

FILE

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the matter of:

COVISTA COMMUNICATIONS, INC.,

Complainant,

-v-

VICTORY TELECOM, INC. and
XTENSION SERVICES, INC.,

Respondents.

CASE NO. 12-2574-TP-CSS

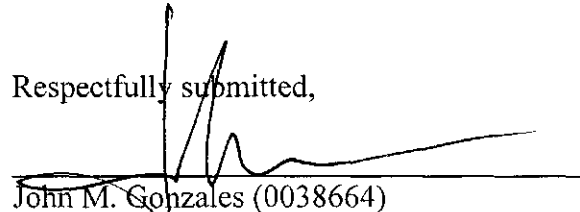
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NOTICE OF FILING OF DEPOSITION

All parties will take notice that the deposition of **Joseph Mullin** has been filed with the Commission as evidentiary materials.

Respectfully submitted,


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CERTIFICATE OF SERVICE

A copy of the foregoing was served by ~~regular~~ ^{regular} mail on September 10, 2013, upon:

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Page 1

IN THE COURT OF COMMON PLEAS
OF FRANKLIN COUNTY, OHIO

Xtension Services, :
Inc., :
Plaintiff, :
vs. : Case No. 10 CVH 04 5197
Covista Communications, : Judge Daniel Hogan
Inc., :
Defendant. :

DEPOSITION OF JOSEPH MULLIN

Taken at The Behal Law Group, LLC
501 South High Street
Columbus, OH 43215-5601
April 21, 2011, 12:00 p.m.

Spectrum Reporting LLC
333 Stewart Avenue, Columbus, Ohio 43206
614-444-1000 or 800-635-9071
www.spectrumreporting.com

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Thursday Afternoon Session
April 21, 2011, 12:00 p.m.

STIPULATIONS

1 It is stipulated by counsel in attendance that
2 the deposition of Joseph Mullin, a witness herein,
3 called by the Plaintiff for cross-examination, may
4 be taken at this time by the notary by agreement
5 of counsel and without notice or other legal
6 formality, that said deposition may be reduced to
7 writing in stenotypy by the notary, whose notes
8 may thereafter be transcribed out of the presence
9 of the witness; that proof of the official
10 character and qualification of the notary is
11 waived.
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Page 2

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF:

Welman Weinberg & Reis Co. LPA
323 West Lakeside Avenue, Ste. 200
Cleveland, OH 44113-1009
By Donald A. Mausar, Esq.

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1 JOSEPH MULLIN
2 being first duly sworn, testifies and says as
3 follows:
4 CROSS-EXAMINATION
5 BY MR. MAUSAR:
6 Q. Let the record reflect that we're here
7 in order to conduct a deposition as part of a
8 series of depositions which are being conducted in
9 the case which is captioned Xtension Services,
10 Inc. versus Covista Communications, Inc. It's
11 pending in the Common Pleas Court of Franklin
12 County with Judge Daniel Hogan and it's Case No.
13 10 CVH 04 5197.
14 Can you state your name for the record,
15 please?
16 A. Joe Mullin.
17 Q. Is that M-u-l-l-i-n?
18 A. Yes, sir.
19 Q. Mr. Mullin, have you ever had your
20 deposition taken before?
21 A. No, sir.
22 Q. I apologize. I haven't introduced
23 myself.
24 I'm Don Mausar, we met quickly before,

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1 but I'm here and I'm representing the plaintiff in
2 this case. So I'm going to ask you some questions
3 today and we're going to move right through
4 everything kind of quickly one way or the other.
5 Mr. Mullin, what is your current
6 business address?
7 A. 225 East Main Street, Chattanooga,
8 Tennessee.
9 Q. And is it Joe or Joseph?
10 A. Joseph.
11 Q. But you go by Joe?
12 A. Yes, sir.
13 Q. And it's M-u-l-l-i-n, correct?
14 A. Yes.
15 Q. What's located at the address in -- did
16 you say East Main Street?
17 A. Yes, sir.
18 Q. What's located there?
19 A. Covista corporate headquarters.
20 Q. Does Covista have any other facilities?
21 A. Yes. We have a facility at 75 Broad
22 Street in New York City. And then I work most
23 times from my home in New Jersey.
24 Q. So you have the New York City address,

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1 you have -- what's the -- what city are you in in
2 New Jersey?
3 A. Newfoundland.
4 Q. And you have -- so you have the
5 Chattanooga, Tennessee address, the New York City
6 address and the -- Covista has the New Jersey
7 address?
8 A. No. New Jersey is just my personal
9 residence.
10 Q. But you work out of it?
11 A. Yes.
12 Q. Home office?
13 A. Yes, sir.
14 Q. Does any of the letterhead have your
15 return address at home?
16 A. No. My business cards, everything, are
17 from Chattanooga.
18 Q. Do you have a business card with you
19 today?
20 A. Yes, sir.
21 Q. Can I see it, please?
22 A. (Complies with request.)
23 Q. How do you pronounce it, is it Covista
24 or --

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1 A. Covista.
2 Q. Covista.
3 How many square feet or so at the East
4 8th Street address?
5 A. Whew, I'm not sure.
6 Q. How many employees?
7 A. Currently have 55.
8 Q. What's the business of Covista?
9 A. Long distance phone -- phone service
10 and Internet service.
11 Q. Residential?
12 A. Residential and business, yes.
13 Q. So you do both?
14 A. Yes, sir.
15 Q. And how long has Covista been in
16 operation?
17 A. 1983, I believe.
18 Q. What is the --
19 A. I'm sorry.
20 Q. Go ahead.
21 A. It was under the name of Total Tel
22 originally and then in 2000 they changed the name
23 to Covista.
24 Q. Is Covista a corporation?

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1 A. I'm not sure.
2 Q. Now you're appearing today on behalf of
3 Covista?
4 A. Yes, sir.
5 Q. As a representative of Covista?
6 A. Yes, sir.
7 Q. You're not certain of the actual
8 corporate name?
9 A. I believe it's going currently as
10 Covista, Inc.
11 Q. Do you know what state that would be
12 incorporated in?
13 A. Delaware.
14 Q. And the previous name was -- I'm
15 sorry --
16 A. Total Tel.
17 Q. Total Tel.
18 Have you been employed by Covista
19 during the whole time of this transaction that
20 we've been talking about today?
21 A. Yes, sir.
22 Q. How long have you been employed with
23 Covista?
24 A. Four years. I left the company for two

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1 years, they acquired the company that I started up
2 and now we're back together again.
3 Q. All right.
4 A. So four years this time.
5 Q. This time around. So we're '11, so
6 you've been there from around 2007 to 2011?
7 A. Yes, sir.
8 Q. And you came back after they acquired a
9 company?
10 A. Yes, sir.
11 Q. And what company was that?
12 A. Clear End.
13 Q. Clear End?
14 A. Yes. It was an LLC.
15 Q. So you were -- not putting words in
16 your mouth, so if I'm wrong, just tell me.
17 You were with Covista for a period of
18 time, then you left and started Clear End, or a
19 company, and then that company was purchased up by
20 Covista?
21 A. Yes, sir.
22 Q. And now you're back?
23 A. Yes, sir.
24 Q. All right. And your business card says

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1 SR for senior, I think, short, VP for
2 vice-president, of network facilities?
3 A. Yes, sir.
4 Q. Are you still a -- the senior
5 vice-president of network facilities?
6 A. Yes, sir.
7 Q. Have you been that since 2007, when you
8 came back?
9 A. No. I was originally executive
10 vice-president. But they tell me it's not a
11 demotion.
12 Q. So when you came back in '07, you were
13 EVP, but now you're SRVP?
14 A. Yes, sir.
15 Q. What's your educational background?
16 A. High school graduate.
17 Q. And what year did you get out?
18 A. 1979.
19 Q. And have you been in the
20 telecommunications industry since then?
21 A. No, sir. I got in telecom in 1999.
22 Q. What did you do between '79 and '99?
23 A. I was asset protection manager for a
24 department store for seven years. And then I was

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1 a welder for the Department of Defense for 11
2 years. And then a truck mechanic for a year.
3 Q. And since you've joined the
4 telecommunication industries, have you -- has that
5 been your source of income or employment since '99
6 in one way or another?
7 A. Yes, sir.
8 Q. Okay. Who is your boss?
9 A. A gentleman by the name of
10 Michael Ford.
11 Q. Michael?
12 A. Yes.
13 Q. And what's his last name?
14 A. Ford, F-o-r-d.
15 Q. And what's his title?
16 A. EVP of operations.
17 Q. Is -- what does the organizational
18 chart look like?
19 Can you give me an idea of how the
20 company, you know, the leadership team is, or if
21 you have different divisions, what they are?
22 A. Sure. We have a board of directors,
23 obviously. We're publicly traded on the pink
24 slip.

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1 Q. So you have a board of directors and
2 you're publicly traded?
3 A. Yes, sir.
4 Q. Under what name?
5 A. CVST.
6 Q. What's the current price?
7 A. About a nickel.
8 Q. Is that up or down?
9 A. It's been there for, I'd say about two
10 years.
11 Q. So you have a board of directors?
12 A. Yes, sir. And then the corporate
13 structure is we have CEO/president, Warren
14 Feldman.
15 Q. Feldman, F-e-l-d-m-a-n?
16 A. Yes, sir.
17 Q. Okay.
18 A. And then reporting to Warren -- he just
19 changed everything around recently, so I'll try to
20 get it the best I can.
21 Mike Ford reports to him directly.
22 Q. And Mike is the EVP of operations?
23 A. Yes, sir.
24 A gentleman by the name of Ron Kuzon, I

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1 think he's legal counsel and finance. I'm not
2 quite sure.
3 Q. Okay.
4 A. Jeff Slater, who just started
5 yesterday. I'm not sure of his position.
6 I don't think there's any other direct
7 reports. And then mainly everyone rolls up under
8 Mike basically.
9 Q. Other than the individuals who you just
10 mentioned?
11 A. Yes.
12 Q. So Mike and Ron and Jeff may be on a
13 parallel track in a way?
14 A. Yes, sir.
15 Q. And then everybody else rolls up to one
16 of them?
17 A. Yes.
18 Q. Primarily Mike?
19 A. Yes.
20 Q. And your responsibilities roll up to
21 Mike?
22 A. To Mike, yes.
23 Q. And how much in sales do you guys do a
24 year at this time?

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1 MR. GONZALES: You know, you've got to
2 be careful here because I'm not going to let you
3 spend too much time on assets and stuff.
4 MR. MAUSAR: I'm just trying to get
5 some background of the company.
6 MR. GONZALES: But I don't think it's
7 relevant to the case and, you know --
8 MR. MAUSAR: Well, it's on their
9 website. I mean, it's not a big deal.
10 MR. GONZALES: Then why are we taking
11 any time doing it?
12 MR. MAUSAR: I'm getting to where I'm
13 going.
14 MR. GONZALES: All right.
15 BY MR. MAUSAR:
16 Q. How much in sales?
17 A. I would say about 15 to 18 million a
18 year.
19 (A discussion is held off the record.)
20 BY MR. MAUSAR:
21 Q. So we're back on the record.
22 Can you tell me if Steve Smith is still
23 employed?
24 A. No, he's not.

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1 Q. And how long has he been gone?
2 A. I'd say about a year.
3 Q. What was his job, do you know?
4 A. He was vice-president of sales.
5 Q. And who has taken that job?
6 A. I don't think we have anyone in that
7 position right now.
8 Q. If somebody asked you who the owner was
9 of Covista, who would you say is the owner?
10 A. It's public.
11 Q. It's public, so there's no one person
12 that makes all the decisions?
13 A. There's a principal shareholder.
14 Q. And who is that?
15 A. Henry Luken.
16 Q. Wasn't he with XO?
17 A. No. Telco.
18 Q. And who is Kevin Alward?
19 A. He was the CEO.
20 Q. And how -- is he still there?
21 A. No, he's been gone a year as well.
22 Q. And who is Mark Kukta?
23 A. He works for me. He does the routing
24 tables.

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1 Q. What's his title? Does he have a
2 title?
3 A. Yes. I believe it's network
4 coordinator.
5 Q. And does he still -- is he still
6 employed by Covista?
7 A. Yes, sir.
8 Q. And Jim Halleran?
9 A. He is not with us. He was only there a
10 week.
11 Q. He was there for one week?
12 A. One week.
13 Q. And what was his job going to be?
14 A. Dealing with the vendors, suppliers.
15 Q. Formal title, if any?
16 A. I don't know.
17 Q. Would he have reported to you or rolled
18 up to Mr. Ford?
19 A. He rolled up to Kevin Alward. I was a
20 direct report to the CEO back then.
21 Q. Okay. Who is the CEO now?
22 A. Warren Feldman.
23 Q. I think you may have mentioned that to
24 me.

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1 Was Mr. Feldman with Covista when this
2 problem arose?
3 A. No, sir. He was a shareholder.
4 Q. And who is Sandra Forquer?
5 A. She is the vice-president of finance.
6 Q. And is she still employed?
7 A. Yes, sir.
8 Q. And who does she report to?
9 A. I believe now she reports to Ron Kuzon,
10 but I'm not positive. Back during the time she
11 reported directly to Kevin Alward.
12 Q. All right. You've -- have you had an
13 opportunity to review the master service
14 agreement?
15 A. Yes, sir.
16 MR. MAUSAR: All right. I'm going to
17 hand you -- first of all, I'll have the court
18 reporter mark this as Exhibit A.
19 -----
20 Thereupon, Deposition Exhibit A is marked
21 for purposes of identification.
22 -----
23 BY MR. MAUSAR:
24 Q. Mr. Mullin, do you recognize any of the

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1 handwriting on the first page?
2 A. No, sir.
3 Q. Were you -- did you have a chance to
4 review this master service agreement before it was
5 signed, do you know?
6 A. Yes, sir.
7 Q. And did you?
8 A. Yes, sir.
9 Q. Would you recognize Steve Smith's
10 signature if you saw it?
11 A. No, sir.
12 Q. Is there any issue in this case whether
13 or not Covista executed this master service
14 agreement?
15 A. No, sir.
16 MR. GONZALES: I'm sorry. There is
17 none.
18 Q. And this master service agreement is
19 dated March 3rd, 2008, at least that's when it was
20 signed on the back page?
21 A. Yes, sir.
22 Q. And this agreement was to extend for 24
23 months unless -- unless a different term that's
24 under paragraph 2, do you agree with that?

Page 20

1 A. Yes, sir.
2 Q. Do you have any information that would
3 indicate that Covista terminated or cancelled this
4 agreement at any point?
5 A. No, sir.
6 Q. And did you have an opportunity to
7 review all of the terms of this agreement before
8 it was executed?
9 A. Just this document here, not the
10 website, no.
11 Q. But did you see the reference to the
12 website?
13 A. Saw the reference and spoke about it.
14 Q. Who did you speak to about it?
15 A. Jimmy Parman.
16 Q. Jimmy Parman. Is it ordinary for the
17 contracts that you review with your other vendors
18 to have reference to a website?
19 A. No, sir.
20 Q. Do you know if there are any other --
21 do you have any other contracts similar to this
22 master service agreement out there? Meaning do
23 you have other vendors --
24 A. Oh, absolutely.

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1 Q. -- with a contract or a master service
2 agreement?
3 A. Yes. Yes.
4 Q. What other vendors do you have that you
5 could think of?
6 A. We've got AT&T, Verizon, Bell South,
7 the list goes on. We have about 50 different --
8 do you want me to name them all?
9 Q. No. Are they under different master
10 service agreement like Mr. Parman's and Victory's
11 or are they direct with the provider? Or a
12 combination?
13 A. Everything is direct. Outside of this.
14 Q. Outside of this everything is direct?
15 A. Yes.
16 Q. So you have a direct relationship with
17 Verizon at this point?
18 A. Oh, yes. We had a back then, too.
19 Q. What was the advantage for Covista to
20 enter into this master service agreement when it
21 was done originally?
22 A. Originally? Steve Smith felt that they
23 had routes to offer us that he could sell.
24 MR. GONZALES: When you say "they" that

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1 confuses me a little bit. When you say "Steve
2 Smith thought they," who are you talking about?
3 THE WITNESS: His sales group, whether
4 it be wholesale or retail.
5 Q. So Covista felt that they had the
6 opportunity to resell what services that were
7 covered under the master service agreement?
8 A. Yes, sir.
9 Q. Were you aware that inside of the
10 agreement, there's a -- of the rate change
11 notification provisions?
12 A. Yes, sir.
13 Q. And is that something that you stay
14 familiar with based on your role as senior
15 vice-president or EVP of network facilities?
16 A. Yes, sir.
17 Q. Do you have a system that tracks the
18 rate change notification deadlines per vendor?
19 A. Not a system, but procedure, yes.
20 Q. What procedure do you have?
21 A. So when any -- any vendor is giving a
22 group e-mail address that all rate changes have to
23 go to, it's called
24 carrierroutinggroup@covista.com, which covers

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1 quite a few personnel in the company, and then
2 each person has their things that they have to do
3 with it.
4 Mark Kukta, for example, he takes it
5 and puts it right into the routing tool, make sure
6 it applies on the effective date. Another
7 gentleman that monitors our costs, he puts it into
8 what's called a traffic analysis system so that we
9 can monitor our costs on a daily basis. And then
10 myself, I just scan through them just seeing if I
11 see anything out of the ordinary.
12 Q. And how long have these procedures been
13 in place?
14 A. Since probably 2002.
15 Q. So they were in place during the course
16 of this situation with Victory?
17 A. Well, this one is a little different
18 for the fact that they were taken out of route.
19 So we weren't using them for two months. And when
20 you don't use a vendor, you don't bother putting
21 the updated rates in the system or anything else.
22 You just keep it out.
23 Because what happens if you do that,
24 then it could generate an improper cost for when

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1 your sales group is trying to put a new product
2 together. So you only put costs in there for what
3 you're actually using.
4 Q. And that's because it's important for
5 you to charge more than what you're paying?
6 A. Exactly.
7 Q. There is a standard rate that you
8 charge in addition to what you're paying when
9 you're pricing a model?
10 A. That's up to the sales department, just
11 putting whatever margin they feel. But wholesale
12 versus retail, yes, two totally different...
13 Q. And do you ever price matters?
14 A. Yes.
15 Q. So when you're looking at rate decks
16 and you see the different LATA codes or the
17 different codes for area codes, based on your
18 experience, you can identify if it's a good price
19 or not?
20 A. Yes, sir.
21 Q. And did that happen in this case?
22 A. In this case we never looked at them in
23 that detail. This was more or less, it was an
24 agreement to put Victory back in route and in

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1 exchange, Victory was going to bring us some
2 traffic.
3 Q. Okay. We'll get to that in a second.
4 And are you aware that there's
5 provisions inside the master service agreement
6 that invoices need to be paid within ten days?
7 A. Yes, sir.
8 Q. And are you aware that there's
9 provisions inside this agreement that if the
10 invoices aren't paid and if they're legitimate,
11 there's a service charge of 18 percent?
12 A. Yes, sir.
13 Q. And are you aware that there's
14 provisions that cover attorneys' fees or
15 collection costs as well?
16 A. Yes, sir.
17 Q. And there's specific provisions for the
18 termination of this agreement in writing?
19 Let me rephrase it for you.
20 If the agreement was to be terminated
21 by either party, there are specific provisions
22 that apply to it, in terms of requiring a written
23 item?
24 A. Right.

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1 Q. Is that -- are you aware of that?
2 A. I'm aware of it, but standard practice
3 is that every wholesale agreement goes month to
4 month and nobody ever really cancels the
5 agreement. You just stop using one another.
6 Q. Okay. And so when you say or when you
7 mentioned that they were taken out of route, that
8 -- is that a separate concept than you terminated
9 the agreement according to what the terms are
10 inside the agreement?
11 A. Yes, sir.
12 Q. And when you take somebody like a
13 Victory out of route, do you tell them you're
14 taking them out of route?
15 A. In some cases we do. Some cases we
16 don't.
17 Q. And in this case, can you show me
18 anything which would suggest that you told
19 Victory, or Mr. Parman, or anyone associated with
20 Victory, that they had been removed from route?
21 A. No, sir. Not that I can think of. I
22 mean it could have happened.
23 Q. So when they were removed from route,
24 there was -- you're not familiar with any

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1 notification to them regarding that?
2 A. No. I know we had a dispute with them
3 back then and that's why they got -- we lost that
4 dispute and that's why we pulled them from route.
5 Q. And who made the decision to pull them
6 from route?
7 A. I did.
8 Q. Was it your feeling that the dispute
9 that you lost, you should have won?
10 A. Yes.
11 Q. And how much was that dispute over?
12 A. I don't know off the top of my head,
13 but it was about \$1,300 I'd say. It wasn't -- it
14 wasn't a large amount. It was principle more than
15 anything.
16 Q. You mean you made a principle decision
17 that because of the resolution of that dispute,
18 that you were not going to use Victory --
19 A. Yes, sir.
20 Q. -- any longer?
21 A. Yes, sir.
22 Q. But that wasn't communicated to
23 Victory?
24 A. I don't know if it was or not. I'm not

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1 sure. I don't remember.
2 Q. Well, how are we supposed to know if it
3 was or wasn't?
4 A. Give me time to find out.
5 MR. GONZALES: Are you thinking written
6 communication or oral communication? Listen to
7 his question.
8 Q. Either. Did you -- when you lost the
9 dispute, do you recall calling Jimmy Parman or
10 Victory and saying what's going on here, we're
11 upset, you're out?
12 A. Yeah, I remember having a conversation
13 with Jimmy saying hey, Jimmy, you know -- what it
14 was, it's called LRN charges they charged us for.
15 So they -- there was fine print somewhere that
16 said that they had a right to charge us 11 cents a
17 minute if there was an LRN number attached.
18 So what happens when a bill rolls in,
19 we compare the call records that we're billed
20 versus the call records that we have in our
21 switch. We did not find any call records to the
22 dial-to number that they were charging us for,
23 which came in to they said it's an LRN, which
24 means it's a supported number, it was 11 cents a

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1 minute. So they shot down the dispute.
2 But what concerned me even more was,
3 you know, my comment to Jimmy, I said Jimmy you
4 know me well enough, I don't pay 11 cents a minute
5 for traffic. I do very well on my routing. Had I
6 -- had you been forthcoming and telling me this,
7 you would have never been in my route guide to
8 begin with.
9 Q. Okay. And that's on the -- so that was
10 on the disputed piece for the LRN calls?
11 A. Which is why they weren't in route for
12 about two months prior to this traffic.
13 Q. And did you have any concerns about
14 minimum usage under the master service agreement?
15 A. No. Because that's something I also
16 strike with all my vendors is to make sure that
17 there's zero, otherwise I won't use them as a
18 vendor.
19 If you -- if you want me to buy your
20 services, then offer me current rates that win the
21 traffic. If they don't win the traffic, I'm not
22 going to be tied to an agreement with minimum
23 usage.
24 Q. So you were aware that there was, in

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1 the master service agreement, a zero for minimum
2 usage?
3 A. I am aware, yes.
4 Q. And did you review the website?
5 A. No.
6 Q. The Xtension Services website?
7 A. No, sir.
8 Q. And are you aware that inside of the
9 Xtension Services website, there are provisions
10 that deal with minimum usage?
11 A. No, I wasn't aware. But I read this
12 contract and this contract, in my opinion --
13 Q. Okay.
14 A. -- takes precedence over that.
15 Q. That's fine. When you said that there
16 was fine print that charged 11 cents a minute, did
17 you review that fine print?
18 A. Yes.
19 Q. And where did you find it?
20 A. On the rate deck.
21 Q. On the rate deck.
22 A. Yes, sir.
23 Q. So was that on the website?
24 A. No.

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1 Q. But that was a rate deck that was
2 provided to you?
3 A. From Victory.
4 Q. From Victory. And who should have
5 caught that there was 11 cents there if it wasn't
6 on the website, it was in the rate deck and you
7 were charged it?
8 A. Myself or Mark.
9 Q. But that wasn't caught up front?
10 A. No, sir. That's why we paid it.
11 Q. So you paid it?
12 A. Yes, sir.
13 Q. But you weren't happy about paying it?
14 A. No, sir.
15 Q. Okay. Are you familiar with any
16 efforts to send to Xtension or Victory any
17 communications to supplement this agreement in
18 writing or change the terms inside of it?
19 A. No, sir.
20 Q. Have you kept all of your e-mails with
21 regards to this series of events?
22 A. I did and I have most on an external
23 hard drive. It's been giving me problems but I'm
24 trying to pull all that stuff back up. Yeah, I've

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1 saved -- I'm a hoarder when it comes to e-mails.
2 Q. And how or when can we review those
3 e-mails?
4 A. Whenever -- whenever you wish.
5 Q. Have you provided them to counsel?
6 A. Just what has been presented so far.
7 Q. All the stuff that's been presented so
8 far came from First Communications. So all of the
9 e-mails, all of the Bates stamped numbered
10 documents have all come from us. I haven't seen
11 any communications from your side.
12 A. Okay. I wasn't aware of that.
13 MR. GONZALES: That's okay. Don't
14 worry about that.
15 MR. MAUSAR: It's not a big issue one
16 way or the other.
17 MR. GONZALES: I think the issue is
18 from what you've seen, do you think there's
19 something else that you may have that you haven't
20 already seen in all these e-mails? Not
21 withstanding who produced him.
22 THE WITNESS: I mean, the only one was
23 the last one that Jimmy presented didn't show my
24 response back to that e-mail.

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1 MR. GONZALES: All right. So to tie a
2 ribbon on this, what Don is going to ask you to do
3 is look back through your e-mails and either just
4 print everything off and give it to me.
5 THE WITNESS: Okay.
6 MR. GONZALES: Unless you want to try
7 to go through them and say well, I know we have
8 already seen this and --
9 MR. MAUSAR: I prefer that you print
10 everything off and give it to me.
11 MR. GONZALES: To me and then I'll give
12 it to him.
13 MR. MAUSAR: Not to me directly. To
14 your counsel.
15 BY MR. MAUSAR:
16 Q. What about e-mails, internal e-mails
17 with co-workers about this scenario, not to the
18 external world, to Victory or Jimmy Parman, do you
19 have any e-mails between you and maybe Steve or
20 you and Kevin or others when this issue arose?
21 A. I'm sure there are.
22 Q. I'd like to see those, too. Your
23 attorney will make a decision about what should be
24 turned over and what shouldn't.

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1 A. Okay.
2 Q. Now, do you know if any of the records,
3 the hard drive or otherwise, for Kevin or Steve
4 has been retained by the company?
5 A. No, I don't know.
6 Q. Who would know the answer to that
7 question?
8 A. A gentleman by the name of Bill Hamel.
9 Q. Bill who?
10 A. Hamel, H-a-m-e-l.
11 Q. And what's his role?
12 A. Vice-president of network engineering,
13 I believe.
14 Q. Since this case, or since this problem
15 has arisen, have you gone out to review the terms
16 and conditions on the Xtension Services website?
17 A. No, sir.
18 Q. Curiosity?
19 A. No, sir.
20 Q. No?
21 A. No.
22 Q. So if I handed you some today, you
23 wouldn't know if that's what was out there or
24 otherwise?

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1 A. No, sir.
2 Q. When you went through the contract
3 execution process, is there a policy or procedure
4 in place that requires that somebody pull down all
5 the terms that are on a website and make it part
6 of your --
7 A. No, sir.
8 Q. -- contract?
9 A. No, sir.
10 Q. No policy about that?
11 A. No, sir.
12 Q. Maintaining a complete contract?
13 A. Complete contract, yes. But not when
14 it comes to terms and conditions, you know, like I
15 say, we deal with, you know, 50 to 100 vendors.
16 You would have to have someone checking these
17 websites every single day for changes. And it
18 just --
19 Q. Not so much that, I'm not worried about
20 changes. I'm talking about when it was executed,
21 to know what you were agreeing to.
22 Did you print up the terms and
23 conditions, keep it as part of your original
24 record?

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1 A. No, sir.
2 Q. Do you have an original file folder
3 with regards to this master service agreement, the
4 billings? Do you have one area where all the
5 paperwork is being kept?
6 A. No, sir. I mean there is one for the
7 contract and this is all that's there. Just this.
8 Q. So your personal records, do you
9 maintain personal records?
10 A. For?
11 Q. File folders or otherwise?
12 A. No, sir.
13 Q. You're completely paperless?
14 A. Yes, sir.
15 Q. So any paperwork that came in by way of
16 hard copy would go where?
17 A. 225 East Main Street -- East 8th Street
18 in Chattanooga.
19 Q. Is there a vendor or file cabinet
20 there?
21 A. For invoices, yes, sir.
22 Q. For invoices?
23 A. Yes, sir.
24 Q. And what about for contracts?

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1 A. Yes, sir.
2 Q. And have you reviewed that vendor area
3 to see what's there for this particular
4 transaction?
5 A. Yes.
6 Q. And what did you find?
7 A. Just this.
8 Q. Just the master --
9 A. For the contract part, yes.
10 Q. And what else was there for -- other
11 than the contract part?
12 A. Over where our financial folks are,
13 there's all the invoicing piece of it as well.
14 Q. So you have copies of all the invoices
15 that were sent and paid?
16 A. Yes, sir.
17 Q. Or copies of invoices that were sent
18 and weren't paid?
19 A. Just -- a copy of any of that.
20 Q. Who maintains those financial records?
21 A. Sandy Forquer.
22 Q. Does she report to you?
23 A. No, sir.
24 Q. Have you gone over there and looked at

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1 Q. And that would be part of the e-mail
2 hard drive that you have or whatever it may be?
3 A. Yes, sir.
4 Q. And do you recall doing an analysis of
5 this bill?
6 A. Oh, yes. Like I said, we have that
7 traffic analysis system. So when the invoice came
8 in versus what we had in our system, the
9 expectation of the invoice differed greatly.
10 Q. So the traffic analysis system is a
11 proprietary system that you have that keeps track
12 of your costs?
13 A. Yes, sir.
14 Q. Do you have authority to sign contracts
15 on behalf of Covista?
16 A. Yes, sir.
17 Q. And do you have a specific policy or
18 procedure that applies to the execution of
19 contracts on behalf of the corporation?
20 A. No, I wouldn't say so.
21 Q. So there's no policy it must be
22 reviewed by two people or signed only by our
23 managing director?
24 A. No, sir.

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1 what records she has with regards to this matter?
2 A. No, sir.
3 Q. Do you know if she has any electronic
4 communications or e-mails regarding this matter?
5 A. I'm not aware.
6 Q. When a payment was made to our client
7 after the dispute arose, who decided how much
8 would be paid?
9 A. I did.
10 Q. And do you have the ability to instruct
11 Sandy on how much to pay?
12 A. Yes, sir.
13 Q. Does she --
14 A. I can give her what I feel should be.
15 Q. Do you fill out a form, like an
16 authorization form?
17 A. She was just asking me what the dispute
18 amount would be and what the due amount would be
19 and I would give her those numbers. And that
20 would be between her and the CEO to make a
21 decision on what would be paid.
22 Q. So do you have e-mails about those --
23 that series of events?
24 A. I'm sure I do.

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1 Q. Nothing of that nature?
2 A. No, sir.
3 Q. Who has the authority to execute
4 contracts on behalf of Covista?
5 A. I don't know.
6 Q. Steve Smith did?
7 A. Yes, sir.
8 Q. In this particular case, you had a
9 Verizon DS3 line. Am I right about that?
10 A. We had a connection with Victory of DS3
11 that now I hear it was connected into Verizon.
12 But all of our -- my provisioning department
13 worked with folks, I believe, now I understand, it
14 was XSI folks to provision it.
15 Q. And were you part of that provisioning?
16 A. No, sir.
17 Q. I mean, I can give you the dates that
18 all the provisioning and point codes and
19 everything else were exchanged. But you weren't
20 part of that process?
21 A. I mean, the people who did it reported
22 up to me.
23 Q. Okay. So did you become aware when the
24 DS3 line, the point code and everything had been

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1 exchanged so that it was active?
2 A. Yes, sir.
3 Q. And how did you decide what business to
4 route to that DS3 from that point?
5 A. We just put the rates into our system
6 and the switch automatically does it.
7 Q. Are you talking about the least cost
8 routing system?
9 A. Yes, sir.
10 Q. Do you recall indicating or suggesting
11 to Jimmy Parman, Steve or anybody, or do you have
12 any records to understand how many minutes they
13 thought that they were going to be using through
14 this DS3 line?
15 A. No. Steve did that analysis back then.
16 Q. If Steve estimated that it would be
17 about 5 million minutes, does that sound unusual
18 to you?
19 A. No.
20 Q. How many millions of minutes on a
21 monthly basis would you say that Covista traffics?
22 A. We do between 35 and 40 million.
23 Q. And that's across all your different
24 vendors?

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1 A. Yes, sir.
2 Q. And are you familiar with the concept
3 of loop charges?
4 A. Yes, sir.
5 Q. Were there loop charges involved here?
6 A. I don't know off the top of my head.
7 Q. Where would you go to look to
8 determine --
9 A. Circuit inventory system.
10 Q. It would have if there was loop
11 charges?
12 A. Yes, sir.
13 Q. Would you ever review the master
14 service agreement or the terms and conditions by
15 reference for loop charges?
16 A. It depends on how the interconnect was
17 being done, you know. In most cases, you know, if
18 I'm -- if I want to buy from someone, I pay to get
19 there. If someone wants to buy from me, they pay
20 to get to me.
21 Q. So if you wanted to buy from Verizon,
22 you would pay to get to Verizon?
23 A. Yes.
24 Q. Generally. I mean generally speaking?

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1 A. Yes.
2 Q. And the services that were contemplated
3 under the master service agreement, were those
4 tier one level services?
5 A. I'm sorry?
6 Q. There are different service providers
7 with different tiers?
8 A. Yes, sir.
9 Q. So you understand that concept?
10 A. Yes, sir.
11 Q. So the DS3 line that was --
12 A. It was being sold to us.
13 Q. That was hooked up. That was sold to
14 you. That was hooked up for the point codes and
15 everything was active.
16 The line was active; am I right about
17 that?
18 A. Yes, sir.
19 Q. And after the line was active, in
20 accordance with the terms of the master service
21 agreement, did you route traffic there?
22 A. Yes, sir.
23 Q. So there is no question that we have a
24 master service agreement or that traffic was

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1 routed there?
2 A. Correct.
3 Q. It all comes down to pricing?
4 A. Yes, sir.
5 Q. In a way?
6 A. Yes, sir.
7 Q. Okay. Do you recall your bills ever
8 having loop charges?
9 A. No, sir.
10 Q. Do you recall any charges for
11 installation?
12 A. No, sir. I'm not saying there couldn't
13 have been. I'm just not aware of any.
14 Q. What process or procedures do you have
15 in place to deal with rate changes?
16 A. Vendors send the e-mails to, you know,
17 personnel, whomever they work with, as well as
18 carrierroutinggroup@covista.com. And we manage
19 them in accordance with the agreement.
20 Q. And does that group, carrier reporting
21 group, report up to you?
22 A. Yes, sir. At that time they didn't.
23 Q. At the time of this transaction, they
24 didn't?

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1 A. No, sir.
2 Q. Is this a -- I'm sorry, go ahead.
3 A. Mark was part of that group, so Mark
4 reported to me, but Steve Smith didn't. And
5 James Halleran, when he was there, didn't report
6 to me.
7 Q. Okay. And with regards to these rate
8 change notifications, do you log them somewhere in
9 your system?
10 A. We just save the attachments with a
11 date, so we put the date that we received it and
12 the date that it's effective.
13 Q. And that goes where?
14 A. On a shared drive, network drive. Mark
15 keeps it on his computer and an external hard
16 drive as well.
17 Q. So for this master service agreement
18 with Covista, when you would get a rate change
19 notification, whomever got it would forward it
20 internally to carrierroutinggroup@covista.com or
21 any other person they knew needed it?
22 A. Yes, sir.
23 Q. And then individuals at Covista monitor
24 that mailbox and take certain actions based on it?

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1 A. Yes, sir.
2 Q. And then where you kept or where you
3 keep the master service agreement in your vendor
4 files, do you keep a separate vendor file for rate
5 change notifications?
6 A. I don't believe so.
7 Q. What's the name of the system where the
8 rate change notifications would be posted?
9 A. No system that they would be posted to.
10 Are you asking what they turn into and how it gets
11 into the switches?
12 Q. No. What I'm trying to figure out, not
13 figure out, but what I'm trying to determine is
14 when it comes to you and you effectuate a rate
15 change, do you keep a record of that somewhere?
16 A. Yes.
17 Q. And where is that record kept?
18 A. That's what I was saying, on a shared
19 drive, network drive.
20 Q. On a shared network drive?
21 A. Yes, sir.
22 Q. What does that look like, like if you
23 were to call it up, would you call it up under
24 Victory, under Verizon?

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1 A. I believe -- the first part of the
2 folder is line costs because it's for the
3 financial people to audit the invoices. And then
4 inside there they have carriers. And then inside
5 there they have the breakdown and yes, there's
6 most likely a Victory folder inside there.
7 Q. Is that something you have access to?
8 A. Yes.
9 Q. All right. I need to see a copy of
10 that. Is that something that can be printed?
11 A. The whole --
12 Q. I want to see your record, your
13 business record for rate changes which came from
14 Victory --
15 A. For Victory?
16 Q. We know that they sent you one in
17 April.
18 A. But like I said, they were out of route
19 then so we weren't -- they weren't going through
20 the process.
21 Q. That's on your side. I understand
22 that. I understand that.
23 A. So I couldn't show you anything.
24 Nothing happened with those.

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1 Q. Okay. So then have you looked in the
2 shared drive recently with regards to Victory?
3 A. No, sir.
4 Q. Okay. So was there -- was there
5 something that was put into the shared drive after
6 you received the Victory Gold SIP offering?
7 A. No, sir.
8 Q. Okay. So they're out of route. You
9 get a rate change notification. You didn't do
10 anything on your system because they weren't in
11 route.
12 A. Yes, sir.
13 Q. Okay. Then at some point you get a
14 Victory Gold SIP offering or a rate deck Victory
15 Gold and you didn't do anything with that in terms
16 of your master shared network file either?
17 A. Agreed.
18 MR. GONZALES: What did you say?
19 THE WITNESS: Agreed.
20 MR. GONZALES: Let me just object to
21 the term "SIP." I don't think you've established
22 with him that SIP was anywhere a part of that
23 notification.
24 Q. Do you have the original e-mail that

1 MR. GONZALES: Nine.
2 A. 2009. Jimmy, myself and John Lapham,
3 who was the vice-president of sales at that time.
4 Q. And is Mr. Lapham still there?
5 A. No, sir.
6 Q. And are there any e-mails back and
7 forth about we're going to do this, you're going
8 to do that?
9 A. Yes, sir.
10 Q. There is?
11 A. Yes, sir.
12 Q. And you have those e-mails?
13 A. Yes, sir.
14 Q. But they're not part of what we looked
15 at, are they?
16 A. No, sir.
17 Q. And so the idea was that you guys would
18 somehow or another pick up doing business again?
19 A. Yes, sir.
20 Q. And he was going to sell some of your
21 services?
22 A. It was a blend. I was going to
23 customize routes so it would use our services and
24 his services.

1 together a combined rate deck?
2 A. For both.
3 Q. For both of you.
4 A. To put him back in route and to build
5 the rate decks that he wanted, yes. I wanted to
6 clarify what deck I should be utilizing to do
7 that.
8 Q. Now, when you utilized -- when I say
9 you, meaning Covista, when Covista utilized the
10 traffic that was the subject matter of this
11 lawsuit, was that all billed to one customer?
12 A. No, sir.
13 Q. Several?
14 A. Oh, yeah. Absolutely.
15 Q. And under what rate deck?
16 A. Several. Probably thousands.
17 Q. But not under the rate deck you were
18 trying to put together with Lapham, Parman and
19 you?
20 A. No, sir.
21 Q. So the rate deck that you looked at,
22 the Victory Gold rate deck, you were going to use
23 to put together this combined rate deck for this
24 shared venture that you guys were going to head

1 Q. So it would be something, and if I'm
2 wrong you'll tell me, something similar to the
3 rate deck that he had shared where he explained
4 today the Victory Gold rate deck where they
5 combined a bunch of vendors?
6 A. Yes. Exactly.
7 Q. And what were you guys going to call
8 that rate deck?
9 A. I have no idea. We never got across
10 the finish line with it.
11 Q. So that never actually materialized?
12 A. No. That was the -- that's what
13 started finding the correct rate decks to use, was
14 to try to put -- he wanted to see what this would
15 look like to sell to his customer. And we started
16 putting them together and then I did a search in
17 my computer for anything with Victory involved in
18 it, and this was the most recent e-mail with a
19 rate deck attached to it.
20 Q. Okay.
21 A. So that's when I sent it to him and
22 said hey, I found these, should I be using these.
23 Q. And that was -- did you -- that was for
24 the system where you guys were going to put

1 down --
2 A. Yes. To do what Jimmy wanted, I had to
3 get his circuits back in route to begin with,
4 which have to have a rate to be able to even be
5 able to get the traffic.
6 Q. Let's stop there. Did you do that?
7 A. Yes.
8 Q. Okay. And did you put them in route
9 under the rates according to the Verizon rate
10 change notice that was sent in April of '09?
11 A. No, sir.
12 Q. Okay. You put them in your system
13 under the rates that were in the Victory Gold
14 attachment?
15 A. Yes, sir.
16 Q. Okay. So then go ahead.
17 A. So once that was applied and I knew
18 what rates to use in my switch, that's when I knew
19 how I could build his product for him.
20 Q. Okay. So taking that, when you knew --
21 when you had those Victory Gold rates, you did not
22 update your shared network file with those rates?
23 A. Not when they came in. But on June 5
24 we did, yes.

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1 you -- that may have been -- had an attachment or
2 otherwise --
3 A. That did have an attachment, yes, I do.
4 Q. Do you have that original e-mail?
5 A. Yes, sir.
6 Q. Do you have it with you today?
7 MR. GONZALES: Hold on a minute. I
8 sent you that e-mail, but I want to make sure
9 you're talking about the one. The original from
10 Jay Brown or the one he sent to --
11 Q. Right, Jay Brown.
12 A. Yes.
13 Q. All right. So you have the original
14 e-mail from Jay Brown?
15 A. Yes, sir.
16 Q. That had an attachment?
17 A. Yes, sir.
18 Q. Did you open the attachment?
19 A. Yes.
20 Q. What did it say on it?
21 A. Just Victory Gold. And it had -- I'm
22 trying to remember if there was a LATA OCN
23 pricing, interstate and intrastate, I don't
24 remember the exact format. But it was a typical

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1 carrier wholesale rate deck.
2 Q. Did you see anything that said SIP on
3 it?
4 A. No, sir.
5 Q. Or SIP offering, anything of that
6 nature?
7 A. No, sir. It just said Victory Gold.
8 Q. Victory Gold. And did you perceive
9 that to mean Verizon?
10 A. I didn't perceive it to mean anything.
11 I perceived it to mean Victory.
12 Q. Okay. So when you got the Victory Gold
13 rate deck, it meant Victory to you?
14 A. Yes. If there's a copy of that e-mail,
15 Jay referred to a connection with Victory, it says
16 I understand you have a connection with Victory
17 and your switches. Here is the new rate deck.
18 Q. I have the e-mail, but I don't have the
19 attachment. Do we have that with us somewhere
20 today?
21 MR. GONZALES: I know I sent it to you.
22 I can look through my file and find out what we
23 sent because you had asked me for that way back.
24 MR. MAUSAR: Well, I asked for that --

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1 MR. GONZALES: You sent it to me.
2 THE WITNESS: Yes.
3 MR. MAUSAR: I asked for that after Mr.
4 Parman's -- I mean Mr. Broyles' deposition if you
5 had the e-mail. I don't have access to my --
6 MR. GONZALES: Do you want to take a
7 minute?
8 MR. MAUSAR: I'd like to just take a
9 look at what that attachment looked like so we can
10 talk about it quickly while we're here.
11 MR. GONZALES: Why don't you come with
12 me because I might have it with whatever I have in
13 my office.
14 THE WITNESS: Okay.
15 MR. GONZALES: Let's take five.
16 (A short recess is taken.)
17 BY MR. MAUSAR:
18 Q. So when you received the e-mail with
19 the Victory Gold rates, you did not do anything in
20 your routing -- in your -- in your system because
21 they were off route?
22 A. Correct.
23 Q. And when did they come back on route?
24 A. I believe it was around June 5th I was

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1 having discussions with Jimmy.
2 Q. And they --
3 MR. GONZALES: If you need to refer to
4 something, you can.
5 Q. If you need to look at something, you
6 can. We're going to go through a bunch of e-mails
7 in a little while anyway.
8 A. June 5. So what happened --
9 Q. Let me ask you a question so then you
10 can have the ability to answer something that's
11 out there.
12 A. Okay.
13 Q. So you believe that they came back on
14 route around June 5th?
15 A. Yes, sir.
16 Q. And what precipitated that?
17 A. Communications with Jimmy about doing a
18 deal where he would sell to some of his customers,
19 route it through my switch. I would send him the
20 interstate minutes and we would terminate the
21 intrastate minutes on our network, and then pay
22 him commissions on the -- split the revenue.
23 Q. Okay. So you and Mr. Parman, in and
24 around June of what year?

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1 Q. On June 5 you did.
2 A. Yes, sir.
3 Q. Is that when --
4 A. Once we got the confirmation back from
5 Jimmy that those were the rates I should be using,
6 that's when the file got updated.
7 Q. Okay. But rates that you should be
8 using for what? The shared venture?
9 A. It's one in the same. I only had one
10 connection with him.
11 Q. Okay.
12 A. So I had to validate what rate deck I
13 should be using on that connection. And that was
14 the reasoning for the e-mail.
15 Q. All right. But you're familiar with
16 rate decks?
17 A. Yes, sir.
18 Q. And have you ever seen a Verizon rate
19 change notice?
20 A. Sure.
21 Q. And did the notification from Parman,
22 or the deck, the Victory Gold, did it look like a
23 Verizon rate change notification?
24 A. No, sir.

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1 Q. But you had an expectation that those
2 were the applicable Verizon rates?
3 A. No, sir.
4 Q. So you didn't think that those rates
5 were the Verizon rates?
6 A. I had a connection with Victory
7 communications -- what happens in this industry is
8 everyone wholesales and says hey, I've got a tier
9 1 route or I'm reselling AT&T or I'm reselling
10 this guy or that guy. When you start routing to
11 it, all of a sudden you see what's called a loop,
12 the calls start coming back into your switch. And
13 that right away says this guy isn't really selling
14 me AT&T otherwise this call wouldn't have come
15 back to me because AT&T doesn't use me. And I saw
16 that happen on traffic with Victory earlier.
17 So although the term kept getting
18 thrown around that he was selling me Verizon
19 rates, nothing proved that. And then when I saw a
20 loop happen a couple times, I had a feeling that
21 he was mixing Verizon in with something else.
22 But that's just the way this industry
23 is. It's how they play the game. A guy will tell
24 you he's selling you one thing, but once he gets

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1 into his switch, you don't know what's going on
2 over there.
3 Q. So with that said, had you ever
4 formally written to him or communicated to him
5 that you thought you were paying for tier 1
6 Verizon services and you weren't getting that?
7 A. No, not that I'm aware of.
8 Q. What does tier 1 mean to you?
9 A. Tier 1 would be Verizon, AT&T, Sprint.
10 Those carriers. There's about three or four.
11 Q. And how many tiers of carriers are
12 there?
13 A. Everybody makes it up themselves.
14 There's no exact thing, but I'd say three.
15 Q. Three main tiers?
16 A. Yeah. With 1 and 2 being very small
17 and 3 being everyone else out there that most
18 people use and don't realize.
19 Q. Right. And what tier does Covista fall
20 into?
21 A. We'd be a tier 3.
22 Q. Tier 3?
23 A. Yes.
24 Q. And Victory?

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1 A. Tier 3.
2 Q. Tier 3.
3 A. Which just means arbitrage; they're not
4 100 percent their own network.
5 Q. Do you have a process for daily
6 monitoring of costs?
7 A. Yes, sir.
8 Q. What's that process?
9 A. It's called traffic analysis.
10 Q. And you do that every day?
11 A. Yes, sir.
12 Q. And in this period of time that things
13 were arising, were you doing traffic analysis?
14 A. Yes, sir. That's how I was able to
15 tell Jimmy when he didn't think I was sending
16 traffic, I knew exactly what I had already sent
17 him.
18 Q. Has Covista been part of any other
19 lawsuits?
20 A. Not that I'm aware of. I don't know.
21 Q. Liens, judgment liens, if you know?
22 A. No.
23 Q. Who actually keys the information into
24 the routing system, the rates?

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1 A. Mark Kukta.
2 Q. And he does that under your direction
3 and control?
4 A. Yes, sir.
5 Q. So you sent him the Victory Gold rates
6 and he keyed that into your routing system?
7 A. I copied him on my e-mail to Jimmy and
8 said, you know, put in whatever Jimmy tells you is
9 the official rates. So that's what we went off
10 of.
11 Q. That's not really -- that's sort of in
12 general what you said in the e-mail. I mean, you
13 don't -- I didn't see an e-mail that said that.
14 A. It's very specific. Are these your
15 current official rates to Covista. I don't know
16 how I can get more specific than that.
17 Q. Well, let's talk about that. Current
18 rates for what?
19 A. For my connection with Victory.
20 Q. Okay. But there's a -- is it a TDM?
21 A. I have connection with Victory. I have
22 one connection with Victory. Jimmy is aware of
23 that.
24 Q. Is there a VOIP?

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1 A. I have one connection with Victory.
2 Q. I understand that you have one
3 connection with Victory.
4 You tell me, what's the difference
5 between a TDM and a VOIP?
6 A. TDM stands to time division
7 multiplexing. That's the old switch telephone
8 network that requires physical connectivity
9 between point A and point Z, okay.
10 Q. Okay.
11 A. VOIP means that I can transmit it over
12 the Internet to your IP address and then you'll
13 take it and break it back out into a voice package
14 again.
15 Q. And do those different services have
16 different pricing points?
17 A. Yes.
18 Q. And are you familiar with Victory
19 trying to sell you additional services other than
20 the TDM connection?
21 A. Am I familiar now or was I familiar
22 then?
23 Q. Well, let's talk about now.
24 A. Now, yes.

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1 Q. Let's talk about then.
2 A. No.
3 Q. Okay. Was that part of the discussions
4 where you guys were talking about aggregating your
5 efforts for the betterment of everybody?
6 A. No, sir. Specifically between using
7 the current connection and Jimmy had this
8 gentleman Tony, he even gave me the traffic
9 patterns for this gentleman, that's how I was able
10 to tell him how this would work out.
11 Q. When bills come into Covista, where do
12 they go?
13 A. To the line cost department.
14 Q. And are they paid automatically or is
15 there an approval process?
16 A. An approval process.
17 Q. And what's that process?
18 A. The invoice is checked against our
19 switches or traffic analysis system for minutes
20 and rates.
21 Q. By who?
22 A. The line cost department. Currently
23 it's a woman by the name of Christine Brant.
24 Q. And does she report to you?

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1 A. No, sir. Sandy.
2 Q. Have you ever gone up on anyone's
3 website to look at additional terms and
4 conditions, for fine print?
5 A. Not that I recall.
6 Q. Isn't that important?
7 A. No, not -- not if the contract language
8 covers everything that you're dealing with, no.
9 MR. MAUSAR: And I'm going to hand the
10 -- your attorney this particular item.
11 And can you mark that Exhibit B,
12 please?
13 -----
14 Thereupon, Deposition Exhibit B is marked
15 for purposes of identification.
16 -----
17 BY MR. MAUSAR:
18 Q. Are you familiar with the format for
19 Victory billings?
20 A. Somewhat, yes.
21 Q. And had you ever seen a bill from
22 Victory before?
23 A. Yes.
24 Q. All right. And it references Xtension

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1 Services in the top corner as part of the logo,
2 co-branded as Mr. Parman says?
3 A. Correct.
4 Q. Do you recall getting this invoice for
5 July 6th of 2009?
6 A. Yes.
7 Q. And what was the initial reaction when
8 this came in?
9 A. That we had a dispute.
10 Q. And did you send a -- something in
11 writing to identify the dispute?
12 A. Yes, sir.
13 Q. What did you send?
14 A. I didn't send anything. Our line cost
15 department sent a dispute with the difference
16 between the contracted cost and billed amount.
17 Q. Any formal letters out of your legal
18 department or anything of that nature?
19 A. No, not at that point.
20 Q. Who can tell me of this usage, how much
21 you sold this for?
22 A. I'm sure we could probably pull that
23 together somehow.
24 Q. Have you done an analysis like that?

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1 A. No, sir.
2 Q. Who can tell you who these minutes were
3 sold to?
4 A. It would take some time. If we had
5 some records, we could probably run it backwards.
6 Q. Of all the minutes that are at issue in
7 this case, do you know how much you sold them for,
8 gross amount?
9 A. Off the top of my head I do not.
10 Q. Did you do an analysis to that effect?
11 A. I'm sure we did some type of analysis
12 to that. I mean, you've got to realize that the
13 cost, the projected costs went from 37,000 to
14 \$267,000. And if I'm running a company with a
15 gross margin of, say 30 percent, that big of a
16 jump, my revenue would jump dramatically as well,
17 and our revenue did not jump dramatically during
18 that time.
19 Q. But cost in this scenario is based on
20 the rate times the number of minutes, correct?
21 A. Yes, sir.
22 Q. So if you had an expectation to pay
23 \$30,000 for specific minutes, what if you put
24 through more minutes than you originally budgeted

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1 for? Costs would be hire?
2 A. Costs would be higher. And revenue
3 would be higher.
4 Q. So for this particular scenario, do you
5 know how many minutes are covered by this bill?
6 A. How many minutes? I would say it was
7 about 5 million because I remember I sent Jimmy an
8 e-mail saying it was 4.9 just before the end of
9 the month. Here it is, 5.774.
10 Q. Okay. And your cost expectation for
11 over 5 million minutes is 30-some thousand
12 dollars?
13 A. Yes, sir.
14 Q. Okay. When you look through this
15 particular scenario, or this bill, are there any
16 specific zones or calling area codes that you took
17 advantage of more so than others that you're aware
18 of?
19 Like did you identify that calling
20 Fargo, North Dakota was a great rate and you
21 pushed all your business there?
22 A. No, sir.
23 Q. But your least cost routing system
24 would have done that?

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1 A. Yes, sir.
2 Q. So for example, on page -- my copies
3 aren't so good -- page 17 on the top.
4 A. Okay.
5 Q. We have Minnesota interstate for
6 102,000 minutes -- I mean \$102,000. Does that
7 surprise you?
8 A. No, sir.
9 Q. You put 1.7 million minutes through
10 there, 1,757,747 minutes. Does that surprise you?
11 A. No, sir.
12 Q. I don't see any other areas where you
13 put through a million minutes.
14 Did you identify that particular
15 section or that area as having a benefit for you
16 in some way?
17 A. No, sir.
18 Q. But the least cost routing system would
19 have identified that?
20 A. It would select them as the first
21 vendor in route, yes.
22 Q. Because it was the cheapest?
23 A. Yes.
24 Q. Or had the best rate?

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1 A. Yes, sir.
2 Q. Tell me about your least cost routing
3 system. What does it do?
4 A. It simply takes a rate for every vendor
5 and an NPA/NXX seven-digit format. That's
6 basically the area code, the next three digits and
7 then the first one of the last four. They're
8 split out in alert by LATA and OCN. OCN stands
9 for operating company number. That determines who
10 owns that and who is ultimately going to be
11 charged a tariff on that traffic. It runs all the
12 vendors and decides who is the most cost -- least
13 cost for that area. We can put exclusions on it
14 saying I don't want to use this guy or I want to
15 block that guy there, and then it uploads into
16 our switch, and that's how the switch sends the
17 call.
18 Q. So then when somebody picks up the
19 phone to make a call, it comes through your
20 switch, it goes through the least cost routing
21 system, and it's supposed to go or it does go,
22 absent exclusions, to the least cost --
23 A. To one of 30 vendors. If that guy is
24 not available, it automatically goes to the next

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1 in route and so on.
2 Q. And your customer pays what amount?
3 The amount they have you under contract?
4 A. Yes. So if it's a retail customer,
5 they're paying me just a flat three cents a
6 minute. Or whatever the deal is. If it's a
7 wholesale customer, it's broken out just like you
8 see the rates come from Victory to us, and we sell
9 it in that same manner.
10 Q. So are all of your contracts for more
11 than whatever your costs are?
12 A. I hope so.
13 Q. Should be?
14 A. Yes, sir.
15 Q. Do you know how much you paid on this
16 invoice, this \$267,926.43 invoice?
17 A. I believe it was around \$37,000. I'm
18 not positive.
19 MR. MAUSAR: Okay. Let's take a look
20 at this.
21 -----
22 Thereupon, Deposition Exhibit C is marked
23 for purposes of identification.
24 -----

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1 BY MR. MAUSAR:
2 Q. Do you recollect receiving or reviewing
3 this particular invoice from January 2010?
4 A. No, sir.
5 Q. And is the entire balance that's
6 covered under this invoice disputed, do you know?
7 A. I would think so. I don't know off the
8 top of my head right now.
9 Q. Once the dispute arose, who decided how
10 much would be paid?
11 A. We ran the traffic through the
12 contracted rate deck and paid that amount.
13 Q. Well, when you say the contracted rate,
14 do you mean the rate that was set forth on the
15 Victory Gold attachment?
16 A. Yes.
17 Q. But that's not the rate that's covered
18 under the formal Verizon rate change notification;
19 am I right about that?
20 A. That would be between Victory and
21 Verizon. I'm not sure how they handle it.
22 MR. MAUSAR: Let's have you take a look
23 at a formal Verizon rate change notification.
24 Can you mark this for me as Exhibit D,

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1 please?
2 -----
3 Thereupon, Deposition Exhibit D is marked
4 for purposes of identification.
5 -----
6 BY MR. MAUSAR:
7 Q. Do you recall receiving anything that
8 looked like this?
9 A. No, sir.
10 Q. Do you know if Mr. Parman forwarded
11 this rate change notification to Covista?
12 A. Am I aware of it now, yes, I am. Was I
13 then, no.
14 Q. And that's because they were not in
15 your routing system?
16 A. Yes, sir.
17 Q. When you upload somebody to your
18 routing system who has been removed or secluded,
19 does a removal -- is that an exclusion or are they
20 completely removed?
21 A. It's a block on the switch in the
22 facility.
23 Q. So Victory has got a DS3 line coming
24 in?

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1 A. Um-hmm.
2 Q. And after your initial dispute, you put
3 a block in the switch?
4 A. Yes, sir.
5 Q. So a removal is the equivalent of an
6 exclusion. They haven't been --
7 A. Yes. Yes. Exactly. The physical
8 connectivity is still there, but it's blocked for
9 -- no calls can go over that circuit.
10 Q. And who can remove the blockage?
11 A. Many of the switch techs or Mark can.
12 Q. Under -- on their own or under
13 someone's direction?
14 A. Someone's direction.
15 Q. Whose direction?
16 A. It would have to come from myself or
17 another vice-president in the company.
18 Q. Is that by way of a form? Is there a
19 procedure?
20 A. Just an e-mail notification.
21 Q. So do you believe that you e-mailed
22 Mark or somebody to remove the exclusion for
23 Victory?
24 A. Yes.

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1 MR. MAUSAR: I'll need to see that as
2 well.
3 MR. GONZALES: Did you already refer to
4 that earlier?
5 THE WITNESS: I think that's when I
6 said that Mark was copied on the e-mail.
7 MR. MAUSAR: We're going to go through
8 some e-mails. If it's there, you'll tell me when
9 we run across it.
10 BY MR. MAUSAR:
11 Q. So with regard to that rate change
12 notification, you're aware of it now and you've
13 seen it?
14 A. Yes.
15 Q. You're aware of the format it came in?
16 A. Yes, sir.
17 Q. Can we agree that that's different than
18 the e-mail that came from Parman's sales staff
19 with the Victory Gold deck attached?
20 A. Yes, sir.
21 Q. As a result of this lawsuit, or this
22 problem, have you changed any policies or
23 procedures at Covista?
24 A. No, sir.

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1 Q. No changes whatsoever?
2 A. No, sir.
3 Q. You're not accounting for rate deck
4 change notices in any different way?
5 A. No.
6 Q. In different ways?
7 A. No.
8 Q. You're not keeping records any
9 differently?
10 A. No, sir.
11 Q. Business is the same?
12 A. Yes, sir.
13 If my salesman sends me a rate deck and
14 says this is the rate we sell, that is what we
15 utilize.
16 Q. It depends on what he's selling you.
17 A. Um-hmm.
18 Q. Now you say that you did an analysis of
19 the -- the First Comm rates versus the Victory
20 Gold rates?
21 A. First Comm --
22 Q. XSI rates?
23 A. -- versus Victory.
24 Q. The Victory/Verizon rates versus the

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1 Victory Gold Rates?
2 A. No, I never did an analysis.
3 Q. Okay. You did an analysis of what to
4 determine how much to pay?
5 A. I ran the traffic through the Victory
6 Gold rate deck.
7 Q. Okay.
8 A. And paid that.
9 Q. And you paid that.
10 A. Yes.
11 MR. MAUSAR: Mark this.
12 -----
13 Thereupon, Deposition Exhibit E is marked
14 for purposes of identification.
15 -----
16 BY MR. MAUSAR:
17 Q. Do you recognize this check?
18 I mean, is this a Covista
19 Communications, Inc. check?
20 A. Yes, sir.
21 Q. And it's for \$42,472.82. Do you recall
22 that amount?
23 A. Yes. I think so.
24 Q. And you see the payor -- I mean the

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1 payee or the person to whom the check is drafted
2 to, Victory Communications, Xtension Services,
3 Inc.?
4 A. Yes, sir.
5 Q. Is that how they're set up as a vendor
6 in your system?
7 A. I would imagine so. I don't know. As
8 a -- in my routing, they're known as Victory only.
9 Q. But on the payment side they're known
10 as Victory Communications Xtension Services, Inc.?
11 A. It appears that way.
12 Q. So somebody was aware that Xtension
13 Services, Inc. was receiving this check or was
14 made as a co-payee?
15 A. I would imagine so.
16 Q. Do you know why your finance department
17 listed Xtension Services, Inc. as a co-payee on
18 this check?
19 A. No, sir.
20 Q. When a check is written to two people,
21 it requires multiple signatures.
22 A. Okay.
23 Q. Do you know why they included them as a
24 -- as being paid on this check?

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1 A. No, sir.
2 Q. Can you break down this amount for me
3 specifically and tell me what it's meant to cover?
4 A. Off the top of my head, no.
5 Q. What would you need to look at to be
6 able to tell me what this check was meant to
7 cover?
8 A. I would say I need to see the June and
9 July invoice because I believe there was a little
10 traffic in July as well. And --
11 Q. Well, you have --
12 A. That's why the difference.
13 Q. Do you have the July invoice?
14 A. Yes. There should have been another
15 one for August, which was July usage.
16 Q. So you would need to see those two
17 invoices?
18 A. That's my feeling because I remember
19 the first invoice was around a 37, \$38,000 amount
20 due. And then, you know, the traffic didn't get
21 shut down until the 5th or 6th of July, so there
22 was a small invoice in the July time frame as
23 well.
24 Q. If I told you that the July invoice was

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1 \$37,957.67, does that ring any bells for you?
2 A. That makes sense and that's why we
3 probably paid \$5,000 on that.
4 Q. Paid \$5,000 on what?
5 A. That July invoice.
6 Q. No. The -- let me start over.
7 For usage in July, you were invoiced
8 \$37,957.67.
9 A. We paid.
10 Q. For usage in June, you were billed
11 \$267,398.48?
12 A. Yes.
13 Q. What did you pay of that?
14 A. 37 --
15 Q. No. July usage was --
16 A. I understand what you're saying.
17 Coincidentally it's the same thing. So we -- a
18 portion of this is for the June and a portion is
19 for the August.
20 Q. Okay. It looks like you had a
21 carryover balance running into June of \$5,593.79?
22 A. Maybe that's what it is.
23 Q. Do you know what that is tied to?
24 A. No, sir.

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1 Q. No?
2 Does Covista have problems paying its
3 bills? Do you stretch? Do you have problems
4 paying the bills?
5 MR. GONZALES: I'll object to
6 relevancy.
7 MR. MAUSAR: If he knows.
8 MR. GONZALES: At this time?
9 MR. MAUSAR: Yeah, I'm saying --
10 MR. GONZALES: I'm going to say it's
11 irrelevant.
12 MR. MAUSAR: Well, he can still answer.
13 MR. GONZALES: You mean at that time?
14 MR. MAUSAR: He can answer.
15 I'll ask him if they have problems
16 paying their bills.
17 MR. GONZALES: I'm going to instruct
18 him not to answer because it's --
19 MR. MAUSAR: Mark the record. We'll
20 take it up at the pretrial with the judge.
21 MR. GONZALES: If you want to ask him
22 at that time that that bill was paid.
23 BY MR. MAUSAR:
24 Q. At the time that these bills were being

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1 issued, was there any reason why a bill was short
2 paid? Take this dispute out of it.
3 A. No, sir.
4 Q. Do you know why you would have had a
5 carryover from any one month to another for 5,000
6 five '93 '79?
7 A. Could have been part of the previous
8 dispute. I don't know.
9 Q. You mean the original dispute from
10 April?
11 A. Yes, sir.
12 Q. But I thought you said you paid that.
13 A. When we lost it.
14 Q. When you lost it.
15 A. So it -- disputes don't resolve,
16 obviously, in this case, they don't resolve too
17 quickly all the time.
18 Q. Do you have any records, your own
19 records, to break down what that check that we
20 marked as Exhibit E was meant to cover?
21 A. No, sir.
22 Q. Do you know where you can look to say
23 this 42,000 is specifically meant to cover --
24 A. That I have, no. Sandy would have

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1 that.
2 Q. Sandy would have that?
3 A. Yes, sir.
4 Q. Do you think, from your information,
5 that you paid any of the bill for the June usage,
6 the disputed bill?
7 A. Yes, sir.
8 Q. And you would have -- were there any
9 payments other than this one we're talking about
10 here, this 42,000?
11 A. I don't know, sir.
12 Q. Can you tell me when that check was
13 sent?
14 A. It looks like it was issued on
15 September 29th.
16 Q. And can you tell me, when you issued
17 it, was there any restrictive language on it,
18 settled in full, sent with a letter that would
19 have said settled in full, anything of that
20 nature?
21 A. No, sir, not that I'm aware of.
22 Q. Do you know if Sandy has any records
23 with regards to a breakdown of what this \$42,000
24 was supposed to cover?

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1 A. No, sir.
2 Q. Who can tell me what this breakdown of
3 what funds were meant to cover what amount?
4 Sandy?
5 A. Yes.
6 MR. MAUSAR: I'm going to hand you what
7 we talked about in part as part of Mr. Parman's
8 deposition, but maybe we can talk about it a
9 little bit more.
10 This will be Exhibit F.
11 -----
12 Thereupon, Deposition Exhibit F is marked
13 for purposes of identification.
14 -----
15 BY MR. MAUSAR:
16 Q. Now handing you what I've marked as
17 Exhibit F, have you ever seen this before?
18 A. No, sir.
19 Q. Okay. If -- assume, assume that the
20 rates used to put this chart together were
21 accurate.
22 A. Um-hmm.
23 Q. Let's make that initial assumption. If
24 these are actually the Victory Gold interstate and

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1 intrastate rates and actually the XSI/First Comm
2 rates, can we agree that under the Victory Gold
3 rates, that a balance is owed at a minimum?
4 Whatever these two numbers combine to?
5 A. No, I can't. Because it totals to 41,
6 maybe \$42,000. So it might be very close to this
7 check.
8 Q. Well, all I'm asking you is that can we
9 agree that if these rates are right, that at a
10 minimum, Covista owed whatever the Victory rates
11 are for the usage?
12 A. Oh, yes.
13 Q. At a minimum.
14 A. That that's what we owed, yes.
15 Q. But you can't tell me specifically
16 whether or not that 42,000, what that specifically
17 was meant to cover?
18 A. My understanding was it was meant to
19 cover this.
20 Q. So here we have a combined amount of
21 35,000, about 35,8 and then on the next page we've
22 got about another 5,500 bucks.
23 A. Um-hmm.
24 Q. So did you do an analysis like this?

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1 A. Yes.
2 Q. And you have those records, your
3 analysis?
4 A. Where we ran the traffic against our --
5 against the Victory Gold?
6 Q. Yes.
7 A. Yes.
8 Q. Does that come out of your computer or
9 is that done by hand manually?
10 A. Computer.
11 Q. Do you have computer reports that show
12 that, this analysis?
13 A. I'm sure we probably saved it
14 somewhere.
15 Q. Where would that have been saved?
16 A. Probably Mark Kukta's computer.
17 MR. MAUSAR: I need to see that, too.
18 Do you have access to Mark's computer?
19 THE WITNESS: Yeah. I mean Mark --
20 MR. GONZALES: Is that what we saw
21 upstairs?
22 THE WITNESS: Could have just been the
23 minutes run against that deck.
24 MR. GONZALES: Remember we looked at

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1 the second e-mail and that's what it was?
2 THE WITNESS: Yes.
3 MR. GONZALES: I'm sorry. I had to ask
4 that because I think we sent that to you.
5 BY MR. MAUSAR:
6 Q. So you don't have any firsthand
7 knowledge or information with regard to the bills
8 that were issued and what was paid when. That's
9 all Sandy's realm?
10 A. That she takes from Mark and I putting
11 together numbers and saying here's the amount due
12 and here is what should be disputed.
13 Q. Okay. When you said to Parman, are
14 these your current official rates to Covista, were
15 you talking about Verizon rates or were you
16 talking about Victory Gold rates?
17 A. I was talking about the connection that
18 we had. What rate deck should I apply to that
19 connection.
20 Q. But if you were in the process of
21 selling or getting together to resell or trying to
22 put some business together, you were here when
23 Mr. Parman testified and said that he was trying
24 to sell you knew product that needed to be under

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1 contract.
2 A. That's what he was saying.
3 Q. Were you aware of that?
4 A. No, that wasn't the conversation.
5 Q. So you're saying that that wasn't the
6 conversation?
7 A. No. I never had any such conversation.
8 Q. Was it your expectation that you were
9 going to be able to put whatever Victory rates
10 through your DS3 that you had?
11 Whatever Victory rates were going to go
12 through the existing DS3?
13 A. I would put on that DS3 whatever rates
14 he would tell me, what the official rates were,
15 yes. Again, it's an arbitrage network.
16 Q. Are the rates covered by the TDM and
17 the SIP rates, are those reasonably discernible?
18 I mean, if you look at one rate deck
19 versus another, can you tell which is which just
20 by cost?
21 A. No.
22 Q. No?
23 A. No.
24 Q. Do you know if, when you did your rate

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1 analysis, did you do it for the two disputed
2 invoices or for one disputed invoice?
3 A. I would say it was done for both.
4 Q. Do you think it was done for both?
5 A. Yes.
6 Q. Now Sandy sent to Jimmy Parman an
7 e-mail, July 16th of '09, suggesting a certain
8 balance was due under the rates. But that
9 wouldn't have accounted for the subsequent e-mail?
10 A. Right.
11 Q. I mean, the subsequent invoice,
12 correct?
13 A. Correct. Unless Jimmy already told her
14 what that amount would be.
15 Q. Is it possible that the computation
16 that you did on your side covered one of the
17 disputed invoices and not two?
18 A. The first one would have, absolutely.
19 Q. Absolutely the first one. But maybe
20 not the second one?
21 A. I mean, the second one wouldn't have
22 been done until we received the amount on the
23 second one.
24 Q. The analysis wouldn't have been done

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1 until you received the second invoice?
2 A. Exactly.
3 Q. And are you aware of making a payment
4 related to the second invoice or the amount that
5 you thought was due under the second invoice?
6 A. My assumption is that's what that check
7 was covering. But you're saying it's not.
8 Q. You think it's covered by the 42. I'm
9 not saying one way or the other. I'm saying Sandy
10 is going to have to say.
11 A. Exactly.
12 Q. When Neil Broyles explained to you why
13 your first dispute was lost, do you agree with
14 that or were you upset by that?
15 A. Legally I agreed, yes, he's correct.
16 Industry-wise, telecom-wise, sales-wise, I didn't
17 like the way it was done.
18 Q. Now, you heard Mr. Parman testify today
19 that there must have been some confusion about
20 what rate decks were being assessed where.
21 Do you agree that there was confusion
22 about that?
23 A. No.
24 Q. No. For you it's clear?

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1 A. Clear-cut.
2 Q. Clear as can be?
3 A. Absolutely.
4 Q. Okay.
5 A. I pride myself on making sure I'm
6 in line with exactly what my vendor is selling
7 me.
8 Q. And you don't or Covista doesn't
9 disagree that it received the formal rate change
10 notification from Verizon in April?
11 A. We didn't get anything from Verizon.
12 Q. Well, through Victory.
13 A. Did Victory send -- yes, Victory
14 sent --
15 Q. A rate change notification in April?
16 A. Yes.
17 Q. What does it mean when Covista says
18 that it's a facilities-based telecommunication
19 service provider?
20 What does that mean?
21 A. That we have switches.
22 Q. You have your own switches?
23 A. Yes, sir.
24 Q. And your products, services include

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1 voice, data and Internet solutions?
2 A. Yes, sir.
3 Q. Local and long distance?
4 A. Yes.
5 Q. Toll-free services?
6 A. Yes, sir.
7 Q. Calling cards?
8 A. Yes, sir.
9 Q. Frame relay?
10 A. We don't do that anymore.
11 Q. Internet access?
12 A. Yes, sir.
13 Q. Directory assistance?
14 A. Yes, sir.
15 Q. Teleconferencing?
16 A. Yes, sir.
17 Q. And VOIP?
18 A. Yes, sir.
19 Q. What's VOIP?
20 A. Voice over Internet.
21 Q. And that's different than TD3?
22 A. TDM.
23 Q. TDM, I'm sorry.
24 A. Yes, sir. It's where the industry is

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1 moving.
2 Q. But it's a completely different
3 product?
4 A. It's a different way of transmitting
5 the traffic. Same product, different transmission
6 methods.
7 Q. Priced differently?
8 A. Not in all cases, no.
9 Q. In some cases?
10 A. Some cases, yes.
11 Q. Do you know if Verizon or Victory was
12 providing VOIP over the DS3 line?
13 A. No, I don't know.
14 Q. You can't -- can you put VOIP over a
15 DS3 line?
16 A. No, sir. If it's a private tunnel you
17 can.
18 Q. Other than that, they're two separate
19 things?
20 A. Exactly.
21 Q. And you know that?
22 A. Yes, sir.
23 Q. Does Mark Kukta know that?
24 A. Yes, sir. But we have a connection

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1 with Verizon that is VOIP. So I know that Verizon
2 sells it as VOIP.
3 Q. Right. On a certain connection or a
4 certain network base.
5 A. No.
6 Q. But you have a relationship with
7 Verizon for a VOIP?
8 A. Yes. That's why my initial
9 conversations with Jimmy was I didn't really need
10 his Verizon because I already had my own Verizon
11 deal.
12 Q. Does it surprise you or would it
13 surprise you that there was an e-mail from
14 Mr. Parman to Sandy, you and Kevin that said Joe
15 and Sandy, I'm not sure I understand the attached,
16 which is the check for \$42,000. You were going to
17 pay \$42,000 for June and we haven't even discussed
18 July yet. When do you guys have time to discuss
19 this.
20 Do you recall that?
21 A. No, sir.
22 Q. You don't recall that?
23 A. No, sir.
24 Q. Here is a series of e-mails about when

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1 are we going to get paid --
2 A. I remember conversations. You're
3 asking about a specific e-mail.
4 MR. MAUSAR: Will you mark that as
5 Exhibit G, please?
6 -----
7 Thereupon, Deposition Exhibit G is marked
8 for purposes of identification.
9 -----
10 THE WITNESS: I remember all this.
11 BY MR. MAUSAR:
12 Q. Do you remember this?
13 A. Yes.
14 Q. Do you remember what Mr. Alward would
15 have been talking about when he said you asked for
16 more money for June based on our second route
17 choice which we may agree to based on dispute
18 resolution.
19 A. Yes.
20 Q. What's he talking about?
21 A. Which is the way we tried to resolve
22 it. If I didn't route to Victory, I had another
23 vendor in route right behind them. So what we
24 were willing to settle on was, all right, Jimmy,

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1 if I would have taken you out of the picture, here
2 is what it would have cost us to terminate that
3 traffic. And we were willing to pay him at that
4 amount.
5 We understand it was a mistake, but,
6 you know, we couldn't take the hit that far
7 because it wouldn't have cost us that much money
8 had he not offered those rates.
9 Q. Okay. And you mean the Victory Gold
10 rate deck?
11 A. Yes.
12 Q. Okay. I just want to be certain.
13 Where do I get the information about
14 how much you resold these minutes for?
15 A. You would have to check with them.
16 Q. I mean who? Who -- who has that
17 information?
18 MR. GONZALES: I think he said there
19 isn't that information.
20 A. There isn't direct -- I mean --
21 MR. GONZALES: I'm sorry. I thought
22 that's what he said, but I guess he's going to
23 tell us.
24 Is that what you said earlier?

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1 A. Yeah.
2 Q. You can't tell how much you resold
3 these for?
4 A. I'd have to do a reverse billing on it
5 all to figure it out.
6 Q. Okay.
7 A. Who sent that traffic and what I
8 charged them.
9 Q. And that is a computerized process?
10 A. It would be, absolutely. You're
11 talking -- we send out over 50,000 invoices every
12 month.
13 Q. Do you think that you had 50,000
14 different customers who used this -- these
15 rates?
16 A. I'm sure.
17 Q. But there is the ability to tell me how
18 much it was resold for?
19 A. Yes.
20 MR. MAUSAR: All right. I don't have
21 any further questions for your client.
22 If you want to ask -- instruct him on
23 signature or waiver thereof.
24 MR. GONZALES: He's going to read.

Witness Errata and Signature Sheet
Correction or Change Reason Code
1-Misspelling 2-Word Omitted 3-Wrong Word
4-Clarification 5-Other (Please explain)

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page or a sheet of stationery. The edges of the paper are slightly irregular, suggesting it might be from a bound volume. There is no handwriting or other markings on the page.

Date Signature

Date Signature

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1 State of Ohio : C E R T I F I C A T E
2 County of Franklin: SS

3 I, Kathryn E. Cathell, RPR, a Notary Public in
4 and for the State of Ohio, do hereby certify the
5 within named Joseph Mullin was by me first duly
6 sworn to testify to the whole truth in the cause
7 aforesaid; testimony then given was by me reduced
8 to stenotypy in the presence of said witness,
9 afterwards transcribed by me; the foregoing is a
10 true record of the testimony so given; and this
11 deposition was taken at the time and place as
12 specified on the title page.

13 I do further certify I am not a relative,
14 employee or attorney of any of the parties hereto,
15 and further I am not a relative or employee of any
16 attorney or counsel employed by the parties
17 hereto, or financially interested in the action.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and affixed my seal of office at Columbus,
20 Ohio, on May 4, 2011.

21 
22 _____

23 Kathryn E. Cathell, Notary Public - State of Ohio
24 My commission expires December 11, 2014.

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