



WITNESSES - VOLUME 6

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20	(Devine) TTD-10	708	

**P R O C E E D I N G S**

1  
2 (Transcript follows in sequence from  
3 Volume 5.)

4 **TIMOTHY T. DEVINE**

5 resumed the stand as a witness on behalf of  
6 Metropolitan Fiber Systems, Inc. and, having been  
7 previously sworn, testified as follows:

8 **CONTINUED CROSS EXAMINATION**

9 BY MR. GILLMAN:

10 Q What states is MFS currently up and running  
11 in providing local exchange service?

12 A In New York, Illinois, Maryland and recently  
13 we just started to turn up service in Massachusetts.

14 Q Now, I think somewhere in your testimony,  
15 and I don't have the exact cite, but you said you have  
16 already tens of thousands of lines in the state of New  
17 York?

18 A Yes, that's correct.

19 Q And I understand also that you're serving  
20 residential customers in that state?

21 A Yes, that's correct.

22 Q Would you describe your entry into New York  
23 as successful?

24 A Yes.

25 Q What about Illinois and Maryland? Have you

1 been successful in entering the market there?

2 A Yes. It's still early, but based on our  
3 recent entry we have been very successful in both  
4 Illinois and Maryland.

5 Q Now, is it true that in New York they have a  
6 compensation scheme where you pay for per minute of  
7 use for terminated minutes.

8 A Yes.

9 Q So they don't have a bill and keep  
10 arrangement?

11 A No. They have a per-minute-of-use base rate  
12 that covers local and toll call so it's a LATA-wide  
13 per-minute-of-use rate.

14 Q And Illinois also does not have a bill and  
15 keep arrangement, does it?

16 A No, Illinois is a per-minute-of-use rate.

17 Q And Maryland also does not have a bill and  
18 keep arrangement?

19 A Yes, that's correct.

20 Q It's correct it does not have?

21 A It's a per minute, yes. Of course, the  
22 rates are considerably less than what have been  
23 proposed here. Maryland is like three- to five-tenths  
24 and Illinois is five-tenths to three-quarters of a  
25 penny. And New York is from three-quarters of a penny

1 to a little less than a penny, but it's a LATA-wide  
2 rate, so there's not switched access charges charged  
3 for intraLATA toll calls.

4 Q On Page 25 of your testimony, specifically  
5 line -- this entire answer to the question which  
6 begins on the top of Page 25, you talk about local  
7 traffic, including traffic traditionally known as  
8 intraLATA toll traffic.

9 Now, does MFS intend to adopt the same local  
10 territories as GTE?

11 A Yes. What MFS and GTE agreed to in the  
12 partial co-carrier agreement was that until a time  
13 that MFS seeks approval at the Commission to have its  
14 calling areas different than GTE's, that MFS would  
15 have one NXX per GTE rate center. So that would mean  
16 we would be consistent in mirroring GTE until the time  
17 we filed tariffs to ask the Commission to do it  
18 differently.

19 Q Now, under that -- if MFS carries a -- or if  
20 GTE terminates a toll call for MFS, switched access  
21 charges would be applied; is that correct?

22 A Between GTE and MFS based on the partial  
23 co-carrier agreement? We didn't agree to that. That  
24 was one of the issues of contention, that we could not  
25 agree as to what the definition of a POTS call was.

1 MFS's definition of a plain old telephone service call  
2 would be a call between two subscribers within a LATA.  
3 So a call that originates and terminates within a LATA  
4 between two subscribers.

5           And we feel that the rate should be based on  
6 the local rate, for two reasons, really. We don't  
7 want a high price floor for consumers. So if you have  
8 a lower price floor for consumers, you can have lower  
9 rates which benefit competition. That was a  
10 contentious issue went MFS and GTE.

11           Q     Would you agree with me that GTE and MFS  
12 will have to distinguish between what is classified as  
13 a toll call and what is classified as a local call?

14           A     If the Commission were to adopt a LATA-wide  
15 rate for compensation between two LECs, as did the New  
16 York Commission and the Connecticut Commission, there  
17 would be no need to distinguish between a local and a  
18 traditional toll call.

19           Q     It's your understanding in this case that  
20 there is no need for GTE to distinguish between  
21 whether a call is an intraLATA toll or a local call?

22                   MR. RINDLER: I'm sorry, was that interLATA?

23                   MR. GILLMAN: IntraLATA toll.

24                   WITNESS DEVINE: It's our position that we  
25 would not need to distinguish between the two.

1           Our position is we would like it to be a  
2 LATA-wide rate. But GTE's position is that their  
3 current rate centers define the difference between a  
4 local call and a toll call. So we disagree on that  
5 issue.

6           Q     (By Mr. Gillman) So GTE can distinguish  
7 within its system the difference between a toll call  
8 and a local call?

9           A     You mean right now? I imagine they can. I  
10 would think that they can.

11          Q     And that would be true under the bill and  
12 keep arrangement that you are recommending for this  
13 Commission?

14          A     Well, you're assuming then if there was bill  
15 and keep and there still was a distinction between  
16 local and toll? Is that the premise?

17          Q     Yes.

18          A     Okay. Assuming that premise it really  
19 depends how you could do it. I mean you could do it  
20 two ways.

21                 If we're going to do bill and keep we would  
22 not keep billing records of calls, we would just  
23 measure -- you know, we would just know total minutes  
24 for engineering purposes for trunks. So if we were  
25 going to do bill and keep we would not worry about,

1 you know, billing records for local calls. I guess we  
2 could do it either through separate trunk groups or  
3 just giving GTE percentages of local usage. So we  
4 could give, you know, a PLU like the interexchange  
5 carriers do for a percentage of interstate/intrastate  
6 usage and just say -- give you on a quarterly basis,  
7 like we do with NYNEX, or we previously did with  
8 NYNEX, was how many are local, how many are toll.

9 Q And assuming you did a PLU basis, then under  
10 your bill and keep situation, for all local calls, all  
11 calls designated as local, there would not be any  
12 compensation exchanged. However, at least in the  
13 interim, for a toll call there would be compensation  
14 exchanged; is that correct?

15 A Well, the Commission hasn't ruled on that  
16 item. I mean as I said, that we would prefer that  
17 local and toll be compensated at the same compensation  
18 arrangement because it keeps, you know, prices down  
19 for consumers. And if we're going to compete against  
20 GTE for intraLATA toll calls, I want to be competing  
21 under the same cost structure. So if GTE's cost  
22 structure is their incremental cost and I'm competing  
23 against switched access, that's not fair. And if for  
24 some reason the Commission were to adopt that there  
25 would be intraLATA calls billed at intraLATA switched

1 access, they should minimally require GTE to do an  
2 imputation test, which would take the terminating cost  
3 of switched access, make GTE add the originating cost  
4 to switched access, plus billing and collection  
5 because we wouldn't want to be caught in a price  
6 squeeze for toll calls.

7 Q Mr. Devine, during this 18-month period that  
8 you're suggesting that bill and keep should be ordered  
9 by this Commission, are you saying that that bill and  
10 keep arrangement should also exist for intraLATA toll  
11 calls?

12 A Yes, it would be for local and intraLATA.  
13 It would give the Commission a time to get, you know,  
14 a thorough analysis of cost studies, and to look at  
15 traffic flows and all of those kinds of things.

16 Q So even though your MFS is going to mirror  
17 GTE's local calling area, you want the compensation  
18 scheme to be the same for the entire LATA?

19 A Yes.

20 Q Now, if an IXC carried that intraLATA toll  
21 call and was terminated in GTE's territory, they would  
22 have to pay switched access, would they not?

23 A If it's a call originated by an  
24 interexchange carrier, yes.

25 Q And, in fact, if GTE carried a toll call

1 they would have to impute those switched access rates  
2 in their rates, would they not?

3 A I don't know. Does GTE, are they currently  
4 under order to impute intraLATA switched access into  
5 their interLATA toll rates?

6 Q Your answer is you don't know?

7 A I don't know if the Commission has GTE under  
8 order to do that. If they are not under order to do  
9 it, I think they should be. A lot of states have done  
10 that.

11 Q When you refer to the PLU factor, how would  
12 you measure what percentage would be local and what  
13 percentage would be toll?

14 A If it's a situation where we're doing a  
15 per-minute-of-use rate, then we actually would be  
16 keeping billing records. And how we do it, how we've  
17 done it up until now is we have been doing this with  
18 NYNEX for the last year or so. We give NYNEX on a  
19 quarterly basis a percentage for what percentage of  
20 the calls are local and what percentage of the calls  
21 are toll.

22 So, for instance, we would send them, you  
23 know, a document on a quarterly basis that says, "70%  
24 of my calls are local, 30% are toll."

25 NYNEX in turn would do the same thing to us.

1 They would send us, you know, a letter that says,  
2 let's say, "80% of my calls are local that I'm sending  
3 you and 20% are toll." And then what we do is we just  
4 take the aggregate minutes that NYNEX has sent us and  
5 we just take the percentages, the aggregate minutes,  
6 and multiply out the actual reciprocal compensation  
7 rate. So we don't really look at the actual call  
8 records in detail in terms of the originating ANI, the  
9 terminating ANI and all that like of stuff. We  
10 just -- real high level aggregate because it's a flat  
11 rate. We don't have to worry about transport and all  
12 of the stupid switched access components; it would  
13 just confuse things. We take total number of minutes,  
14 take the rate, take the percentages, boom, that's how  
15 much we bill each other.

16 NYNEX does the same thing to us. They take  
17 the total minutes times the rate times the  
18 percentages, and it's real simplified. We don't have  
19 to get into all the details of records. Although we  
20 do allow each other, if we need to audit the records,  
21 NYNEX has been to our office to audit our records and  
22 we've audited them.

23 The PLU concept seems to work well. If  
24 we're going to do bill and keep, if local were bill  
25 and keep and then we had toll, we wouldn't keep

1 billing records at all, we would just do the total  
2 minutes by looking at engineering forecasts, or  
3 engineering reports, which don't have, like, ANI  
4 records of originating/terminating numbers. Because  
5 we wouldn't want to spend the money to use that in our  
6 billing system. So if it were bill and keep all I  
7 would do is get the total aggregate minutes from  
8 engineering reports and apply those, you know, to know  
9 how many are local.

10           So if the Commission wanted me to come back  
11 and look back for a year or two to figure out exact  
12 years that for some reason were out of balance, like  
13 the discussion yesterday, we wouldn't have those  
14 detailed records. We'd just have aggregate total  
15 minutes and that's it.

16           Q     So in New York where you're using the PLU,  
17 the traffic is being measured to some extent, is that  
18 what you're saying? And that measurement would not be  
19 needed in the bill and keep situation?

20           A     We would be doing a different kind of  
21 measurement. We haven't turned up service yet with  
22 bill and keep, so if we turned up service with bill  
23 and keep we wouldn't need to have like billing  
24 records, we would just have like engineering  
25 utilization of trunks with like total call minutes.

1 So it would be less expensive for us to do the  
2 engineering reporting rather than the actual billing  
3 records because then you have taking up database time  
4 for a year or two years and tapes and all of those  
5 kind of things. Because a call record, as you know,  
6 has the originating/terminating phone number and all  
7 of that stuff. We wouldn't be recording all of that  
8 if it were bill and keep.

9 Q As I understand your testimony you're  
10 proposing bill and keep only for 18 months.

11 A Yes, it would just be for the interim.

12 Q So then I can infer from that, I guess, that  
13 the most appropriate long-term plan would be on  
14 reciprocal compensation plan?

15 A Yes, that's what we feel.

16 Q And what do you expect this Commission to do  
17 over the next 18 months while it's in interim?

18 A That they would get detailed cost studies  
19 from the incumbents as to what their cost is to  
20 terminate a call, and also that 18 months would  
21 provide a period of time for the Commission and Staff  
22 to look at traffic flows and imbalances, you know,  
23 whatever it is in terms of the traffic flows. When  
24 they get to the point to order a per minute rate, they  
25 can decide, "Well, gee, traffic is in balance. It

1 really doesn't make sense, you know, to do a per  
2 minute rate" or, "Yes, we should do a per minute rate.  
3 There seems to be a lot of traffic balance and we have  
4 the cost studies done and the rate should be, you  
5 know, whatever the rate is."

6 Q So are you expecting the incumbent LECs to  
7 do the measuring to make this balance determination or  
8 would MFS be doing that?

9 A We would each do it and we would just do it  
10 based on, you know, aggregate minutes that were  
11 passing between each other. And those, we can just  
12 look at engineering utilization, reports that both of  
13 our companies I'm sure do just to manage trunk  
14 utilization.

15 Q So even if bill and keep is ordered for 18  
16 months, MFS is going to start measuring their traffic  
17 and distinguish between -- or to determine the number  
18 of local calls terminated?

19 A What we'd have to do since we're not going  
20 to keep billing records, the call records that would  
21 give us information, like originating/terminating  
22 phone number, which you need to determine if it's a  
23 local or toll call, we would maybe want to think about  
24 using two-way trunks with GTE, as GTE said that  
25 two-way trunks would be one of the options. And we

1 would just get two-way trunks and exchange local calls  
2 on those two-way trunks for GTE and not put toll calls  
3 on those.

4 Q Are you proposing to do that with all of the  
5 incumbent LECs that -- where bill and keep is ordered?

6 A Well, if it were bill and keep then we  
7 wouldn't want to spend the money to keep billing  
8 records. So if you're using bill and keep, you could  
9 just get, as I said, two-way trunks or maybe we could  
10 just do one-way trunks to you and you do one-way  
11 trunks to us but just put local on it. So then you  
12 don't have to worry. You're looking at aggregate  
13 minutes.

14 Let's say if the Commission 18 months from  
15 now comes up with a rate, and let's say it's  
16 three-tenths of a penny or whatever it is, we'll have  
17 these separately identified trunk groups with  
18 separately identified number of local minutes. So for  
19 some reason the Commission feels compelled to go back  
20 and do something on a retroactive basis, it's a real  
21 simple process because we'll have the engineering  
22 reports that will know total aggregate minutes we sent  
23 GTE and total aggregate minutes GTE sent us. That way  
24 we don't have to get into looking at billing records,  
25 call records and the complicated process.

1           That's another reason why we need a -- If we  
2 do have a per minute rate, it needs to be a flat rate;  
3 it needs to be flat and reciprocal and identical.  
4 Because if you have switched access, then you need  
5 call records because you're going to have to look at  
6 rate centers, mileage for transport and all of those  
7 innocuous kind of things that really don't apply.

8           Q     In any event, during this 18-month period  
9 both GTE and MFS are going to have to measure their  
10 traffic to determine whether a balance occurs. Is  
11 that correct or not correct?

12          A     Yes. We would measure it, you know, from  
13 engineering reports, yes.

14          Q     You expect the balance to be equal -- or  
15 that the flow of traffic between the two companies  
16 will be equal?

17          A     I would think in the long term that it would  
18 be equal.

19          Q     And when you say "long term" do you mean  
20 that it eventually will be equal two years down the  
21 road, or do you agree with what Mr. Wood said  
22 yesterday, that if you look at a very short period of  
23 time it may not be equal, but over a longer period of  
24 time it will.

25          A     I agree with them in terms of -- I think he

1 made a comment, and if he did I'll make it now -- once  
2 you have per minute number portability and once a new  
3 entrant is in a market and we have the opportunity to  
4 provide all of the same services that GTE is  
5 providing, it's likely in the long term -- I can't  
6 think of a reason why it would -- why traffic would  
7 not be in balance.

8           Certainly in the short term without per  
9 minute number portability and some of the obstacles  
10 we'll have to overcome in the first year or two until  
11 there's a per minute number portability, there could  
12 be a chance there could be some imbalances. But  
13 everybody focuses on different market segments and I  
14 think different market segments can cause different  
15 balances of traffic flow. I think we just don't know.

16           Q     Would you describe the short term then in  
17 the next 18 months?

18           A     I would say short term would be, you know,  
19 the next, you know, 18 months. It could be a little  
20 longer.

21           Q     So then during this 18-month period you  
22 would not be surprised to see an imbalance in the  
23 traffic?

24           A     You don't know with each carrier. As we put  
25 on the record with New York, while a lot of people

1 suspected that we were sending NYNEX more calls than  
2 they were sending us, as the evidence shows in New  
3 York, they were sending us more calls. So it just --  
4 we started to get loops in March or April. We're  
5 using interim number portability. There are so many  
6 variables. What we're talking is apples and oranges.

7           If we're talking apples and we had  
8 everything, we had per minute number portability and  
9 we could sell services to all the same kind of  
10 customers that GTE does in the same areas, then  
11 traffic should be in balance logically.

12           If you have a new entrant coming in and, you  
13 know, maybe there's a problem with unbundled loops,  
14 maybe we don't have the resources to penetrate as many  
15 different markets and things, I mean you just -- it's  
16 a guess. I mean you don't -- you just don't know.

17           I mean our experience in Illinois and  
18 Maryland could be a lot different. It's hard. I'm  
19 not at soothsayer.

20           Q     And when you said you're not a soothsayer  
21 and it's a guess, and all of your last answer that  
22 dealt with all of these various variables, what that  
23 drives is the fact that we don't really know whether  
24 traffic is going to be in balance either in the first  
25 18 months or after, do we?

1           A     No, I feel strongly that in the long term  
2 we'll be in balance. I mean there's no reason why we  
3 shouldn't be in balance in the long term. But in the  
4 short term it -- you know, maybe MFS could be in  
5 balance but somebody would not be in balance.

6           Q     And assuming -- do you have an opinion on  
7 whether the balance would favor the ALEC or the  
8 incumbent LEC?

9           A     I don't know. I know if you go to New York,  
10 Teleport says that they send NYNEX a lot more calls  
11 than they receive from NYNEX but we receive a lot more  
12 calls in NYNEX.

13          Q     Assuming that the incumbent LEC terminates a  
14 higher percentage of calls than does MFS, then under  
15 the bill and keep arrangement the incumbent LEC would  
16 not recover its cost through the interconnection  
17 charge, or through the interconnection arrangement.  
18 Would you agree with that statement?

19          A     No, I wouldn't agree with that statement.  
20 Because we feel strongly that bill and keep -- that  
21 the phone companies, whether it's MFS or the LEC,  
22 recover their costs through bill and keep in two ways.

23                   One is that they receive the value of having  
24 the other carrier actually terminate the call from  
25 them, which is a value related to compensation. And

1 then the second is that we'll have subscribers and you  
2 will have subscribers, and just as you provide flat  
3 rated service, which includes the capability of  
4 calling, we would likely do the same thing. So we're  
5 going to be compensated from our customers for  
6 completing those calls. So we will each be adequately  
7 compensated.

8 Q Now, I'm not sure, Mr. Devine, I understood  
9 that.

10 Your first reason is that we will cover our  
11 cost because of the value that the company has, that  
12 it has customers served by MFS?

13 A No. There's two reasons. One is you have  
14 MFS and GTE. And I'm going to terminate calls for  
15 you. And there's value placed on that. And you're  
16 going to terminate calls from me. So reciprocally  
17 we're each being compensated for terminating calls for  
18 each other.

19 Secondly, if I could finish, the second  
20 piece of that answer is that you have flat rated  
21 service, let's say, in Tampa for business at \$28 or  
22 whatever. You can go and take -- some of that revenue  
23 recovers your cost of the line and some of the revenue  
24 recovers a cost of terminating phone calls for  
25 customers. MFS will also have service. And it's

1 contrary to what Witness Beauvais said, that we'll  
2 likely have to provide a flat rated service and we'll  
3 have cost to cover line and cost to cover termination  
4 of calls.

5 Q Wouldn't your first reason apply only if the  
6 balance is in -- if the traffic is in balance?

7 A The first reason applies all the time, but  
8 if for some reason traffic were significantly out of  
9 balance, and if the cost of, you know, billing each  
10 other, administration, all those things exceeded the  
11 cost of the benefit, then certainly that would be the  
12 case.

13 So if we're way out of balance, then  
14 certainly there would be some imbalance in terms of  
15 the compensation, the in-kind compensation, yes.

16 Q So if there is imbalance, the first  
17 reason -- I asked you the question if it's imbalanced  
18 and the LEC -- incumbent LEC terminates more calls  
19 than MFS?

20 A Okay.

21 Q I asked you the question whether costs would  
22 be recovered through the interconnection arrangement  
23 for the incumbent LEC. And your first reason in  
24 response to your answer that the answer was no --

25 A Well, when you asked the question the first

1 time --

2 Q -- applies to equal -- applies to the  
3 situation where the traffic is equal. Is that true?

4 A Well, whether it's equal or only out of  
5 balance to the extent that the cost of measurement and  
6 billing and all of that don't exceed, you know, the  
7 cost of that overage and the potential opportunity  
8 cost, I guess.

9 Q If it's out of balance significantly as you  
10 defined it, then the incumbent LEC would not recover  
11 its cost through the interconnection arrangement; is  
12 that correct?

13 A Well, it depends how MFS and GTE are  
14 actually calculating based on those two scenarios.

15 One, they are getting revenue from their  
16 subscribers and the other through this in-kind  
17 compensation. So it depends on how you balance that  
18 and if the total revenue exceeds the cost of this  
19 exchange.

20 So potentially if there is a significant  
21 imbalance, potentially there could be, you know, a  
22 lopsided compensation exchange. The in-kind  
23 compensation, you know, could favor or disfavor  
24 another side.

25 Q Doesn't your opinion in that regard also

1 assume that the cost for MFS to terminate the call is  
2 identical to the cost of GTE terminating your call?

3 A Well, relatively speaking the costs are  
4 probably very similar. So I think you're getting down  
5 to such hundreths and hundreths of pennies that our  
6 costs might be higher because we -- you know, we have  
7 longer loops and less switching. GTE just happens to  
8 have an infrastructure based on the last hundred  
9 years. It has a lot more switching.

10 Q But your answer is yes, that your assumption  
11 is that the cost would be equal for both parties?

12 A They would be equal or similar; within the  
13 ballpark. But you're getting down to such minutiae, I  
14 don't think it's material.

15 Q Now, assuming that there's a significant  
16 imbalance as you describe it, then do I understand  
17 your second reason that GTE's ratepayers should pay  
18 for that, or GTE should recover for that imbalance  
19 from its local exchange rates. Is that your  
20 testimony?

21 A Well, since we want per minute --

22 Q Is it your testimony or not, and then let's  
23 go from there.

24 A I think my testimony really --

25 COMMISSIONER JOHNSON: Could you do the yes

1 or no, that would help, because I'm very confused on  
2 your answers, also.

3 WITNESS DEVINE: Yes, it does, partially.  
4 But my testimony, if he's just looking at my written  
5 testimony, yes, but partially.

6 As we said, our per minute mechanism, we  
7 want a permanent per-minute-of-use rate long term,  
8 so --

9 Q (By Mr. Gillman) I apologize, Mr. Devine.  
10 I'm asking solely about the 18-month bill and keep  
11 period. And I want you to assume that the traffic is  
12 in balance such that the incumbent LEC terminates more  
13 calls, or significantly more calls under your  
14 definition than MFS. And under that scenario aren't  
15 you saying, or is it your position that GTE needs to  
16 recover for those imbalanced costs, or the costs  
17 created by the imbalance for terminating the extra  
18 calls from its local exchange rates?

19 A To make up that --

20 Q Is that yes or no?

21 A Yes, that's where they could collect it  
22 from, yes, they could.

23 Q Well, not only could we collect it from  
24 there, but that's what your position is, is it not,  
25 that we should collect it from there and not from MFS?

1           A     Yes, that's where you would collect it from.

2                   COMMISSIONER JOHNSON:  Why is that a  
3 reasonable thing?

4                   WITNESS DEVINE:  Well, what our per  
5 minute -- we're just talking about bill and keep in  
6 the interim to get into business fast.

7                   COMMISSIONER JOHNSON:  And why is that  
8 reasonable then within those 18 months?

9                   WITNESS DEVINE:  You know, we want a  
10 permanent per-minute-of-use rate.  So if the  
11 Commission could -- if they felt compelled that they  
12 should do a per-minute-of-use rate now, in this  
13 decision, and if it's based on long run incremental  
14 costs, that would be our optimal outcome of a  
15 decision from the Commission.

16                   We only are supportive of bill and keep in  
17 the interim to allow the Commission to look at cost  
18 studies and to look at the traffic flows.

19                   COMMISSIONER JOHNSON:  What if they in the  
20 interim could demonstrate that the traffic was  
21 significantly out of balance and wanted to -- or  
22 sought compensation for the retroactive out-of-balance  
23 time period, the costs that they would allege would  
24 occur because it was out of balance.

25                   WITNESS DEVINE:  Then a per-minute-of-use

1 rate based on incremental cost should be applied.

2 COMMISSIONER JOHNSON: In order to give them  
3 that retroactive payment for the out-of-balance  
4 minutes?

5 WITNESS DEVINE: If the carriers are all  
6 able to keep records back -- if you start to --  
7 retroactive for two years, I think, might -- to  
8 stretch it, the Commission could order that we have to  
9 keep records and we would all do that then.

10 I would hope that since we want a permanent  
11 per-minute-of-use rate, if you can get the solution  
12 in, you know, five months, three months, then that's  
13 what we want. But if there is a significant  
14 imbalance, sure. If we can get the records to  
15 identify it, to go back. Because we might be in favor  
16 of it. We might be terminating a lot more calls.

17 So, yeah, that would make a lot of sense.  
18 If we make sure everyone keeps the records, though, to  
19 do it. I think two years is kind of a long time.

20 COMMISSIONER JOHNSON: That's fine.

21 Q (By Mr. Gillman) If this Commission could  
22 establish appropriate rates in this proceeding, would  
23 you agree then to forgo or the 18-month bill and keep?

24 A Yes. Definitely. That was really just  
25 enough time for the Commission to evaluate; to make a

1 final decision.

2 Q And that's true despite the fact that a  
3 different order has been issued in the BellSouth  
4 petition?

5 A Yes. I mean, we have been contending in our  
6 negotiations from the beginning with everybody that  
7 long term we want a per-minute-of-use rate. It's just  
8 between GTE, MFS and Sprint the per minute rate they  
9 wanted is significantly higher than what we wanted.

10 Q I'm drawing your attention to Page 35 of  
11 your direct testimony, Lines 1 through 9. Are you  
12 there, Mr. Devine?

13 A Yes.

14 Q You talk about the fact that the LEC charges  
15 a flat rate price and the ALECs then, in order to  
16 compete, would have to offer a flat rate price as  
17 well?

18 A Yes. I mean we could try certain things but  
19 it would be difficult to --

20 Q Would you agree with me that the incumbent  
21 LEC incurs usage based cost in providing flat rated  
22 local exchange service?

23 A Yes, as part of their cost that includes  
24 usage cost, yes.

25 Q So to the extent that GTE may have a very

1 high volume customer, it may not recover its cost  
2 regarding that particular customer?

3 A I don't know how GTE runs its business, but  
4 I imagine that could be a possibility.

5 Q Now, you also refer to a price squeeze. But  
6 isn't it true that if traffic is in balance, as you  
7 think it will be in the long term, that there would  
8 not be a price freeze or a price squeeze?

9 A Well, it would minimize the overall, you  
10 know, economic impact to the total amount of calls  
11 that we're exchanging.

12 CHAIRMAN CLARK: Is that a yes or a no,  
13 Mr. Devine?

14 WITNESS DEVINE: Could you clarify your  
15 question in more detail?

16 Q (By Mr. Gillman) Assuming that traffic is  
17 in balance, as you have testified it would be in the  
18 long term, under that assumption there would not be a  
19 price squeeze for MFS, would there?

20 A No. There could still potentially be a  
21 price squeeze. But if you look in the aggregate of  
22 all of the calls and all of the dollars exchanged  
23 between the two parties, then that does wipe out some  
24 of the economics. But in individual market segments  
25 there could be squeezes.

1           So let's say our large market business  
2 segment -- because we're broken up between basically  
3 small business consumer and then major accounts.  
4 That's how we look at the business and we have P&L  
5 managers that are responsible for looking at the  
6 business that way. That's how they are paid.

7           That large segment could be in a price  
8 squeeze but the small one maybe could not. As a  
9 whole, between GTE and MFS, if there's a traffic  
10 balance and the rates equal reciprocal and identical,  
11 then the exchange of revenues would be the same and it  
12 would cancel any any inequities in terms of  
13 compensation between the two companies. But  
14 individual market segments could be detrimentally  
15 affected.

16           So I do agree with you in the context of  
17 both companies exchanging monies, yes, that would be  
18 correct in that context, but not totally, because  
19 there's individual market segments that could be  
20 affected differently.

21           Q     From a total basis, I mean if the balance is  
22 equal, there would be no -- do you contend that  
23 there's not a price squeeze with bill and keep?

24           A     With bill and keep? No, there would not be  
25 a price squeeze. Well, unless loops -- I mean, when

1 you look at a price squeeze, we have to put it in the  
2 right context. We're talking about you look at a  
3 customer, you're not talking about between GTE and  
4 MFS. Does GTE and MFS have a price squeeze? That's  
5 not what we're talking about.

6 We're talking about you go to an individual  
7 subscriber, for example in Tampa, go to a resident  
8 subscriber. Let's say they are paying \$10 a month for  
9 the line and flat rate calling capability. MFS is a  
10 new entrant; either will use its own loop or buy a  
11 loop from GTE to provide service to that customer.  
12 GTE has proposed a loop price at special access, which  
13 is around \$20. So right off the bat we're in a price  
14 squeeze for that customer. Let's assume for some  
15 reason GTE has a loop they're going to give us in  
16 Tampa for \$8.

17 MR. GILLMAN: I'm going to object. It's  
18 outside of this docket. It's in another docket.

19 WITNESS DEVINE: When you look at a price  
20 squeeze you have to look at all of the components --

21 CHAIRMAN CLARK: Mr. Devine, I understood  
22 your testimony to talk about a price squeeze that  
23 develops from charging -- doing something other than  
24 bill and keep.

25 I know there might be a price squeeze

1 depending on what you charge for the loop. I don't  
2 find -- I'd like you to answer his question as it  
3 pertains to the price squeeze with respect to the  
4 interconnection charges.

5 WITNESS DEVINE: Okay. For the function of  
6 an interconnection charge, if you want to look  
7 narrowly at a squeeze for that capability, if you're  
8 in balance, I mean if the rate is \$2,000 a minute then  
9 there wouldn't be an issue. But it does create a  
10 problem with having an artificial price floor if the  
11 rates are too high.

12 COMMISSIONER DEASON: Let me ask -- but you  
13 would be receiving that \$2,000 a minute in that  
14 example.

15 WITNESS DEVINE: Yes, that's correct, yes.

16 COMMISSIONER DEASON: So then how is that a  
17 price squeeze?

18 WITNESS DEVINE: Well, when we talked about  
19 a price squeeze, I believe, in my direct, I reference  
20 things like you have to add up the cost of a loop,  
21 number portability, reciprocal compensation. Plus I  
22 have to add up my costs, too. I have costs to  
23 originate a phone call.

24 So GTE's Witness Beauvais talked about they  
25 could charge us a penny a minute because it's the same

1 as their consumer rate for STS service; one cent a  
2 minute. He neglected to calculate our originating  
3 cost of a call. So I have an originating cost and a  
4 terminating cost of, you know -- assuming that their  
5 price is LRIC and our costs at LRIC are about the  
6 same, that's two cents a minute.

7           So in terms of retail pricing it could put  
8 us in a price squeeze for that type of customer, for  
9 the actual customer, but it doesn't put us in a  
10 squeeze between the total dollars exchanged between  
11 GTE and MFS.

12           Q     If GTE originates the call, they incur the  
13 same costs, do they not?

14           A     Yes. But we have to calculate that into our  
15 rate. And if you have a flat rated service we're  
16 competing against, that's the issue.

17           Q     And we've already testified that GTE is  
18 usage based cost, and with regard to certain customers  
19 high volume customers, the flat rate may not cover  
20 those usage based cost?

21           A     It may not. I guess that's why I mentioned  
22 earlier about an imputation test, if the Commission  
23 were to adopt a per-minute-of-use based rate. So if  
24 local calls were exchanged a per-minute-of-use based  
25 rate, then the incumbent that really is the price

1 setter for the marketplace, should have to pass an  
2 imputation test for the retail services every time  
3 they file a tariff.

4           So if GTE is going to go file a tariff to  
5 change its prices for a local service, they would have  
6 to impute the termination cost that they are charging  
7 the competitor, plus their originating cost of  
8 originating a call, plus their cost of billing and  
9 collection.

10           This is something that has been  
11 considered -- I'm not sure if the New York Commission  
12 actually ordered it -- but that way you can avoid a  
13 price squeeze.

14           Q     Mr. Devine, let's go to your rebuttal.  
15 Specifically Page 22, Lines 18 and 19. And in there  
16 you -- I'm sorry. -- you talk about that the rate  
17 should not include contribution to overhead cost.

18           A     Yes.

19           Q     Is there a distinction in your mind between  
20 overhead costs and joint and common costs?

21           A     Well, the overhead cost, yes, there's a  
22 general distinction, but when I've talked to our  
23 economists about these kind of things -- and I'm  
24 personally not an economists, so maybe some of the  
25 other, you know, economists witnesses could address it

1 better -- but, it really depends what elements you're  
2 looking at. Are you talking about, you know, the  
3 Chairman's desk in Kansas City or are you talking  
4 about, you know, the central office building or  
5 grounds.

6 Q I guess that's my question. What are you  
7 talking about when you refer to overhead cost? On  
8 Line 18 and Line 19? Are you talking about the  
9 director's or the president's chair, or are you  
10 talking about the central office?

11 A Any of the things that are not, if they are  
12 not relevant to providing that actual function, then  
13 they shouldn't be included in the cost. So the things  
14 we feel should be included in the cost would be, you  
15 know, the volume sensitive function, which in this  
16 case would be actually the cost of terminating the  
17 call, plus the volume insensitive items, which  
18 potentially could be things like memory in the switch,  
19 they get taken up based on terminating the call.

20 So in terms of those kind of -- when I say  
21 "joint costs," or those kind of costs, I'm really  
22 talking about those volume insensitive items, so.

23 CHAIRMAN CLARK: Mr. Devine, I'm having  
24 extreme difficulty understanding your answers. Let me  
25 just ask you a simple question. Does it include the

1 president's desk?

2 WITNESS DEVINE: No.

3 CHAIRMAN CLARK: Thank you.

4 Q (By Mr. Gillman) Does it include the  
5 central office?

6 A To terminate a call? No.

7 Q And even though that central office would be  
8 part of the joint and common costs needed -- or  
9 utilized by the company to terminate that call?

10 A It would not be included because you'd need  
11 the central office already. So if it got to the point  
12 where we were terminating so many more minutes that  
13 you needed to put another switch in and build another  
14 central office, then that's when it would be  
15 considered. But that doesn't cause a cost in terms of  
16 terminating that incremental phone call.

17 Q And the cost of that central office and all  
18 the other joint and common costs that may be  
19 applicable to terminating a call, how do you propose  
20 that GTE recover those costs?

21 A GTE already, you know, recovers those costs  
22 in a lot of different ways, so I really am not an  
23 economist. I don't want to get outside my realm. I  
24 mean, we just feel the costs that should be computed  
25 into terminating a call should just be those direct

1 incremental costs associated with the termination of a  
2 call and not other things that don't cause the effect  
3 of terminating the call directly.

4 Q And how should those other joint and common  
5 costs which are utilized to terminate a call be  
6 recovered? If not through the -- partially through  
7 the interconnection route.

8 A Well, as I just said, it's not our opinion  
9 that they directly cause a call to be terminated.

10 Q But those costs are true costs. I mean, you  
11 have to have the central office there or at least the  
12 building that covers it, don't you?

13 CHAIRMAN CLARK: Mr. Devine, let me remind  
14 you his question is where should those costs be  
15 recovered if it shouldn't be recovered through the  
16 interconnection charge?

17 WITNESS DEVINE: I'm not --

18 CHAIRMAN CLARK: "I don't know" is fine. If  
19 you don't know that's all right.

20 WITNESS DEVINE: Yeah. I don't know how GTE  
21 does its costing to know how they do it.

22 Q (By Mr. Gillman) In any event, none of that  
23 should be recovered from MFS?

24 A Not for the termination of the call, no.

25 Q I don't want to get into the stipulated

1 issues, but as part of those issues you get SS7  
2 connectivity; is that correct?

3 A Yes.

4 Q Would you agree with me that the Company has  
5 to utilize joint plant and facilities to provide SS7  
6 capability to MFS as part of the interconnection  
7 agreement?

8 A Yes, to the extent that SS7 calls will be  
9 routed over the big network and there's all kinds of  
10 calls that get routed over the network.

11 Q And none of those joint and common costs  
12 that relate to that joint and common plant should be  
13 recovered from the interconnection rates. Is that  
14 your testimony?

15 A Related to SS7?

16 Q Yes?

17 A No. SS7, we agreed with GTE that we would  
18 reciprocally, you know, cover each other's cost to  
19 connect SS7 to each other, so I think we're in  
20 agreement in terms of SS7.

21 Q But on the LRIC price that you're  
22 recommending this Commission to adopt or the  
23 methodology would not include any recovery for the  
24 joint and common plant utilized by the Company to  
25 provide the SS7 functionality? Is that yes or no?

1           A     No.  It's my understanding with GTE that we  
2  agreed that we're going to just use the tariffed rates  
3  for SS7.  We just didn't think it's a big issue.  We  
4  just need to have a couple trunks to each other.  So  
5  that's my understanding and I did the agreement with  
6  GTE.

7           MR. GILLMAN:  Mr. Chairman, could I just  
8  have just one minute?

9           CHAIRMAN CLARK:  We're going to go ahead and  
10 take a break until 10:30.

11                   (Brief recess taken.)

12                                   - - - - -

13           CHAIRMAN CLARK:  We'll call the hearing back  
14 to order.  Mr. Gillman.

15           MR. GILLMAN:  Madam Chairman, I have no  
16 further questions.  Thank you.  Thanks for the break.

17           CHAIRMAN CLARK:  Mr. Fons.

18           MR. FONTS:  I have some questions.

19                                   **CROSS EXAMINATION**

20 BY MR. FONTS:

21           Q     Good morning, Mr. Devine.  I'm John Fons  
22 representing Sprint-United/Centel and I have some  
23 questions.

24                   Mr. Devine, you've testified that MFS is  
25 operational in a number of states, and I would like

1 for you to tell me what those states are.

2 A Yes. New York, Illinois, Maryland and  
3 Massachusetts.

4 Q Are you also operational in Connecticut?

5 A We're very close to becoming operational in  
6 Conneticut.

7 Q And how about in California?

8 A California, we're in the process of  
9 implementing service. I'd say within the next few  
10 months.

11 Q Okay. In New York, do you have an agreement  
12 with NYNEX?

13 A Yes.

14 Q And in Illinois, do you have an agreement  
15 with Ameritech?

16 A Yes, for some things. Other things were  
17 ordered by the commission. So some are covered under  
18 the agreement, some are covered by commission order.

19 Q How about in Maryland, do you have an  
20 agreement with Bell Atlantic?

21 A Same case as Illinois, some things are under  
22 order and some things are under agreement.

23 Q How about in Massachusetts, do you have an  
24 agreement with NYNEX in Massachusetts?

25 A Yes, we have an agreement with them that's

1 subject to the commission proceeding which should be  
2 completed in the next month or two.

3 Q And how about in California, do you have an  
4 agreement with Pacific Bell?

5 A Yes.

6 Q Are there any other states where you have an  
7 agreement?

8 A No, not that I can think of, at least not  
9 for a comprehensive agreement. We may have like a  
10 directory assistance agreement with Ameritech that  
11 covers their whole region.

12 Q Are there any states where you have a  
13 commission order regarding local interconnection where  
14 you have not commenced operation and you have not  
15 entered into an agreement with the local telephone  
16 company?

17 A Yes. There would be some, yes.

18 Q Would Washington be one of those states?

19 A Yes.

20 Q And would Oregon be one of those states?

21 A Yes.

22 Q And you do not have an agreement in  
23 Washington or Oregon?

24 A That's correct.

25 Q In New York you have an agreement with NYNEX

1 for local interconnection. Does that agreement  
2 include a local interconnection charge?

3 A Yes, but the agreement has been superseded  
4 by the commission's order in the Competition 2 case.

5 Q And under the agreement that you had with  
6 NYNEX, was that an agreement for a charge per minute?

7 A Yes.

8 Q And under the commission's order is it a  
9 charge per minute?

10 A Yes.

11 Q So in New York there's no bill and keep; is  
12 that correct?

13 A That's correct.

14 Q And what is the charge in New York?

15 A It's a LATA-wide charge. If you connect at  
16 an end office the rate is .0074, so around  
17 seven-tenths of a penny. And in an access tandem it's  
18 .0098 and both of the rates are LATA-wide. And in  
19 terms of the reciprocal nature, if we only connect to  
20 a NYNEX tandem, then NYNEX connects to our tandem and  
21 pays our tandem rate.

22 Q So it's reciprocal and mutual?

23 A Yes.

24 Q All right. Have you seen the incremental  
25 cost studies of NYNEX in New York?

1           A     No, not NYNEX in New York, no.

2           Q     Okay. Do you know whether or not the rates  
3 that are being charged under the commission order in  
4 New York cover TSLRIC?

5           A     Well, the commission has stated that the  
6 rates cover more than LRIC. They feel the rates are  
7 towards incremental cost, but they are not at  
8 incremental cost, so there's discussion that those  
9 rates will come down.

10          Q     But currently the rates are above TSLRIC; is  
11 that correct?

12          A     Yes.

13          Q     And that those rates make some contribution  
14 to shared and common costs?

15          A     I don't know what they're making a  
16 contribution to, but there's certainly a contribution  
17 in those rates, excessive contribution.

18          Q     How about in Illinois, you have an agreement  
19 with Ameritech; is that correct?

20          A     Yes.

21          Q     And that agreement covers the local  
22 interconnection charge?

23          A     Well, the compensation actually is based on  
24 the commission's order, so we have an agreement but it  
25 covers a lot of other things; the compensation rates

1 in the commission order.

2 Q And what are those compensation rates?

3 A If you connect to an end office the rate is  
4 a half a penny a minute, and if you connect to a  
5 tandem it's three-quarters of a penny a minute.

6 Q Is that like New York LATA-wide or is that  
7 just for the local exchange?

8 A I believe that's just for local.

9 Q Did the commission in Illinois order bill  
10 and keep?

11 A No, they did not.

12 Q And have you seen the cost studies  
13 supporting the rates of half -- a tenth of a cent and  
14 .75 of a cent in Illinois?

15 A I don't handle Illinois matters, so, no, I  
16 have not.

17 Q Do you know whether those rates more than  
18 cover TSLRIC?

19 A I don't know.

20 Q How about in Maryland, you have an agreement  
21 in Maryland with Bell Atlantic?

22 A Yes.

23 Q And does that agreement cover compensation  
24 for local interconnection?

25 A I don't believe the actual agreement does,

1 but as with Illinois, the commission actually ordered  
2 rates in Maryland.

3 Q And the commission in Maryland rejected bill  
4 and keep, did they not?

5 A I wasn't involved in that proceeding. So I  
6 know what they ordered but I don't know personally  
7 what was contested in the case.

8 Q Are you familiar with the documents that are  
9 included in Exhibit 3 which was offered by MFS?

10 MR. RINDLER: Could you be somewhat more  
11 specific.

12 Q (By Mr. Fons) Do you have a copy of  
13 Exhibit 3 in front of you?

14 A From my direct testimony?

15 Q No, Exhibit 3 that was introduced. It's a  
16 request for judicial notice of state and federal  
17 decisions.

18 A It says, "Staff's List of Orders for  
19 Official Recognition," is that it?

20 Q No, it's a request for judicial notice of  
21 state and federal decisions and it has been offered by  
22 Metropolitan Fiber Systems of Florida, Inc.

23 A No, I don't believe I have that.

24 Q I'd ask your counsel to have copies of all  
25 of these orders available to you this morning. Did he

1 make them available to you?

2 A Well, he may have, but with all of the paper  
3 I have.

4 Q Would you please locate the order from the  
5 Maryland Commission.

6 MR. RINDLER: Excuse me, Mr. Commissioner,  
7 that request was made to me about 6:30 last night in  
8 the course of the hearing. There's no way that I  
9 could pull together those public -- I think they were  
10 produced, in fact, to United in response to an  
11 interrogatory. So the witness does not have all of  
12 them available to him at this point.

13 COMMISSIONER DEASON: Mr. Fons, do you have  
14 another copy you could share with the witness?

15 MR. FONS: I have only my copy and under  
16 normal procedures, Commissioner Deason, when you make  
17 an offer for judicial notice you're supposed to supply  
18 the Commission and the parties with copies of the  
19 orders. And rather than make copies all again myself  
20 and kill a number of other trees, I thought the best  
21 way to do was to ask counsel from MFS to have those  
22 available. I'm surprised that he does not have them  
23 available since it was his motion and request for  
24 judicial notice.

25 COMMISSIONER DEASON: Mr. Fons, I agree with

1 what you're saying. I was just curious if you had one  
2 extra copy at least to show to the witness because,  
3 obviously, he says he does not have it.

4 Mr. Rindler, you don't have even one copy of  
5 these orders which you've asked us to take judicial  
6 notice of?

7 MR. RINDLER: With me, sir?

8 COMMISSIONER DEASON: Yes, with you.

9 MR. RINDLER: No.

10 Q (By Mr. Fons) Will you accept, subject to  
11 check, so we can solve this problem, would you accept,  
12 subject to check, that the Maryland Commission  
13 rejected bill and keep?

14 A Yes.

15 Q Now, in Massachusetts you have an agreement  
16 with NYNEX, do you not?

17 A Yes.

18 Q And does that agreement include a rate per  
19 the exchange of local exchange traffic?

20 A Does it include a rate?

21 Q Yes.

22 A Yes.

23 Q Okay. In that case it's a mutual reciprocal  
24 exchange of traffic at a certain rate; is that  
25 correct?

1 A Yes.

2 Q And what's that rate?

3 A The rate is 1.5 cents a minute and the rate  
4 is subject -- it was in an interim agreement that I  
5 personally executed and it's subject to the outcome of  
6 the competition proceeding in Massachusetts which is  
7 coming to a close. So there's actually a section in  
8 there that says it's subject to the outcome of the  
9 final order in the case, so it was a way to get into  
10 business.

11 Q But you did agree in Massachusetts to a rate  
12 of a cent and a half a minute for the exchange of  
13 local exchange traffic?

14 A Yes, that's correct.

15 Q Did you review the cost studies to support  
16 that rate in Massachusetts?

17 A Not for the agreement, but during the case I  
18 did review NYNEX's cost studies for terminating local  
19 call.

20 Q And does that one-half cents more than cover  
21 that TSLRIC cost of NYNEX in Massachusetts?

22 A It covers it by more than three or four  
23 times the cost.

24 Q In Connecticut, do you have an agreement  
25 with Southern New England Telephone?

1           A     Yes. We have a stipulation that covers a  
2 lot of issues.

3           Q     And does that -- one of the issues, does  
4 that include the rate for exchange of local traffic  
5 between Southern New England and MFS?

6           A     No. The actual agreement did not address  
7 compensation. That was left to the proceeding.

8           Q     And has the proceeding been completed?

9           A     Yes.

10          Q     And what was the result of that proceeding?

11          A     Well, the proceeding actually ordered a few  
12 things.

13          Q     How about on the area of compensation?

14          A     On compensation it adopted three different  
15 options. One option was a per-minute-of-use based  
16 rate. One option was a port scheme and the third  
17 option was bill and keep.

18          Q     And you could select either one of those  
19 options?

20          A     Yes. If you wanted bill and keep and if you  
21 could have a traffic, show a traffic balance for an  
22 initial period -- I can't remember if it ended up  
23 being nine months or 12 months -- if you could show  
24 that you were in balance, you could go to bill and  
25 keep or you could opt to the port scheme or

1 per-minute-of-use scheme at any time, depending upon  
2 your circumstance.

3 Q So if you were out of balance where you were  
4 sending more traffic to Southern New England Telephone  
5 than Southern New England Telephone was sending to  
6 you, you could elect to go to bill and keep or would  
7 you have to go to a rate in that situation?

8 A Well, it really wasn't clear in the order.  
9 It was kind of open, but it talked about if you were  
10 out of balance and if you could not mutually agree to  
11 continue with bill and keep, then, you know, you would  
12 go to one of the other options and it would be your  
13 choice picking between per minute of use and port  
14 scheme.

15 Q So bill and keep would apply only as long as  
16 the traffic was in balance; is that correct?

17 A Generally, yes.

18 Q Indeed bill and keep only works if the  
19 traffic is in balance; isn't that correct?

20 A Are you asking that in the context of the  
21 decision in Connecticut or --

22 Q Just generally.

23 A Well, it works. I guess can you be more  
24 specific in terms of work.

25 Q In the sense that if it's out of balance one

1 party is bearing more costs than the other.

2           A     If it's significantly out of balance, then,  
3 you know, one party would be terminating more calls  
4 and, you know, I guess they would be incurring more  
5 costs then, yes.

6           COMMISSIONER JOHNSON:   Could you go back  
7 over that Connecticut decision.  There are three  
8 options.  Did you state that you could only use bill  
9 and keep if you demonstrated that the traffic was in  
10 balance.

11           WITNESS DEVINE:  No, it's real vague.  I was  
12 actually responsible for Connecticut for MFS at the  
13 time and there was a joint proposal that all of the  
14 parties presented to the Commission.  In fact, all of  
15 the parties except for SNET, and it did include Sprint  
16 actually, who was actively involved in the process.  
17 And the proposal said, you know, if -- you could start  
18 out with bill and keep for like the first nine to 12  
19 months, and within the first nine to 12 months if your  
20 traffic was relatively in balance and there was mutual  
21 agreement with the other party that traffic was  
22 relatively in balance, that you could continue with  
23 bill and keep.  If the parties after nine or 12 months  
24 did not mutually agree the traffic was in balance,  
25 then you would, you know, opt for a per-minute-of-use

1 based rate for a port-type situation like Sprint has  
2 proposed here.

3 COMMISSIONER JOHNSON: Okay. But it allows  
4 for the parties to implement a bill and keep  
5 mechanism.

6 WITNESS DEVINE: Yes.

7 COMMISSIONER JOHNSON: And then they would  
8 have to basically object and show -- then do they have  
9 to show that the traffic is out of balance?

10 WITNESS DEVINE: Well, the commission kind  
11 of left it open. They said if you don't have mutual  
12 agreement --

13 COMMISSIONER JOHNSON: Okay.

14 WITNESS DEVINE: -- then you would pick one  
15 of those two.

16 COMMISSIONER JOHNSON: Thank you.

17 WITNESS DEVINE: Yes.

18 Q (By Mr. Fons) In the Connecticut decision,  
19 does the Connecticut decision require a true up at the  
20 end of the nine or 12-month period?

21 A I don't remember.

22 Q You're proposing here in Florida that there  
23 be bill and keep for a period of time, a year to two  
24 years, at which time then you would go to mutual  
25 compensation with a rate per minute.

1           A     Yes.

2           Q     Would you agree that at the end of that  
3 one-year or two-year that there ought to be a true-up  
4 between the parties if the traffic is out of balance  
5 during that one- or two-year period?

6           A     If it's -- yes, if it's -- financially makes  
7 sense. If the imbalance is not a lot and if the costs  
8 outweigh the benefit, then I don't think it would make  
9 sense. But if they are way out of balance, then that  
10 should certainly be considered.

11          Q     What do you define as way out of balance?

12          A     I guess it would depend upon what the costs  
13 are to terminate a call. You know, I think there's an  
14 equation. You have to look at what the actual  
15 incremental costs are to terminate a call, and if --  
16 the lower the price of the call, then the more  
17 flexibility you have for being out of balance in terms  
18 of what the actual benefit is.

19                   I guess generally I would think anything --  
20 maybe more than -- certainly more than 10%, I guess.  
21 If you're more than 10% out of balance I would think.  
22 But it is relative to -- you have to relate it to the  
23 actual cost to terminate a call and the cost of  
24 billing and collection and all of the records and  
25 stuff like that.

1 Q In Connecticut have you entered into an  
2 agreement with Southern New England?

3 A Well, we have a stipulation which all of the  
4 parties signed during the proceeding, which addresses  
5 everything but prices for unbundled loops and  
6 compensation, kind of similar to what we signed with  
7 GTE. And then the proceeding actually, you know,  
8 ordered compensation for loops and for  
9 interconnection.

10 Q Has MFS decided which one of the three  
11 options it's going to select in Connecticut?

12 A I don't know. I'm pretty far removed from  
13 implementation of that.

14 Q Do you know what the compensation levels are  
15 in Connecticut for the per minute and for the loop,  
16 for the port?

17 A Well, the port rate was derived from the per  
18 minute rate, so I don't know what the the final rate  
19 was ordered, but SNET offered up a rate of around half  
20 a penny. That's what we offered up initially, and I  
21 don't know if the Commission ended up having that go  
22 down or not but that's what they initially offered I  
23 remember.

24 Q Now, you were active in Connecticut were you  
25 not? Wasn't that one of the areas that you were

1 responsible for?

2 A Yes, until September of '95.

3 Q Were you able in your duties on behalf of  
4 MFS and your responsibilities in Connecticut to review  
5 the cost studies of Southern New England Telephone to  
6 support a per minute charge?

7 A Yes, I did.

8 Q And does the half a cent cover TSLRIC cost?

9 A They were confidential numbers.

10 Q I mean can you tell me whether or not they  
11 covered -- I'm not asking you what the cost --

12 A The feeling was among all of the parties,  
13 and as I said I left after -- I mean, I left right  
14 before the commission, you know, sent out the final  
15 order, but it was agreed amongst all of the parties  
16 and the commission had a lot of question as to -- you  
17 know, they thought it more than exceeded their TSLRIC.

18 Q How about in California, you entered into an  
19 agreement with Pacific Bell there, have you not?

20 A Yes, that's correct.

21 Q Are you familiar with that agreement?

22 A Yes, I am.

23 Q And in California you agreed to pay a  
24 per-minute-of-use charge for local interconnection,  
25 did you not?

1 A Yes, that's correct.

2 Q And what was that rate?

3 A I believe it was .0745, so around  
4 three-quarters of a penny, just under three-quarters  
5 of a penny.

6 Q Are you familiar with the cost studies that  
7 underline that rate?

8 A No, I'm not involved in California. All I  
9 have seen is our actual agreement.

10 Q In New York and indeed attached to your  
11 testimony as a late-filed deposition exhibit, at least  
12 that's the way it shows up on mine. Maybe it's  
13 different on yours. But it's the last exhibit in your  
14 direct testimony in the US Sprint case, the Sprint-  
15 Centel/United case. Are you familiar with the ratios  
16 in New York show MFS inbound traffic?

17 A Yes.

18 Q You're familiar with that document?

19 A Yes.

20 Q And I guess that's been identified for this  
21 record as Exhibit 16. And it would be TTD-3.

22 CHAIRMAN CLARK: Mr. Fons, I have 16 being  
23 the letters attached to his direct testimony and I  
24 don't recall that they had the initials on them.

25 MR. FONS: Okay. This may well have been a

1 late-filed deposition exhibit and just got included  
2 with my copy of Mr. Devine's direct testimony. So, it  
3 may be a stand-alone item. If it is, I believe it  
4 must be in Staff's exhibits for Mr. Devine.

5 MR. EDMONDS: You're talking about the  
6 deposition transcript?

7 MR. FONTS: Yes. It would be Late-Filed  
8 Deposition Exhibit 7 to Devine's deposition dated  
9 12-15-95.

10 CHAIRMAN CLARK: Mr. Fons, I do have a  
11 TTD-10 which appears to include a deposition  
12 transcript and some interrogatories. Do you have a  
13 copy of that and can you direct me to what you're  
14 looking at?

15 MR. FONTS: I'm looking at an exhibit that  
16 looks like this. It's a chart.

17 Q (By Mr. Fons) You've got it there.

18 A Yes.

19 MR. FONTS: The witness has it. At the risk  
20 -- do you all have it over there?

21 MS. CANZANO: Is it attached to --

22 CHAIRMAN CLARK: Just a minute.

23 Mr. Rindler.

24 MR. RINDLER: It is attached to his rebuttal  
25 testimony. It is the first of the -- document in the

1 composite exhibit attached to his rebuttal testimony  
2 in the United/Centel proceeding.

3 CHAIRMAN CLARK: Let me get there.

4 MR. FONTS: So it would be composite  
5 Exhibit 17 is the first document.

6 CHAIRMAN CLARK: Which would be TTD-6.

7 MR. RINDLER: Yes.

8 MR. FONTS: So we're on the right page.

9 CHAIRMAN CLARK: Mr. Fons can you just hold  
10 up a minute while I get there. Let me be, clear am I  
11 supposed to be look at the rebuttal testimony with  
12 respect to United or GTE?

13 MR. FONTS: United. First page of what  
14 identified as Exhibit 17.

15 CHAIRMAN CLARK: I have it now, Mr. Fons.

16 Q (By Mr. Fons) Mr. Devine, this exhibit  
17 shows date of from January 1995 through August of 1995  
18 and it shows -- and it's based upon a customer base of  
19 tens of thousands of voice grade lines; is that  
20 correct?

21 A Yes.

22 Q Do you know what the mix is on those lines  
23 between business and residence?

24 A A clear majority are business.

25 Q And this exhibit shows that the traffic

1 flowing from MFS to New York Tel, or NYNEX, is greater  
2 than the traffic flowing from NYNEX to New York Tel or  
3 just the opposite.

4 A Could you ask that again.

5 Q I'm not certain. It says "Usage rates in  
6 NYC show MF inbound traffic greater than outbound more  
7 traffic." So this means that there is more traffic  
8 coming from NYNEX customers to MFS customers than vice  
9 versa?

10 A Yes.

11 Q Does this exhibit show a trend line?

12 A Yes, it does.

13 Q And the trend is that this imbalance is  
14 increasing, is it not?

15 A I think it flips around, but generally it  
16 looks as though once you got into May that there was  
17 more -- you know, it went up a few points, more  
18 in-bound.

19 Q Under your agreement with NYNEX, is NYNEX  
20 compensating you today for this traffic?

21 A Yes.

22 Q And would you consider this to be well out  
23 of balance?

24 A I'd say it gets in the range of being out of  
25 balance; more than the 10% I talked about earlier,

1 yes.

2 Q And if it went the other way, of course,  
3 then you would have to pay NYNEX?

4 A Yes. We pay each other. We completely bill  
5 each other for all of the calls so there's not a  
6 netting. We actually pay them and they pay us for all  
7 of the calls.

8 Q Let me ask you about the -- these are just  
9 local calls.

10 A Yes, it would be the POTS calls between MFS  
11 and NYNEX.

12 Q So you exchange other traffic with NYNEX, do  
13 you not?

14 A Yes.

15 Q You exchange toll traffic with them as well  
16 as POTS traffic?

17 A Yes, there would be toll, all kinds of  
18 traffic, yes.

19 Q So you had some way of measuring and  
20 identifying which calls are which; isn't that correct?

21 A Yes.

22 Q Okay. So you have the measurement  
23 capability. Indeed, you're using that measurement  
24 capability in New York; isn't that correct?

25 A Yes, because we're billing on a

1 per-minute-of-use basis, yes.

2 Q And would you expect that if in Florida you  
3 went to a compensation arrangement, which involved a  
4 per-minute-of-use charge that you would be able to  
5 measure the traffic in Florida?

6 A Yes, we would want to do that.

7 Q Do you have any auditing agreement with New  
8 York Telephone, or NYNEX, for the auditing of this  
9 traffic?

10 A Yes. I don't think it's real formalized.  
11 We've agreed with each other that the other party has  
12 the right to audit.

13 Q I believe you indicated you do submit bills  
14 to each other, so does that indicate that MFS has a  
15 billing system that they've instituted for handling  
16 the traffic in New York?

17 A Yes, that's correct.

18 Q And you would expect that the same billing  
19 system would be applicable in Florida in the event  
20 that you went to a mutual compensation on a  
21 per-minute-of-use basis, or on a port basis in  
22 Florida?

23 A Yes.

24 Q Is it your position, Mr. Devine, that the  
25 bill and keep is required for an interim period just

1 to get you in the business?

2 A Yes, partially. The other part would be  
3 just to give the Commission a chance to determine what  
4 the long term per-minute-of-use rate should be to look  
5 at cost studies and all of those things.

6 Q And based upon what you've seen to date, at  
7 least in New York, is it your understanding that  
8 during that interim period it's more likely that the  
9 traffic will be out of balance than in balance?

10 A During the interim period?

11 Q Uh-huh.

12 A Yes, I would suspect during the interim  
13 period that there's a better chance of being out of  
14 balance rather than long term.

15 Q Now, after a year or two years, do you  
16 expect the traffic to be in balance as opposed to  
17 being out of balance?

18 A Yes. Generally I would assume after a  
19 couple of years or so. It could take longer. It  
20 depends how fast, you know. Everyone gets fully  
21 operational, the per minute number portability and  
22 things like that.

23 Q If you're correct on the long term, after a  
24 year or two years, that the traffic will be in  
25 balance, then there will not be any exchange of cash

1 even in the event there is a mutual reciprocal  
2 per-minute-of-use charge?

3 A Well, right now with NYNEX we actually  
4 exchange dollars fully both ways. I think maybe we'd  
5 want to talk to our financial tax kind of people. I  
6 don't know if there's tax consequences or not; if it  
7 makes sense to net out the difference or pay it  
8 out. I don't think we have a complete -- we don't  
9 really know at this point.

10 Q But that's a financial decision made by MFS?

11 A I would say it's probably a financial  
12 decision.

13 Q It's not a regulatory requirement?

14 A No.

15 Q So what you would like to have is that for  
16 the time you perceive the traffic to be out of balance  
17 you want bill and keep where you don't have to pay  
18 anything, and then you're willing to go to a  
19 per-minute-of-use charge at that point in time when  
20 you do not expect traffic to be out of balance and,  
21 therefore, you would not owe the local exchange  
22 company anything, or them owe you anything?

23 A No, that's not correct.

24 What we want, and we state in our testimony,  
25 that interim period is a time to give the Commission a

1 chance to determine what the long term  
2 per-minute-of-use rate would be. We want a  
3 per-minute-of-use rate, but we want to make sure the  
4 rate is set appropriately at incremental cost. And I  
5 think the Commission needs more time than just with  
6 this instant proceeding will give them to make that  
7 determination.

8 Q In any of the states in which you have an  
9 agreement, or in which you are planning to operate  
10 based upon a commission order, in any of those states  
11 are you paying a rate that's at TSLRIC cost?

12 A I don't know because I haven't seen the  
13 Maryland cost study, but three-tenths and five-tenths  
14 probably starts to get towards TSLRIC. But I haven't  
15 personally seen those cost studies, I just know the  
16 order of magnitude of the rates proposed here versus  
17 other states. They are a lot lower in other states.

18 Q In several states that you have where you  
19 are operating and you have agreements, indeed the  
20 Commission has indicated that the cost should include  
21 some contribution to common overheads. Isn't that  
22 correct?

23 A I think I answered parts of that question  
24 earlier. Illinois I don't know because I didn't see  
25 the final -- I mean, really, I don't know

1 specifically. I can't cite here the actual language  
2 in the order, and I didn't see cost studies in a lot  
3 of those states I think I mentioned to you earlier.  
4 I'm just familiar with the states I was involved in.

5 Q If the price is above TSLRIC then there is  
6 contribution, is there not?

7 A Yes, if the price is --

8 MR. FONS: I have no further questions.

9 CHAIRMAN CLARK: Staff.

10 MR. EDMONDS: Thank you.

11 **CROSS EXAMINATION**

12 BY MR. EDMONDS:

13 Q Mr. Devine, Staff has a few questions for  
14 you.

15 First, do you have a copy of what has been  
16 marked by Staff as TTD-10 composite exhibit?

17 A Yes.

18 Q Okay. And part of that is responses to  
19 discovery. And those responses, were they prepared by  
20 you or under your direction?

21 A Yes.

22 Q And are they true and correct to the best of  
23 your knowledge?

24 A Yes.

25 MR. EDMONDS: Commissioners, at this time

1 I'd like to have this marked for identification as an  
2 exhibit.

3 CHAIRMAN CLARK: Staff's exhibit marked  
4 TTD-10, which includes the deposition transcript and  
5 responses to interrogatories will be marked as  
6 Exhibit 20.

7 (Exhibit No. 20 marked for identification.)

8 A I did just have two minor corrections in the  
9 deposition, though.

10 Q Okay. Would you like to go over them?

11 A Yes. On Page 58, Line 19, if you could  
12 delete "not really" and also "dis", D-I-S, the word on  
13 that line.

14 Q I don't understand the second part. That  
15 should be "agree" and not "disagree". Is that what  
16 you're saying?

17 A It should be -- I'll read it based on the  
18 correction. It should be "So that's true. So I would  
19 agree."

20 Q Thank you. Were those all of the  
21 corrections?

22 A Just one other one. It's Page 93, Line 12.

23 CHAIRMAN CLARK: What was that page number  
24 again?

25 MR. EDMONDS: 93.

1                   WITNESS DEVINE: Line 12. The "no" would be  
2 "yes".

3           Q       Does that conclude the corrections you have?

4           A       Yes.

5           Q       Thank you.

6                   First I'd like to ask you a few questions  
7 concerning contribution. And I'm going to ask them to  
8 you with respect to GTE. And I'm going to ask them  
9 again with respect to United/Centel.

10                   Have you reviewed GTE's supporting cost  
11 studies for their LRIC costs of terminating a call for  
12 interconnection purposes, a local call?

13           A       Yes.

14           Q       Do you believe that that LRIC cost is  
15 reasonable?

16           A       Not based on my experience in terms of the  
17 order of magnitude that I've seen in some other  
18 states, and also in the BellSouth case.

19           Q       Is it your understanding that that LRIC cost  
20 includes contribution?

21           A       That the cost that GTE is showing?

22           Q       Yes.

23           A       Yes.

24           Q       Could you explain what types of contribution  
25 are included in that LRIC cost?

1           A     I couldn't tell from the data that was  
2 provided, you know, it's not a sufficient amount of  
3 data for me to really understand what items clearly  
4 are in there or not in there.

5                     So I've seen cost studies in a couple of  
6 other states and everybody does their cost studies  
7 differently. And just the order of magnitude in terms  
8 of the numbers are not consistent with what I have  
9 seen in other locations. So that's really all I have  
10 to comment in terms of what I've seen with that.

11           Q     Do you have any idea if return on capital is  
12 a type of contribution that's included in that cost?

13           A     We feel return on capital should be included  
14 in a LRIC price.

15           Q     Okay. But do you know whether it is  
16 included in GTE's LRIC cost?

17           A     I don't have the information in front of me,  
18 so -- you know, cost of money and cost of capital  
19 should be included in the LRIC which would provide a  
20 reasonable profit.

21           Q     Now, do you believe that the amount of  
22 contribution that's contained in GTE's LRIC cost is  
23 sufficient for setting an interconnection rate at  
24 LRIC?

25           A     I don't know.

1 Q Do you believe that it would be appropriate  
2 to allow GTE to have contribution built into the  
3 interconnection rate, that is over and above the LRIC  
4 rate?

5 A No, that would not be appropriate.

6 Q And why not?

7 A Because additional contribution would not be  
8 covering the cost to directly do the function of  
9 terminating the call. So it really should just be  
10 those sensitive costs and insensitive costs causing  
11 the termination of that call.

12 Q Let me ask you those questions with respect  
13 to NYNEX Centel. Have you reviewed United/Centel's  
14 LRIC cost studies for local interconnection?

15 A Yes, just a very short time because I just  
16 received them yesterday.

17 Q Okay. Do you have an opinion on whether  
18 their LRIC cost is reasonable or not?

19 A I would say based on what I've seen it's  
20 unreasonable, really, in regard to two things. One is  
21 the level there does not come close to anything I've  
22 seen in any other state where I've actually seen a  
23 cost study, and certainly in relationship to what  
24 we've seen in the BellSouth case.

25 And secondly, it is very confusing the way

1 it was put together, and it didn't have the elements  
2 identified that normally you would be used to seeing  
3 in terms of the functions that are provided.

4           So it seems insufficient in terms of the  
5 level of detail, and also just the level just doesn't  
6 seem to come close to anything else we've either seen  
7 in a rate or a cost.

8           Q     Could you tell if United/Centel's LRIC  
9 included contribution?

10          A     I just received the information yesterday  
11 and there wasn't -- I think there's like four, five  
12 pages, and there's things that are crossed out and  
13 marked up and at this point I really couldn't tell you  
14 based on the information I saw.

15          Q     Now, it's your position that an exchange of  
16 traffic under a bill and keep scenario would be  
17 balanced over the long term; is that correct?

18          A     Yes, I would think so.

19          Q     Now, if mutual traffic exchange were  
20 implemented by this Commission, and it turned out the  
21 traffic were out of balance, then you believe that the  
22 companies involved should go to a per-minute-of-use  
23 scheme?

24          A     Yes, if traffic is significantly out of  
25 balance.

1 Q And what do you mean by "significantly," at  
2 what point should it go to a per minute of use scene?

3 A I think you have to weigh a few things.  
4 One, of course, is the administrative cost of, you  
5 know, billing and collection, all of those kind of  
6 items. And secondly, whatever the actual, you know,  
7 LRIC, TSLRIC is for to terminate a call.

8 But roughly I would think probably when you  
9 hit, you know, 10% or more of an imbalance or an out  
10 of balance of 10% or more, that that might be a point  
11 to look at. But I don't think we will know that until  
12 we have the cost studies to better understand those.

13 Q Would you agree that termination of traffic  
14 on a LEC's network is provided technologically  
15 speaking in the same manner whether it is for toll or  
16 local traffic?

17 A Yes.

18 Q Then, given that, could you offer an  
19 explanation why there should be a different rate for  
20 the termination of local traffic than for toll  
21 traffic?

22 A Well, we actually feel that the rate should  
23 be the same; or, in any event, it should not be  
24 intraLATA switched access. So I think when you asked  
25 your question were you making an assumption?

1 Q Well, when you say they should be the same,  
2 let me ask you this. Is it your position that the  
3 termination of local traffic should be provided at  
4 cost?

5 A Yes.

6 Q Is it your position that the termination of  
7 toll traffic should be switched access charges?

8 A No, we would want that also provided at  
9 cost.

10 Q Now I would like to ask you a couple  
11 questions that deal with Issue 3 in this docket, an  
12 intermediary interconnection? And that's a situation  
13 that would arise when ALECs are interconnected with a  
14 LEC but not with each other; is that right?

15 A Yes, generally. There's really two issues  
16 there that No. 3 is dealing with. One would be for  
17 switched access like meet point billing switched  
18 access calls. And the other would be just for  
19 subscriber-to-subscriber calls between the two ALECs  
20 through the incumbent.

21 Q And in your testimony you proposed, you had  
22 a few proposals for the provision of intermediary  
23 interconnection. And was one of those that you  
24 proposed that the ALECs be allowed to subtend or  
25 connect to the LEC's access tandem?

1           A     Well, there are really two things in there.  
2 I mean, one of them is, yes, for jointly provisioned  
3 switched access, so interexchange carrier switched  
4 access service that the ALEC would subtend the  
5 incumbent's access tandem. And we would be  
6 compensated based on the current meet point billing  
7 switched access arrangement that incumbent LECs do now  
8 with each other.

9                     And then the second is actually a case when  
10 let's say MFS and MCI want to send traffic to each  
11 other but they are not directly connected with each  
12 other. One option would be if we're both collocated  
13 at a GTE is central office, we would like to be able  
14 to cross-connect to each other directly. And then the  
15 second scenario would be if we're not both  
16 cross-connected or both not connected through  
17 collocation at the GTE wire center, that if we sent  
18 the traffic on a per-minute basis through GTE to MCI  
19 that we would pay an intermediary switching charge for  
20 that function to GTE since they are passing the  
21 traffic through their switch on to MCI.

22           Q     And what do you propose that that charge be?

23           A     Well, what we have proposed in our testimony  
24 was the lesser of two things: One would be either the  
25 intrastate or interstate switched access tandem

1 switching charge, which is intended to recover the  
2 cost of switching at the tandem; or two-tenths of a  
3 penny. So it would be the lesser of the two.

4 The Commission may want to go a step further  
5 and, you know, possibly, if they think that that price  
6 is excessive, to look at pricing it at, you know, LRIC  
7 or TSLRIC. But we really haven't studied that too  
8 much.

9 Q Now, that's your proposal with respect to  
10 GTE. Does that also hold true with respect to  
11 United/Centel?

12 A Yes, that's something that we do with  
13 everybody we propose.

14 Q Another point that I believe you made in  
15 your testimony was that the RIC rate element be  
16 charged and that it be collected by the ALEC  
17 performing the terminating access. Is that right?

18 A Yes.

19 Q Did GTE agree with you on that point?

20 A Yes.

21 Q AT&T's witness, Mr. Guedel, raised the point  
22 that it might be appropriate to eliminate the RIC  
23 altogether because there's no underlying costs  
24 associated with it. I take it you disagree with that  
25 position?

1           A     No, I would agree with that. In fact, when  
2 the FCC initially invented the RIC charge it was their  
3 intent to at some point eliminate it. So if there is  
4 a RIC and we're doing jointly provided switched access  
5 and we're doing end office functionality, we feel we  
6 should collect the RIC just as, you know, GTE or  
7 Sprint do now if they subtend BellSouth.

8                     But if the Commission in Florida would like  
9 to go a step further and eliminate the RIC charge and  
10 switched access on all switched access type charges  
11 then we would support that. Certainly, as Mr. Wood  
12 pointed out yesterday, the RIC, there's no cost  
13 associated with the RIC, there's no cost causation, so  
14 the RIC isn't intended to do anything in terms of  
15 covering costs, so it really doesn't have much use.

16           Q     Do you distinguish between the rates that  
17 you propose for handling intermediary traffic between  
18 local and toll traffic?

19           A     Yes.

20           Q     Could you explain that.

21           A     Well, if somebody is purchasing regular  
22 switched access, let's say MFS is, is buying switched  
23 access as an interLATA long distance carrier, we're  
24 already going to be, you know, passing switched access  
25 type calls with the incumbent LEC. So if the

1 Commission were to adopt that for intraLATA calls  
2 originating and terminating between two LECs, if the  
3 rate is going to be switched access, then how switched  
4 access is normally provisioned would apply.

5 For local calls, which is a different  
6 scenario, we would agree that there should be some  
7 kind of intermediary charge when there is an incumbent  
8 LEC between, let's say, two ALECs to switch a call  
9 between them if they're not directly connected.

10 I mean, the LEC is already collecting a  
11 tandem switching charge if we're using switched  
12 access, so there's no sense of having an intermediary  
13 switching charge plus a tandem switching charge to  
14 switched access, it is really double charge. It just  
15 doesn't make sense.

16 Q Now, is it correct to say that you have no  
17 outstanding or unresolved technical issues with GTE  
18 for handling of intermediary traffic?

19 A Yes, that's correct.

20 Q Do you have any unresolved technical issues  
21 with United/Centel for handling intermediary traffic?

22 A Well, we don't have a written agreement with  
23 them yet; but assuming -- you know, they have an  
24 agreement with Intermedia in terms of intermediary  
25 switching, so I don't think it is going to be a

1 technical issue of them being intermediary to switch  
2 calls between two ALECS. It doesn't seem there will  
3 be, I would think we could get agreement in writing on  
4 that.

5 MR. EDMONDS: Thank you, Staff has no  
6 further questions.

7 CHAIRMAN CLARK: Commissioners?

8 COMMISSIONER JOHNSON: In your testimony,  
9 you listed those states that have adopted bill and  
10 keep. And you have listed it's like five states that  
11 have adopted bill and keep. And I know yesterday I  
12 think your attorney suggested that you all had not  
13 included Ohio because the order had not been issued --  
14 or someone did, I thought it was you that stated that  
15 you all had addressed it but not listed it as one of  
16 the orders that you wanted to take official notice of?  
17 Is that something that -- I'll talk to the witness.  
18 Is that something that you are aware of, what has been  
19 done in Ohio?

20 WITNESS DEVINE: I haven't seen a written  
21 order but I did receive an e-mail from our person who  
22 handles Ohio and the e-mail said that the Ohio  
23 Commission ordered bill and keep between Time Warner  
24 and Ameritech.

25 COMMISSIONER JOHNSON: Madam Chair, is there

1 any way we could have that Ohio order late-filed and  
2 taken initial notice of? I don't know how we take  
3 official notice of something that hasn't been issued  
4 yet.

5 CHAIRMAN CLARK: I don't think we can. But,  
6 Mr. Devine, do you have -- do you know when that order  
7 is going to be issued? Do they have a time  
8 constraint?

9 WITNESS DEVINE: The e-mail I received did  
10 not say that. So I don't know if it was just, as  
11 somebody said yesterday, "from the Bench," or if it  
12 was written. But we could certainly make some phone  
13 calls when I'm off the stand and look into it if that  
14 would be helpful.

15 MR. CROSBY: Madam Chairman, I was the  
16 person who said I had a news release from the Ohio  
17 Commission if that would be of help to the Commission.

18 CHAIRMAN CLARK: I certainly think at this  
19 point we can indicate our intention to take official  
20 notice of the Ohio order when it is issued as part of  
21 this docket, assuming it is issued before the time  
22 that we make a decision on it. And I would ask Staff  
23 to make sure that the Commissioners have copies of  
24 that order.

25 COMMISSIONER KIESLING: Could we also, at

1 whatever point that we get that order, could you all  
2 let us know, too, whether it is subject to  
3 reconsideration or if it has been appealed so I can at  
4 least know whether it is something I can count on yet?

5 CHAIRMAN CLARK: I would certainly hope the  
6 order would provide some indication of that; and if  
7 not, that you would get in touch with Ohio Staff. I'm  
8 sure we could likewise talk to the Ohio Commission and  
9 find out the status of it.

10 MR. EDMONDS: We can do that.

11 CHAIRMAN CLARK: Thank you.

12 MS. WEISKE: It is not an order, it was a  
13 directive from the Commission to Ameritech to go back  
14 to the table and reduce the directive to writing. So  
15 I don't believe there's going to be a written order.

16 COMMISSIONER JOHNSON: I was just trying to  
17 clear up the record. And I thought they had referred  
18 to this particular witness and that he had listed or  
19 discussed the Ohio decision.

20 MS. WEISKE: I think it was Mr. Schleiden  
21 yesterday actually who addressed it and indicated that  
22 bill and keep was -- that Ameritech was ordered to  
23 provide Time Warner bill and keep through the end of  
24 1997.

25 I can check with our vice president for that

1 region, but I understand yesterday they extended the  
2 time frame to reduce the negotiations to writing and  
3 at this point Ameritech has not agreed to that  
4 directive.

5 COMMISSIONER JOHNSON: Well, Madam Chair, I  
6 don't --

7 CHAIRMAN CLARK: I think what we should do  
8 is maybe get information back from the parties as to  
9 just what exactly has been done in Ohio, if you can  
10 verify that, Ms. Weiske. And I would ask our Staff to  
11 get in touch with the Ohio Commission and find out if  
12 they have an intention to reduce that directive to an  
13 order; and if they would, if they would make sure we  
14 get a copy of it. And would you report back to me on  
15 that?

16 MS. CANZANO: Certainly.

17 COMMISSIONER JOHNSON: And on the other  
18 orders here, it is my understanding -- what, are these  
19 states that have made a ruling on the issue of  
20 compensation but they haven't all decided on mutual  
21 traffic exchange, have they?

22 WITNESS DEVINE: The states listed that we  
23 identified in terms of ordering bill and keep? Like  
24 the Oregon --

25 COMMISSIONER JOHNSON: No, on your list for

1 judicial notice you have listed quite a few orders  
2 that you wanted us to take judicial notice of. And I  
3 thought they were somehow tied to testimony and tied  
4 to those states that have perhaps implemented a bill  
5 and keep.

6 But from the exchange that occurred with you  
7 and United, I understand that Maryland rejected bill  
8 and keep. And what I was just asking is, what, for  
9 what reason did you want us to look at all of these  
10 orders? Are they just states that have addressed the  
11 issues and reached different conclusions, or?

12 WITNESS DEVINE: That addressed the issues.  
13 I think we tried to provide all of them that have  
14 actually sent orders. But a lot of them that have  
15 sent orders, the rate levels are a lot lower than what  
16 has been suggested by GTE and Sprint, so in terms of  
17 supporting evidence --

18 COMMISSIONER JOHNSON: Okay, just for all of  
19 the issues.

20 WITNESS DEVINE: Yes.

21 COMMISSIONER JOHNSON: Not necessarily  
22 supporting a position one way or the other, but these  
23 have all addressed the compensation issue for  
24 terminating local traffic?

25 WITNESS DEVINE: Yes. We tried to give you

1 as complete a record as we are aware of.

2 COMMISSIONER JOHNSON: And do you believe  
3 this to be a comprehensive list with respect to all of  
4 the states in the United States that have addressed  
5 the issue through an official order?

6 WITNESS DEVINE: Comprehensive as to what we  
7 are aware of. There may be some states we don't have  
8 investment in so we're not involved in, so there may  
9 be some other states that we're not aware of because  
10 we're just not there.

11 COMMISSIONER JOHNSON: Okay. So these would  
12 be those states that are relevant to your Company that  
13 have addressed these issues?

14 WITNESS DEVINE: Yes.

15 COMMISSIONER JOHNSON: Or issues related to  
16 compensation?

17 WITNESS DEVINE: Yes.

18 COMMISSIONER JOHNSON: Okay, thank you.

19 MS. WEISKE: Commissioner, if it would be  
20 helpful, Time Warner put together a chart of all the  
21 states and what they have done as to compensation for  
22 interconnection for an argument we made in Ohio. We  
23 would be happy to provide that as an exhibit.

24 COMMISSIONER JOHNSON: It wasn't one of the  
25 exhibits for your witness?

1 MS. WEISKE: It was done after our prefiling  
2 deadlines here so it wasn't something we provided  
3 here.

4 COMMISSIONER JOHNSON: Madam Chair, I don't  
5 know how we could handle that but that would be  
6 something that would be helpful. As I was looking at  
7 Metro Fiber Systems, orders that they provided to  
8 us, --

9 MS. WEISKE: Maybe what I could do, Madam  
10 Chairman, is provide a copy to United, Sprint and GTE  
11 at the next break and see if we can stipulate to its  
12 admission.

13 CHAIRMAN CLARK: Provide it to all the  
14 parties --

15 MS. WEISKE: I'd be happy to do that.

16 CHAIRMAN CLARK: -- and see if there is an  
17 objection to entering that in the record as a  
18 stipulated exhibit.

19 COMMISSIONER JOHNSON: And, ma'am, your list  
20 would be all the states that have dealt with the  
21 compensation issue?

22 MS. WEISKE: That's correct. The only state  
23 missing from that is the Ohio directive which hasn't  
24 yet been reduced to writing.

25 COMMISSIONER JOHNSON: Okay, thank you.

