

In The Matter Of:

*In Re: BellSouth Telecommunications, LLC d/b/a AT&T
TN v.*

Halo Wireless, Inc.

*Transcript of Proceedings
January 17, 2012*

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1 Q. Were those pieces of testimony prepared
2 by you or under your direction?

3 A. Yes, they were.

4 Q. Do you have any corrections to either
5 piece of testimony at this time?

6 A. No.

7 Q. If I were to ask you the same questions
8 set forth in the testimony today, would you give the
9 same answers?

10 A. Yes.

11 MR. COVEY: I move the admission of
12 Mr. McPhee's direct and rebuttal testimony, including
13 the exhibits, and make him available to issue his
14 opening statements.

15 CHAIRMAN HILL: Without objection.

16 MR. THOMAS: We do have an objection.

17 CHAIRMAN HILL: Okay. Please make it.

18 MR. THOMAS: We would like to take the
19 witness on voir dire to test the credibility of the
20 witness and his statements in the testimony and to
21 determine whether there's a proper foundation been laid
22 for the testimony.

23 MS. PHILLIPS: If I could just briefly
24 respond to that objection.

25 CHAIRMAN HILL: You may.

1 MS. PHILLIPS: Thank you. The
2 practice of the Authority has been consistent with
3 Tennessee State statute that the Rules of Evidence do
4 not bind this Authority. As a result, we do not follow
5 that sort of process of asking questions first to find
6 out whether you will ask questions of a witness.

7 And so what we would suggest is that
8 if counsel for Halo wants to ask the witness questions
9 on cross, that they ask those questions on cross. If
10 they think those questions somehow form a basis to ask
11 the Authority not to allow this witness to testify,
12 then they can make that argument.

13 But I fear that if we're going to
14 question all the witnesses twice, once to see if we're
15 going to question them and then to ask them their
16 questions, we're going to be here for a longer time
17 than is necessary.

18 MR. THOMAS: May I respond, Chairman?

19 CHAIRMAN HILL: You may.

20 MR. THOMAS: Regardless of the
21 applicability of the evidence rules, there are still
22 rules that govern whether evidence is admissible for
23 purposes of using it as testimony for the Authority to
24 rule on.

25 As the Authority itself has previously

1 said: (As read) Despite the leeway granted to the
2 Authority in admitting and valuing certain evidence,
3 the purpose of prefiled testimony, expert or otherwise,
4 presented for the consideration of the Authority
5 remains constant to substantially assist the Authority
6 in understanding the evidence or determining of fact in
7 issue in the case. (End of reading.) That was in the
8 Chattanooga -- March 2, 2009, In Re Chattanooga
9 proceeding.

10 And the point behind my voir dire is
11 to show that none of this testimony is based on
12 personal knowledge, none of this testimony is based
13 upon any expert opinion. It is all essentially a
14 reassertion of the positions taken by the legal
15 counsel. Most of it is legal opinion, and, therefore,
16 it does not -- it does not serve the purposes of the --
17 of evidence for this Authority and is objectionable.

18 And so we take the position -- Halo
19 takes the position that we believe we have the right to
20 conduct voir dire, but if we do not -- if we are not
21 afforded that right, we object to the admission of the
22 testimony because we believe that none of it is
23 credible, trustworthy, reliable testimony on which the
24 Authority may rely.

25 CHAIRMAN HILL: Mr. Thomas, I've heard

1 what you have to say, and I understand what you're
2 saying; however, I think that you are a competent
3 counsel for your client and in your cross-examination I
4 believe that you can bring out the points that you need
5 to bring out without us going through the Rules of
6 Evidence.

7 MR. THOMAS: And on that point, may
8 I -- I simply make my objection and I would only ask
9 that you overrule it.

10 CHAIRMAN HILL: The objection is
11 overruled and it is part of the record.

12 MR. THOMAS: Thank you.

13 (Prefiled testimony entered
14 into the record.)

15 CHAIRMAN HILL: All right. Mr. Covey.

16 BY MR. COVEY:

17 Q. Mr. McPhee, are you ready to make your
18 opening statement?

19 A. I am. Good morning. My name is Scott
20 McPhee and I'm employed by AT&T.

21 I submitted testimony in this proceeding
22 that addresses the interconnection agreement between
23 AT&T Tennessee and Halo Wireless, as well as several
24 ways in which Halo has breached the agreement.

25 In April 2010, the parties entered into the

1 CHAIRMAN HILL: If you would.

2 MR. THOMAS: Thank you, Mr. Chairman.

3 CROSS-EXAMINATION

4 BY MR. THOMAS:

5 Q. Good morning, Mr. McPhee. My name is
6 Steve Thomas.

7 A. Good morning.

8 Q. I represent Halo wireless Services --
9 Halo wireless, Inc.

10 Would you confirm -- your testimony says
11 that you were -- you have degrees from the University
12 of California at Davis in economics and political
13 science. Do you have any other degrees?

14 A. I do not.

15 Q. Are you an attorney?

16 A. No.

17 Q. Have you ever had any legal training?

18 A. No.

19 Q. Have you ever been to Halo's facilities?

20 A. I have not.

21 Q. Have you ever discussed anything with
22 any of Halo's personnel?

23 A. No.

24 Q. Have you ever had an opportunity to
25 directly take data of call information for Halo

1 calls?

2 A. Can you please explain what you mean by
3 "directly take data"?

4 Q. By you actually putting in the
5 instructions where you obtained the data as it came
6 from the call stream.

7 A. I have not input any instructions to
8 obtain data.

9 Q. Have you taken any other steps where
10 you -- from a scientific or technical point of view
11 conducted any study or analysis that you would use
12 to -- on any data of Halo?

13 A. I'm sorry. Could you -- I guess I need
14 to understand what you mean by "study or analysis."

15 Q. In any way have you conducted a
16 scientific study or analysis of any data of Halo?

17 A. I have seen studies of data from Halo.
18 I'm not sure I understand your term "scientific
19 study," but I have looked at the studies. I have
20 not directed the collection of the data for those
21 studies.

22 Q. So all of the information that you have
23 was provided to you by third parties; is that
24 correct?

25 MR. COVEY: If I could ask for

1 end users --

2 CHAIRMAN HILL: We're going to recess
3 for five minutes. We'll be back.

4 You are under oath. Don't talk while
5 you're gone.

6 (Recess taken from 9:59 a.m.
7 to 10:06 a.m.)

8 DIRECTOR KYLE: Thank you. I'm ready
9 to move on.

10 CHAIRMAN HILL: Is everybody situated?
11 Let me remind the witness you are still under oath.
12 All right. You may continue.

13 BY MR. THOMAS:

14 Q. Thank you, Mr. McPhee. The point that I
15 was trying to make is that if a court disagrees with
16 you that it's landline-originated, then the court
17 would trump, would it not?

18 A. I will leave that to the attorneys to
19 decide. It sounds like a legal issue.

20 Q. Exactly. And so because this is a legal
21 term, it's not something that you have expertise on?

22 A. Well, I disagree, because in my
23 experience of 12 years of dealing with intercarrier
24 compensation, the term is commonly used in order to
25 describe call scenarios. So --

1 Q. Go ahead and finish your answer. I'm
2 sorry.

3 A. So I do feel a bit -- that I have an
4 understanding of what a landline-originated call
5 means for purposes of my testimony and for purposes
6 of intercarrier compensation.

7 Q. You have an understanding of what you
8 understand "landline-originated" means, and all I'm
9 trying to point out is you may not agree -- or a
10 court may not agree with you on that and a court
11 would trump, wouldn't it?

12 A. I understand that there may be a legal
13 definition where the lawyers might have a different
14 understanding or there might be a different
15 definition, but, as I said, in my industry
16 experience, I do use the term and it is commonly
17 used.

18 Q. You use the term "disguising" and
19 "manipulating" -- those two terms in that sentence
20 that follows, didn't you?

21 A. I did.

22 Q. With that, you implied, didn't you, that
23 Halo was intentionally trying to deceive AT&T,
24 didn't you?

25 A. I don't say specifically that Halo is

1 intentionally doing it. I say that the traffic was
2 disguised and the call records were manipulated.

3 Q. So you think that there's a possibility
4 that someone could accidentally disguise and
5 accidentally manipulate?

6 A. I don't know what the intention may be
7 behind somebody disguising or manipulating. I'm
8 just describing the characteristic of the traffic
9 and the call records.

10 Q. So you don't have personal knowledge of
11 anything -- you don't have personal knowledge of
12 anything that Halo did, do you?

13 A. I'm sorry? In what respect?

14 Q. You don't have personal knowledge of
15 anything -- any action that Halo has ever taken, do
16 you?

17 A. I disagree with that.

18 Q. How would you have personal knowledge if
19 you've never had any interaction with Halo or its
20 employees?

21 A. I have not literally stood over
22 anybody's shoulder at Halo and watched them do
23 things. I do have knowledge of --

24 Q. Let me clarify my question. I'm sorry.
25 It was an improper question.

1 "Personal knowledge" means that you saw it,
2 you experienced it. If you don't have personal
3 knowledge, then you're relying on something someone
4 else told you, something that came from a document,
5 something that came from someone telling you something.
6 It's hearsay. It's something you've been told and so
7 you're repeating it or you're using it to analyze
8 without knowing what the source of that is.

9 So the difference between personal
10 knowledge and the type of knowledge you're talking
11 about -- you're not talking about personal knowledge.
12 Do you understand that?

13 MS. PHILLIPS: Chairman Hill, could I
14 just clarify for the record?

15 CHAIRMAN HILL: You may.

16 MS. PHILLIPS: AT&T is happy to
17 stipulate that Mr. McPhee has based his testimony on
18 things like looking at the call detail, looking at call
19 studies, looking at communications from Halo. We are
20 not suggesting that Mr. McPhee witnessed with his eyes
21 call detail being input by Halo.

22 I hate for us to waste a lot of time
23 on the legal, technical definition of what is personal
24 knowledge. I think within the context of the ordinary
25 practice of this agency, in order to not have 15

1 different witnesses who say, yes, I'm the one who
2 looked at the computer screen and I pulled the call
3 detail, and then have somebody else say I looked at the
4 call detail and I handed it to Mr. McPhee, Mr. McPhee
5 is describing what he understands has happened here and
6 how that interrelates with the contract. We are not
7 suggesting that Mr. McPhee has visited Halo.

8 And I don't believe Mr. McPhee has
9 testified anything about their intent. The call study
10 that was included in the prefiled testimony is included
11 in someone else's prefiled testimony, and I think we
12 might could move through this a little more quickly if
13 we just stipulate he is a fact witness. He is not
14 offering an expert legal conclusion. He is simply
15 describing his understanding of the information that
16 came from other parties and whether that is consistent
17 with the interconnection agreement of the parties.

18 And I say that on the record because I
19 just want to try to cut through some of the evidentiary
20 sort of discussion about the competence of the witness.

21 CHAIRMAN HILL: And so then, if I may,
22 you would -- forgive me if I -- I don't mean this to be
23 a leading question, but would you agree to the fact
24 that your witness has not -- he has not been to Halo.
25 He hasn't talked to Halo. He hasn't had a

1 psychological profile done on anybody at Halo. That
2 what he has to say should not be inferred -- there
3 should be no inference that he has that knowledge. Is
4 that what I'm hearing?

5 MS. PHILLIPS: I think those are all
6 correct statements, in large part because our case does
7 not allege any intent on Halo's part. We're not making
8 a fraud claim. We're saying that they breached the
9 contract.

10 So this testimony is about what they
11 did, not what they intended, not what their motivations
12 were. And Mr. McPhee is testifying based on his
13 understanding of material he has reviewed from other
14 people as opposed to interacting face-to-face with
15 Halo, and we would contend that that is commonly
16 accepted as reliable and proper testimony here at the
17 Authority.

18 And we will not be objecting to Halo's
19 witnesses who also rely on -- describe industry
20 practices and rely on things that their lawyers told
21 them, because we recognize that is the efficient way to
22 raise these issues in this commission.

23 CHAIRMAN HILL: And so your witness
24 appears as an analyst of what he has seen?

25 MS. PHILLIPS: He is describing what

1 he has seen. He has not performed any sort of expert
2 analysis or the kinds of things that expert witnesses
3 do. He is describing his conclusions based on other
4 things that he has observed or learned, yes, sir.

5 CHAIRMAN HILL: Thank you.

6 MR. THOMAS: May I make two points,
7 Your Honor?

8 CHAIRMAN HILL: You may.

9 MR. THOMAS: First of all, I apologize
10 that I am not well experienced in dealings before the
11 Tennessee Regulatory Authority or proceedings like
12 this, but I have been representing clients for many
13 years. And when someone says that my client is
14 disguising, when they say that my client is
15 manipulating, or on the next page when they say that my
16 client is perpetuating a scheme, it appears to me that
17 that is a specific statement -- an accusation that my
18 client is engaged in unlawful conduct intentionally,
19 and I have a right to defend my client against those
20 accusations.

21 But, second, if counsel for AT&T will
22 stipulate that Mr. McPhee has no personal knowledge of
23 the matters on which he is testifying regarding Halo,
24 then I think we can leave all of that -- all of these
25 issues behind.

1 MS. PHILLIPS: Chairman Hill, AT&T
2 will not stipulate that this witness does not have
3 personal knowledge. He has a great deal of personal
4 knowledge. He has personally evaluated the information
5 that all folks in the telecom industry use to decide
6 whether folks are complying with their interconnection
7 agreements. We certainly are not going to do something
8 in Tennessee -- the first state commission to take up
9 these issues -- to create the ability for Halo to go
10 around to other places, well, AT&T has agreed that
11 their witnesses don't have any knowledge, that their
12 witnesses aren't competent, and that is all this
13 exercise appears to be about.

14 MR. THOMAS: No. You're wrong.

15 MS. PHILLIPS: What I would suggest
16 is -- I hoped by raising this that we could cut to the
17 chase and relieve Halo of feeling the obligation to
18 create a lot of record here that they have questioned
19 the competence of the witness. Obviously, that isn't
20 going to make things go more quickly; it's just going
21 to draw things out. So we would just suggest that -- I
22 think both parties have made their point on the record
23 and maybe we can get back to asking questions of the
24 witness.

25 CHAIRMAN HILL: If I may restate then

1 what I heard you say, Ms. Phillips, you're not accusing
2 fraud, you're not -- you're not exposing in any fashion
3 something that you've discovered. All you're talking
4 about here is whether or not there was a breach of the
5 agreement; is that correct?

6 MS. PHILLIPS: We are talking about --
7 our claim is that there has been a breach of the
8 agreement. Now, it certainly makes it more likely in
9 the -- for the fact finder to determine that a breach
10 occurred when we explain what the motivation might have
11 been for doing those things. We do believe that the
12 reasons that Halo has made -- has inserted call detail
13 that isn't normally inserted is for the purpose of
14 making their traffic look like something it isn't.

15 We are not making a fraud claim,
16 though. We don't have to prove what was in their
17 heart. And all I'm suggesting is that, you know, the
18 word "disguise" means make something look like
19 something else, and that's what I think the witness
20 means. And "manipulate" means, you know, change
21 something. That is what I think has happened.
22 "Scheme" -- I'm sorry if that word feels a little
23 unpleasant, but "scheme," you know, means a design, a
24 plan, a purpose to do something.

25 And we do believe that they have

1 engaged in this purposefully to pay a lower rate than
2 is required by the contract, but all of those claims
3 relate to breach of contract. And I do not want to
4 concede that we are obligated to prove that they had
5 some evil intent, because breach of contract claims
6 don't require that.

7 CHAIRMAN HILL: So what you're trying
8 to -- what I'm trying to hear here -- I think you're
9 trying to tell me is that these words are used without
10 prejudice and are not necessarily malevolent in their
11 usage?

12 MS. PHILLIPS: Absolutely.

13 CHAIRMAN HILL: What I'm -- I mean, I
14 can understand -- I mean, you know, there's a famous
15 lawyer named Shylock, so we understand that that set a
16 precedent for certain views of attorneys. And so words
17 are powerful, but I'm understanding, for the record,
18 that you're telling me that this is not used with any
19 prejudice, these words are not?

20 MS. PHILLIPS: They are not intended
21 to offend.

22 CHAIRMAN HILL: However, apparently,
23 they do offend.

24 MR. THOMAS: Chairman, if I might
25 respond. Page 4, line 15 of Mr. Neinast's testimony

1 comes straight out and says that this is an attempt to
2 defraud by Halo. This is evidence -- they are asking
3 that you admit this information as evidence. We are
4 objecting to that evidence in cross-examining to show
5 they don't have any basis for these claims of fraud or
6 scheme or manipulation or disguising.

7 Second, there are only two types of
8 witnesses in any kind of proceeding you want to put
9 together in this country, and that is a fact witness or
10 an expert witness. AT&T has said he is a fact witness.
11 Under Tennessee law, he cannot testify unless he has
12 personal knowledge. We have the right to object to his
13 testimony being admitted because he has no personal
14 knowledge of any of the facts that he has put into his
15 testimony. They are all of the type of facts that
16 would be presented by an expert witness.

17 It has been right here on the record
18 said by AT&T he is not an expert witness. He is a fact
19 witness. Absolutely none of this testimony can come in
20 for that reason, and we object to its admission.

21 MS. PHILLIPS: Chairman Hill, we don't
22 agree that personal knowledge for purposes of admitting
23 evidence at the Tennessee Regulatory Authority has the
24 meaning that was just described. This testimony is
25 based on this witness's industry understanding, his

1 actual experience, his actual evaluation of what has
2 happened.

3 I'm sorry. I just disagree with
4 what's being described. This is a perfectly competent
5 witness of the same nature that this agency routinely
6 relies upon in cases of this nature.

7 CHAIRMAN HILL: Well, the objection is
8 noted, but it's my opinion that the witness has the
9 right to make his statements. You also have the right
10 to question them, Counsel, and I understand that. And
11 so let's proceed, shall we?

12 MR. THOMAS: Your Honor, I have made
13 an objection to the admission of his evidence based on
14 the admission by AT&T that he is not an expert, that he
15 is a fact witness. I presented that objection to the
16 Authority. It sounds to me as though you have just
17 overruled my objection.

18 CHAIRMAN HILL: I have overruled your
19 objection, but I have noted it.

20 MR. THOMAS: Thank you. Thank you.
21 In light of you overruling that objection and in order
22 to preserve time, I will -- I will say that in the
23 interest of time, we will take up issues where the two
24 witnesses overlap through cross-examination of
25 Mr. Neinast and I will conclude my cross-examination.

1 Q. Was that testimony prepared by you or
2 under your direction?

3 A. Yes, it was.

4 Q. Do you have any corrections to the
5 testimony at this time?

6 A. No, I don't.

7 Q. Does your testimony include a corrected
8 version of, I believe it was, Exhibit MN-3 with your
9 direct testimony?

10 A. Yes, it was. I had a label correction
11 that I needed to make.

12 Q. If I were to ask you the same questions
13 set forth in your direct and rebuttal testimony
14 today, would you give the same answers?

15 A. Yes, I would.

16 MR. COVEY: Your Honor, I would move
17 the admission of the testimony of Mr. Neinast and make
18 him available to issue his opening statement.

19 CHAIRMAN HILL: Without an objection.

20 MR. MCCOLLOUGH: There is an
21 objection. I suspect it is going to sound very much
22 like what counsel before me did with Mr. McPhee. We
23 do, for the record, request an opportunity to take voir
24 dire to test the basis for this witness's opinions.

25 I would characterize much of this

1 testimony not only as legal in nature, but also as an
2 expert who is expressing opinions, who has conducted a
3 study. And before testimony on his study results can
4 be admitted, we have a right, under the law which has
5 been adopted in this state, to test its reliability.

6 This is in the nature of a Daubert
7 test. Before expert opinions using studies of this
8 type can be admitted into evidence, there must be a
9 finding that it is of a reliable nature and was
10 performed using proper scientific or other analytical
11 methods. I wish to conduct some voir dire to get into
12 that before this is admitted.

13 CHAIRMAN HILL: Counsel?

14 MS. PHILLIPS: Thank you, Chairman
15 Hill. AT&T disagrees that that is a proper
16 characterization of this witness's testimony. This
17 witness is offering fact evidence. This witness did
18 not do any DNA testing. Okay? We are not talking
19 about somebody who has performed scientific
20 experiments.

21 The data that Mr. Neinast is going to
22 talk about, what is called in his testimony "a call
23 study" is basically this, we looked -- AT&T collected a
24 list of all the telephone calls that Halo sent during a
25 week. We didn't use logarithms or mathematical

1 analysis is silly and not at all consistent with the
2 way this commission treats evidence of this nature. So
3 we disagree, obviously.

4 MR. MCCOLLOUGH: If I may respond. I
5 promise to be really quick. In essence, what
6 Mr. Neinast is bringing to you is some kind of
7 forensics analysis. He studied information, picked a
8 certain period, looked at the information from that
9 period, and formed conclusions and an opinion which he
10 is presenting to you. One specific instance is his
11 estimate that 74 percent of the traffic is
12 landline-originated. Now, in order to calculate that
13 percent, he had to perform an analysis and a study.
14 I'm sorry. Where I come from, that's an expert
15 opinion.

16 CHAIRMAN HILL: You are from Texas,
17 aren't you?

18 MR. MCCOLLOUGH: I am indeed, and in
19 Texas we pronounce it VORE-DIRE, not VWA-DEER. I don't
20 want to waste a bunch of time here, because I suspect I
21 know what the ruling is. We do request the opportunity
22 for voir dire, and you're either going to give it to me
23 or you're not.

24 CHAIRMAN HILL: Voir dire or garde or
25 whatever you want to call it, no, we're not going to

1 give it to you.

2 MR. MCCOLLOUGH: Thank you.

3 CHAIRMAN HILL: We're going to operate
4 as we normally do within the TRA function, and I don't
5 think it rises to that issue at this point.

6 (Prefiled testimony moved
7 into the record.)

8 CHAIRMAN HILL: All right. Continue.

9 MR. COVEY: Thank you.

10 BY MR. COVEY:

11 Q. Mr. Neinast, have you prepared a summary
12 of your testimony that you would like to present at
13 this time?

14 A. Yes, I have.

15 Q. Thank you.

16 A. Good morning. I'm Mark Neinast,
17 associate director of network regulatory. I have
18 over 36 years with AT&T, primarily in the network
19 organization. I'm here to discuss the network and
20 technical facts in this case.

21 Halo has entered into a wireless
22 interconnection agreement with AT&T here in Tennessee.
23 Halo's ICA clearly prohibits from sending AT&T landline
24 traffic. I discuss in my testimony how Halo has
25 actually been sending landline traffic to AT&T in

1 going to -- I'm not here to testify about that.

2 Q. So you don't know --

3 A. No.

4 Q. -- that, for example, if we assume that
5 this Bandwidth.com number that was in your list --
6 that this particular call actually touched
7 Bandwidth.com's network when it was originated?

8 A. I'm not here to represent that. I'm
9 here to represent the fact that they're listed in
10 the LERG, local exchange routing guide, as a
11 landline carrier, and that's what they're listed as
12 and that's the way we treat them. That's the
13 industry practice today.

14 Q. Your study, however, would have assumed
15 that it did indeed originate on Bandwidth.com's
16 network?

17 A. If they list themselves as a landline
18 carrier, Bandwidth.com, then that's how we're going
19 to treat them, and that's the industry practice
20 that's being used today by all local exchange
21 carriers.

22 MR. MCCOLLOUGH: I'm going to rise
23 just to make a record. I move to exclude his testimony
24 because his study is unreliable. He used the calling
25 and called number and then derived from that the

1 inference or assumption that merely because an
2 originating number was signaled, that it originated on
3 the carrier's network that holds that number and that
4 it is the type of call that is denoted in the LERG,
5 i.e., wireline or wireless.

6 I have demonstrated in this room today
7 that that is not a valid assumption. That renders his
8 study invalid, without basis, and inadmissible. I move
9 to strike.

10 MS. PHILLIPS: Obviously, AT&T opposes
11 the motion to strike. Mr. McCollough can make his
12 argument about his view of how reliable our process
13 was, but it's been explained here, and I think the
14 Authority can weigh that as the Authority thinks is
15 appropriate. But it certainly doesn't go to the
16 admissibility of this evidence. This evidence has been
17 explained. It is of the type and character that we
18 routinely rely on in this commission to talk about what
19 happened with a bunch of telephone calls.

20 CHAIRMAN HILL: One question of the
21 witness. The study that you did and the way that it
22 was done, getting the information and all that, and the
23 results that you had from the study, is that industry
24 standard -- and I don't mean AT&T only, but industry
25 standard to do the study the way you did it and to come

1 a lot of things I've got questions about, but we're not
2 here to talk about those things today.

3 I overrule your objection, but well
4 stated, nonetheless. Anything else?

5 MR. MCCOLLOUGH: Yes, sir.

6 BY MR. MCCOLLOUGH:

7 Q. You said today -- you said in your
8 rebuttal testimony, page 6, 11 -- lines 11 through
9 12, that the industry treats IP-originated traffic
10 as wireline. May I take from that then that your
11 analysis would have included all IP-originated calls
12 and characterized them as wireline-originated?

13 A. Yes.

14 Q. Okay. Now, AT&T has an affiliate,
15 AT&T wireless; correct?

16 A. Yes.

17 Q. And AT&T wireless is building a
18 next-generation wireless network. It's 4G LTE;
19 right?

20 A. Yes.

21 Q. That's an IP-based network, isn't it?

22 A. Yes, it is.

23 Q. And, in fact, the voice piece of it runs
24 on the data side. They actually have a session
25 initiation protocol-type application baked into the

1 MS. PHILLIPS: Put it in as an
2 exhibit. He can't testify about it.

3 CHAIRMAN HILL: Without objection,
4 Exhibit 10 will be in the record.

5 (Marked Exhibit 10.)

6 MR. MCCOLLOUGH: That concludes my
7 cross-examination.

8 CHAIRMAN HILL: We are going to take a
9 5-minute break or so and let everybody get a little
10 refreshed and then come back and we'll hit the next
11 side. The witness is excused. Thank you very much.

12 (Recess taken from 3:08 p.m.
13 to 3:19 p.m.)

14 CHAIRMAN HILL: We're back in session
15 again. Ms. Phillips, did you have any redirect?

16 MS. PHILLIPS: No, sir, we don't.

17 CHAIRMAN HILL: And you wanted to move
18 the testimony of Mr. Neinast into the record; is that
19 correct?

20 MS. PHILLIPS: I believe we moved it
21 earlier and there was an objection, and we just weren't
22 absolutely sure, even though the objection was
23 overruled, that it actually got accepted into the
24 record.

25 CHAIRMAN HILL: It's moved into the

1 record, without objection.

2 MS. PHILLIPS: Thank you.

3 (Prefiled testimony entered
4 into record.)

5 CHAIRMAN HILL: And there's no direct
6 from you?

7 MS. PHILLIPS: No.

8 CHAIRMAN HILL: Do the directors have
9 any questions for the witness, if we do, we'll call him
10 back to the stand?

11 DIRECTOR FREEMAN: No.

12 CHAIRMAN HILL: Do the staff members
13 have any questions?

14 MS. STONE: No.

15 CHAIRMAN HILL: You get off easy. I
16 don't know if that's true or not, but at least you
17 don't have to answer any more questions. How's that?

18 Mr. Thomas, are you the lead on this
19 one?

20 MR. THOMAS: No, Your Honor. I just
21 wanted to clarify that we did object to the entry of
22 the testimony, and you have overruled our objection?

23 CHAIRMAN HILL: That's the way it
24 worked. All right. Well --

25 MR. THOMAS: Thank you.