. I'm saying that the timing is not instantaneous. I'm
12 saying that when significant changes go into our retail pricing,
13 we know that on the list of things to do we must go back and
14 look and see if there's a need to do adjustments in the reseller
15 channel. It's not an instantaneous thing.

16 Q. How does the reseller react in the meantime; what is the
17 reseller supposed to do?

18 A. My understanding of the policy would be if they have
19 customers they think would benefit from these kind of rates,
20 this is what the option is.

21 Q. To take service under those rates, they have to sell at --
22 they have to sell at retail, right? If they want to take
23 service, they can take service under the retail rate, and then
24 to market to those customers they're going to compete with the
25 same rate they just took, right?

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- 1 A. That's my understanding.
- 2 Q. Right. You're with me, aren't you?
- 3 A. Uh-huh.
- 4 Q. There's no -- They can't make any money, it's just a
5 pass-through for the reseller?
- 6 A. That's my understanding of the policy, yes.
- 7 Q. Okay. Is that something that was -- that has been
8 discussed at AirTouch, that we will -- that we will allow
9 resellers to take rates that they can only pass through and
10 can't resell?
- 11 A. That is -- That is what the policy would end up doing.
12 It's not a comment that people would make and say, "This is what
13 we're trying to do"; it's the policy.
- 14 Q. That's what it ends up doing; you recognize that, don't
15 you?
- 16 A. Under the same terms and conditions, these are the rates
17 that you can take.
- 18 Q. So to sell that to the public, you have to compete with the
19 exact same rate, correct? And you have to sell it -- If you
20 market it, you can't mark it up, because if you mark it up,
21 you're not selling it at the same rate, you can't be
22 competitive, right? You're not going to buy -- not going to buy
23 the same service for a higher rate, are you?
- 24 A. We have people that do that.
- 25 Q. Is that the expectation, that you would have people --

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1 A. Is it my expectation? My personal one, no, probably not.

2 Q. If a reseller takes service under the rates that are there
3 in Exhibit 1 and sells to the public, they're forced to sell it
4 at the rate they get it at?

5 A. Correct.

6 Q. Can't mark it up at all, right, because they're buying the
7 same terms and conditions that the end users buy it at?

8 A. That's correct.

9 Q. When you say the same -- When I use the term "same terms
10 and conditions", if I go into a store and I walk out with
11 something -- one of your stores and I walk out with something,
12 I'm going to walk out with a phone, I'm going to have service at
13 a particular rate, maybe I get some free minutes, okay? Are you
14 with me?

15 A. Uh-huh.

16 Q. Okay. If you give -- If you give a customer a concession,
17 and I don't get the concession, would you say I'm getting what
18 your retail customer is getting?

19 A. No.

20 Q. Two different things, right?

21 A. Yes.

22 Q. Okay. If you tell me that I'm entitled to the same terms
23 and conditions that a retail customer can walk out of that store
24 with, how is that possible when I can't get the concessions?

25 A. Because for whatever reason, in your hypothetical situation

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1 that other customer that got a concession had a competitive
2 offer or had something else that made them different than you.
3 You're not similar customers.

4 Q. Why not?

5 A. I don't know. Because we haven't gone far enough in your
6 hypothetical situation to know what would be different to get
7 that other person to get the concession.

8 Q. Well, you're not -- you're not going to base it on volume
9 of use? Concessions aren't based on volume of use?

10 A. Concessions will be based primarily on a competitive offer.

11 Q. Somebody else in the market offers the rate to somebody?

12 A. Right.

13 Q. So you have two customers who walk in, not both walking out
14 with the same exact thing, necessarily, even if there's no
15 difference between the two customers, as far as usage is going
16 to be, right?

17 A. Possibly.

18 Q. I mean, that's how your pricing works, isn't it?

19 A. Say that again.

20 Q. When you add concessions into the mix, the pricing doesn't
21 necessarily say that two people walking in are going to get the
22 same thing, the same terms and conditions. What does that mean
23 is what I'm saying.

24 A. It's going to mean a lot of things. It's going to mean how
25 many lines they'll potentially be bringing, mean what kind of

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1 volume you have, what kind of credit rating do you have. It
2 would mean many things.

3 Q. When you say same terms --

4 A. In this case, can you get a digital handset? Do we have to
5 sell you a digital handset? You've got to have a digital
6 handset.

7 Q. When you say "same terms and conditions", the reseller's
8 entitled to the same terms and conditions, you're excluding
9 concessions out of that mix, correct?

10 A. Am I excluding them out of the mix of same terms and
11 conditions?

12 Q. Right.

13 A. That's not a term or a condition.

14 Q. Right.

15 A. That's a result; not a term or a condition.

16 Q. They want the same terms and conditions -- A reseller who
17 doesn't get concessions versus a customer who does get
18 concessions, they're not going to get the same thing, are they?
19 However you want to term it, they're not walking out with the
20 same package?

21 A. They're not walking out with the same package. The policy
22 would say the person that got a concession and the person who
23 didn't get the concession are not similarly-situated customers.

24 Q. Where's that written first? Where's that policy come from?

25 A. The policy would have come from a legal interpretation that

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1 we received that said if they're under the same conditions and
2 terms --

3 Q. You're going to blame it on the lawyers. It's their fault.

4 A. I never blame anyone.

5 Q. Is there something written? Is there a written protocol
6 that says, "We don't have to give" -- "If two people walk in, we
7 don't have to give them the same thing if there's a competitive
8 situation"? Is that written somewhere?

9 A. Not to my knowledge.

10 Q. I didn't think so. Your concession guy said it wasn't. I
11 wanted to know if you had anything else to add to that.

12 So how do you get that? How do you get that information?
13 Who does it come from?

14 A. How do I get which information?

15 Q. That concessions would be able -- would be given to one
16 person but not another?

17 MS. TRAFFORD: Wait. I think he testified he didn't
18 even have anything to do with giving concessions.

19 BY MR. HART:

20 Q. I understand that, but you're saying that a reseller can
21 get the same terms and conditions as any customer.

22 A. No. I said they can get the same rates if they're
23 similarly situated.

24 MR. TRICARICHI: Have her read it back.

25 BY MR. HART:

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1 Q. What are you telling me?

2 MS. TRAFFORD: Just --

3 BY MR. HART:

4 Q. Answer the question. What are you telling me?

5 MS. TRAFFORD: Let's read it back.

6 BY MR. HART:

7 Q. Does the reseller have --

8 MR. HART: I don't want it read back.

9 BY MR. HART:

10 Q. Does the reseller have the right to the same terms and
11 conditions as any of your retail customers; "yes" or "no"?

12 A. You and I don't define what -- That sentence you just said
13 and the way I would define that sentence are not the same.

14 Q. Why?

15 A. You said do they -- You said they have the same terms and
16 conditions. Are they -- Are they eligible for the same terms
17 and conditions? In my definition, terms and conditions are what
18 you come to the table with not what you walk away with.

19 Q. Okay. You're saying -- So resellers are never going to be
20 eligible for the same thing that a retail customer gets?

21 A. I don't know about never.

22 Q. That would be your expectation, right?

23 A. No, wouldn't be mine.

24 Q. Why not?

25 A. Because I don't know what terms -- what kind of a situation

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1 a reseller is in when they walk in.

2 Q. As far as concessions.

3 A. I don't know. I mean, theoretically, if there's some
4 competitive offer out there that a reseller says, "I'm going to
5 go across the street and get X, and I've got this piece of paper
6 to prove it, that in my mind, hypothetically, would put them in
7 the same situation of any other customer coming in.

8 Q. Did we say that a reseller can -- Use the Powerband rates.

9 A reseller takes the Powerband rates and now he's going to
10 market those Powerband rates to the public, okay?

11 A. Uh-huh.

12 Q. He comes upon an AirTouch customer. Are you with me?

13 A. Uh-huh.

14 Q. Now, the AirTouch customer comes back to AirTouch and says,
15 "Look, Cellnet offered me the Powerband rates", all right?

16 A. Uh-huh.

17 Q. Is that customer entitled to a concession?

18 A. I don't know.

19 Q. It's up to the store, right?

20 A. It's not my decision, I know that.

21 Q. You see the problem if he gets a concession, that means
22 that we can't -- we can't move -- as you've already gone
23 through, we can't move the rate, right, because we have to sell
24 it at exactly what we buy it for, so we have to take a loss,
25 right?

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1 A. In that hypothetical situation, if it were to occur, then I
2 would say that that's probably true.

3 Q. That's how the rates are set up -- is how the pricing is
4 set up to allow that to happen?

5 A. The pricing's not set up to have anything to do with the
6 concessions.

7 Q. No. You let the people who are giving concessions do
8 whatever they want to do.

9 A. I don't let them do that. It's not my decision.

10 Q. That's not your decision.

11 A. Correct.

12 Q. The Powerband rates you have in front of you as Exhibit 1,
13 earlier we spoke about the concept, and I think that I had this
14 right, that what you do is you set your retail rate to make sure
15 your company as a whole is profitable. Then you determine what
16 your reseller rate is going to be, correct?

17 A. Correct.

18 Q. Okay. Is that what you did here? How does this flow in?
19 You set your retail rate in November and then you introduce it
20 to Cellnet or resellers as a reseller plan to take in the
21 spring, is that what happened here?

22 A. Yes.

23 Q. Same thing?

24 A. Yes.

25 Q. Okay. In this case it was about six months later, correct?

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1 A. I don't know about six months. I'd have to get back and
2 check all the records to see when it was.

3 Q. It was some months later?

4 A. Yes.

5 MR. HART: Thank you.

6 MS. TRAFFORD: Thank you.

7 (Signature not waived.)

8 - - -

9 (Thereupon, the deposition was concluded at 4:31
10 o'clock p.m. on Tuesday, December 8, 1998.)

11 - - -

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MC GINNIS & ASSOCIATES, INC.
COLUMBUS, OHIO (614) 431-1344

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STATE OF _____,)
COUNTY OF _____,) SS:

Michael Yoder, having been duly placed under oath,
deposes and says that:

I have read the transcript of my deposition taken on
Tuesday, December 8, 1998, and made all necessary changes and/or
corrections as noted on the attached correction sheet, if any.

Michael Yoder

Placed under oath before me and subscribed in my
presence this _____ day of _____, 19____.

Notary Public

My Commission Expires: _____.

C E R T I F I C A T E

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State of Ohio,)
County of Delaware,) SS:

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I, Deborah J. Holmberg, Registered Merit Reporter and Notary Public in and for the State of Ohio, hereby certify that the foregoing is a true and accurate transcript of the deposition testimony, taken under oath on the date hereinbefore set forth, of

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which the deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in the action.

Deborah J. Holmberg,
Registered Merit Reporter
and Notary Public in and for
the State of Ohio.

My Commission Expires:
October 07, 2001.

*** CAUTION ***

This certification bears an original signature in nonreproducible ink. The foregoing certification of the transcript does not apply to any reproduction of the same not bearing the signature of the certifying court reporter. McGinnis & Associates, Inc. disclaims responsibility for any alterations which may have been made to the noncertified copies of this transcript

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