

1 MR. BINNIG: Then I have no objection.

2 MS. VAN DUZER:

3 Q. You want me to restate the question?

4 A. Yeah, please.

5 Q. Nowhere in the FCC Orders upon which you
6 rely does the FCC state one way or another whether
7 ISP-bound traffic should be included in the
8 determination of whether the significant local
9 exchange traffic requirement is met?

10 MR. BINNIG: Again, I will object. It's not
11 the requirement. It's mischaracterizing the FCC's
12 Orders.

13 MS. VAN DUZER:

14 Q. The significant local exchange traffic.

15 MR. BINNIG: Same objection.

16 MS. VAN DUZER:

17 Q. Mr. Auinbauh, turning your attention to
18 page 3 of your testimony?

19 A. I'm sorry, which piece now, exhibit?

20 Q. Page 3 of your verified statement. Line
21 12, "Focal must self certify that it is providing and
22 will provide a significant amount of local exchange

1 service to a particular customer through the
2 requested loop transport combination." Nowhere in
3 the FCC's orders upon which you rely does the FCC
4 state whether ISP traffic should be included in that
5 determination, is that correct?

6 A. I don't think I can agree with that
7 characterization. I think the FCC has very clearly
8 said that ISP traffic is interexchange access in
9 regard to how they characterize traffic bound for an
10 ISP. So I hope that answers your question.

11 Q. Do any of the orders and specifically
12 the FCC's UNE Remand Order which discuss the EEL
13 issue and the Supplemental Order which discuss the
14 EEL issue, does the FCC in either of those Orders
15 discuss whether or not ISP traffic should be included
16 in determining whether or not a CLEC needs a
17 significant amount of local exchange service to a
18 particular customer through the requested loop
19 transfer combination?

20 A. To be sure I answer your question, they
21 do in the UNE Remand Order discuss the nature of
22 classification of ISP-bound traffic as interexchange.

1 If I remember -- I'm sorry, I can't recall off the
2 top of my head. But it seems to me that they do
3 discuss that in that Order.

4 Q. In the context of the significant amount
5 of local exchange service in the discussion of EELs,
6 is there any discussion of ISP traffic?

7 A. What I am struggling with trying to
8 answer your question is that the FCC does discuss and
9 has for quite awhile distinguished ISP traffic as
10 interexchange traffic. And so when I use the term
11 "local exchange traffic," that doesn't connect with
12 ISP traffic because ISP traffic isn't local exchange
13 revenue.

14 Q. Mr. Auinbauh, isn't it true that the FCC
15 has never discussed ISP traffic in the context of
16 EELs?

17 A. I don't know specifically if they ever
18 discussed it. I do know that, when they issued their
19 supplemental order, the requirement was that a
20 combination of loop transport converted from special
21 access would only be permissible under certain
22 circumstances and that was qualified with a

1 significant amount of local. And I don't have all
2 the exact words there, and local is an ISP, is where
3 I am having trouble.

4 Q. And in that discussion they never
5 explicitly mentioned ISP traffic, isn't that correct?

6 A. But you won't expect them to because it
7 isn't at all --

8 Q. Isn't the answer to my question, isn't
9 it correct that in that discussion they never
10 explicitly mentioned ISP traffic?

11 A. I think that's true.

12 Q. Thank you. Didn't the FCC note in
13 paragraph 25 in its declaratory ruling that it has a
14 policy of treating ISP traffic as local?

15 MR. BINNIG: Do you have a copy of that? We
16 will stipulate that the FCC's declaratory ruling says
17 what it says.

18 MS. VAN DUZER: Your Honor, throughout the
19 testimony Mr. Auinbauh cites and quotes numerable FCC
20 orders and discusses them. And I am just trying to
21 clarify that the FCC has never looked at this issue,
22 has never discussed explicitly ISP traffic in the

1 context of the EELS, and that it has a history of
2 treating ISP traffic as local.

3 EXAMINER WOODS: We understand where you are
4 trying to go. The question is how you are going to
5 get there. I think if you want to ask him if he is
6 aware of that as opposed to are you aware of that the
7 FCC said that, then I think that's an appropriate
8 question.

9 MS. VAN DUZER:

10 Q. Are you aware that the FCC has stated
11 that it has a policy of treating ISP traffic as
12 local?

13 A. No, I don't think that I am. I am aware
14 that the FCC had ruled back about the '83-'84 time
15 frame that ESP traffic, which I believe the FCC has
16 subsequently said ISP traffic is part of ESP traffic,
17 should be -- that the ESP should be allowed to buy
18 the interexchange access that they use at the same
19 rates as a business line. I think that's maybe where
20 your going. And there was some court cases, claims
21 of them abdicating authority and saying basically
22 that they hadn't abdicated authority, they had just

1 simply decided to apply the local exchange rate when
2 an ESP was buying the interexchange service that they
3 buy.

4 Q. So you would agree?

5 A. With all the information that I provided
6 to you in that answer, I would agree that they have
7 allowed ESPs to purchase local exchange service to
8 use at local exchange rates for the interexchange
9 services that they provide.

10 Q. Hasn't the FCC stated that state
11 commissions may continue to treat ISP traffic as
12 local?

13 MR. BINNIG: I'll object to the vagueness of
14 the question. If he understands it, he can answer.

15 THE WITNESS: I'm struggling with that.
16 Point me wherever we are talking about in the
17 testimony so I have it in context.

18 MS. VAN DUZER:

19 Q. Well, on page 3, line 16, you suggest
20 that Focal cannot make its certification between
21 internet traffic as local exchange traffic. And then
22 I am trying to find the section of your testimony

1 where you discuss that at length. Page 6, the first
2 half of that page you discuss the UNE Remand Order
3 and the Supplemental Order in the context of the
4 significant local exchange language relating to EELs.

5 A. Okay.

6 Q. Hasn't the FCC stated that state
7 commissions may treat ISP traffic as local?

8 MR. BINNIG: I have the same objection.

9 MS. HIGHTMAN: You withdrew your objection.

10 MS. VAN DUZER: You said if he understood
11 the question.

12 EXAMINER WOODS: If he understands the
13 question, he can answer it.

14 THE WITNESS: I am struggling with it as I
15 was earlier with the context. Are you referring in
16 regard to intercarrier compensation?

17 MS. VAN DUZER:

18 Q. I am referring in regard to a number of
19 things, including intercarrier compensation. I think
20 that the FCC -- I think that you said earlier that
21 you were aware that the FCC has a policy of treating
22 ISP services as local for certain purposes. And I am

1 just asking, hasn't the FCC stated that state
2 commissions may treat ISP traffic as if it were
3 local?

4 MR. BINNIG: I am going to object because
5 she has mischaracterized his testimony. What he said
6 was he was aware that the FCC had exempted ESP's from
7 paying exchange access rates for the interexchange
8 access service that they buy. Instead, they would
9 pay the rates of a local business line set out in a
10 carrier's local tariff.

11 EXAMINER WOODS: Right, that was his
12 testimony. Well, that's not saying that they are
13 treating ISP traffic as local. That's different.
14 That's an inference that you are trying to draw from
15 the FCC's treatment of it. That's not what he said.

16 MS. VAN DUZER:

17 Q. Do you understand my question as being
18 simply whether or not the state commissions may
19 continue to treat ISP traffic as if it is local
20 traffic?

21 A. For what purpose? That's where I am
22 struggling.

1 Q. Well, I believe the state commissions
2 have the authority to treat it as if it is local
3 traffic for any purpose.

4 MR. BINNIG: There is no question pending.

5 EXAMINER SHOWTIS: To shorten it up, why
6 don't you answer the question but put at the end of
7 the question "for any purpose." So I think that's
8 what she is trying to -- she is not limiting it to
9 any purpose.

10 MS. VAN DUZER: I am not.

11 EXAMINER SHOWTIS: So I think if I can
12 recall her question -- just state the question again
13 and then add at the end of it to shorten the
14 arguments "for any purpose."

15 MS. VAN DUZER: That's fine.

16 Q. Hasn't the FCC stated that the state
17 commissions may continue to treat ISP traffic as if
18 it is local for any purpose?

19 A. No, I don't think the FCC has said it
20 could be treated as local for any purpose.

21 Q. Is there anything in any statute or FCC
22 order that would prevent this Commission from

1 concluding that internet-bound traffic be deemed
2 local for determining whether the significantly local
3 language is met?

4 MR. BINNIG: I will object. I think the
5 question necessarily calls for a legal conclusion.

6 EXAMINER WOODS: Well, we understand he is
7 expressing his opinion. He can answer.

8 THE WITNESS: I'm not sure I entirely
9 understood the question. But given the difficulty we
10 are having here, let's see if I can help a little
11 bit. Are you asking me if there is anything that
12 precludes treating internet traffic as local for
13 purposes of certifying significant amounts of local?

14 MS. VAN DUZER:

15 Q. Yes. I am asking if you are aware of
16 any reason that this state commission can't do that?

17 A. Yes, I am. I think there is two
18 significant reasons. First, the FCC has made it very
19 clear that ISP traffic isn't local. And in their
20 Supplemental Order they also made it clear that,
21 until they get done with the Fourth Further Notice,
22 they did not require and do not require conversion of

1 existing special access to loop and transport
2 combinations except under this specific conditions
3 that they discuss in that order which includes
4 providing a significant amount of local.

5 Well, ISP traffic isn't local. The FCC
6 has been enormously clear on that in order after
7 order. As recently as their Remand Order they made
8 it clear that ISP is interexchange access traffic.
9 In the Bell South 271 Order -- I'm sorry, the Bell
10 Atlantic 271 Order they reaffirmed that ISP
11 compensation wasn't even a check list item, had
12 nothing to do with local.

13 So whether or not intercarrier
14 compensation may be treated as local for ISP has
15 nothing to do with whether or not ISP is local.

16 Q. Mr. Auinbauh, turning to page 6 of your
17 testimony, of your verified statement, I apologize,
18 you refer to the FCC's Supplemental Order?

19 A. Yes.

20 Q. Wasn't the purpose of this significantly
21 local certification to ensure that IXC's did not try
22 to use EELs as a substitute for special access

1 service?

2 A. That may be a fair partial
3 characterization of the reasoning. The FCC states
4 that the reasoning is that they didn't have a
5 complete record in front of them. And they plan to
6 develop that complete record in the Fourth Further
7 Notice of proposed rulemaking. And so to not create
8 an unexpected outcome, they basically issued the
9 Supplemental Order saying let's leave this this way
10 until we get done. And they said in that order that
11 they would be done by June 30, I think, of this year,
12 determining how the unbundling requirements would
13 apply in regard to use of those facilities for
14 access.

15 Q. So was the purpose of the significantly
16 local certification to ensure that IXCs did not try
17 to use EELs as a substitute for special access?

18 MR. BINNIG: I will object to the question
19 as being asked and answered. This is just the exact
20 question she asked. He gave his answer.

21 EXAMINER WOODS: I think so, too.
22 Sustained.

1 MS. VAN DUZER: I will withdraw the
2 question.

3 Q. Mr. Auinbauh, is it true that
4 Ameritech has now withdrawn its original cutoff date
5 proposal?

6 A. In regard to conversion, yes, that's
7 addressed in the supplemental which is Exhibit 6.

8 Q. Does that mean that, if a combination is
9 in place at the time the order for conversion is
10 made, Ameritech will perform the conversion?

11 A. There is a lot assumed in that question
12 so let's make sure we have an understanding as I
13 answer. The answer is a qualified yes as long as all
14 of the other conditions necessary to be able to make
15 the conversion are met.

16 Q. Would you agree that an EEL is
17 functionally equivalent to a special access circuit?

18 A. In some cases it may be. In other cases
19 it may not.

20 Q. When is it not functionally equivalent
21 to a special access circuit?

22 A. Well, it depends on what, obviously, the

1 CLEC or whoever is buying it asks for. To the extent
2 that special access may go all the way from a
3 customer's premises, end user customer's premises to
4 a POP, I think the ex parte that's attached to the
5 supplemental makes it clear that only in certain
6 circumstances would it go all the way to beyond a
7 point of collocation.

8 The FCC made it real clear in their
9 definition of the antecedent link functionality that
10 they made a requirement for under the unbundled local
11 switching being able to opt out of providing
12 unbundled local switching. One of their requirements
13 is that an EEL be made available. And in that
14 particular case they define that as only going to
15 collocation. Clearly, special access could go beyond
16 collocation and never touch collocation. So there
17 are differences.

18 Q. That's Ameritech's position that the FCC
19 requires that an EEL terminate at a collocation cage,
20 is that correct?

21 A. No, actually, I think it was pretty
22 clear FCC requirement in the UNE Remand Order where

1 they said here is what an EEL is, here is what needs
2 to be made available.

3 Q. That's Ameritech's interpretation of
4 that Order?

5 A. It's my opinion that it's very clear in
6 the UNE Remand Order.

7 Q. That's your opinion. You would agree,
8 would you not, that an EEL can be provisioned without
9 terminating at a collocation space as a technical
10 matter?

11 A. I'm not sure I know exactly what you are
12 asking. They would have to, of course, be in
13 agreement what an EEL is and how it's provisioned.
14 And since we are struggling a little bit with what my
15 opinion of what an EEL is and what yours is, given
16 all of that assumption, to the extent that there is a
17 request to connect a loop to transport, it's
18 technically feasible to do that, yes.

19 Q. Without collocation?

20 A. It's technically feasible to do that.

21 Q. With regard to the recurring and
22 non-recurring charges that would be assessed to

1 provision an EEL, didn't Focal ask in discovery what
2 those charges would be?

3 A. It is my understanding that they did.

4 MS. VAN DUZER: May I approach?

5 EXAMINER WOODS: Yes, ma'am.

6 MS. VAN DUZER:

7 Q. Mr. Auinbauh, do you recognize what I
8 have just handed you as Ameritech's response to
9 Focal's Supplemental Data Request 174?

10 A. I'm sorry, I don't know the RFI number
11 but, yes, I do recognize this document.

12 MS. VAN DUZER: I am marking this document
13 as Auinbauh Cross Exhibit 1.

14 (Whereupon Auinbauh Cross
15 Exhibit 1 was marked for
16 purposes of identification as
17 of this date.)

18 MS. VAN DUZER:

19 Q. Could you turn to the last page of that
20 response? Is it true that this is one way in which
21 Ameritech can provision an EEL?

22 A. I'm sorry. Are we talking about the

1 same thing, the diagram?

2 Q. Yes.

3 A. I would have to say no. It appears that
4 there is many, many customers involved here.

5 Q. Looking at the first page of the
6 response where Ameritech Illinois states right under
7 Response, "Without waiving any of its objections
8 Ameritech Illinois agrees that the attached diagram
9 illustrates one possible physical structure of the
10 network used to provision special access service from
11 the end user premises to Focal's central office." Do
12 you see that?

13 A. Uh-huh.

14 Q. Mr. Auinbauh, there is no collocation
15 depicted on this diagram on the last page, is there?

16 A. No, but I think you just said that this
17 illustrates special access which is why I am
18 confused.

19 MS. VAN DUZER: Could we go off the record
20 for a moment.

21 EXAMINER WOOD: If you wish.

22 (Whereupon there was then had

1 an off-the-record
2 discussion.)

3 MS. VAN DUZER: I would move the exhibit
4 into the record.

5 EXAMINER WOODS: Objections?

6 MR. BINNIG: No objections.

7 EXAMINER WOODS: Auinbauh Cross Exhibit 1 is
8 admitted without objection.

9 (Whereupon Auinbauh Cross
10 Exhibit 1 was admitted into
11 evidence.)

12 MS. VAN DUZER:

13 Q. It's true, is it not, that T-1s are
14 currently provisioned today without a requirement for
15 collocation by the purchasing carrier, is that
16 correct?

17 A. That's I think too broad for me to be
18 able to answer.

19 Q. Does Ameritech provision T-1s without
20 requiring the purchasing carrier to collocate?

21 A. I am very sure that Ameritech Illinois
22 provides DS-1 level service to customers. It's not

1 clear to me in the context of your question what you
2 are talking about. In other words, sure, end user
3 customers might buy DS-1 service from Ameritech
4 without having collocation.

5 MS. VAN DUZER: Thank you. No more
6 questions, Your Honor.

7 EXAMINER WOODS: Mr. Harvey.

8 MR. HARVEY: Well, I kind of think here that
9 a ruling on Mr. Binnig's motion to strike would have
10 a great deal of effect on, you know, what I had for
11 this witness.

12 EXAMINER WOODS: As we recall, the issue was
13 Mr. Garvey's testimony and there was a question by
14 Mr. Binnig as to whether or not Ameritech was going
15 to do something. He indicated he couldn't make that
16 representation but there would be a witness who
17 could. Is that my recollection?

18 MR. BINNIG: I believe this witness has.

19 EXAMINER WOODS: I will get to that. I
20 think this witness just did that. So I think the
21 question now becomes the way to resolve this.

22 MR. HARVEY: I guess I have two things here.

1 First of all, what gets struck; and, second of all,
2 you know, what the ruling is on the motion.

3 MR. BINNIG: I specified this.

4 EXAMINER SHOWTIS: I have got the --

5 EXAMINER WOODS: Our inclination right now
6 would be to go ahead and grant the motion to strike.

7 MR. BINNIG: And then we will excise, and I
8 think Mr. Harvey and I could determine pretty readily
9 what should be excised.

10 MS. HIGHTMAN: Well, I think the whole point
11 is that we objected. So I don't think that you and
12 Mr. Harvey should decide.

13 MR. BINNIG: The Hearing Examiner is
14 indicating he is inclined to grant the motion. If he
15 does so, I am saying, if he decides to do so, I
16 believe Mr. Harvey and I could agree on what
17 provisions could come out of Mr. Auinbauh's
18 supplemental verified statement which is responding
19 solely to Mr. Garvey.

20 MS. HIGHTMAN: But ask me when you know what
21 Staff's position is then.

22 MR. HARVEY: Well, I was hoping that

1 somebody would let me wade in here.

2 MS. HIGHTMAN: You ask for way too much.

3 MR. HARVEY: Now, as I understand the motion
4 to strike, it was based upon the withdrawing of the
5 November 28, '99, cutoff date for ordering EELs that
6 had been special access. Based on that and a review
7 of Ms. -- and I at least didn't manage to call you
8 Ms. Fleck, sir, I am a little bit concerned with the
9 breadth of what we are talking about here. I suspect
10 that there are three ways to approach this, the first
11 of which would be to grant Mr. Binnig's motion in its
12 entirety and strike everything between page 10, line
13 8, and "Does this conclude your testimony for
14 practical purposes," or rather page 14, line 16.

15 A review of the matrix of the issues,
16 though, leads me to believe that that may not be
17 necessarily what's called for in light of the fact
18 that there is still the outstanding sort of issue of
19 what ordinarily combined and currently combined mean.
20 I'm not sure that's outcome determinative, if Mr. --
21 if Ameritech wants to withdraw it. Now, if this is
22 not the case, Mr. Binnig will no doubt tell you in a

1 minute. That is one possible outcome.

2 The second would be to strike page 10,
3 lines 8 through 11, line 2, lines of Mr. Garvey; page
4 14, lines 7 through 15 of Mr. Garvey; and absolutely
5 nothing from Mr. Auinbauh.

6 The third would be, of course, to strike
7 everything in Mr. Garvey's testimony that Mr. Binnig
8 requests be stricken and everything in Mr. Auinbauh's
9 testimony between page 8, line 22, and "Does this
10 conclude your testimony."

11 EXAMINER WOODS: We are about due for a
12 break. So what I would like to do is take a break,
13 see if you two can get this thing worked out between
14 the two of you, actually between all three parties,
15 to see if we can come up with an accomodation on how
16 to proceed with this.

17 (Whereupon the hearing was i
18 a short recess.)

19 EXAMINER SHOWTIS: Let's go back on the
20 record. We asked the parties to talk to each other
21 to see if they could reach an agreement with regard
22 to the motion to strike certain portions of the

1 testimony of Mr. Garvey: Would someone just report
2 what has been discussed?

3 MR. BINNIG: Your Honors, I don't think we
4 have been able to reach any agreement, but let me
5 sort of summarize my motion, the basis for my motion,
6 and portions of Mr. Auinbauh's supplemental verified
7 statement that we would withdraw if the motion is
8 granted. The motion to strike related to testimony
9 of Mr. Garvey on page 10, line 8, continuing through
10 page 15, line 6, and that is a portion --

11 MR. HARVEY: I think you mean 14, line 6.
12 All right.

13 MR. BINNIG: And then a portion of lines 16
14 through 17. The basis for the motion was that this
15 testimony was irrelevant because it addresses the
16 issue and begins with this question, the issue of
17 Ameritech's proposal that the conversion of special
18 access to EELs to loop transport combinations
19 existing on or before November 24, 1999, that cutoff
20 date that applied for such conversions. Mr. Garvey
21 summarizes Ameritech's rationale for that proposed
22 cutoff. His next question he disagrees with

1 Ameritech's rationale. The next several questions he
2 explains why he disagrees with Ameritech's rationale.
3 Then he summarizes his recommendation as to
4 Ameritech's proposed cutoff date.

5 Ameritech has withdrawn the proposal of
6 a cutoff date. Mr. Auinbauh has made that clear in
7 his testimony today. That proposal no longer exists
8 so this testimony is by definition irrelevant. If
9 the motion is granted, then we would withdraw from
10 Mr. Auinbauh's verified supplemental statement the
11 testimony that begins on page 8, line 2 through page
12 13, line 6, which is responding directly to the
13 portions of Mr. Garvey's testimony that we are moving
14 to strike

15 EXAMINER WOODS: Mr. Harvey?

16 MR. HARVEY: Staff's position is this, and
17 it takes no position on -- well, let me just explain.
18 We've had no part in the framing of these issues.
19 That's clearly a matter that the parties have
20 undertaken. And to the extent that Section 315, that
21 any interpretation of Section 315(b) is still called
22 for, even subsequent to the withdrawal of Ameritech's

1 cutoff date, by the arbitration of the petition as
2 placed before the Commission, then there is some
3 merit to not striking all this.

4 If that proves not to be the case, if
5 you find that there is no issue before the Commission
6 that requires any interpretation of Section 315(b),
7 then it appears that Mr. Binnig is correct. And
8 Staff doesn't take a position on whether such an
9 issue exists because we had no part in that. We had
10 no part in the negotiations of this contract or in
11 apparent impasse in the negotiations which led to
12 this petition. So we can't speak to that.

13 I am merely suggesting that in the event
14 that there is any issue that requires resolution
15 under Section 315(b) before this panel, then there
16 may be some merit to retaining some of Mr. Garvey's
17 testimony on the subject. If not, not.

18 MS. HIGHTMAN: I think that we have stated
19 yet for the record the portion of the testimony that
20 Ameritech seeks to strike that we believe should not
21 be stricken. So I think for the record and for the
22 Hearing Examiners' understanding of the issue, I

1 would just state which portion we would like to
2 retain in.

3 MR. HARVEY: And if I could be heard on
4 that, I think I did state that. I stated parts Staff
5 wants to -- under the various findings that I have
6 described, what the Staff's recommendations would be
7 in this regard. Again, this is a matter that I think
8 requires a ruling on whether there is an issue that
9 implicates Section 315(b) and its interpretation
10 before this Commission.

11 MS. HIGHTMAN: For the record, the portions
12 -- I think it was Mr. Harvey's second option, the
13 language that he proposed could potentially be kept
14 in is the language that Focal would like to keep in
15 which is on page 11, line 4 through page 13, line 2,
16 just so we are clear.

17 MR. BINNIG: I guess I would reiterate, not
18 that it necessarily is a controlling factor here, but
19 my motion is to strike all of Mr. Garvey's testimony.
20 And I believe that either it all should be stricken
21 or none of it should be stricken.

22 MS. HIGHTMAN: Actually you don't mean all,

1 but your motion is broader than --

2 MR. BINNIG: With respect to the motion that
3 I moved to strike, the motion is to remove all of
4 that, not portions of it. And my motion is that I
5 believe my motion should be granted in full or
6 denied.

7 MS. HIGHTMAN: In response to that, if
8 that's Ameritech's position, then we would propose
9 that it all be kept in.

10 MR. HARVEY: The Staff concedes that some of
11 it is clearly irrelevant in light of Ameritech's
12 proposal, at least some of it.

13 EXAMINER WOODS: We have conferred and I
14 think if you read Mr. Garvey's testimony fully, it is
15 apparent that he is addressing all issues under Issue
16 3. We think there are still open issues under Issue
17 3 relating to the interpretation of the FCC Rule
18 315(b). We recognize that the one paragraph
19 regarding -- the various paragraphs regarding the
20 cutoff date are probably, if not irrelevant, at least
21 immaterial at this time, but I don't think leaving
22 them in at this time is going to greatly impact the

1 outcome of this case. So the motion is denied. The
2 entire testimony will come in as well as the entire
3 testimony of Mr. Auinbauh.

4 (Whereupon Ameritech Exhibits 5
5 and 6; and Staff Exhibit 3.0
6 were admitted into evidence.)

7 EXAMINER WOODS: Do you have cross?

8 MR. HARVEY: In light of this, I'm not sure
9 that I do. I will leave it alone.

10 EXAMINER WOODS: Redirect?

11 MR. BINNIG: Can we have 30 seconds?

12 (Whereupon the hearing was in a
13 short recess.)

14 MR. BINNIG: No redirect, Your Honor.

15 EXAMINER WOODS: Thank you. Next witness?

16 MR. HARVEY: As a preliminary matter we are
17 going to put Pat Phipps on first. But I would like
18 to -- if I could as a preliminary matter, I would put
19 Chris Graves' testimony into evidence as Staff
20 Exhibit -- does yours have a number on it, Pat? It's
21 two, right?

22 MR. PHIPPS: It's two.

1 MR. HARVEY: The parties have agreed,
2 subject to a stipulation and I believe to several
3 data request responses that Mr. Binnig has, that
4 Mr. Graves' testimony which I will mark as Staff
5 Exhibit Number 1 will go into evidence without any
6 cross examination. It's verified and consequently
7 the need to establish a foundation for it is not
8 here. And we would move Chris Graves' testimony as
9 Staff Exhibit Number 1 into evidence subject to
10 Mr. Binnig's --

11 MR. BINNIG: Can we go off the record?

12 EXAMINER SHOWTIS: Off the record.

13 (Whereupon there was then had
14 an off-the-record
15 discussion.)

16 (Whereupon Staff Exhibit 1
17 and 2 and Graves Cross
18 Exhibits 1 and 2 were marked
19 for purposes of
20 identification as of this
21 date.)

22 EXAMINER SHOWTIS: Let's go back on the

1 record.

2 MR. BINNIG: Your Honor, we are also
3 admitting by stipulation at this time Graves Cross
4 Examination Exhibit 1 which is the response of
5 Mr. Graves to Ameritech Illinois Data Request Number
6 1 to Staff and Graves Cross Examination Exhibit 2
7 which is Mr. Graves' response to Data Request Number
8 2 of Ameritech Illinois. And I think by stipulation
9 the parties have agreed that those can be entered
10 into the record.

11 And then we also have Mr. Miri's
12 testimony; the parties have agreed to waive cross of
13 Mr. Miri and to allow his verified statement to be
14 submitted by stipulation. And we would enter that
15 into the record as Ameritech Illinois Exhibit 7.

16 EXAMINER SHOWTIS: I believe Staff Exhibit 1
17 has already been admitted and, if it's not, it's
18 admitted again. That's Mr. Graves' verified
19 statement. Graves Cross Exhibits 1 and 2 and
20 Ameritech Illinois Exhibit 7 are also admitted into
21 evidence.

22 (Whereupon Ameritech Illinois

1 Exhibit 7 was marked for
2 purposes of identification as
3 of this date and admitted
4 into evidence; and Staff
5 Exhibit 1 and Graves Cross
6 Exhibits 1 and 2 were
7 admitted into evidence.)

8 MR. HARVEY: Are we ready for Mr. Graves
9 now?

10 EXAMINER SHOWTIS: No, Phipps.

11 MR. HARVEY: Maybe I will just go stick my
12 head into the ground and turn into a radish or
13 something.

14 P A T R I C K P H I P P S

15 called as a Witness on behalf of Staff of the
16 Illinois Commerce Commission, having been first duly
17 sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. HARVEY:

20 Q. Please state your name for the record
21 and spell it.

22 A. Patrick Phipps, P-H-I-P-P-S.

1 Q. And do you have, Mr. Phipps, before you
2 a document consisting of 24 pages of text in question
3 and answer form with two attached exhibits?

4 A. Yes, I do.

5 Q. Was that prepared by you or at your
6 direction and supervision?

7 A. Yes.

8 Q. If I were to ask you the questions
9 contained -- well, let me ask you this. Do you have
10 any additions, revisions, redactions or any editorial
11 changes that you want to make to this statement?

12 A. Yes, I have one, and that is to strike
13 Footnote 20 on page 21.

14 Q. And that would be through discussions
15 with representatives, etc.?

16 A. That would be the one.

17 Q. And with that redaction are there any
18 other changes you want to make to your verified
19 statement?

20 A. No.

21 Q. If I were to ask you the questions
22 contained in this verified statement today, would

1 your answers be the same as they were on February 28,
2 2000, when you submitted this statement?

3 A. They would.

4 MR. HARVEY: That being the case, I would
5 move Staff Exhibit Number 2, the verified statement
6 of Patrick L. Phipps into evidence and tender the
7 witness for cross examination.

8 EXAMINER SHOWTIS: Is there any objection?

9 MS. HIGHTMAN: No.

10 MR. BINNIG: No objection.

11 EXAMINER SHOWTIS: Staff Exhibit 2 is
12 admitted.

13 (Whereupon Staff Exhibit 2 was
14 admitted into evidence.)

15 EXAMINER WOODS: Ms. Hightman.

16 CROSS EXAMINATION

17 BY MS. HIGHTMAN:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. With regard to your testimony, verified
21 statement, at page 4, line 69?

22 A. Yes.

1 Q. Actually, let's move up to line 67
2 first. You refer to an ideal reciprocal compensation
3 mechanism, don't you?

4 A. Yes.

5 Q. Are you familiar with any reciprocal
6 compensation arrangement between an ILEC and a CLEC
7 which meets the ideal which you describe in your
8 testimony?

9 A. I'm not personally aware of such
10 arrangement, no.

11 Q. Moving down a couple lines to line 69
12 you refer to costs incurred in terminating traffic,
13 right?

14 A. Yes.

15 Q. Did you say yes?

16 A. Yes.

17 Q. Isn't the rate for reciprocal
18 compensation intended to recover, not just the cost
19 of terminating traffic, but also the cost of
20 transporting the traffic?

21 A. Those are both pieces of reciprocal
22 compensation, yes.

1 Q. And, again, in the next sentence on line
2 71 you refer to terminating traffic?

3 A. Yes.

4 Q. Right? Again, the focus -- did you say
5 yes?

6 A. Yes, I'm sorry.

7 Q. Again, the focus with regard to the
8 appropriate compensation level is to look at both
9 transport and termination when we refer to reciprocal
10 compensation, right?

11 A. Well, depending on the traffic but I
12 would say that when we are talking about reciprocal
13 compensation in a general sense, that that would
14 include both transport and termination.

15 Q. And would it be correct to state that
16 the condition that you put in the prior answer before
17 you said "generally speaking, yes, it would refer to
18 both" is that you would want to be sure that both
19 transport and termination functions are being done?

20 A. Yes, and that's what I meant by
21 depending on the traffic.

22 Q. At the bottom of page 5 and top of page

1 6 of your verified statement you state that the FCC
2 has stated that traffic delivered to ISPs is
3 jurisdictional interstate, is that right? And I am
4 paraphrasing you.

5 A. Yes, that would be a fair
6 characterization of that.

7 Q. Didn't the FCC also state that it was
8 not eliminating the state commissions ability to
9 determine the proper payment for these functions? And
10 I think you address that a little bit later in your
11 testimony.

12 A. Yes. And I believe that in the context
13 of this instant proceeding I think the appropriate
14 language we should be looking at is Footnote 7 on
15 page 7 where it says, "Even when parties to
16 interconnection agreements do not voluntarily agree
17 on an intercarrier compensation mechanism for
18 ISP-bound traffic, state commissions nonetheless may
19 determine in their arbitration proceedings at this
20 point that reciprocal compensation should be paid for
21 this traffic."

22 Q. And are you also aware -- isn't it true

1 that the Illinois Commission filed a document with
2 the FCC stating that it disagrees with the FCC's
3 position that internet-bound traffic is interstate?

4 A. I had not read that.

5 Q. You are not aware of any position that
6 this Commission has taken on the issue of the
7 jurisdictional nature of reciprocal compensation for
8 internet-bound calls?

9 A. I have not read the comments, no.

10 Q. Are you familiar with the comments
11 generally as you sit here today?

12 MR. HARVEY: Object, that's asked and
13 answered.

14 MS. HIGHTMAN: He didn't read them. I am
15 asking him if he knows.

16 EXAMINER WOODS: He said he didn't read
17 them. I think that's an appropriate question.

18 MS. HIGHTMAN:

19 Q. Are you familiar with them?

20 A. Just in what I have heard earlier today
21 in crossing other witnesses that, yes, I think that's
22 the general comment.

1 Q. Would it be fair to state that you did
2 not know until today that the Illinois Commission had
3 stated what I previously described to you to the FCC
4 with regard to the interstate/intrastate issue?

5 A. I don't think I am personally aware of
6 that right now. I think that based on comments by
7 others that that is their opinion on what's included
8 in that statement.

9 Q. You would agree, wouldn't you, that this
10 Commission should insure that the compensation
11 mechanism it approves in this proceeding compensates
12 Focal for the costs Focal incurs in transporting and
13 terminating traffic to ISPs?

14 MR. FRIEDMAN: May I state an objection
15 before you answer? Maybe we can have a standing
16 stipulation that when you use the word "termination,"
17 you don't intend to connote anything in particular
18 having to do with what it is exactly that Focal does
19 with its traffic.

20 MS. HIGHTMAN: I will rephrase it to say
21 "delivered," just to solve your problem for this
22 question.