

(Whereupon, CUB
Exhibit Nos. 2.0, 2.0P, 2.01 and
2.01P were marked for
identification.)

JUDGE GILBERT: We're been back on the record.

(Witness sworn.)

JUDGE GILBERT: Thank you.

ILENE BAYARD,

having been called as a witness herein, after having
been first duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION

BY

MS. SATTER:

Q. Ms. Bayard, can you please state your name.

A. Ilene Bayard, B-a-y-a-r-d.

Q. And do you have in front of you documents
entitled CUB Exhibit 2.0 and 2.01, a proprietary and
a nonproprietary version of those documents?

A. Yes, I do.

Q. And those are the direct testimony of Ilene
Bayard and the rebuttal testimony of Ilene Bayard?

A. Yes, that's correct.

Q. Were these documents prepared under your direction and control?

A. Yes, they were.

Q. If I were to ask you the questions contained in these documents today, would your answers be the same?

A. Yes, they would.

Q. Are the answers true and correct to the best of your information, knowledge and belief?

A. Yes, they are.

Q. Would you like to offer these exhibits as your testimony in this case on behalf of the Citizens Utility Board?

A. Yes, I would.

MS. SATTER: I'd like to offer the exhibits as testimony, and I have three copies for the record, and I offer the witness for cross-examination.

JUDGE GILBERT: Are you also offering public versions of the testimony?

MS. SATTER: Yes, sir. We have nonproprietary versions and proprietary versions.

JUDGE GILBERT: Okay. Let's mark the direct then 2.0 for the -- is it direct? And 2.0P for proprietary?

MS. SATTER: Right.

JUDGE GILBERT: I'm sorry, 2.0 for the public direct and 2.0P for the proprietary direct.

MS. SATTER: Oh, okay. We had put an indication 2.0NP for nonproprietary.

JUDGE GILBERT: Okay. Maybe you can just scratch that out.

MS. SATTER: Okay. So you want 2.0 as public and 2.0P as proprietary.

JUDGE GILBERT: Yes. And then the rebuttal public version will be 2.01 as it's marked, I guess, and the proprietary is 2.01P.

MS. SATTER: Okay.

JUDGE GILBERT: Objections?

MR. HARVEY: No.

JUDGE GILBERT: CUB 2.0, 2.0P, 2.01 and 2.01P are admitted, subject to cross-examination.

(Whereupon, CUB
Exhibit Nos. 2.0, 2.0P, 2.01 and
2.01P were admitted into
evidence.)

JUDGE GILBERT: Cross-examination?

MR. HARVEY: Yeah.

CROSS-EXAMINATION

BY

MR. HARVEY:

Q. Ms. Bayard, thank you much for coming today.
My name is Matt Harvey. I represent the staff and
the Illinois Commerce Commission, and I have a
couple of -- well, a fair number of, I think,
questions that can be readily answered yes or no in
the interest of getting you out of here.

I observed from your curriculum vitae
that you are and have been for a number of years a
consultant in advertising marketing and public
relations; is that fair?

A. That's fair.

Q. Okay. And so I assume that you're kind of
an expert in corporate communications?

A. That would be correct.

Q. Okay. And that's what you're offering testimony here today about is really as an expert in communications in sort of the general sense as opposed to the wires and switches sense?

A. That's correct.

Q. Okay. Now communications from the dictionary, would it be fair to say that it's giving or exchanging information or the art of expressing ideas; is that something you can accept?

A. I can, but I would also expand the marketing expertise. I believe I was also asked to be a witness based upon on my marketing, and some people would say marketing falls under communications and some people would say communications falls under marketing.

Q. Okay. So this is --

A. But the ampersand I think it covers the word.

Q. And assuming for the sake of argument that everybody around the table is lawyer or a court reporter and incapable of understanding such

distinctions, would you again agree that it's -- that sort of what a communications would mean to me or a general nonprofessional marketing person would be idea exchanges, idea expression?

A. Yes.

Q. Okay. Fair enough.

A. But I would -- to add to that, if I may.

Q. Sure.

A. I would say that the definition of marketing would expand beyond that. So if we're only talking about communications, I would accept that definition.

Q. Okay. All right. Fair enough.

Now, you've offered testimony which gives us opinion that Ameritech communicated information to it's customers in a manner which confirmed misperceptions, which the customers already held.

A. Generally speaking, yes, I would agree with that characterization.

Q. And in this case, you offered testimony giving it as your opinion that Ameritech communicated information to it's customers in a

manner which led them to believe things that were not, in fact, true?

A. That were not, in fact, true 100 percent of the time and that communications material could easily have been construed as being a blanket statement rather than, for some of you, this could be true and for others of you -- other customers it may not be true.

Q. So with that qualification --

A. Right.

Q. -- that would be a fair characterization?

Okay. You further give it as your opinion that Ameritech failed to disclose information to its customers, which they needed, in order to make informed choices regarding the rate plans that were available to them?

A. Yes.

Q. Okay. I guess -- would it be fair to summarize your testimony and your opinion that Ameritech communicated with its customers in an unfair deceptive way?

A. I think the words I was comfortable using

was unfair and misleading.

Q. Unfair and misleading.

A. I believe the materials were misleading.

Q. Okay. That's fair enough.

Now, since that's your testimony and since you're experienced in the areas of advertising and marketing, I assume that you have an opinion as to what information Ameritech for other telephone companies should communicate to their customers; is that fair?

A. Absolutely.

Q. And I further assume you have an opinion regarding what information -- the manner in which Ameritech or other telephone carriers should communicate the information.

A. Can I elaborate?

Q. If you'd like.

A. Yeah, I mean, I don't want to feel like I have to leave in two seconds.

In terms of your specific question, yeah, I have an opinion that given the content which is communication about telephone rates and given a lot

of the information that Ameritech had about its customer base and their mind set that there were additional, both pieces of information -- primarily, pieces of information that should have been communicated.

So the manner, I'm not taking as much issue whether it's a bill insert or a letter, as much as the way the information was conveyed. And that's one of the basis of my gravest concern as a marketing specialist.

Q. Okay. And I guess what I wanted to really ask you about is kind of your general opinion regarding this.

Does your general opinion regarding how Ameritech should communicate -- I mean, you obviously have a general opinion regarding how Ameritech should communicate. Does that extend to other telecommunications carriers?

A. Yes. I think this particularly in industries that have gone from a regulated to a deregulated or from a sole supplier to a multiple supplier, it's not just in a regulated environment.

There's a greater test or measure on behalf of companies to go kind of above and beyond the call of duty.

Q. Okay.

A. And particularly when there's been research done that clearly identified the confusion amongst its customers.

And even furthermore when I read the additional testimony by Ms. Shaw, which indicated that many of those initial wave customers when they went optional calling plans -- when they got their bill said, this plan is not right for me.

So we have a lot of evidence that says for many customers who signed up for something, it was not what they really thought they were getting.

Q. Okay. I guess at this point I'm going to ask you to -- from henceforth, try to be a tad more responsive, if you can. I mean, that was an interesting answer, but I think we strayed a little far afield.

I kind of like to discuss with you your opinion regarding how telecommunications carriers

should communicate with their customers. And since you have one, I assume we can go ahead and do this.

Now, would it be fair to say that you think companies' communications with its customers shouldn't be misleading?

A. Yes, that's fair to say.

Q. Okay. Is it fair to say that you think a telephone company's communication with its customers ought to be truthful?

A. Yes.

Q. Okay. Would it be fair to say that you think a telephone company's communications with its customers regarding savings they might realize ought to be true?

A. Yes.

Q. And ought to be substantiated?

A. Yes.

Q. Okay. Would it be fair to characterize your opinion -- well, strike that.

Is it fair to say that you think a telecommunications carriers, communications to its customers, ought to include to the extent that are

at issue relevant information about any time of day restrictions on calling?

A. Absolutely.

Q. Or any distance restrictions on calling?

A. I think it should include all relevant factors that would effect a customers bill.

Q. Fair enough.

Do you think that a telecommunications company should tell its customers the basis for any rate comparisons that are made?

A. I'm not sure I understand the question.

Q. Okay. Let's say that a company compares its rates to another carrier's rates. Should it state the basis --

A. Yes.

Q. -- for that comparison?

A. Apples to apples, apples to oranges.

Q. I was going to use that analogy, but you very kindly done so.

Now -- and that would be true, of course, when a carrier compared its rates to other rates that it offered?

A. Yes.

Q. Okay. Would it be fair to say that you think the telephone company ought to tell customers about all the charges they'll be paying including monthly nonrecurring charges?

A. Within reason.

Q. Okay. And within reason would mean to you?

A. Well, if there's a 21 cent tax that's going to, you know -- I don't think that the company needs to be listing every single charge, but within reason, the charges that customer is expecting to pay and that they advertised about, that should be thorough.

Q. So with the exceptions of the libraries, parks and fees --

A. Exactly.

Q. -- that we all pay.

Okay. Do you think that a telephone company should tell its customers that services are optional if that's the case?

A. Certainly.

Q. Okay. And that they can purchased

separately if that's the case?

A. Yes.

Q. Okay. Now, we've agreed that in your opinion Ameritech advertised and marketed it's CallPack and Simplifive plans in an unfair and -- I think your word was misleading way?

A. Yes.

Q. Okay. But this plan that Ameritech used, it really wasn't -- let me sort of rephrase that.

It's not one big message, is it, that -- Ameritech's marketing plan?

A. Well, I ask of you to do the same thing you asked of me. Can you --

Q. Fair enough.

A. I mean, I want to be responsive, and I'm afraid I'm going to start down a long path if you give me that big opening there.

Q. No, that's okay. And I think that -- as helpful as that would be, maybe I should be more clear.

For example, Ameritech's marketing plan is not sort of a huge neon light in the sky saying,

bye Simplifive and CallPack; right?

It's rather -- other than that it's a series of smaller communications, smaller messages.

A. Well, I was not provided with Ameritech's marketing plan. I was provided with what would seem to be pieces of its marketing plan.

Q. Okay. And maybe I'm not using the term marketing plan right. Its advertising message, let's say. It's not -- that's a bunch of small messages; isn't it?

A. Actually, I would say that I took away, both as a consumer and as a marketing expert, a broad -- what we would call a branding message, which is, we're offering you a better plan which is simpler and cheaper.

I would say that if I had to describe an overall statement that that was a fairly overriding message, it was throughout its internal training documents and the external letters.

Q. Okay. And that would be what you as a marketing professional would take out of it, but let's try to maybe concentrate a little more on what

a customer might -- how it would be conveyed to a customer.

A. That's what I said. Because I was also -- I believe I received some of these materials as a customer.

Q. Okay. And so that would be the broad impression you got?

A. Correct.

Q. But you got it in a series of smaller messages?

A. I got it in a letter that was sent to me as a solicitation.

Q. Okay.

A. And if that's the only message I would have received as a customer, then that's my -- 100 percent of what I got.

Q. Fair enough.

Now, you reviewed a number of these solicitations?

A. Yes.

Q. And they were divided generally into direct mail types of solicitations?

A. Yes.

Q. And those included bill inserts and win-back letters?

A. Yes.

Q. And also telephone solicitations --

A. Correct.

Q. -- which would include contacts with customer service representatives and with telemarketers?

A. It seemed as that, what that was.

Q. Okay. And it's your testimony that you only saw one of these as a customer, strictly speaking?

A. Correct.

Q. And so we would have to assume from that that not every Ameritech Illinois customer would see or hear all of the messages that Ameritech Illinois wanted us to hear perhaps?

A. I think that's a reasonable assumptions.

Q. Okay. And might even be fair to say that like you, yourself, Ameritech Illinois -- individual Ameritech Illinois customers might not even see very many of them, might even see only one of them.

A. I don't think I -- I don't have enough -- I'm not privy to their database and what they've done.

Q. Fair enough.

But you only yourself --

A. I received one.

Q. Okay. Now, you're professional in this field and I assume, therefore, that you'll agree that an advertising message in today's world has a lot of competition with other advertising messages?

A. I would agree with that.

Q. Okay. And any message that Ameritech tries to send us is competing with other messages for the customer's attention?

A. That's fair.

Q. And even in the field of telecommunications, customers are exposed to a lot of advertising messages; right?

A. Yes.

Q. Okay. Now, it's your testimony and it's on your direct testimony Page 14, but if you want to just take my word for it, you can, but --

A. No. I'll look it up.

Q. Well, that's --

MR. KELTER: Give us a second.

MR. HARVEY: I was going to suggest that you had said something about Mr. Kelter there that wasn't entirely -- but, no, that's okay.

BY MR. HARVEY:

Q. Customers are somewhat ill-informed about their telecommunications choices anyway; right?

A. I wouldn't use the word ill-informed.

Q. Well, you actually used the word ignorant, and I just wanted to stay away from that, but that's, I guess, your testimony then?

A. Yeah. I think there's a difference between ill-informed and ignorant.

Q. I'm going to agree with you there. I just -- I sort of wanted to let you get away with ill-informed, but if that's what you -- your testimony is ignorant. We'll go with ignorant.

So would it be fair to say that individual Ameritech customers were probably exposed to a few messages and may not have understood them

very well at all?

A. Yes.

Q. Okay. Now that being the case, I assume it would be your opinion that we have to evaluate Ameritech's advertising and marketing as we would have to evaluate that of any competitor in a marketplace by looking at individual messages that the company sends to its customers.

A. Okay. You're pausing so so far I'm agreeing with you.

Q. Okay. Some of those messages viewed independently might be unfair or misleading.

A. That's correct.

Q. Some might not.

A. That's also correct.

Q. Okay. And the analysis of whether they were or weren't would be based on how the message might reasonably be expected to -- strike that.

The analysis of how those messages -- whether those messages were deceptive or misleading would be based on how the message -- one individual message might be expected to effect a person who

sees or hears it.

And I'll cheerfully restate that if you didn't --

A. Well, let me if I -- I'll restate it and see if I can agree you.

Q. Okay.

A. What I would say is, the interpretation of whether something is misleading in terms of advertising or direct mail message is a combination of the content of the message and the receptor.

So the message alone may not be deceptive, but when you take into account who it's being targeted to in the audience and what you know about that audience, that's where you must raise the bar.

And my testimony is particularly on Page 14 when talked about the sheer ignorance of the population was related to the sheer ignorance of the population with respect to its phone experiences, not just in general.

So that was my -- that was the benchmark I used to assess this material.

Q. So I take it from that then that you would not characterize the public as being ignorant when they went out and bought a loaf of bread or a sport utility vehicle?

A. Loaf of bread, no; support utility vehicle, possibly.

Q. Okay.

A. Even Ford has come clean with their problems.

Q. Okay. Let's take a less controversial consumer.

A. I'm just taking your lead, Mr. Harvey.

Q. But there are a number -- we can agree that there are a bunch of consumer products that customer -- that the average customer can go out and pretty responsibly purchase?

A. Correct. I would agree with that.

Q. And somewhere between a loaf of bread and a support utility vehicle, we have -- people aren't ignorant.

A. Correct.

Q. Okay. And your testimony here today is that

telecommunications is on the loaf of bread, support utility vehicle continuum; where would you say?

A. I would say that telecommunications in general is beyond a sport utility vehicle.

Q. Okay.

A. In terms of the continuum of complexity changes and competition. It's far more in flux than the automotive market.

MR. HARVEY: Okay. Well, thank you, Ms. Bayard.

That's actually all I have for you and I appreciate your taking the time to educate me on these things.

THE WITNESS: You're very welcome.

JUDGE GILBERT: I have a few.

EXAMINATION

BY

JUDGE GILBERT:

Q. If you would like at Page 6 of your direct.

A. Okay.

Q. And if you could look at the two sentences that comprise your answer starting on Line 7.

A. Yes.

Q. Okay. I was confused by this, in the first sentence, you refer to time of day. In the second sentence, you say that the factor with the greatest impact time of day is not integrated into either plan.

It sounds contradictory.

A. My point was -- and, again, my -- to beg the indulgence of the hearing, my expertise is in marketing more than it would be, for example, Ms. Terkhurst, which more competitive phone exchanges.

So from a market perspective, in learning more about how these plans are developed, there were three components that I understood to be integrally -- have interval impact, the distance, the duration, and the time of day.

And what I was saying in these optional calling plans, the two primary factors that would effect whether or not it would be best for you to subscribe to this plan would be calling distance and duration of call, rather than time of day.

And my point was, for many customers or

some customers, the time of day was the most important factor that if it was built into plan would have given you a lower rate. And that was sort of ignored.

Does that reconcile my point?

Q. Well, I see what you're saying. I don't think that's clear from that sentence, but I see what you're saying now.

Because the plans do account for time of day in one fashion or another.

A. But my point was in terms in this marketing material, as good as it could have been, that somewhere it should have said, there are these two plans but what would really make a difference in your calling -- in your phone bill would be if you changed your calling time of day, or some reference to time of day.

Q. Right, but not under the plans. If you're with basic rates and paid attention to time of day, you would get a different result then if you were under one of the plans and paid attention to the time of day.

A. Correct.

I'm saying if we raise up to 30,000 feet rather than being on the runway, overall that that was just not even addressed in the marketing material.

And from a marketing standpoint, I felt that it should have been. So I'm not taking issue with how they developed the plans whatsoever. I'm just saying that that should have been in the best practices of marketing somehow alluded to.

Q. Okay. Well, if there's an existing service on the market and in order to maximize my benefits -- or one way of maximizing my benefits using the existing service, would be to pay attention to the time of day because of the cost fluctuations in that service.

And then I'm offered another alternative in which I am freed from that requirement. I can ignore time of day because I'm going to have the same cost all day long.

Can we say that then this plan ignores time of day or it has addressed a problem that I

had?

A. I think where I would have gone back and maybe revised my language here was, rather than talk about the plan, it's the marketing of plan.

In other words, I don't have the expertise to comment on which -- how the plans are put together. My point was in learning about what actually saves customers money, time of day is a critical factor.

And in the marketing of that plan, if you're a customer, I should tell you you have the two options under our new launch. But if you're really most concerned about pricing, keep the plan you have but just call more off-peak. And that's not anywhere in the material that I was provided with. And I felt that would be a less deceptive way of communicating the benefits to customers.

Q. Okay. I just wanted to make sure that I understood you because on the surface here it wasn't clear.

A. I apologize.

Q. No, no, that's fine. I take your answer.

Let's look at your rebuttal. I just have a few there and maybe we'll have you out. See if I can find the rebuttal.

Okay. Page 4, Line 20, if you'd look at that first sentence.

A. Yes.

Q. Okay. When you say that Ameritech expects the result that you described in the rest of the sentence, is that something they've explicitly set out somewhere, or is that your interpretation of what they do?

A. Both. There was other testimony offered by an Ameritech witness. I don't know if it was Mr. Fargo. One of the Ameritech witnesses. And if you give me a moment, hopefully I can find it in here. Said, and I'm not quoting verbatim, but the sentiment that he was sharing his testimony was sort of like, Hey, it's kind of up to them, you know. They can go do the research and they can figure this out. They can call in and we'll calculate it, and they should be able to figure it out on their own.

So he said something to that extent in

his testimony. So that from a literal standpoint, I would stand by that rebuttal. And then just overall, again, this whole campaign misses the point that Ameritech knows consumers are very confused. And I believe that in a marketing program that some educational component should be there. Some educational component.

Q. Okay. If you'd look at Page 5. If you look at the sentence that begins on Line 2 with the word "my."

A. Yes. I have that.

Q. Okay. Where you say there that Ameritech is not giving customers enough information to do anything but blindly rely on Ameritech's recommendation.

When I read that, I thought that was a big strong. I mean, certainly one option is to simply reject the offer; is it not?

A. Correct.

Q. I mean -- and from your discussion with Mr. Harvey, I guess to say that customers may blindly rely would imply a pretty severe degree of

ignorance, at least as telecommunications customers.

A. I wouldn't argue too vehemently to soften the word; however, from a personal standpoint now as a customer of Ameritech's, I can tell you that I had phone bills of \$600 a month for several months on basic rates. Because in my case, I am better off being on a CallPack. And a couple of times called in just to kind of figure out what was going on and it took a number of calls for someone to finally do the calculations to say, You know what? You actually are better off going onto a CallPack.

And I'm a fairly educated person and, you know, compared -- you know, actually save the bills and tried to figure out where I was.

So, again, I wouldn't -- I don't have a problem softening that, but I think that if you are going to a consumer with at least the veil of, We've done some number crunching and we're going to give you the best deal, then you're going to believe them, especially if it's Ameritech.

And that's why I think the onus is on them to be a bit more inform -- informational based

in their marketing materials.

Q. Okay. On the same page in the answer beginning at Line 12 where you. . .

A. Yes, I have that.

Q. All right. First you said -- forget that.

Have you seen the current materials?

A. I'm not sure. The material -- one of the things that I was surprised by -- or confused by, I should say, in the initial attachments or exhibits that were given to us or given to me from CUB, the letters I saw, many of them were dated February 5th; so I'm confused by what could be more current than February 5th, which still uses language, A simple way to save money in Illinois, when marketing the Simplifive program.

Q. First, you mean February 5th of 2000?

A. Yes.

Q. Okay. And what are you referring to then?

You're referring to the --

A. Well --

Q. Let me finish the question just so the transcript will be clear.

Are you talking about materials that are given to Ameritech service representatives?

A. I was -- this is my rebuttal testimony, and I was addressing a comment that she made which seemed to indicate that I had been looking at old material so that my -- the basis of my opinion was sort of outdated. And I was simply saying that what I had been given was all I had been given; and, furthermore, they looked fairly current to me. It's February 5th. So I've not been given any other materials that are more recent than February 5th.

So perhaps they've changed their language or their tone, but I have not been given that material to review.

Q. Okay. I think that answers my question.

The material on which you based your direct testimony is the material that you looked at. And if there is something that was issued later than that, you didn't see that?

A. That's correct.

Q. Okay. Just about done.

Generally speaking, if an enterprise is

using marketing materials or advertisement materials, is it not one of the elements of those materials to try to be concise and to try to sort of stay on message, you know, to have that one clear message and to keep it fairly simple and straight line in the material?

A. Absolutely. But it must be accurate.

Q. How would you accomplish both things in this context, of both making the material attractive enough that the consumer will read it and accurate enough that the consumer is getting the kind of context that you think is necessary?

A. I think that Ameritech could have and can characterize this plan as being a very good deal for some of our customers.

JUDGE GILBERT: All right. Let's go off for a moment.

(Whereupon, a discussion
was had off the record.)

JUDGE GILBERT: For purposes of keeping proprietary material out of the public record, do you want to go ahead and restate your answer.

THE WITNESS: Yes. I think Ameritech could have a very effective marketing program. And it says, for many of our customers, this is a plan that addresses your needs which are simple billing and then go to the people that they know, have -- for their behavioral reasons or research said that that -- their number one attribute they're concerned about. And in that case, I would feel that that would be very fair way of marketing the service.

BY JUDGE GILBERT:

Q. And not make a representation in those materials regarding savings?

A. As a sub-point, again, to your point of keeping it simple, say, And for many of those -- in addition to being a simpler bill, you may experience savings.

I would -- right now they're bundled and that's where the misleading nature comes in. If you unbundle it and make a pledge of simplicity as distinct from savings, but a simple way to save money is when you put the two together.

It's a great campaign. It just isn't

fair.

JUDGE GILBERT: Okay. That's all I have.

Do you some redirect?

MR. KELTER: Can we have just a second?

MS. SATTER: I just have one question.

REDIRECT EXAMINATION

BY

MS. SATTER:

Q. Mr. Harvey asked you some questions about advertising and messages, and my question is, is there a difference between advertising and the kind of marketing that was done here which included direct mail, bill inserts and letters?

A. Yes. I think that the standard for how specific you have to be in an advertising promise is much less rigorous than a direct mail campaign.

One of the ways that marketing people describe direct mail is the long-distance handshake, which metaphorically is you're actually touching your customer in the whole notion of a handshake, as sort of, you know, the trust and the personal contact.

So I think that in judging the appropriateness of advertising messages is pure advertising, like television, you know, what's on the freeway, which is more of a broadcast message but just gets lost in the shuffle.

Much different if it comes to your home with your name on it especially in a bill insert where you're giving to definitely pay attention to it.

There's a higher standard that most marketing people will counsel their clients to adopt in a direct mail piece.

MS. SATTER: Okay. I have no further questions.

JUDGE GILBERT: Cross, Mr. Harvey?

MR. HARVEY: Nothing.

JUDGE GILBERT: Okay. Thank you very much.

(Whereupon, CUB Deposition Exhibit No. 3.0, 3.01 and 5.0 5.01 were marked for identification.)

MS. SATTER: For the record, CUB would like to offer the testimony -- the direct and rebuttal

testimony of Martin Arcohen.

He has submitted a verification of that testimony, which is included with the testimony to the court reporter. Those are marked as CUB Exhibits 3.0 and 3.01.

We would also like to offer the testimony of Pamela Stegman; that is, direct testimony and rebuttal testimony. CUB Exhibits 5.0 and 5.01.

That testimony is also being offered pursuant to a verification, which is included with the testimony, the verification of both witness.

JUDGE GILBERT: Are there any objections?

MR. HARVEY: No.

MR. KERBER: No, your Honor.

JUDGE GILBERT: All right. CUB 3.0 and 3.01, Martin Arcohen testimony is admitted. 5.0 and 5.01, Pamela Stegman testimony is admitted.

(Whereupon, CUB

Exhibit Nos. 3.0, 3.01 and 5.0,

5.01 were admitted into

evidence.)

MS. SATTER: CUB's next witness is Jonathan Goldman.

Has he been sworn?

JUDGE GILBERT: He has not.

(Witness sworn.)

JONATHAN GOLDMAN,

having been called as a witness herein, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY

MS. SATTER:

Q. Can you please state your name.

A. Jonathan Goldman.

Q. Do you have in front of what has been marked as CUB Exhibit 4.0 and 4.01 the direct and rebuttal testimony of Jonathan Goldman?

A. Yes, I do.

Q. Did you prepare these documents or were they prepared under your direction?

A. Yes.

Q. If I asked the questions contained in these documents, would your answers be the same?

A. Yes.

Q. Are the answers true and correct to the best of your knowledge, information and belief?

A. Yes.

Q. Do you have any corrections to these documents?

A. No.

Q. Do you adopt these documents as your testimony in this docket s on behalf of the Citizens Utility Board?

A. Yes.

MS. SATTER: Okay. I'd like to offer the witness for cross-examination.

JUDGE GILBERT: Okay.

CROSS -EXAMINATION

BY

MR. KERBER:

Q. Mr. Goldman, your direct testimony presents analyses of two customers bills; is that correct?

A. That's correct.

Q. Two customer bills would not be a statistically significant sample of customers on Ameritech Illinois' OCPs; would it?

A. No, probably not.

Q. Now, the basis of identifying the customers whose bills you analyzed was that they responded at some point to CUB requests to members for information in support of this docket; is that correct?

A. That's how CUB received the bills, yeah.

Q. And that wouldn't be characterized as random sampling method either; would it?

A. No.

Q. Now the two customers whose bills you analyzed those were not the only customers by any means that CUB either contacted or attempt to contact; correct?

A. That's correct.

Q. In fact, I believe CUB solicited customers

to provide information through a front page article in the March issue of a newsletter called the CUB Voice; is that correct?

A. I believe that's correct.

Q. Do you know about how many people would have received that?

A. Would have received the newsletter?

Q. Yes.

A. I'm not sure. I believe it's probably on the order of 100,000 people.

Q. Okay. And CUB also sent letters directly to various of its members also seeking information for use in this case; did it not?

A. We may have. I'm not familiar with that.

Q. Okay. Well, let me hand you copies of two documents that I'm going to mark Ameritech Illinois Cross Exhibits 3 and 4, respectively. And if you'll excuse me for a moment I'll pass them out.

(Whereupon, Ameritech Cross
Exhibit Nos. 3 and 4 were marked
for identification.)

MS. SATTER: This one's 3?

MR. KERBER: This one's 3, which, just to keep straight, deals with CallPack. 4 is going to be virtually identical to except dealing with Simplifive.

BY MR. KERBER:

Q. Could you just take a look at these letters and just let me know when you've had a chance to read through them, please.

MR. KELTER: I'm sorry, there are two of them?

MR. KERBER: Yeah, 3 and 4.

MR. KELTER: I didn't get 4.

BY MR. KERBER:

Q. Now I take it from your earlier response that you're not directly familiar with these letters yourself?

A. That's correct. I understand that these had gone out. I played no person role in the development or --

Q. Okay. Would you be willing to agree, subject to check, that these were, in fact, letters that went out to various CUB members during the

process of gathering information for this case?

MR. KELTER: Objection. There's no evidence that these went out just in a broad sense to CUB members, and the witness has said he wasn't involved in this letter in any way.

MR. KERBER: Well, I'd be happy to do a data request as to who they went to and how many people and things such as that if you wanted to clarify the record on that.

MS. SATTER: You know what, if you have -- I think if there's a question that the witness can answer, he will be happy to answer it; but if the question can't be answered by the witness, it can't. And you made some assumptions in your question that we can't just verify.

BY MR. KERBER:

Q. Let me try to narrow my question a little bit in a way that won't present those problems.

Can you at least agree, subject to check, that these two letters were sent to some Ameritech Illinois customers as a part of CUB's preparation for this case?

MS. SATTER: I mean, it's up to the witness.

THE WITNESS: I have no personal knowledge of whose these letters were sent to.

BY MR. KERBER:

Q. But I think to go back to the earlier question you did answer, you were aware that this took place, that these letters were a part of preparing for this case?

A. I don't know what role they played within the organization. I am generally aware that these letters were prepared within the organization and were used in some capacity. Beyond that, I don't know.

Q. Okay. Well, I mean, I'll try to stay within just four corners of what appears on the face of the letter, and certainly if there's anything that you can't answer, feel free to let me know.

A. Okay.

Q. At any rate to sort of cut to the chase here, out of this process which included this letter in the CUB Voice -- or excuse me, this article in the CUB Voice and these letters and whatever else,

you ultimately came up with two bills that you analyzed for purpose of your testimony?

A. From an organizational perspective, yes.

Q. Okay. Now, not speaking specifically of either the letters or the article but just speaking generally of the information gathering process, your aware, I take it, that CUB got responses from a certain number of customers?

A. Yes.

Q. And could we agree, subject to check, that that number was in excess of a hundred?

A. I don't know personally what the number was.

Q. Okay. Did you -- were you provided with the information that CUB received from customers in response to its inquiries as part of allowing you to prepare your testimony?

A. No. All the I received was -- were the copies of the bills and the billing itemizations on the two customers that I performed --

Q. Just the two customers.

A. Yes.

Q. So you made no attempt to evaluate any

information with respect to any other customers?

A. Correct.

Q. So you would not be in a position, as you sit here today, to offer any opinion as to whether either/or both of the bills that you analyzed is in any way generally representative of what any other customers would have seen in terms of savings or increase costs under the OCPs?

A. That's correct. I would not be in a position to offer an opinion on that.

Q. You also then wouldn't have any basis to offer an opinion as to whether any particular number of the customers who responded to CUB's requests were actually saving money as a result of the OCPs?

A. That's correct. I would not know that.

Q. In fact, I guess at least in theory if you only evaluated these two bills, it would be possible that they were the only two who didn't?

And we're not alleging that, but that's technically possible.

A. In theory, that would be possible, yes.

Q. You were here, I believe, during

Ms. Bayard's cross-examination?

A. I missed the beginning of it.

Q. Okay. Were you here when she was responding to some questions from Hearing Examiner Gilbert regarding what customers ought to be told when they're provided with information about a particular calling plan?

A. Yes, I was in the room at that point.

Q. Okay. If I could please call your attention -- and I'll do both documents at the same time -- there is an identical paragraph at the bottom of Ameritech Illinois Cross Exhibits No. 3 and No. 4. Could you just read that paragraph please and let me know when you've finished.

MS. SATTER: You know, I'm going to object because this has not been linked to Mr. Goldman's testimony. He said that he didn't prepare this letter; he doesn't know to whom it was sent; he --

JUDGE GILBERT: Okay. Let me ask you to hold the objection. Let's see where he's going.

MR. KERBER: Well, I mean --

JUDGE GILBERT: You can renew the objection if

you need to.

MR. KERBER: I'd be happy to pose these to Ms. Bayard -- well, no, this is -- you know, I'm going to keep this within the scope of Mr. Goldman's bill analyses.

BY MR. KERBER:

Q. Have you finished reading those?

A. No, I haven't started yet.

And you're referring to the paragraph --

Q. The P.S., here's a quick tip paragraph, yes.

A. Okay.

Q. Now, when you would evaluate a customer's bill under various rate plans depending on whether or not they were saving money, I guess the first place you'd have to start is you'd have to know the structure of the rate plan; isn't that correct?

A. Yes.

Q. And are you at least generally familiar that there are different rate plans out there with different structures?

A. Yes.

Q. And that would be true both of Ameritech

Illinois and other carriers including interexchange carriers?

A. Yes.

Q. So whether or not somebody could have achieved, quote/unquote, immediate savings, it would depend at least in part on the particular plan that was being offered; would it not?

A. That's correct, yes.

Q. Okay. Are you aware that many IXCs require monthly minimum charges in order to qualify for their best per minute rates on various types of calls?

MS. SATTER: I'm going object because this was not part of Mr. Goldman's testimony. He did not talk about IXC rates; he did not talk about interLATA toll rates. He just took the billings and a comparison.

MR. KERBER: He's CUB's bill comparing witness and I'm asking him how one goes about comparing bills.

MS. SATTER: Well, he compared those two bills, and I don't think he addressed IXCs in that context.

MR. KERBER: I mean, he seems to have been able to answer so far. If I ask him something that's truly outside his scope, he can certainly let me know.

MR. KELTER: That's not the issue.

JUDGE GILBERT: Hold on.

That's right, he can answer that.

BY MR. KERBER:

Q. Does the paragraph or anything else in CUB's letter indicate to a customer that the availability of, quote/unquote, immediate savings may depend on what rate plans they're looking at?

MS. SATTER: Again, I'm going to object. This witness didn't draft the letter. This witness is not here to testify about the letter. That letter is not referenced in his testimony. Interpreting the letter might be a marketing issue. He's not a marketing expert. I just don't see any nexus between Mr. Goldman's testimony and these letters.

MR. KERBER: I'm just asking him what's necessary to compare bills under various rate plans. That's the subject of his testimony.

MS. SATTER: That wasn't the question, though.
That wasn't the question.

JUDGE GILBERT: I'm probably going to sustain that one unless there's some way you can show me a more precise connection to the boundaries of his testimony.

BY MR. KERBER:

Q. Mr. Goldman, for any particular customer, would you be able to determine whether, quote/unquote, immediate savings were available without knowing the structure of the rate plan you were talking about?

A. Without knowing the structure of the rate plan, there's no basis for comparison.

Q. All right. And whether or not, quote/unquote, immediate saving would be available would also depend on a customer's usage patterns; would it not?

A. Yes. It would depend on that usage pattern.

Q. And would you be able to determine for any particular customer whether or not, quote/unquote, immediate savings would be available without knowing

something about the customer's usage?

MS. SATTER: I'm sorry, I have to object again because this entire line of questioning about the, quote/unquote, immediate savings is not anything that Mr. Goldman ever discussed.

What he did was he took two sets of bills and he specifically looked at those two sets of bills. He didn't make any general statements about immediate savings. This isn't signed by him.

MR. KERBER: I just want --

MS. SATTER: This has nothing to do with him.

MR. KERBER: -- to know whether this letter identifies, for the people it's sent to, the information that would be necessary to do a bill comparison, and Mr. Goldman is your witness that does bill comparisons.

MS. SATTER: This letter is not -- it's something that you're presenting for the first time today. It wasn't a subject of his testimony. His testimony is that he looked at two specific bills including itemization and gave a bill comparison.

And you've asked him several times

already, this one point that you've just reiterate.
And I just -- now we're going over it again and
again. He said he can't determine immediate savings
without the details.

JUDGE GILBERT: All right, well --

MS. SATTER: Is there anything else to be said?

JUDGE GILBERT: Well, let me say in general,
though, Ms. Satter, I'm looking at Page 5, for
example, on his direct and the question posed to him
is: Do you have any general conclusions based on
your review of these consumers' bills?

And he does render there some general
conclusions; so I think we can't go as broadly as
you're trying to go.

Can you find the original question.

(Whereupon, the record was
read as requested.)

JUDGE GILBERT: Okay. He can answer that
question. I don't see that that needs to be tied to
these exhibits. I think it's probably --

MR. KERBER: I can do that in my brief if I want
to I guess, but I mean --

JUDGE GILBERT: Well, by saying quote/unquote, you kind of brought it on yourself. So I think if you drop that out, you're probably fine.

BY MR. KERBER:

Q. Deleting the quotes, can you answer the question?

A. I'm sorry, can you state the question again.

Q. Could you determine whether savings were available to a customer under a given rate plan without knowing something about the customers' usage patterns?

A. No.

Q. But that paragraphs doesn't mention either rate plan structure or usage patterns; does it?

MS. SATTER: Again, I'm going to object because of the --

MR. KERBER: That's fine. I'll argue it in my brief.

JUDGE GILBERT: I think what you're doing is impeaching the letter and it's really not his letter.

I mean, the preceding question was

getting him to give you a general conclusion about what information he needs. This question is going toward impeaching that letter and I think I've already told you that --

MR. KERBER: No, that's fine. As I said, you know, I mean -- you know, the point is CUB tells customers less than we do.

With that, move for the admission of these two Exhibits and I'll be happy to argue it in the briefs.

JUDGE GILBERT: Okay.

MS. SATTER: I think that it's -- I'm sorry, go ahead.

I am going to object to the admission of these documents. The witness didn't draft them, didn't know who they went to, didn't know what --

MR. KERBER: If we --

MS. SATTER: Excuse me, excuse me.

MR. KERBER: I'm sorry.

MS. SATTER: Let me finish.

MR. KERBER: I'm just trying to make it easy.

MS. SATTER: Didn't know who they went to, is

not -- did not adopt them as his, was not involved with these letters, and it would be -- they weren't requested in discovery; they weren't produced in discovery, you know.

I -- if they want to introduce them with their witnesses, that's their prerogative, but they didn't; and I think it's an inappropriate use in cross.

MR. KERBER: Two things, one, if you'd like to give me another witness, I'll be happy to ask these questions of whoever you'd like to bring over either yet this afternoon or tomorrow that can do that.

Two, these were produced by CUB in response to Ameritech Illinois data request No. 2. That's right where they came from.

MS. SATTER: Within the materials that consumers provided.

MR. KERBER: Well, it was going both ways.

MS. SATTER: Yeah.

Even so, though, I mean, it's not related to this witness, and it was produced. If Ameritech wanted to introduce them and comment on them, I

think Ameritech had that right in its case.

And at this point to expect to -- to try to piggyback it with a witness that didn't discuss it, that isn't responsible for it, that really has no connection with it is inappropriate.

MR. KERBER: I'll be happy to argue the significance in the briefs. I mean, unless CUB is taking the position that it didn't produce these documents or that they're inaccurate or something, I don't understand where the rest of that goes.

JUDGE GILBERT: Okay. I think it's a much narrower question, so let's try to focus it here.

It seems to me the objection or the appropriate objection is about using this or placing this document in the record through this particular witness on cross.

As the two of you are talking. I'm looking through testimony to see if it is, indeed, associated with or within a kind of zone that this --

MR. KERBER: Can I --

JUDGE GILBERT: -- testimony covers.

MR. KERBER: -- call your attention to what I saw in the testimony that I was going off of?

JUDGE GILBERT: I think that would be productive.

MR. KERBER: At the front end of the direct, Mr. Goldman stated that these customers -- and I'm not quoting -- but more or less the customers were identified through CUB's various efforts to get information back from customers.

We sought that information in data request No. 2. We received it. Mr. Goldman was the only person, at least that I recall, discussing the fact that there was this process of soliciting information from customers in his testimony.

I mean, I was a little surprised, which is my problem, that he couldn't respond to that; but in terms of what was mentioned within CUB's testimony, he was the only one that said that there was a process of going out to customers asking for information, asking for copies of bills. It looked to me to be within his scope at least in terms of who discussed it at CUB.

Now, if there is, you know, somebody else

who would more appropriately be able to authenticate these documents, et cetera, that's fine with me, but that seems to me to be a bit of a formality because I don't detect a real objection that this is not what it purports to be. So it seems to be kind of an unnecessary extra step.

I mean, he was the guy that had identified this process, so I thought he was the guy to ask about who did the letters go to, how many responses you got back, et cetera, because he was the only one that addressed it.

JUDGE GILBERT: Okay. Well, there's the question of whether or not it's a technical or hyper-technical objection. There's also your strategic concern about getting these pieces of paper into the record.

He received these through a data request verified to be a correct response to your questions. So I'm assuming that, given all the witnesses are available, that you at least have an opportunity to pursue putting these documents in the record that way; but I think it's more than hyper-technical to

say that these two documents don't pertain to this particular witness.

MR. KERBER: Okay. Can I ask then on the record through whom would I put these in?

MS. SATTER: That's not -- frankly, that's not our strategic decision. If you wanted to put those in, they were produced to you.

MR. KERBER: No, wait a minute. The Commission practice is not to produce documents in response to discovery requests and then hide behind the fact that the guy that wrote the document isn't in the room. We don't do that here.

I mean, if you produce --

MR. KELTER: You do it to us all the time.

MR. KERBER: I mean, if there's a document and somebody needs to be available to speak to that document then, fine, tell me who that somebody is, bring him in and I'll be happy do it.

MS. SATTER: There's issues of relevance and --

JUDGE GILBERT: All right. Let me stop you. We've gone from productive to somewhat desperate.

This is out for now. If you have another

way that you want to attempt to put it in the record, you're certainly free to do that.

MR. KERBER: Can you give me a hint as to what that would be?

JUDGE GILBERT: You've got your on witnesses. Haven't you used --

MR. KERBER: They didn't -- none of our witnesses drafted this document. I mean, if the objection is this witness didn't draft the document, is not directly familiar with it, didn't know who it was sent to, I don't have much of a clue how any of my witnesses are going to help me.

MS. SATTER: Well, maybe we can -- no, I'm sorry. Never mind.

JUDGE GILBERT: I'm confused, actually, as to why you would not have thought previously to place this in the record as an attachment to one of your own witnesses. Your authenticity was already taken care of when you got a verified response from CUB.

Anyway, we're done. I no longer want to try to discuss how to do your case or yours.

MR. KERBER: That's fine.

JUDGE GILBERT: So we're done with that part.
Did you have other questions you wanted to ask the witness?

MR. KERBER: No. I am finished with Mr. Goldman.

JUDGE GILBERT: Okay. I have a question or two for Mr. Goldman, assuming I can find them.

EXAMINATION

BY

JUDGE GILBERT:

Q. Yes. You're rebuttal testimony, Mr. Goldman, on Page 7, if you would look at the sentence beginning on Line 16 and starting with the word "even" and follow through to the next sentence as well.

A. Okay.

Q. All right. The response I had to the point you're making there is you seem to be proving that no one could provide sufficient information to make a valid billing comparison and that essentially the customer had no one to turn to.

Or at the very least the customer had no one that could make that analysis for the customer

without substantial input from the customer in terms of their Band C calling -- Band C calling patterns or actual Band C calls.

A. Correct.

Q. All right. You're saying that the Ameritech customer service representative could not make a complete comparison because that representative would not have available the Band C calling records of the customer.

A. For the customers that are in a win-back situation so that they have another carrier carrying the local toll, the Ameritech customer service representative may not have that calling data in front of them to be able to perform the comparison.

Q. Okay. You then can you fault Ameritech for not making that comparison if, in fact, they don't have that information?

A. I don't believe that I'm faulting them here for not making the comparison. I believe what it goes back to is, in the previous sentence, in Ms. Shaw's response to my direct testimony, she says that -- and I'm paraphrasing -- that a customer

doesn't have to sit down with a bill itemization and do the lengthy comparison that I conducted for those two customers because all they have to do is contact an Ameritech customer service rep who will do it for them.

And I'm pointing out that I don't believe that that's necessarily accurate. The Ameritech customer service rep may not be able to perform that comparison for them.

Q. Who could?

A. I believe that the -- to truly to do that comparison, the customer would have to do it if they had full information about the two different rate plans, which would be the rate information and the related terms and conditions of those calling plans. If they had all that provided to them, then they could do the comparison more easily.

Q. All right.

A. And they're not being provided with that information.

Q. So the missing information that the customer has would be certain details associated with these

calling plans?

A. Correct.

Q. And the missing information that Ameritech has would be the customer's actual Band C or intra-MSA calling using an alternate provider?

A. Correct.

And from the testimony and, again, in the sentence before that, wherein I'm discussing Mr. Fargo's direct testimony about the telemarketing to the customers, I believe in the script that is offered in the testimony, if a customer asks about rate comparisons, they're then told to call Ameritech customer service, which, again, gets to this point where they can't -- may not be able to perform that comparison.

Q. Right.

A. So it seems like Ameritech is offering that they can do the comparison in lieu of providing the actual rates information to the customer.

Q. Okay. And just to be thorough in our discussion here, the alternative Band C or intra-MSA provider could also not perform the comparison for

the customer because they would not have Ameritech's records; correct?

A. Correct.

Q. Okay. So it seems to me that what you're saying is, ultimately, the customer is going to have to make the kind detailed analysis that you made on behalf of these two customers.

A. They would have to do the analysis, but in this situation it's easier to do because the data that you receive on your phone bill is summary data within the different calling bands; so you know that you made, for instance, 140 calls Band A peak rate.

The problem that I was addressing in the direct with those comparisons was that for existing Simplifive or CallPack customers, they don't have that summary available to them; so it's either no detailed information or it's extremely detailed information at that point.

Q. Right. I'm just making the distinction between two things. One is the necessary information to make the comparison and the other is who will bear the burden of making that comparison.

And it seems to me that the customer ultimately is going to bear the burden.

A. Right, which will naturally be the case really with any product that a -- or service that a customer is purchasing in any field. The customer has to have the information about varying or competing products and services and make that comparison. But in order to make that comparison, they have to have the information.

Q. Right. But at the same time, you couldn't fault any of providers either, the IXC or the ILEC, for not providing information they don't have to begin with.

A. Correct.

Q. Okay. On Page 8, the next page of your rebuttal up at the top, if you want to look at the sentence that's running over onto that page.

A. So the sentence that begins at the bottom of the page?

Q. Well, you know what, it's probably good enough just to start with this sentence that begins with the word "Mr. Curtis" on line one.

A. Okay.

Q. And this may be beyond the scope of testimony as well, but speculate with me if you care to and if you don't, you don't have to; but would an answer from a customer's perspective be to have some kind of mechanism by which the consumer can input that information and have someone else make that comparison?

A. If there was an objective party that could perform that comparison, I think that would be helpful to the consumer.

Q. Would the party have to be objective?

A. The -- probably the test would be that the party would have to be considered objective by the consumer.

Q. I mean, let's assume that there's not going to be a real market niche for someone who will make those comparison for you, and maybe there might be. I mean, maybe there could be some sort of intermediary, you know, who would gather that information and give you an opinion.

But could you not -- could the customer

not provide that kind of Band C information, let's say, to either Ameritech or CLEC or any provider they wanted to talk to and say do that calculation for me?

A. They do that and then it would be up to the customer to determine how much weight they want to place on the comparison that's performed for them based on whatever credibility they perceive.

Q. Would you know if a customer were to do that with Ameritech that Ameritech would not perform that calculation?

A. No, I don't have any indication that Ameritech is incorrectly performing those calculations.

Q. Okay. So that's really a different piece as to whether they would do and whether they do would do it correctly, and you would say --

A. And whether the customer would perceive that they're doing it correctly.

Q. Right. And you're not saying that Ameritech refuses to do that?

A. No, I'm not saying that.

Q. And you're not saying that Ameritech, if they do it, would necessarily do it inaccurately?

A. Correct.

At the same time, I don't know if a -- someone who has a third-party local toll provider if they were to go to Ameritech and say, Here's a list of my Band C calls, would you do the rate comparison for me. I have no way of knowing if Ameritech would do that.

JUDGE GILBERT: Okay. Fair enough.

Okay. That's all I have.

Do you have redirect?

MS. SATTER: No redirect.

JUDGE GILBERT: Okay. Thank you, Mr. Goldman.

Oh, you not move for admission of his exhibits.

MS. SATTER: I would like to move for the admission of CUB Exhibits 4.0 and 4.01, the direct and rebuttal testimony of Jonathan Goldman.

JUDGE GILBERT: Objection?

MR. KERBER: No, your Honor.

JUDGE GILBERT: Okay. 4.0 and 4.01 are admitted.

(Whereupon, CUB
Exhibit Nos. 4.0 and 4.01 were
admitted into evidence.)

MS. SATTER: At this time, I'd just like to point
out that Ms. Terkhurst is back and we could either
complete her testimony for submission now or maybe
go on with staff.

MS. SUNDERLAND: Could we have a minute to talk
with her about those exhibits that we were handed
over lunch?

JUDGE GILBERT: Sure. Okay. We'll go off.

(Whereupon, a brief
recess was taken.)

JUDGE GILBERT: All right. We're back on.

I believe we have received all f CUB's
testimony and now we're moving to staff.

MS. SATTER: Except for Shirley Terkhurst.

JUDGE GILBERT: Oh, I'm sorry, yes. We're still
waiting for Ms. Terkhurst's final version and a
response from Ameritech on that and then we'll go
with that.

Okay. Mr. Harvey.

MR. HARVEY: We're prepared to call at this time
Cindy Jackson on behalf of staff.

(Witness sworn.)

JUDGE GILBERT: Thank you.

CINDY JACKSON,

having been called as a witness herein, after having
been first duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION

BY

MR. HARVEY:

Q. Ms. Jackson, do you have a document -- or,
actually, two documents before you consisting of 21
pages of text in question and answer form with a
number of attachments?

A. Yes, I do.

Q. And are those labeled direct testimony of
Cindy Jackson, public version, and direct testimony
of Cindy Jackson proprietary version, the
proprietary version being in a Manila envelope to
ensure proprietary treatment?

A. Yes, they are.

Q. Okay. Is that your -- was that testimony prepared by you or at your direction?

A. Yes, it was.

Q. Okay. Is it true and correct to the best of your knowledge?

A. Yes, it is.

Q. Do you have any additions, redactions, corrections or other amendments to make to the testimony in question?

A. No, I do not.

MR. HARVEY: With that, I would request that staff Exhibits 1.0 and 1.0P, being respectively the direct testimony of Cindy Jackson, public version, and direct testimony of Cindy Jackson, proprietary version, be moved into evidence.

JUDGE GILBERT: Is there any objection?

Okay. Staff 1.0 and 1.0P are admitted .

(Whereupon, Staff

Exhibit Nos. 1.0 and 1.0P were admitted into evidence.)

JUDGE GILBERT: Is the cross-examination?

MS. SUNDERLAND: Not from us.

MR. KERBER: Not were Ameritech Illinois.

MS. SATTER: No. CUB has no questions.

JUDGE GILBERT: Let's go off the record.

(Whereupon, a discussion
was had off the record.)

JUDGE GILBERT: We're back on the record.

We had a brief of -the-record discussion regarding the FCC FTC policy statement, which is discussed in Ms. Jackson's testimony and I believe some of the other testimonies, and that there is a summary of that attached to Ms. Jackson's testimony.

I would like a copy. Mr. Kelter has volunteered to get me a copy. There's no need to put it in the records; so just that we're clear, that everyone's clear, sight away as a public governmental document.

Okay. Mr. Harvey, do you have another witness?

MR. HARVEY: Yes, I have another witness, Mr. Robert Koch, and I anticipate little or no cross-examination from Mr. Koch, but he also has legitimate business up here; so I'll just -- there

is no need to put him in the affidavit. We'll just tender him for cross.

MR. HARVEY: Mr. Koch, do you have before you a document consisting of -- well, you better swear him in first.

JUDGE GILBERT: Yes. We're falling apart here.

Does anyone have cross for this witness?

MS. SUNDERLAND: We don't.

MR. KERBER: No.

JUDGE GILBERT: CUB, do you guys have cross for this witness?

MS. SATTER: No, we don't.

MR. KELTER: No.

MR. HARVEY: Again, staff's position being impeccable, obviously.

JUDGE GILBERT: Okay. I'm going to swear Mr. Koch.

(Witness sworn.)

ROBERT KOCH,
having been called as a witness herein, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY

MR. HARVEY:

Q. Mr. Koch, do you have before you a document consisting of nine pages of text in question and answer form marked as Staff Exhibit 2.0 in this proceeding?

A. Yes, it is.

Q. Is that your direct testimony in this proceeding?

A. Yes, it is.

Q. Was it prepared by you or at your direction?

A. Yes, it was.

Q. To the best of your knowledge and belief, are all the statements made therein true and correct?

A. Yes.

MR. HARVEY: That being the case, I would move Staff Exhibit 2.0 into evidence at this time, subject to the cross-examination of the parties.

MR. KERBER: Ameritech has no cross.

MR. KELTER: CUB has no cross.

JUDGE GILBERT: All right. I'm going to ask a couple of questions to make your journey well worth it.

EXAMINATION

BY

JUDGE GILBERT:

Q. Okay. If you would take a look at Page 3 and if you would look at the sentence starting on Line 60 and the sentence after that.

A. Yes.

Q. Okay. You appear to be criticizing Mr. Kerst refusing a -- to a hypothetical average user. I assume you're not saying that she should have created some sort of voluminous analysis of every customer.

A. No, sir.

Q. Okay. What's your objection then to what she did here?

A. I was trying to frame her analysis as it pertained to this docket instead of providing a comparison to what the actual figures show for the customers in the different plans, rather she

develops an average customer and shows how that person would be affected by the plan. So I was trying to frame that appropriately.

Q. What would it have looked like if it had been done appropriately in your judgment?

A. Well, I believe the data -- CUB requested actual data that was not available to them.

My opinion of what the actual call volumes are is more in line with Ameritech witness, Ms. Sorensen, who does the statistical analysis.

It shows that people are following the plans for the most part appropriate to the usage and that they did -- have different calling patterns in each of the plans.

Q. Is the keyword to your objection to her testimony the word "hypothetical"? I mean, is it not, in fact, just an average?

A. I don't necessarily have an objection to her analysis per se for what it is. I want to characterize it appropriately for -- instead of -- maybe I'm not wording this correctly.

Her's is a hypothetical example rather

than an actual example, and I was just trying to frame it as such. And the results you derived from this customer are different for the -- obviously, what this analysis shows, at least in my opinion, is more along the lines of what would happen if you eliminated the basic rates.

Then the average customer would have to choose between these plans, and it would be more in line -- the impact would be more along the lines of what she showed in her analysis.

Q. Well, I'll just say the light bulb isn't going on for me. And that may certainly be my fault.

Okay. I think we're just going to get into the same problem, but if you look at Page 8, the sentence that starts on Line 152. And, again, you're criticizing her testimony because it doesn't address whether actual subscribers have been harmed as a result subscribing.

And my reading of her testimony was that she was certainly asserting that harm had been caused in her judgment; so I'm not sure what you're

saying there.

You're obviously making the distinction and I'm obviously not making the distinction that you're making, so maybe you can take another crack at it.

A. Okay. The numerical analysis, I don't believe provides any proof of any harm done to any actual customers.

And that's the -- and I'm referring to her direct testimony, the attachments 2 through 7 and specifically in her direct testimony. I had it right here. Starting on Page 3 Exhibit 1.00 through Page 10.

Q. Okay. Let me catch up with you.

Sorry, are we on her direct or her rebuttal?

A. On her direct, sir.

Q. On Page 3?

A. Starting on Page 3, basically, my testimony addresses Section 2 of her testimony, and -- which starts on Page 3 and goes through the middle of Page 10.

And all I'm saying -- what I'm trying to -- the distinction I am trying to make is that there really is no proof of any harm done to customers, any actual impact in that section; that it really is only showing a potential harm and that's, I think, where the distinction between the hypothetical and the actual number come into play, sir.

Q. Okay. I think I'm starting to see what you're asserting.

Well, let's do this first. When you say harm on Page 8, you're referring to economic harm, I assume?

A. Yes.

Q. Which should mean paying more than they ought.

A. Correct.

Q. Okay. And is your criticism then that what she says on Pages 3 through 10 of her direct analysis of what would happen hypothetically to a customer as opposed to what has happened to a particular customer or all customers?

A. I'm saying that -- and hopefully I'm capturing your question appropriately -- I'm saying that her hypothetical example -- hypothetical average customer would not fit well into either of the two plans, option calling plans.

However, if you showed the actual take rate and actual data, that you wouldn't see that. Her analysis isn't showing that type of harm because it's not providing what the actual results are for the company, and her analysis instead just develops that average customer and runs them through the plan and shows that it wouldn't work.

Q. Okay. As I read her analysis, she's saying that if a customer has this kind of usage they would benefit from either being on basic rates or one of the plans, depending on that particular customer's usage; is that what you understand her to be saying?

A. I understand her to be saying that for three different types of users that they would be harmed by taking a CallPack or Simplifive.

In my analysis, I found that due to different reading of the discount from one of the

packages that that's not necessarily the case for all three of the examples; but that's exactly what she did was develop for three different users, their -- how they -- what their impact would be under the plans.

Q. Okay. And I don't mean to badger you. I just generally do not understand the point you're making. If -- well, isn't your analysis just as hypothetical as hers?

A. What I provided, at least what I felt I would add to the record, is -- and when I tried to clarify it in my testify was exactly what that analysis showed because at least, at first reading, it appeared that she's showing that there was actual harm being done to customers with that data; and I wanted to make that distinction that, no, she developed a hypothetical customer and showed that there would be damage for that customer.

So that was part of what I attempted to do in my testimony and the other was to look at those numbers and verify her accuracy, her appropriate -- the appropriateness of her analysis.

Q. Okay. Would it be so that, if an actual customer had the usage characteristics she describes, they would then get the results that she describes either under CallPack, Simplifive or basic rates?

A. Exactly, except for the fact that the discount calculations that we found was in error, yes.

Q. Okay. Now I get it.

JUDGE GILBERT: Okay. I'm done.

Redirect?

REDIRECT EXAMINATION

BY

MR. HARVEY:

Q. Mr. Koch, your testimony -- and I'm going to lead flagrantly so if anybody has an objection they can probably give it right now.

Your testimony was prepared entirely in response to Mr. Kerst; was it not?

A. Yes, it was.

Q. And your testimony does not purport to address the use characteristics of any actual customer?

A. That is correct.

Q. It merely analyzes Mr. Kerst's data; is that correct?

A. Yes, it is.

Q. And it is intended to analyze whether the actual customer would be harmed; correct?

A. Correct.

Q. Or rather -- I will withdraw that question.

Whether this hypothetical customer would be harmed; correct?

A. Correct.

Q. And you further testified if an actual customer had the usage patterns that are precisely those of Mr. Kerst's, hypothetical customers, those customers would achieve the same result?

A. Yes.

MR. HARVEY: Fair enough. Thank you.

JUDGE GILBERT: Okay. Thank you, Mr. Koch.

That's staff's case?

MR. HARVEY: That's staff's case.

JUDGE GILBERT: Okay. Your turn.

All right. Let's go off the record.

(Whereupon, a discussion

was had off the record.)

(Whereupon, Ameritech

Exhibit Nos. 2.0, 2.0P, 2.1,

2.2 and 2.2P were marked

for identification.)

JUDGE GILBERT: We're back on record.

MR. KERBER: Your Honor, we next call David Sorensen to the stand please on behalf of Ameritech Illinois.

(Witness sworn.)

JUDGE GILBERT: Thank you, sir.

DAVID SORENSEN,

having been called as a witness herein, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY

MR. KERBER:

Q. Mr. Sorensen, do you have before you a document entitled direct testimony of David Sorensen on behalf of Ameritech Illinois proprietary version?

A. Yes.

Q. Do you also have in front of you a document with the same title except indicating public version?

A. Yes.

Q. Do you also have before you a document entitled rebuttal testimony of David Sorensen on behalf of Ameritech Illinois?

A. Yes.

Q. And finally do you have before you, again, both the public and a proprietary version of a document entitled supplemental direct testimony of David Sorensen?

A. Yes.

Q. And are those -- let me do it this way.

MR. KERBER: Your Honor, I've asked and had those documents marked, respectively, as 2.0 for the public direct, 2.0P for the proprietary direct, 2.1 for the rebuttal, 2.2 for the public version of the

supplemental direct; and, finally, 2.2P for the proprietary version of the supplemental direct. And I provided the requisite number of copies to the court reporter.

BY MR. KERBER:

Q. Mr. Sorensen, do these documents together represent your testimony in this matter?

A. Yes.

Q. And were all of those documents prepared by you or under your direction?

A. Yes.

Q. Do you have any changes or corrections to make in any of those documents at this time?

A. No.

Q. And if I asked the same questions that appear within the documents, would you provide the same answers that appear here today under oath?

A. Yes.

MR. KERBER: With that, your Honor, I would move for the admission of the documents I've previously identified into the record and make Mr. Sorensen available for cross-examination.

JUDGE GILBERT: Is there objection?

MR. HARVEY: None from staff.

MR. KELTER: No.

JUDGE GILBERT: Okay. 2.0, 2.0P, 2.1, 2.2 and 2.2P are admitted into the record.

(Whereupon, Ameritech
Exhibit Nos. 2.0, 2.0P, 2.1,
2.2 and 2.2P were admitted
into evidence.)

JUDGE GILBERT: Mr. Harvey, will you be crossing first?

MR. HARVEY: Yeah.

CROSS-EXAMINATION

BY

MR. HARVEY:

Q. Mr. Sorensen, my name is Matt Harvey. I represent the staff of the Commerce Commission in this proceeding, and I'm going to ask you some questions on kind of how you did this study and to do that I'm afraid you're going to walk through a couple of concepts and statistics with me.

First of all, the purpose of the study you conducted that's the subject of your testimony was to determine whether optional calling plans subscribers were, in fact, saving money compared to what they would have paid Ameritech under basic rates plans; correct?

A. This is to see that difference between the two.

Q. Okay. Now, let's take a step back from that and kind of start with first principles. In statistics, the term population, would it be fair to say that that means kind of a total number of things to be studied?

A. That's correct.

Q. And so, in this case, the population would have been all of the subscribers to optional calling plans during the month of January --

A. Correct.

Q. -- 2000?

Now, the term sample in statistics refers, does it not, to a subset of the members of the population?

A. Correct.

Q. Okay. And the sample would have been the customers who you studied in this case?

A. Correct.

Q. Okay. A random sample is a sample where each and every individual member of the population has an equal chance of being selected; right?

A. Correct.

Q. Okay. And you selected a random sample?

A. Yes.

Q. Okay. Now, the whole purpose of doing this study was to get a statistically significant result; correct?

A. Correct.

Q. Okay. And that would be a result which was probably true for the whole population despite the fact that you only studied it part of it?

A. Yes.

Q. Okay. Now, you described your results in this as highly statistically significant .

A. Yes.

Q. Okay. So what you're saying is that you're

giving us your opinion that you think the results of your study are highly likely to be true for the whole population?

A. Yes.

Q. Okay. Now, you assured a ran -- you attempted to assure -- and I guess I'm not disputing it. You may have done that but I just wanted to clarify that -- you attempted to assure a random sample for your study by using a random number generator to select telephone numbers for the people in your sample.

A. Correct.

Q. And the population of customers you used was, again, the subscribers to optional calling plans during January of the year 2000.

A. Yes.

Q. Okay. So I assume that each telephone number selected by your computer had the exact same chance of being selected as every other telephone number in the population that you studied.

A. Correct.

Q. Okay. So if for whatever reason there were

another, let's say, 30 or 40,000 phone numbers in the population at that point, when you studied it, they would have had an equal chance of being selected; correct?

A. Yes.

Q. Now, at this point, I'm going to ask you assume a couple of things for me, and you don't have to concede by any stretch of the imagination that they're true. I just want you to assume them for the sake of the discussion we're having here today.

First of all, I'm going to ask you so assume, you know, that there are a number of customers who subscribed to an optional calling plan, use it for a month, discover the plan isn't really for them, maybe it results in higher phone bills and as a result switch back to basic rates.

A. Yes.

Q. Okay. And I'm going to ask you to assume that these customers only subscribe to the optional calling plan that they choose for a period of one month.

A. Okay.

Q. And I'm going to ask you to assume that these customers sort of come and go. They're replaced by other similarly situated customers --

A. Okay.

Q. -- each month.

And I'm further going to ask you to assume -- and this is entirely for the sake of argument, Mr. Sorensen -- that these customers account for, let's say, 10 percent to make the math easy, which is always a key with lawyers, of the total subscribers to optional calling plans at any given month.

A. Okay.

Q. Okay. Now, assuming that all these things are true, your study population of customers who subscribe to optional calling plans during January of 2000 would consist of 10 percent customers who are kind of on it for one month.

A. Okay.

Q. However, if you decided that your study population ought to consist of all customers who subscribe, let's say, during December of 1999 or

January 2000, that that 10 percent would magically morph to 20 percent; right?

A. Yeah.

Q. Okay. And if you selected -- maybe you chose November or December of 1999 or January of 2000 as your study population, that would be -- make 30 percent of our customers of the total population, the short-term subscribers that we're talking about.

A. Okay.

Q. Is that a fair statement?

A. You're still playing out the assumptions; right?

Q. Yeah.

A. Yes.

Q. Now assuming that was true and assuming you picked a three-month sample, each of those subscribers, including the 30 percent of the subscribers who are the short-term ones, would have an equal chance of being selected as a part of your statistical sample; wouldn't they?

A. If they were a customer in November, yes.

Q. Or December?

A. Well, my sample was picked from January, so they -- the customer who was in December would not have been in my sample.

Q. Okay. Maybe I'm not making myself totally clear.

Let's say you took a sample of all customers who subscribed during any of the three months in -- that we've -- you know, November, December '99, January 2000, each of those -- those customers would all have the same chance of being selected --

A. Yes.

Q. -- to be part of the sample.

And so the sample would have a relatively larger number of our short-term subscribers in it; right?

A. In your assumptions, yes.

Q. Under my assumptions, yes.

And assuming that my assumptions are in any way correct, which I don't expect you to do, your study would not have had similar results, would it have, to what it ultimately did have?

A. Could you restate that?

Q. All right. I will restate it in what I hope will be a more clear way.

Your study wouldn't have shown that customers saved as much money; right?

A. If, by chance, the customers of those one timers ended up in the 10 percent sample and they dropped because they spent -- would have spent more money under the plan, you're statement would be true.

Q. Okay. And, in fact, there would be -- one of the reasons those customers might leave the plan is because they didn't save money; would that be fair --

A. That would be one reason.

Q. Okay. So if we assume for the sake of argument that there are a substantial number of short-term optional calling plan customers of the type we've been talking about here, you're study isn't really designed entirely to capture them; is it?

A. My study picked at the one month in time all

the subscribers at that point in time. It is true that maybe some of those dropped the following month, but it would be seemingly at the proportion that the general -- of the general population that people dropped out of the plan.

So, for example, each month 2 percent of customers dropped the plan, I would expect, in my 10 percent sample, I would have that same proportion of customers who only have the plan for one month.

Q. But under that assumption, if you studied a sample consisting of all customers who subscribed during the three-month period, that 2 percent would rise to 6 percent; wouldn't it?

A. Yes. That is one reason why I limited it to the subscription for one month to reduce any lowest possible biases of short-term customers.

Q. So it's your testimony here today that the affect of an -- that the short-term customers introduce a bias into this study?

A. Only if they are disproportionately included, but seeing I took a random sample for one month, they would be in the same proportion as the

general population in theory.

Q. But not if the population was the whole universe of people who'd ever subscribed to an optional calling plan; right?

A. Well, I'm saying if I look at -- if I did the study with all customers and we say 2 percent of those customers dropped the next month, I would expect, seeing I took a random sample of January, that 2 percent of my sample population also would be those customers that only had it for one month.

So the proportion of customers, as you described as short-term, should be proportional in the sample as it is the same proportion to the population.

Q. I understand what you're saying, but I want to kind of clarify this with you because I don't think it's a fairly important point.

Assuming that you wanted to study how this use of these optional calling plans affected all of the customers who had ever subscribed to them, wouldn't it be better to study more than one month?

A. I think for the reason of the people who -- that there are people who turn off the plan is the reason why I chose to do just one month instead of looking over three month periods. Somebody might have been on the plan for one month but not the following two.

I took the customers who I knew had the plan in January and then got the usage for that same period of time; so I made sure I had the usage and subscription lined up.

If I went over a longer period of time, there would be some mismatches between the usage and the plan they were on.

Q. And I understand that. I guess what I'm getting at is, assuming, again, and that you want to kind of figure out what the affect of this -- these plans, in terms of rates, are upon every single person that's ever subscribed to them for bad reasons or good and for a month or forever, you'd want to study more than one month; wouldn't you?

A. Well, based on that characterization of saying ever subscribed, I would agree to that

statement; but we are looking at, you know, a current snapshot. We're not looking at somebody who subscribed a year ago, as I'm following under your subscription of ever.

Q. Well, that's fair enough, Mr. Sorensen. Just a couple of more things.

Now, this is the first time you've performed a study like this as to this particular group of customers; correct?

A. Correct.

Q. And this is the first time you've performed an analysis for these services; correct?

A. Well, I have in the past performed somewhat similar in helping with identifying customers which target our direct mail in a previous job, in a previous position.

Q. Okay.

A. So I've done somewhat similar getting the usage, doing some of analysis; but for this exact analysis, this is the first time.

Q. Okay. Well, let me ask you a couple of more stat questions because, you know, I didn't do so hot

in that class in college and as long as I got you here.

Now, is the size of your sample the only real indicator of statistical significance?

A. That's the preponderance, the main.

Q. The primary one?

A. The primary reason. And it depends -- in this case, yes, the size is.

When you're looking at other tests of statistics, some other factors come into play, but that's not relevant in this analysis.

Q. Okay. Now, did you -- when you conducted your study, did you test the mean number of calls at all?

A. Yes.

Q. Okay. Did you test the whole time?

A. Yes.

Q. And the distribution?

Okay. You tested all those things. Did you test them for significance?

A. Significance in what term?

Q. Hypothesis tests.

A. Hypothesis tests generally is this sample mean different than the universe or the population mean. In this case, we don't have a population mean because of the data billing system only retains the amount of data needed to bill.

For example, for a CallPack customer, it would not record the minutes because we don't need that to bill; so I don't know what the population mean is.

Q. Okay. So that information is unavailable for you and so you didn't test for it.

A. Right.

Q. And this is because of our auto-indexing mass storage database that the billing information is stored on?

A. Right.

Q. Okay. One more question and this is just sort of a Zen question, basically.

Were you surprised by these results, Mr. Sorensen?

A. I was not surprised, no. I -- it pretty much followed my expectations, the general levels.

MR. HARVEY: Okay. Thanks much, Mr. Sorensen. I appreciate your helping me understand this better.

JUDGE GILBERT: Okay.

MS. SATTER: I have a few questions.

CROSS-EXAMINATION

BY

MS. SATTER:

Q. Good afternoon.

A. Hi.

Q. First, let me ask you, do you know whether Ameritech performed any analysis of the benefit of these -- of calling plans to consumers prior to the analysis that you prepared in this case?

A. Could you give me an example of the type of analysis?

Q. Prior to your analysis in this case, had Ameritech reviewed the usage patterns of customers on, say, CallPack and compared them to what their rates would have been under basic rates or any other plan?

A. Not to the level of detail in this study. Only at really high level degrees of analysis

because, like I said, the billing system, we don't have the detailed data to do this exact analysis; so it's more maybe a higher level analysis but not the same detail analysis.

Q. When you say higher level analysis, can you tell me what you mean by that?

A. For example, we would know the number of calls from a -- well, let me change that.

We looked at -- between basic rates and Simplifive is there that data is more comparable. While CallPacks, like I said, we only have the number of calls and you really need the minutes to compare it to basic rates. So a qualified answer.

Q. So had there been an analysis comparing basic rates and Simplifive customers rates?

A. Well, in the past when we did some of the initial direct marketing to try to promote Simplifive, we did look at customers on basic rates to see who are the customers in sort of the target market that would be -- this plan would be targeted to.

Q. Do you know when that was done? Would that

be the initial promotion, subsequent promotions?

A. That was, I believe, sometime in early '98, if memory serves; but. . .

Q. Would that have been after the customers -- after some customers had signed up for the plan?

A. Yeah. The plan has been in the market for a while, but this would have -- like I said, I think sometime in 1998.

Q. Do you have that?

A. No.

Q. Did you review it in connection with your testimony?

A. Not with this testimony.

And that analysis was basically identifying those basic rate customers who would be in the targeted -- would be in the target audience for Simplifive. Is just identifying those customers to whom we would send direct mail to try to offer Simplifive to.

Q. So do you mean that there was an analysis as to which calling pattern would result in a lower bill under Simplifive as compared to --

A. Right.

Q. -- basic rate?

A. To be -- to identify those customers who would want to sent the direct mail to.

Q. Okay. And this is different from this plus or minus \$3 that we've talked about in the case?

A. Well, that was the target, plus or minus 3.

Q. And that plus or minus \$3 came out of whatever analysis you're referring to?

A. That was the target to identify which customers would fall in that range.

So you start with the basic rate customers, price them out under Simplifive and see who would fall in that range of plus or minus \$3.

Q. How many -- how big of a universe that is?

A. Yeah, it would identify those customers for whom we would send the mail to.

Q. So does that mean that that company did not determine that there were customers that would save \$5 and that that would be a more appropriate threshold, or did you not make that analysis?

A. That was not my -- that was the -- that did

not fall in my responsibility. I was just to identify the people in those ranges.

Q. How did you identify the people in those ranges?

A. Well, we have the -- for basic rate customers in our billing system, we do have the detailed and the calls and the minutes by the times of day, so we could accurately price out what their bill would be, assuming the same usage with the Simplifive rates.

Q. Was that based on one month's usage or three month's usage; do you know?

A. Three months, I believe.

Q. And did the -- do you remember how many customers fell within that category?

A. I do not recall. It was a couple of years ago that was done.

Q. Were customers who pre-subscribed to interexchange carriers included in that analysis?

MR. KERBER: Could you clarify as -- I assume you mean for Band C usage?

MS. SATTER: Yes, Band C usage.

THE WITNESS: I do not recall exactly. If I were do the analysis today, I would exclude those customers.

BY MS. SATTER:

Q. Do you have the ability to access that information?

In other words, if a customer pre-subscribes to company other than Ameritech for Band C interLATA toll, does Ameritech have available to it those customers usage?

A. I'm sorry, can you repeat the question?

Q. Does Ameritech have access to the Band C usage of customers who have a different non-Ameritech carrier --

A. No.

Q. -- for Band C?

A. No.

Q. Does that depend on whether or not Ameritech bills -- does the billing for the non-Ameritech carrier -- or does it just not have access to it, period?

A. I, myself, do not have access to that for my

purposes. I mean, somewhere in our billing system that data is stored, but it's not available for --

Q. So that then when you're targeting your plus or minus \$3, when you're identifying those customers, the customers who -- you are excluding the Band C usage of customers who have pre-subscribed to a non-Ameritech carrier from interLATA toll; is that right?

MR. KERBER: Could I just have that question read back, please

(Whereupon, the record was read as requested.)

MR. KERBER: I'm going to object to the question as mischaracterizing the previous responses.

I think the witness testified that he didn't know if that's what happened when that analysis was done; but if he did it today, he would do it that way.

THE WITNESS: I would exclude those customers who are not Band C.

MS. SATTER: Well, I think the witness -- if the witness needs to clarify --

MR. KERBER: Well, no. I've got an objection pending.

JUDGE GILBERT: Well, the ruling on the objection really depends on recalling what was said before.

MR. KERBER: I'd be happy to read those Qs and As back too. I mean, if I'm wrong, I'm wrong, certainly.

JUDGE GILBERT: I just don't remember.

(Whereupon, the record was read as requested.)

BY MS. SATTER:

Q. When Ameritech selected the customers who fell within the plus or minus \$3 range, did Ameritech include customers who did not use Ameritech for their Band C usage?

A. That, I don't recall exactly what happened then; but as I said, if I were to do that analysis today, I would exclude those customers.

Q. Okay. So why would you exclude those customers today?

A. Well, because Simplifive is a product that is designed for high Band C users; and, of course,

people who we don't -- have Ameritech as a provider for that service, we would have no usage for them.

So if -- even if I included them, they would show up as spending -- they would not benefit from the lower rates of Band C usage from Simplifive.

Q. But they might benefit from Band B if they make -- no, they wouldn't -- excuse me.

Strike that. Strike that. That's not correct. That's just wrong.

Okay. But you don't know whether you included it or not?

A. I don't recall exactly.

Q. Okay. And was there only one analysis of customer bills that was done?

A. That I know of.

Q. That you know of. Okay.

Now, were customers informed that Ameritech was reviewing their bills for this purpose?

A. I don't recall the materials sent to the customer on the text of those -- of that customer.

All I said, I was involved in identifying who the customers were.

Q. Okay. So you don't know whether the customers consented to the use of their usage information for purposes of this Simplifive or CallPack solicitation?

A. I don't think I'm positioned to answer that.

Q. Okay. Now, when a customer subscribes to CallPack 100, they are charged \$10 a month regard -- up to -- strike that. Let me start over.

When a customer subscribes to CallPack 100, they are charged \$10 a month and they can make up to 100 calls for that \$10; is that right?

A. That's correct.

Q. Okay. In your analysis, were you able to itemize how many calls the CallPack 100 customers actually did make?

A. Yes.

Q. Okay. So if they made less than that 100 call amount, that would be reflect in the your analysis?

A. Yes.

Q. Did you talk about the -- excuse me. Wait a minute.

In your revenue analysis, did you include the full \$10 as revenue to the company or did you include what would be the revenue had the customer only been charged for the calls the customer made?

A. I priced for each of the three plans, CallPack 100, Simplifive and basic rates, what the charges for that customer would be given their usage.

So if there was a CallPack customer, if they only made ten calls, they would -- I would include \$10 as their charge. If they made 110 calls, I would include \$10 plus the 10 cents per call above the 100.

Q. Okay. Do you know how much additional revenues Ameritech Illinois receives as a result of the minimum charges for CallPacks as it compared to the revenues that Ameritech would be receiving had the customer only been charged for the calls the customer made?

MR. KERBER: I'm going to object to that one as

to relevancy. I mean, the plan is structured the way the plan is structured. We don't have an offering that is CallPack without paying for a hundred calls.

MS. SATTER: I think it really goes to whether -- comparing with CallPack or without CallPack.

MR. KERBER: Well, that would be comparing the basic rates, though. It wouldn't be comparing to CallPack without a hundred calls.

MS. SATTER: Well, I guess, you know, the question --

MR. KERBER: Regardless of what the answer might or might not be or whether the witness knows the answer, I have a relevancy objection.

JUDGE GILBERT: Okay. And the point of the objection is that there is not a service offered by Ameritech that has the characteristics described in the question.

MR. KERBER: Right. It doesn't exist and nobody has suggested that it should exist or anything else in the context of this case.

I mean, the comparison has been between

basic rates or CallPack or Simplifive, not some version of CallPack or Simplifive. It's sort of hybrid that doesn't exist.

JUDGE GILBERT: Okay. Was the intention of the question to make a comparison between CallPack and basic rates?

MS. SATTER: Well, the intention of the question is just to clarify what is -- what was considered and what wasn't considered in the analysis.

I mean, if the witness didn't include that or did include it, we just need to know that. I'm not saying that he should have, he should not have or anything like that. I'm just asking him what he did so I can be clear on it.

I mean he did say that in the revenues he included the full \$10. Well, I don't know whether he made some --

MR. KERBER: With that --

MS. SATTER: Excuse me, I'm not --

MR. KERBER: I'm sorry, with that understanding, I'll withdraw the objection. I'm trying to make it easy.

BY MS. SATTER:

Q. Do you remember the question?

A. Yes.

I did not make the comparison of those CallPack 100 customers to what -- the only comparison was what they pay on their CallPack 100 to what they would have paid under basic rates.

MS. SATTER: That's all the questions I have.

JUDGE GILBERT: I have a few.

EXAMINATION

BY

JUDGE GILBERT:

Q. Okay. If you'd look at Page 5 of your direct.

A. Okay.

Q. And if you'd look at the last question that begins on that page. And the table that's part of your answer.

A. Yes.

Q. All right. Let me make sure that I

understand what the table contains.

Is this based on the usage by customer -- well, this is going to be a lousy question. Let me start over.

Let's take the first line of the table, CallPack 100. Are the charges under basic rates, as they appear in that line, derived by taking the usage of the CallPack customer and applying basic rates to that usage?

A. That's correct.

Q. Okay. And the next line, the same principal, for Simplifive?

A. Correct.

MR. KERBER: Just for clarity, your Honor, I note that this is one of the tables that was updated in the supplemental so that the numbers would be different if you looked at the supplemental.

JUDGE GILBERT: Right. Yes. And I wasn't going to ask anything about numbers. Okay. That's fine.

BY JUDGE GILBERT:

Q. Let's say that we have a canny consumer who has chosen either of these optional calling plans

with the intention of saving money. And in doing so, they have altered their calling patterns to some degree to accomplish that.

Now, by applying basic rates to their actual usage under the CallPack, you might get a different scenario than if you applied their basic rates to their usage prior to going on the CallPack; would you not?

A. Yes, that could happen.

Q. Did you make that kind of a comparison?

A. No, because I thought about looking at the usage before CallPack, but reasons why -- some reasons why people would take the CallPack is something happened in their household.

For example, maybe a college child came back who was using the Internet a lot. That usage would be more indicative of whether CallPack 100, in this case, is better than basic rates versus the usage before they took the CallPack.

Q. Okay. Yeah, I was -- it just occurred to me that the fact of having subscribed to either of the calling plans might then change to some degree the

usage pattern, which would then have an effect on the results that you have here. But you're agreeing with that.

A. I agree.

Q. Okay. Let's see, Page 10. First, just a pretty simple question there.

In the second sentence of the full answer on that page, it starts there in the middle, you refer to the average and then in parens you have the word mean. It's my understand that those are two different concepts. What is your intention there?

A. Well, there's actually multiple averages. The mean is just taking the total -- like the total minutes, for example, divided by the calls, you get an average per call.

There's also a median, where if you lined up all the customers whoever fell at the 50th percentile, in other words, is another average term. So I clarified what average meant by including the term mean.

Q. Well, does -- it sounds like the Clinton deposition, but what does "mean" mean?

A. That is, if I took all the customers -- each customer that had the difference then I would just add up those differences across all the customers and divide by the number of customers. That's what "mean" means.

Q. Okay. So you really meant --

A. It --

Q. -- to emphasize, meaning an average rather than a median?

A. Correct. It's the traditional average that everybody thinks about.

Q. Just to make sure of this, in the run-over answer higher on Page 10, there's a sentence about midway through of that paragraph that begins with the word "therefore" and where you said the available data was factor up.

Now, none of that matters any more. That sentence no longer matters because of the supplemental direct?

A. Correct.

Q. Okay. I just have to say, I understand that you guys haven't numbered your lines for 24 years.

The Cubs have not won a pennant in, how many, 50? It doesn't mean they're doing something right, is what I'm trying to say, just because it's gone on for a long time. This makes it harder for me, but okay.

(Whereupon, a discussion
was had off the record.)

BY JUDGE GILBERT:

Q. If you would look at Page 13, the very last line, the asterisk where you say, Price per call does not factor in rounding to whole minutes.

How do you not do that because -- well, let me just stop there. How do not factor that in? How can you withdraw that from your analysis?

A. In this analysis, I did not round the minutes up. I took 5.9 and multiplied it times all the rates.

In actuality, that -- if they made that 5.9 minute call, it would be charged as a 6 minute, but because I'm looking at calls across the whole spectrum, some of them are going to be 5 minutes, some of them are going to be 6 minutes; so I took

the average of 5.9 and applied the rates to 5.9.

But I put that footnote to say that this is not actually what would happen in the billing system. It would be charged as 6-minute call.

Q. Okay. Just for my curiosity then, when in your basic rates do you round up? If it's anything over the minute, do you then round up to the next minute?

A. Yes.

Q. So 5 minutes and 1 second is going it round up to 6?

A. Yes. Which would only make this analysis even better if I did that rounding up.

Q. Okay. That question wasn't part of a challenge to the analysis. I just wanted to know.

If you would look at Page 14 of your direct. You changed here the formats of the analysis that you had been using regarding voice mail. In other words, you didn't compare customers on a CallPack -- I'm sorry, CallPack or Simplifive with customers on basic rates in both cases with voice mail. Here you did a different kind of

analysis.

Are you following me so far?

A. Yeah.

Q. Okay. Why did you change the way you analyzed data here?

A. Well, this is to determine if there was any relationship between -- well, actually, these ranges are, for example, the CallPack 100, it is as it relates to basic rates.

So that first line, the over \$10 represents those people who would -- that percentage shows how many are saving on CallPack 100 versus basic rates.

But this analysis then says, Given how those differences between the OCP and basic rates, is there a relationship between the -- whether the customer has voice mail or not.

So it shows, at least, in many -- most of those cases the distinction between savings on CallPack versus basic rates is not dependant on voice mail penetration.

Q. Okay. Let make sure that I understand the

table. Let's use the first line as an example.

Is this proprietary, by the way?

MR. KERBER: The bracketed materials are proprietary, so the specific numbers within -- under the columns.

JUDGE GILBERT: Okay. Now, can I refer to the materials in the first column, which are just the --

MR. KERBER: I guess -- the ranges are just chosen, so even those are bracketed, they probably need not have been.

JUDGE GILBERT: Okay.

BY JUDGE GILBERT:

Q. So that using the first line as an example, for those customers who are saving \$10 or more, then we move to the second column and that is the percentage of customers using CallPack 100 who are saving \$10 or more as opposed to basic rates. I'm correct so far?

A. Right.

Q. All right. And then the next number is the percentage of all customers realizing that savings under CallPack 100 or of the customers in the

preceding column?

A. The pre- -- of those customers in the preceding column are saving more than \$10. That third column shows what percentage of those customers have voice mail.

Q. Okay. And since you have some anomalies here, what I view as an anomaly, in that the CallPack and Simplifive results are not -- well, I'm speaking too broadly.

At least for customers who are saving \$10 or more, I see a substantial difference between CallPack 100 and Simplifive. Do you have an interpretation of that difference?

A. I guess the purpose of this table was not necessarily to compare CallPack 100 to the Simplifive customers.

It's really to see -- if I look independently at the CallPack 100 customers to see if there was a group of these customers like, let's say, you would assume that people who may be -- might be spending more on CallPack 100, it might be because -- it might be because they have voice mail.

And I wanted -- and I wanted to see how the influence of voice mail on whether customers save or not under the plan is really what the purpose of these plans.

And so the Simplifive difference in that first line was supportive that voice mail is really not a large impact of determining savings or not under these call plans.

If the hypothesis was that voice mail would drive -- cause, quote/unquote, harm as we defined earlier, I would expect to see the highest numbers on the bottom rows; but in the Simplifive case, that first row is counter to that.

Q. Did you consider performing an analysis that would compare customers with voice mail on the optional calling plans with customers with voice mail on basic rates?

A. I did not do that analysis, no.

Q. Did you think about doing that analysis?

A. No.

Q. Okay. So you didn't do any preliminary runs or get any preliminary results or anything of that

nature?

A. We got the results of who -- the savings or non-savings and tried to explain any areas like the people who spent more on their CallPack 100 to try to identify -- could identify the reasons that that was the case. Voice mail was one -- was the main reason that we hypothesized as a possible reason.

But I did not do that -- even think of that comparison that you stated.

JUDGE GILBERT: That's all I have.

Do you have redirect?

MR. KERBER: I have no redirect.

JUDGE GILBERT: Okay. Thank you, Mr. Sorensen.

We have, what, three witness for tomorrow? I think we can start at 10:00. I think we'll be all right.

(Whereupon, further proceedings in the above-entitled matter were continued to June 1, 2000, at 10:00.)