

BEFORE THE

Illinois Commerce Commission

DOCKET NO. 00-0027

IN THE MATTER OF:

FOCAL COMMUNICATIONS CORPORATION OF ILLINOIS

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COMMERCE COMMISSION

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BEFORE THE
ILLINOIS COMMERCE COMMISSION

FOCAL COMMUNICATIONS CORPORATION)
OF ILLINOIS)
Petition for Arbitration Pursuant)
to Section 252(b) of the) Docket No.
Telecommunications Act of 1996 to) 00-0027
establish an Interconnection)
Agreement with Illinois Bell)
Telephone Company d/b/a Ameritech)
Illinois.)

Springfield, Illinois
March 16, 2000

Met, pursuant to notice, at 9:00 a.m.

BEFORE:

MR. WILLIAM SHOWTIS, Examiner
MR. DONALD WOODS, Examiner

APPEARANCES:

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(Appearing on behalf of Focal Communications
Corporation of Illinois.)

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P R O C E E D I N G S

1
2 EXAMINER SHOWTIS: Pursuant to the authority vested in
3 me by the Commission, I now call for hearing Docket 00-0027
4 which concerns the petition of Focal Communications
5 Corporation of Illinois for arbitration pursuant to
6 Section 252(b) of the Telecommunications Act of 1996 to
7 establish an interconnection agreement with Illinois Bell
8 Telephone Company d/b/a Ameritech Illinois.

9 Will the parties please enter their appearances
10 for the record.

11 MS. HIGHTMAN: Carrie J. Hightman, Schiff, Hardin &
12 Waite, 660 Sears Tower, Chicago, Illinois 60606, appearing
13 on behalf of the Petitioner, Focal Communications
14 Corporation of Illinois.

15 MS. VANDUZER: Jane VanDuzer and Paul Rebey, Focal
16 Communications Corporation, 200 North LaSalle Street,
17 Chicago, Illinois 60601, appearing on behalf of the
18 Petitioner, Focal Communications Corporation of Illinois.

19 MR. HARVEY: Appearing for the Staff of the Illinois
20 Commerce Commission, Matthew L. Harvey, 160 North LaSalle
21 Street, Suite C-800, Chicago, Illinois 60601.

22 MR. BINNIG: Christian F. Binnig and Dennis G.

1 Friedman with the law firm of Mayer, Brown & Platt,
2 190 South LaSalle Street, Chicago, 60603, appearing on
3 behalf of Ameritech Illinois.

4 MS. WITTEBORT: Nancy Wittebort, 225 West Randolph,
5 27C, Chicago, Illinois 60606, appearing on behalf of
6 Ameritech Illinois.

7 EXAMINER WOODS: Okay. I think we're ready for the
8 redirect of Focal witness Tatak. And we also had an
9 on-the-record data request.

10 MS. HIGHTMAN: Yes. I've got it here.

11 (Whereupon Tatak Cross
12 Exhibit 3 was marked for
13 identification.)

14 MS. HIGHTMAN: I've just distributed to the parties a
15 document that's been marked for identification as Tatak
16 Cross Exhibit 3, which is what we described yesterday that
17 Mr. Binnig requested.

18 EXAMINER WOODS: This is what you requested,
19 Mr. Binnig?

20 MR. BINNIG: Yes, Your Honor, this is what I
21 requested.

22 EXAMINER WOODS: And as I understand, this is a

1 proprietary document?

2 MS. HIGHTMAN: No.

3 Yes.

4 MR. TATAK: Yes, it is.

5 MS. HIGHTMAN: Yes, it is. It's marked on there. I'm
6 sorry.

7 EXAMINER WOODS: It will be marked as Tatak
8 Proprietary Cross Exhibit 3.

9 MS. HIGHTMAN: Okay. I've got some redirect.

10 EXAMINER WOODS: Okay.

11 D A V I D T A T A K

12 called as a witness on behalf of Focal Communications
13 Corporation of Illinois, having been previously duly sworn,
14 was examined and testified further as follows:

15 REDIRECT EXAMINATION

16 BY MS. HIGHTMAN:

17 Q. Good morning, Mr. Tatak.

18 A. Good morning.

19 Q. You were asked some hypothetical questions about
20 by Mr. Binnig about whether a carrier should use its own
21 network to transport and terminate FX calls to an FX
22 customer. Do you recall being asked questions along that

1 line?

2 A. Yes.

3 Q. Does Focal use its own network to transport and
4 deliver calls to Focal's FX customer if the call is being
5 made by a Focal local customer?

6 A. Yes, 100 percent.

7 Q. Now, does Focal use its own network to transport
8 and deliver calls to a Focal FX customer if the call is
9 being made by an Ameritech local customer?

10 A. It does to the point of demarcation because Focal
11 can only take it as far as Ameritech's network, and in
12 order to get to the end user, that has to happen on
13 Ameritech's side of the network.

14 Q. Because Ameritech's providing the local service
15 to that end user?

16 A. Yes. That's correct.

17 Q. You were asked questions regarding whether you
18 could establish -- whether Focal could establish certain
19 POIs. Do you remember being asked those questions by
20 Mr. Binnig?

21 A. Yes, I do remember those.

22 Q. I believe you stated that, in response to each of

1 those questions with regard to specific geographic areas,
2 that it was, quote, possible, close quote, to do this.
3 Right?

4 A. Yes. It is possible to construct those.

5 Q. Can you state for the record what you meant when
6 you said it was possible?

7 A. What I said was from, what I was answering from
8 was that from an engineering standpoint, from a
9 construction standpoint, a POI can be built anywhere,
10 anywhere along Ameritech's network.

11 Q. Why would you not want to add the additional --
12 the POIs about which Mr. Binnig questioned you?

13 A. Because our -- both companies, Focal and
14 Ameritech, meet on a regular basis to groom our combined
15 network. And through that grooming, our operations group,
16 meaning our local, Focal's local operations engineers and
17 Ameritech's local operation engineers, get together and
18 decide from an engineering standpoint and from a, from the
19 standpoint of minutes and locations of traffic, so to say,
20 as to where the optimal points are to interconnect our
21 networks and create those POIs or POIs.

22 Q. So are you saying that it wouldn't necessarily be

1 optimal or necessary from a network perspective to --

2 I'd like to be able to ask my question.

3 MR. BINNIG: Okay. Well, ask your question, but I
4 have an objection.

5 MS. HIGHTMAN: Q. Would it be necessary, do you know
6 sitting here today, from a network perspective to add any
7 of the -- in the way that you just described you determined
8 normally where POIs will be added. Can you say sitting
9 here today that it would be necessary to add any of the
10 POIs Mr. Binnig asked you about?

11 A. I cannot say if it would be necessary to add
12 those POIs. That is a decision that is made between
13 Focal's local operating engineers and Ameritech's local
14 operating engineers.

15 Q. Can you tell us whether -- if Ameritech's
16 language is adopted, do you know sitting here today whether
17 POIs would be added that would not necessarily be needed
18 from a network perspective?

19 A. From the standpoint of LATA of MSA1 or LATA 358,
20 I cannot tell you for sure if POIs would be required to
21 meet their test. Our -- the LATA 358 market is a mature
22 market for Focal. It's been -- it's been evolving and

1 being groomed by our engineers for the past three years.

2 But if we were to go into a new MSA or LATA, pick
3 Rockford, and we were to have the same type of 35, as
4 Ameritech pointed out, NXXs required for that FX type
5 coverage over the LATA, before we had one single customer,
6 we would have to build some number of POIs, some number,
7 probably less than 35, but probably more than half of that,
8 maybe more than 17. We would have to build those POIs in
9 order to offer that service.

10 Q. Would that be needed in the absence -- would
11 those POIs be needed in the absence of the language
12 Ameritech is proposing?

13 A. That number of POIs would not be needed in the
14 absence of what they are asking in that language.

15 Q. And how do you know that today?

16 A. I know that because what Focal will do is we will
17 place a POI in each of Ameritech's tandems as we go or in
18 any RBOC's tandems as we go into a market and we will ask
19 that RBOC where do they see their heavy use exchanges are
20 or rate areas. And we will begin on a -- through our
21 grooming plan, to build to all those heavy use places after
22 service is turned up.

1 Q. Not with the first customer?

2 A. Not with the very first customer. As service is
3 turned up and we see where the traffic patterns actually
4 lie, then the interconnection network is groomed.

5 Q. You were asked several questions regarding the
6 expiration of the initial interconnection agreement that
7 you and Ameritech had, and I want to just ask some
8 clarification questions with regard to those questions and
9 your answers.

10 First off, you talked about a grooming plan or
11 the grooming team in your prior answers to me this morning.
12 Is there an existing grooming plan that's currently in
13 place?

14 A. Yes, there is.

15 Q. Okay. And was it -- prior to the expiration --
16 let me strike that.

17 I believe you testified in response to
18 Mr. Binnig's questions regarding the expiration of the
19 interconnection agreement. Right?

20 A. Yes.

21 Q. What was the date of that expiration? Do you
22 know?

1 A. October 28, 1999.

2 Q. Okay. Prior to that date, had Ameritech's and
3 Focal's teams, grooming teams met to manage the joint
4 network?

5 A. Yes.

6 Q. And after that date have they continued to meet?

7 A. Yes, they have.

8 Q. When the initial term of the contract expired I
9 think you said October 28th, did Focal take down all of its
10 POIs?

11 A. No. That would shut down our joint network.

12 Q. You were asked some questions concerning page 12,
13 lines 8 through 13 of your testimony.

14 A. Yes.

15 Q. And in particular, the reference to the tandem
16 transport facility mileage charge?

17 A. Yes.

18 Q. Okay. You recall that?

19 A. Yes, I do.

20 Q. Why didn't you also include in this portion of
21 your prefiled testimony a reference to the transportation
22 termination -- wait one second -- transportation

1 termination rate?

2 A. I believe you're referring to the transport
3 termination rate.

4 Q. Yes.

5 A. The facility mileage rate, the transport facility
6 rate is a mileage sensitive rate. The transport
7 termination rate is a fixed rate, is a nonmileage sensitive
8 rate. It is a minute sensitive rate, but it is applied
9 whether or not that facility is one mile, ten miles, or a
10 hundred miles.

11 Q. You were asked some questions regarding page 12,
12 line 24 of your testimony concerning the competitive
13 advantage statement that you made?

14 A. Yes.

15 Q. Do you recall being asked those questions?

16 A. Yes.

17 Q. What was the basis for the claim that you make in
18 your testimony concerning Ameritech obtaining a competitive
19 advantage?

20 A. My concern was that if Ameritech had required us
21 to have these additional POIs for contract language and not
22 for network and traffic termination purposes, that it would

1 -- it could do one of two things. It could require -- or
2 it could -- let's see. Let me start over.

3 It could make Focal not offer a product such as
4 Virtual Office because, as I mentioned, in that day one
5 market, we would have a large expense before a single
6 minute could even go over that network.

7 Q. Can you describe for the record what it would
8 require of Focal to create a POI?

9 A. The process to create a POI is that after the
10 joint engineering meetings and after the POI locations have
11 been decided, our network group will go to either third
12 party transport providers or Ameritech and purchase
13 transport to that location. And that is through the
14 ordering process, through whatever the standard ordering
15 process is and for the time for those facilities to be
16 built and tested and be put in place.

17 Q. You were asked some questions concerning page 13,
18 lines 20 -- let's see here -- starting on line 21 on that
19 page.

20 Do you recall being asked questions regarding
21 your statement concerning competitors being more successful
22 than Ameritech with regard to foreign exchange service?

1 A. Yes, I do.

2 Q. What was the basis for your conclusion that
3 competitors have been more successful than Ameritech?

4 A. As part of my job of negotiating interconnection
5 agreements with all RBOCs, including Ameritech, all
6 carriers, including Ameritech, it's my responsibility to
7 find out what is important for Focal's business plan and
8 how those, how our various products and services are
9 performing in the market.

10 And through that process I speak with marketing
11 people, sales people. And in my conversations with sales
12 groups, they have come to me many times and said that our
13 Focal Virtual Office is a product that is not available
14 from other customers.

15 Q. From other --

16 A. Other carriers. It is not available from other
17 carriers and that they're excited to purchase our product.

18 Q. And when you said marketing and sales groups, you
19 mean within Focal?

20 A. Yes, Focal's internal marketing and sales groups.

21 Q. Okay. You were asked to accept subject to check
22 a mathematical calculation that resulted from a

1 hypothetical that Mr. Binnig asked you concerning a hundred
2 million minutes of use. Do you recall being asked that?

3 A. Yes, I do.

4 Q. First of all, have you done the check?

5 A. Well, I've done the check.

6 Q. Okay. And it was what Mr. Binnig said?

7 A. The mileage component or the termination
8 component which is fixed that is not based on how many
9 miles that physical termination is, that is nothing more
10 than -- and I apologize that I didn't move the decimal
11 yesterday. It's nothing more than a hundred million
12 minutes times the .00021 or \$20,100 of termination --

13 Q. Okay. Now, you were asked following that
14 hypothetical to provide the information that's now
15 contained in Tatak Cross Exhibit 3. Do you recall being
16 asked to provide that?

17 A. Yes.

18 Q. And in case one might want to use the information
19 on Tatak Cross Exhibit 3 to prove as a fact what was asked
20 of you in that hypothetical, would that be a fair use of
21 this information?

22 A. I don't believe it would be a fair use of the

1 information. What was asked for Cross Exhibit -- Tatak
2 Cross Exhibit 3 were the total number of minutes
3 originating on Ameritech network and terminating to the
4 Focal network.

5 These minutes from the October, November, and
6 December months, calendar months are inclusive of Band A
7 calls, which are 0 to 8 miles or the local flat rate,
8 Band B calls, which are the 8 to 15 mile which are minute
9 sensitive, and Band C calls, toll calls.

10 Q. And are you also including anything else, any
11 other minutes?

12 A. No.

13 Q. That's all?

14 A. Those are just A, B, and C band calls local and
15 toll.

16 Q. Okay. And so it's not just FX minutes that are
17 reflected on Tatak Cross Exhibit 3?

18 A. No, not at all.

19 Q. One final question for you. You were asked
20 several times throughout Mr. Binnig's cross-examination of
21 you with regard to various portions of your prefiled
22 testimony whether the revised proposal Ameritech has set

1 forth on this issue satisfied the concern within your
2 testimony.

3 And I just wanted to ask you generally now for
4 the benefit of the record, why is it Focal's position that
5 the revised proposal on this Virtual Office issue is not
6 acceptable?

7 A. Well, as I stated earlier, what Ameritech's
8 proposal would do would put a contractual or barrier on
9 where POIs need to be placed rather than having both
10 Ameritech's local operations group and Focal's local
11 operations slash engineering group to get together and
12 understand, look at studies, understand where traffic is
13 being forwarded to, where traffic is passing, and where to
14 design an optimum network.

15 MS. HIGHTMAN: Thank you. I have no further questions
16 at this time.

17 MR. BINNIG: I do have some short recross.

18 EXAMINER WOODS: We got a question too.

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20
21
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EXAMINATION

BY EXAMINER WOODS:

1
2
3 Q. If it's not a proprietary number and if you know,
4 on average what does it take Focal to put a POI together?

5 EXAMINER SHOWTIS: Talking about costs.

6 THE WITNESS: Yeah. I don't know that it's
7 necessarily confidential, but I don't know what the, what
8 the transport, you know, the transport costs are per mile.
9 We can get that from, as I said, either a third party
10 vendor like the MCI-MFS World Comm, however you want to
11 call them, the AT&T TTG that have their own type of
12 transport, Nexlinks of the world, we will go to them and
13 price a circuit out to that point.

14 It's based on the mileage and whether that's
15 EDOS3 or OC48 if it's an optical or whatever. And then --
16 and if it is isn't available from any of those third party
17 customers or carriers, we will also go to Ameritech to
18 build -- to purchase that transport up to that POI. So I
19 cannot give you a number. I don't know what that DS3 is
20 per mile.

21 Q. Are those tariff purchases?

22 A. They are currently being purchased out of the

1 tariff, yes.

2 MR. BINNIG: Just a couple questions, Mr. Tatak.

3 REXCROSS-EXAMINATION

4 BY MR. BINNIG:

5 Q. The hypothetical that you responded to I think
6 wasn't the hypothetical I asked. The hypothetical I asked
7 was to assume a hundred million minutes per month of
8 Virtual Office traffic, foreign exchange traffic that
9 originates with Ameritech and delivered to Focal's network.

10 A. Yes.

11 Q. Okay. And that the aggregate mileage for that
12 traffic in a month was two million miles. And then I want
13 to know what -- just the mileage cost would be, not the
14 transport termination charges, the transport mileage.

15 A. I'm sorry. Okay. So the mileage or the, the
16 facility mileage that you're concerned about would be the
17 .00013 times the minutes times your total miles.

18 Q. Correct.

19 A. Okay. So 00013 times a hundred million is, like,
20 \$1300, I believe. Let's see.

21 Yeah, \$13,000.

22 Q. Times two million?

1 A. Times two million.

2 Q. So you would be talking millions of dollars in a
3 month?

4 A. Your hypothetical would come up with that number.

5 Q. Okay. Let me also ask you a question related to
6 testimony you just gave regarding establishing a POI. You
7 testified -- do you recall testifying yesterday during your
8 cross-examination that you believe that the cost to Focal
9 of transport should be no greater than the cost to
10 Ameritech of transport?

11 A. Yes. I remember saying that.

12 Q. Okay. I'm not going to mark this as an exhibit,
13 but I want to show you a copy of Focal's 10K for 1999. And
14 I'm showing, this is a printout from Edgar online.

15 A. Okay.

16 Q. Do you recognize this as Focal's 10K for 1999?

17 A. Yes, I do.

18 Q. Okay. And on page 8 --

19 A. Is this the same document?

20 Q. Yes.

21 A. Okay.

22 Q. On page 8 in the discussion of networks, there's

1 a reference to Focal's design of networks of providing
2 Focal with added negotiating leverage and obtaining
3 favorable terms from transport providers.

4 A. Okay.

5 Q. Is that a statement that Focal has made in
6 its --

7 A. I see that statement, yes.

8 Q. And is that a true statement, to your knowledge?

9 A. To my knowledge, it would be.

10 MR. BINNIG: No further questions, Your Honor.

11 MS. HIGHTMAN: One minute.

12 I have no further questions.

13 EXAMINER WOODS: Okay. Thank you, Mr. Tatak.

14 (Witness excused.)

15 EXAMINER WOODS: Call your next witness.

16 MS. WITTEBORT: Ameritech Illinois calls as its next
17 witness Eric Panfil.

18 (Whereupon Ameritech Illinois

19 Exhibits 2.0, 2.1, 2.2,

20 2.3, 2.4, and 2.5 were

21 marked for identification.)

22 MS. WITTEBORT: May I proceed?

1 EXAMINER WOODS: Yes.

2 E R I C P A N F I L

3 called as a witness on behalf of Ameritech Illinois, having
4 been previously duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MS. WITTEBORT:

8 Q. Please state your name for the record.

9 A. Eric L. Panfil.

10 Q. By whom are you employed?

11 A. I am employed by Ameritech.

12 Q. Have you filed in this proceeding a verified
13 statement that has now been marked for identification as
14 Ameritech Illinois Exhibit 2.0 and consists of 41 pages?

15 A. Yes, I have.

16 Q. And attached to that is there also something that
17 was marked throughout that verified statement as
18 Exhibit EP-01 consisting of 14 pages which now have been
19 marked as Ameritech Illinois Exhibit 2.1?

20 A. Yes.

21 Q. And further attachment Exhibit EP-02, which is
22 now Ameritech Illinois Exhibit 2.2?

1 A. Yes.

2 Q. And further attached to that, Exhibit EP-03,
3 which has now been marked for identification as Ameritech
4 Illinois Exhibit 2.3?

5 A. Yes.

6 Q. And further a one-page document captioned
7 Exhibit EP-04 which is now Ameritech Illinois Exhibit 2.4?

8 A. Yes.

9 Q. And did you also submit a supplemental verified
10 statement which has been marked for identification as 2.5?

11 A. Yes, I did.

12 Q. And this consists of 17 pages?

13 A. Yes, it does.

14 Q. Are there any changes or corrections that you
15 would like to make either to your verified statements or
16 any of the exhibits?

17 A. Yes. I have a few minor corrections.

18 In the verified statement of February 7th, on
19 page 16, line 15, towards the end of that line there should
20 be a period after the word "traffic." That's the end of a
21 sentence.

22 On page 35 of that February 7th verified

1 statement, at line number 14, in the quote of the proposed
2 language, line number 14, towards the end it should say,
3 Geographic area assigned to such, insert the term, NXX
4 code.

5 And in the supplemental verified statement,
6 page 14, line 13, the parenthetical in the middle of that
7 line the word "nor" should be "not," n-o-t, rather than
8 nor.

9 Q. Other than those corrections that you have just
10 made, are there any other changes that you would make to
11 the questions and answers contained in these two verified
12 statement?

13 A. No, there are not.

14 MS. WITTEBORT: I would move to admit these exhibits
15 that have been identified into the record and also make
16 this witness available for cross-examination.

17 EXAMINER SHOWTIS: Any objection?

18 MS. HIGHTMAN: No.

19 EXAMINER SHOWTIS: Ameritech Illinois Exhibits 2.0
20 through 2.5 are admitted.

21
22

1 (Whereupon Ameritech Illinois
2 Exhibits 2.0, 2.1, 2.2,
3 2.3, 2.4, and 2.5 were
4 admitted into evidence.)

5 EXAMINER SHOWTIS: You can cross-examine.

6 CROSS-EXAMINATION

7 BY MS. HIGHTMAN:

8 Q. Good morning, Mr. Panfil.

9 A. Good morning.

10 Q. I'm Carrie Hightman. I'm representing Focal in
11 this arbitration, and I have a few questions to ask you
12 today.

13 A. Just a few?

14 Q. Just a few.

15 You would agree with me, wouldn't you, that this
16 is the issue -- I'm sorry -- Issue 2 in this arbitration,
17 which is the issue regarding inter-carrier compensation for
18 Internet-bound calls is the only disputed issue in this
19 case that involves payments made by Ameritech to Focal?

20 A. To my knowledge it is the only issue that has
21 that effect.

22 Q. To the extent Ameritech can reduce payments it

1 makes to interconnecting CLECs for their transport and
2 termination of traffic originated on Ameritech's network,
3 you would agree, wouldn't you, that Ameritech reduces its
4 cost of providing local service?

5 A. In the context of local service, yes, I would
6 agree that that's a correct statement.

7 Q. And all else being equal, if Ameritech can reduce
8 its payments that it makes to these CLECs for their
9 transport and termination of calls that originate on
10 Ameritech's network and terminate on the CLEC's network,
11 that would increase the CLEC's cost of providing service,
12 wouldn't it?

13 A. To the extent that the CLEC receives less
14 compensation from Ameritech or from any other carrier, that
15 at least indirectly in a sense increases the costs. It
16 doesn't per se directly increase Focal's costs, but it
17 increases the amount of otherwise unrecovered total
18 network, total business costs that it must recover
19 elsewhere, probably from its customers.

20 Q. Turning to page 6 of your verified statement,
21 starting at line 14 you discuss generally the policy
22 directives of the FCC. And I've got some questions related

1 to that portion of your testimony.

2 I believe you state -- and I'm paraphrasing --
3 but that the Commission, this Commission should defer to
4 the FCC's rulemaking and that that would be consistent with
5 the FCC's policie if this Commission did so?

6 A. I believe it would be, yes.

7 Q. It is true, is it not, that the FCC has stated
8 that state commissions may determine that reciprocal
9 compensation is appropriate for Internet-bound calls?

10 A. Again, I don't know if they have used those exact
11 words, but I would say the effect of what they have said is
12 that a state could, among other possibilities, rule that
13 reciprocal compensation ought to be paid on those calls.

14 Q. So your answer to my question is, yes, the FCC
15 has stated that this --

16 MS. WITTEBORT: I object. I think he answered her
17 question.

18 MS. HIGHTMAN: I didn't finish my question, and I'm
19 entitled to get yes or no answers. We'll go on forever if
20 I can't get yes or no answers. I've got a lot of
21 questions, and there's no reason to restate my question
22 every time I ask it.

1 MS. WITTEBORT: Well, I think he answered your
2 questions. He said he wasn't sure that those were the
3 exact words.

4 MS. HIGHTMAN: I didn't quote the FCC.

5 EXAMINER WOODS: You said the FCC stated. That is
6 your question. You said, So the answer is yes, the FCC
7 stated? Then the objection came in.

8 MS. HIGHTMAN: I would ask that the witness answer yes
9 or no if that's possible. I think that's appropriate.

10 EXAMINER WOODS: I'll direct the witness please answer
11 yes or no if possible.

12 MS. HIGHTMAN: Thank you.

13 Q. Isn't it also true that the FCC has indicated in
14 its notice of proposed rulemaking that at least as a
15 tentative matter it has concluded that states should set the
16 reciprocal compensation rate for ISP-bound traffic?

17 A. I would not agree with that.

18 Q. Would you agree that in the FCC's notice of
19 proposed rulemaking the FCC tentatively concluded that it
20 was going to have the state set the reciprocal compensation
21 rate for ISP-bound traffic? Yes or no?

22 MS. WITTEBORT: I object. I think that speaks for

1 itself.

2 MS. HIGHTMAN: I'm sorry. I mean, I'm not -- I don't
3 think it's appropriate to object to questions regarding
4 what this witness has stated in his prefiled testimony.
5 He just opened this up.

6 EXAMINER WOODS: I think he can answer that question.

7 THE WITNESS: If I am limited to a pure yes or no
8 answer, I believe my answer would be no.

9 MS. HIGHTMAN: Q. Okay. Do you recall being asked
10 this exact question? I can show you if you'd like the
11 transcript from Ohio that was just, the hearing held
12 December 9th. It's page 206. It's the Ohio ICG
13 arbitration proceeding.

14 And let me just show this to you to refresh your
15 recollection and ask you if, in fact, you recall stating in
16 December in response to the question that, in the notice of
17 proposed rulemaking, the FCC tentatively concluded that it
18 was going to have the state set the reciprocal compensation
19 rate for ISP-bound traffic? And your answer was, Yes,
20 that's my understanding.

21 A. That was -- I'm assuming the transcript is
22 accurate. I don't specifically remember the question and

1 answer, but yes, that was my answer at that time.

2 Q. Do you recall sitting here today giving that
3 answer?

4 A. Not specifically, no.

5 Q. Were you wrong in Ohio?

6 A. I would, given the ability to give more than a
7 pure yes or no answer, I would qualify that answer
8 somewhat.

9 Q. But you're changing your testimony here today, is
10 that correct, from what you said in Ohio?

11 MS. WITTEBORT: Objection. He said he has no specific
12 recollection --

13 MS. HIGHTMAN: I asked him --

14 MS. WITTEBORT: -- recalling that he was there of what
15 he said at that moment in Ohio.

16 EXAMINER WOODS: I think to be technically correct you
17 need to ask him if he's changing the response today than
18 what appears in the transcript in the Ohio proceeding.

19 MS. HIGHTMAN: Q. Can you answer that question? Did
20 you hear it?

21 A. I'm not sure I understood the question. I'm
22 sorry.

1 EXAMINER WOODS: The question -- as I understand the
2 question you're being asked, because you don't recall
3 giving the testimony in Ohio, is whether or not the
4 testimony you're giving today is different from what the
5 testimony is that appears in the transcript that you were
6 just shown.

7 THE WITNESS: Again, I would say that it would only be
8 very slightly different. I would just quibble with the
9 wording or some of the implications of the wording
10 slightly.

11 MS. HIGHTMAN: Q. At pages 2 to 3 of your verified
12 statement -- actually, it's on page 3 of your testimony,
13 the answer that begins on line 15.

14 You state that the Illinois Commission supported
15 the FCC proposal to adopt rules governing inter-carrier
16 compensation. Is that a correct paraphrase of your
17 testimony?

18 MS. WITTEBORT: I'm sorry, Carrie. Could you refer me
19 to the page?

20 MS. HIGHTMAN: Page 3, the answer starting on line 15.

21 MS. WITTEBORT: Thanks.

22 THE WITNESS: Yes.

1 MS. HIGHTMAN: Q. That's a correct paraphrase?

2 A. I believe so.

3 Q. Okay. In fact, have you reviewed the document
4 filed by the Illinois Commerce Commission with the FCC on
5 this issue?

6 A. Yes, I have.

7 Q. And isn't it correct that the Illinois Commission
8 stated, and I quote, As an initial matter, the Illinois
9 Commerce Commission agrees with those commenters asserting
10 that the FCC erred in determining that Internet Service
11 Provider, ISP-bound traffic is interstate?

12 A. Yes. That's my recollection.

13 Q. And didn't the Illinois Commission also go on to
14 state, and I quote, The ICC continues to stand by its
15 decision and would urge the FCC to consider its ruling?

16 A. Reconsider its ruling, I believe.

17 Q. To reconsider its ruling?

18 A. Yes.

19 Q. Okay. And the decision that the Illinois
20 Commission referred to in that portion that I just read to
21 you was its decision in consolidated Dockets 97-0404,
22 97-0519, and 97-0525. Does that refresh -- is that your

1 understanding what they're referring to?

2 A. I'm not sure. There's a disconnect between what
3 I remember you reading and -- I thought we were referring
4 to the FCC's decision and not the Illinois Commission.

5 Q. Let me just to refresh your recollection, maybe
6 speed this up, I'll show you a copy of the comments the
7 Illinois Commission filed with the FCC that we were just
8 talking about. And I read to you the last sentence of the
9 second paragraph on the first page.

10 Can you look at this just to refresh your
11 recollection.

12 A. Yes. Now I think I understand the question.

13 Q. Okay. And the question is, when the Illinois
14 Commission stated to the FCC that the Illinois Commission
15 continues to stand by its decision, the decision that it
16 was continuing to stand by was the decision in the dockets
17 I just asked you about?

18 A. Yes.

19 Q. Thank you.

20 You indicate in your testimony I think about
21 page 5 that the -- you propose that this Commission require
22 the parties in this case to retroactively apply whatever

1 rule the FCC ultimately adopts. Is that correct?

2 MS. WITTEBORT: Could you give a page cite if at all
3 possible?

4 MS. HIGHTMAN: I did, page 5.

5 Q. Isn't that your position in this case?

6 A. Yes.

7 Q. And wouldn't you agree that another option which
8 the FCC has set forth for state commissions is for this
9 Commission to actually consider the issue on its own and
10 require implementation of whatever this Commission
11 concludes is appropriate regarding compensation for
12 Internet-bound traffic until the FCC rules?

13 A. Yes, I would certainly agree with that.

14 Q. With regard to this Issue 2, the reciprocal
15 compensation rate for Internet-bound calls, I want to make
16 sure that we're clear on what the issue actually involves
17 and what it doesn't involve.

18 This issue concerns the rate for traffic
19 terminating to the Internet. Isn't that right?

20 A. Setting aside any potential quibbles over the use
21 of the "word," terminate I would agree.

22 Q. Okay. Well, let me -- my next question will

1 clarify. I wasn't trying to quibble over terminate, but
2 what this issue does not address is the compensation rate
3 for all traffic terminating to Internet Service Providers.
4 Right?

5 A. That's correct. It's not intended to talk about,
6 administrative, for example, traffic between -- trouble
7 reports or whatever.

8 Q. Right. Okay.

9 And you would agree with me based on what you
10 just said, in fact, that Internet Service Providers receive
11 local calls that do not necessarily go to the Internet?

12 A. Yes.

13 Q. Like marketing departments, their employees?

14 A. I've made some of those calls myself.

15 Q. Troubleshooting where you call their help desk or
16 whatever it is?

17 A. Yes.

18 Q. And that traffic that's not going to the Internet
19 but just going to the ISP is no different, is it, than
20 other local traffic, the reciprocal compensation rate for
21 which is the subject of Issue 1?

22 A. I would agree with that, yes.

1 Q. Okay. Now, there are many types of customers
2 other than Internet Service Providers that generate more
3 inbound calls than outbound calls. Isn't that correct?

4 A. I would tend to believe that that's true, yes.

5 Q. For example, mail order companies or direct
6 marketers and even some large businesses generate more
7 inbound calls than outbound calls. Isn't that right?

8 A. Certainly.

9 Q. And a majority of the customers of those
10 companies use Ameritech as their local service provider.
11 Isn't that correct?

12 A. Presuming we're talking about customers located
13 in Ameritech's operating areas, yes.

14 Q. And Ameritech is not proposing any modification
15 to the reciprocal compensation rate for the transport and
16 termination of calls to those companies, i.e., mail order
17 companies and all the other ones you agree with me generate
18 more inbound calls than outbound calls. Right?

19 A. Not in this particular proceeding, no.

20 Q. You're not proposing that in any proceeding
21 currently pending before any regulatory agency?

22 A. No, nothing that is currently pending.

1 Q. You would agree with me, would you not, that were
2 it not for Ameritech providing those companies -- and I
3 mean by those companies the ones that generate more inbound
4 calls than outbound calls -- were it not for Ameritech
5 providing those companies' callers access to the public
6 switch network, the calls to those companies could not be
7 made? Right?

8 A. Again, setting aside the idea that they could
9 theoretically get service from anybody else, generally
10 someone is providing them basic connection to the network
11 that enables them to make those calls, be it Ameritech or
12 somebody else.

13 Q. I understand. And the reason I asked it the way
14 I asked it is because you agreed with me that for the
15 majority of customers that make the calls to those
16 companies, their local service provider is Ameritech?

17 A. Currently, yes.

18 Q. Okay. Now, when a 26 minute voice call is
19 originated on Focal's network and terminated on Ameritech's
20 network, is it your position that Ameritech recovers its
21 setup costs over seven times?

22 A. I would agree with that, yes.