

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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3 Sandra L. Feigley v. AT&T) Docket # C-00981434
4 Communications of Pennsylvania,)
5 Inc.)
6 Complainant wants PUC to bar the)
7 companies from collecting a tax)
8 on speech in which tax doubles)
9 cost of collect phone calls from)
10 prisoners and which is paid to)
11 the Commonwealth without)
12 legislative authorization.)

Further Hearing.)

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Pages 32 through 251

Hearing Room 3
North Office Building
Harrisburg, Pennsylvania

Wednesday, June 16, 1999
Commencing at 10:21 a.m.

BEFORE

LOUIS G. COCHERES, Administrative Law Judge

APPEARANCES:

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Pennsylvania, Inc.

ALSO PRESENT:

Mark E. Guzzi, Esquire

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1 JUDGE COCHERES: Good morning. Good morning, ladies
2 and gentlemen. As you all know by now, my name is Louis
3 Cocheres and I'm the Administrative Law Judge assigned to
4 hear the matter of Sandra Feigley versus AT&T
5 Communications of Pennsylvania, Incorporated at Commission
6 Docket Number C-00981434.

7 First of all, it's nice to meet you, Mr. Love. I
8 talked to you on the phone. It's always good to put a
9 face and the voice together. Who is this nice person you
10 brought with you at the table?

11 MR. LOVE: This is a law student. Could you
12 please --

13 MS GILCACKEL: I'm Jasmine Gilcackel. I'm a Temple
14 law student.

15 MR. LOVE: She's an intern at my office.

16 JUDGE COCHERES: Okay. Well, we'll try not to put
17 you to sleep immediately. All right. Okay. The first
18 thing that I see on my agenda is that I had required the
19 parties to have a stipulation. And I want you to know
20 that I received Mr. Love's letter of June 11th including a
21 pleading denominated undisputed facts. Guilty of not
22 having looked at the very last page where Mr. Kohler's
23 signature appears on the last page. I didn't realize you
24 signed them in sequence.

25 But in any event, I will certainly accept it into

1 the record. I took the liberty of making an extra copy.
2 I'm going to give it to the Court Reporter. Since it has
3 proprietary information in it, I will label the top of it
4 proprietary so that not only the Reporter but the file
5 room will know how to treat it.

6 (The stipulation was admitted into evidence.)

7 MR. KOHLER: Your Honor, can we address the
8 treatment of proprietary information both in the
9 stipulation and how the hearings are going to be conducted
10 today?

11 JUDGE COCHERES: Certainly.

12 MR. KOHLER: Your Honor, first in the stipulation,
13 just to clarify the record and also for the Court
14 Reporter, Mr. Love prepared the stipulation. And just to
15 clarify, proprietary information is marked a little
16 differently than it normally is in this forum. That's of
17 no consequence to me as long as Your Honor understands it
18 and the Court Reporter understands it and Mr. Love who did
19 make the designations, of course, understands it.

20 The one thing I'd add is on the ninth stipulated
21 fact. The number of calls -- the number of telephones is
22 non-proprietary but the number of calls is. And would ask
23 that be marked.

24 JUDGE COCHERES: All right. I'll put the -- use the
25 same format and just put an asterisk next to the

1 information.

2 MR. KOHLER: The other thing is, Your Honor, as you
3 know, this information is proprietary to AT&T. It was
4 provided and disclosed to Mr. Love in discovery and then
5 became the basis for stipulated facts. Your Honor, has
6 issued a proprietary order in this agreement. It requires
7 that that information not be disclosed beyond Mr. Love
8 except by signed affirmation of other parties.

9 It was circulated to the Commonwealth through
10 service and stipulation. For the record, that was
11 partially my fault or maybe wholly my fault because Mr.
12 Love did send me a copy of the certificate of service and
13 I should have seen that. I talked to Mr. Guzzi who's here
14 representing the Commonwealth this morning and he
15 understands that that is proprietary, and I don't need
16 anything further. That's fine.

17 JUDGE COCHERES: You need no further reassurance.

18 MR. KOHLER: That's right. But I would like the
19 record to reflect that that information -- there's other
20 witnesses here. They are third parties. They are -- they
21 have not signed the proprietary agreement. They are not
22 parties to this proceeding. They should have not received
23 the information and should not receive the information and
24 should not be privied to it in this hearing. That would
25 also hold true for Ms. Feigley absent signing of an

1 affirmation which I will accept if it were so signed.

2 To take matters further, there will be testimony
3 today on I believe AT&T proprietary information and
4 potentially Commonwealth proprietary information. Your
5 Honor, we have parties that are in the room now that
6 cannot be subject to that information. And I would seek
7 your guidance as to how you want to run this hearing in
8 some sort of orderly fashion.

9 JUDGE COCHERES: Well, I'm going to try and run it
10 the way you're accustomed to seeing me run it. But I
11 thank you for the lead in. Normally what I do when we
12 have proprietary information in the courtroom is, first of
13 all, try to limit its use during the hearing. And if we
14 must use it, I try to group it in as few instances as
15 possible. So that if that means that witness number one
16 is on the stand and has as part of their testimony
17 references to proprietary information, we state the cross
18 examination or the examination of that material until they
19 end their presentation. So that if witness number two has
20 proprietary information that they will be dealing with, we
21 will start with that information.

22 And the reason I say that is that when proprietary
23 information will be used in the courtroom, I need a clear
24 signal from counsel to alert me and the Court Reporter and
25 then I must give the instructions to clear the courtroom.

1 And as a standard form of practice, those folks who
2 have signed a particular agreement which was -- a copy of
3 which was attached to my proprietary order signifying that
4 they will not disclose proprietary information except
5 under very limited circumstances, those people are allowed
6 to stay in the courtroom. Folks who have not signed that
7 agreement -- and in my estimation, most proprietary
8 information is fairly boring but important to people who
9 designate it as proprietary -- have to leave the
10 courtroom. And they are permitted to return when the
11 information has been disclosed on the record and
12 completed.

13 The result is that the transcript and the documents
14 that may be produced while we're on the proprietary record
15 will be isolated. And the Court Reporter will provide the
16 transcript in two formats. There will be obviously two
17 transcripts for today; the proprietary transcript and the
18 non-proprietary transcript. The pages are sequential in
19 the sense that if we do page 1 through 125 on the
20 non-proprietary transcript, page 126 will start the
21 proprietary transcript and only go to page 140 before
22 we're back on non-proprietary. And that would start on
23 page 141.

24 So the result is only slightly bizarre to the
25 outsider. But it's intended to protect information which

1 is of commercial importance to the parties of the case.

2 MR. KOHLER: Your Honor, could I make a suggestion?
3 I'm going to make a presumption that Ms. Feigley would
4 like to be here for her entire case. I have not received
5 an acknowledgement. I have no objection to her signing it
6 -- I have -- signing an acknowledgement now.

7 And I'm relying on Mr. Love to make it clear to his
8 client on what the obligations are with the proprietary
9 agreement and to do everything in his power to make sure
10 it's complied with. I would add that that's not true for
11 third parties.

12 AT&T would object to disclosure to any third parties
13 even with a signed acknowledgement because they are not
14 parties to this proceeding, third party witnesses. If
15 they qualify as an expert under the proprietary agreement,
16 Mr. Love maybe could make a request. But I have received
17 no such acknowledgements to date.

18 JUDGE COCHERES: Yes. All right. Well, that is
19 certainly up to Mr. Love and Ms. Feigley to accept your
20 offer. And at least at this point, unless there are no
21 other procedural aspects that I have to deal with, we can
22 get to witnesses.

23 MR. LOVE: Ms. Feigley will sign the agreement.

24 JUDGE COCHERES: That's fine. And we can do that
25 during the break. It doesn't have to be done immediately.

1 That is not a problem. Are there any other procedural
2 issues?

3 (No response.)

4 JUDGE COCHERES: Hearing none, then, Mr. Love, you
5 are the attorney representing the claimant. You have the
6 burden of proof, and I expect that you have one or two
7 witnesses that you want me to hear from.

8 MR. LOVE: Your Honor, I'd like to make a brief
9 opening statement if I could.

10 JUDGE COCHERES: Fine.

11 MR. LOVE: Ms. Feigley started this proceeding pro
12 se April of 1998 when she filed a challenge with the
13 Public Utilities Commission to the contract between the
14 Commonwealth of Pennsylvania and Bell and AT&T alleging
15 three things: That the rates were excessive, that they
16 constituted a tax on her free speech because of their
17 excessiveness and that there was a racially dispirit
18 impact upon people of color paying a higher rate than
19 other folks were paying in the Commonwealth.

20 Your Honor issued an order in this case I believe it
21 was in November of 1998 dismissing Bell from the case.
22 Bell had filed a motion for a judgment on the pleadings.
23 You converted that to a summary judgment motion and
24 granted that. You dismissed AT&T's motion for a summary
25 judgment and allowed the case to proceed. You also

1 discussed whether or not the Commonwealth should be
2 brought in as a necessary party. And at that time Ms.
3 Feigley opposed that bringing in of the Commonwealth.
4 That decision was basically affirmed by the Public
5 Utilities Commission, I believe, in February of the
6 following year.

7 We're here today to present six witnesses. We're
8 going to present three family members of inmates to
9 testify as to their experiences with the phone system.
10 We're then going to call John Malcom from the Commonwealth
11 of Pennsylvania who is familiar with the contract
12 negotiations on behalf of the Commonwealth. We're then
13 going to call Deputy Commissioner Shaffer from the
14 Pennsylvania Department of Corrections to explain the
15 Department of Corrections role in this operation and then
16 I'll either call Patty Calega from AT&T to talk about
17 their rate structure in this case.

18 Based on this evidence, I'm going to ask the Court
19 to reconsider its ruling in the Bell summary judgment
20 motion based on new evidence that we're going to present
21 today. And I understand in the rules, in the Pennsylvania
22 Code Rules, there is a section that allows the Court to
23 reconsider motions before a final decision is made. And
24 we're going to ask the Court to review that in light of
25 the fact that the new contract entered in to this year is

1 substantially different from the old contract. And we
2 believe that's a material change, a fact that warrants a
3 reconsideration. And we're also going to ask the Court to
4 add the Commonwealth of Pennsylvania as a party because we
5 believe that a contract takes two people to have a
6 contract, and they're both equally important in this
7 matter.

8 And Ms. Feigley is now not opposing the introduction
9 of the Commonwealth into this case and is asking that the
10 Commonwealth be added to the case. And that will be our
11 case today. I'd like to start out by calling Sandra
12 Feigley to the stand.

13 MR. KOHLER: Your Honor, can I respond?

14 JUDGE COCHERES: Yes.

15 MR. KOHLER: First of all, I don't have a problem
16 with joining the other parties. It's AT&T's position that
17 Bell should have never been dismissed. And I agree with
18 Mr. Love that the circumstances have changed and that an
19 amended complaint or a petition or even a motion for
20 reconsideration or whatever you may call your pleading may
21 be appropriate at this time.

22 Your Honor, we have to have all the parties here
23 before a hearing. And they have to be parties of record.
24 If there was a, you know, if this isn't an appropriate
25 preliminary matter which it may be, we could have done it

1 by telephone. We ought to do it now before we get into
2 evidence.

3 JUDGE COCHERES: Yes.

4 MR. KOHLER: Your Honor, it may be relevant. I
5 think Mr. Love and I can stipulate at least as to Ms.
6 Feigley and AT&T as to what the circumstances were at the
7 time you issued your ruling, what the circumstances are
8 now. And Your Honor can issue a a ruling or take it under
9 advisement, whatever you prefer. I don't think there' any
10 point in putting witnesses on for purposes of the
11 preliminary motion. I'd like to know who the parties are
12 before we proceed.

13 MR. LOVE: Your Honor, my position is that the new
14 contract, the point of having Mr. Malcom here was to have
15 him talk about the differences between the old contract
16 and the new contract. As I understand it, in the old
17 contract, AT&T was the prime contractor. Now, Bell is the
18 prime contractor.

19 So I think there's been a significant change in the
20 roles of the parties in this regard. And my understanding
21 in the regulations you have to show a change in a material
22 fact in order for the Court to entertain a motion to
23 reconsider a prior ruling. And that was my point today to
24 bring this evidence to the Court so there would be a
25 foundation for this motion.

1 MR. KOHLER: That's true, Your Honor. But the
2 foundation is in the stipulation. And to the extent it's
3 not as Your Honor would like, we can stipulate further. I
4 mean, there's no dispute as to how the contract worked
5 before and how the contract worked after February of 1999.

6 I agree it may have relevance to whether Bell should
7 be a party and whether the Commonwealth should be a party.
8 But again, it's a preliminary matter. There's no need for
9 witness. It's just going to take time. When we get to
10 the merits, we need witnesses.

11 Your Honor, if the Court's willing, I can take a
12 shot at explaining that to Your Honor and Mr. Love can
13 jump in if I say anything that he doesn't agree with.

14 JUDGE COCHERES: I think I better get a chance to
15 talk here. You have a basic problem. You have a couple
16 basic problems. First of all, you two are on the same
17 side and you're arguing against an empty chair. Bell
18 Atlantic is not here.

19 Second, I issued my order. And as Mr. Love just
20 told me, the Commission affirmed it. Now, I don't have
21 the authority any more to order that Bell, you know, that
22 I reconsider my decision.

23 There is a final Commission Order that was not
24 appealed to the effect that Bell should no longer be a
25 party. So there is nothing for me to reconsider because I

1 no longer have the authority to reconsider. If you had
2 wanted reconsideration, you should have gone to the
3 Commission. And that is appropriate and permitted by
4 Statute, Section 703 of the Pennsylvania Public Utility
5 Code, 66 P.A.C.S 703 (g) allows the Commission to
6 reconsider its orders. You're talking to the wrong fellow
7 here. There is nothing I can do to change what the
8 Commission has completed.

9 Next, I did read the stipulation. I did note that
10 there was a change in the contract format that is part of
11 the facts stipulated. That's interesting. This
12 stipulation, according to my order, was due a week ago. I
13 got it two days ago.

14 This hearing was deliberately postponed to allow the
15 parties to complete their discovery so that if this kind
16 of problem was going to come up, it was going to come up
17 and could be taken care of before today. I have a roomful
18 of witnesses. I have litigants who have been litigating
19 since 1998 and should have done their homework before they
20 walked into the courtroom. Now, is there counsel present
21 for the Department of Corrections or the Commonwealth?

22 MR. GUZZI: Yes, Your Honor.

23 JUDGE COCHERES: You're Mr. Guzzi?

24 MR. GUZZI: That's correct.

25 JUDGE COCHERES: All right. You were really

1 enchanted to get my last order I'm sure. I have, you
2 know, for you to bring it up now is a definite violation
3 of the due process rights of Bell Atlantic. And there's
4 no way during this hearing that I will even consider what,
5 at best, could not be characterized as a motion to
6 reconsider but, at best, a new motion to join an
7 indispensable party. And without having given prior
8 notice to Bell, I find that your motion with respect to
9 Bell Atlantic is simply not well taken and will be denied
10 now.

11 By the luck of the draw, Mr. Guzzi is here. And I
12 will at least entertain any comments that he has at this
13 point before I make a decision as to whether the
14 Commonwealth should be joined as an indispensable party.

15 MR. GUZZI: Well, Your Honor, I'm not afraid to tell
16 you that my knowledge of the specifics of this case is
17 very limited. The documents that I've had access to and
18 been filed with the Commission is limited.

19 And I would just request time for me to assess Mr.
20 Love's request to do some legal research about joinder of
21 indispensable parties before the Commission. I am not
22 familiar with those rules at this time. I would just ask
23 the Court indulge me in giving me some time to respond to
24 the motion of Mr. Love.

25 JUDGE COCHERES: When you say time, you don't mean

1 longer than an hour, do you?

2 MR. GUZZI: Yes, I do, Your Honor.

3 JUDGE COCHERES: Okay. Well, I'm not going to be
4 able to do that. I don't have that luxury. And what I'm
5 going to conclude is this case, Mr. Love, as you properly
6 characterized it and as I indicated in my prior order and
7 decision is about whether AT&T's rates are too high or
8 not. That's what we're here today to talk about.

9 And while the basis for that decision may rest on
10 your client's conclusion that there's something unfair,
11 too high, improper or a violation of some statute or her
12 constitutional rights in respect to what the Commonwealth
13 has done in its contract, I do not find it is necessary
14 that the Commonwealth actually be a party to these
15 proceedings. The only thing I have the right to
16 adjudicate in this forum is utility problems.

17 And to the extent that your client has pleaded that
18 the AT&T rates are too high, that is the problem I must
19 deal with. You have properly -- and I know it took some
20 time to get it right -- but you have properly brought the
21 Commonwealth officials into the courtroom. That's fine.
22 Their testimony will be relevant. I wouldn't have allowed
23 the issuance of the subpoenas had I not believed that. So
24 I see no reason at this point to make the Commonwealth a
25 party. And your motion to join the Commonwealth as an

1 indispensable party is also denied. Now, can we move on
2 to witnesses?

3 MR. LOVE: Can I just put on the record that I
4 object to those two rulings and just give you my position
5 in this matter. I apologize for not getting you the
6 stipulated facts a week in advance. There was some
7 problems in getting a couple issues straightened out and
8 signatures, etc. And I take that responsibility.

9 But with regard to the two motions that I'm
10 presenting to the Court today, my understanding of the
11 grounds with which the Court could rule on those motions
12 was that there was need for evidence to support those
13 motions. And my point of coming here today was to give
14 the Court the necessary evidence to support those motions.

15 With regard to the Bell motion to bring -- to
16 reconsider the Bell ruling, it's my understanding from the
17 regulations of the Commission that if there is a material
18 change, a change of a material fact that the Court can
19 reconsider, you may be correct that it's the Commission
20 and not Your Honor. That I don't know the answer to. But
21 I do know the Commission has the power to reconsider based
22 on new evidence presented. That was my point today to
23 present the new evidence, i.e., a new contract, a new
24 contractual arrangement, different roles between the
25 parties and utilize that evidence as a basis for my motion

1 to reconsider the role of Bell.

2 Now, with regard to the Commonwealth of
3 Pennsylvania, Your Honor, on page 7 of your opinion
4 queried why the Commonwealth was not a party to this
5 action and noted that there was a strong possibility that
6 they would be called in some capacity as a party.

7 However, at that time, Ms. Feigley who was
8 representing herself opposed the motion. It's our
9 position today that in order to pursue her theory that
10 this is a tax, we need the Commonwealth to be a party to
11 the case in order to consider whether the Commonwealth's
12 role in this could be considered to be a tax. We also
13 need the Commonwealth for the very simple reason that a
14 contract takes two people to have a contract. And the
15 contract is the issue. The rates are the issue.

16 And through the testimony today, I'm going to try to
17 show that the Commonwealth shares the burden of why the
18 rates are so high. It's not just AT&T that dictates the
19 rates. A contract is between two parties. And we need to
20 have the Commonwealth in to understand why the rates are
21 as high as they are. Because the Commonwealth played a
22 role in setting those rates by signing the contract.

23 And that's why we believe we need the Commonwealth
24 to be in this case. So I want my objections duly noted
25 for the record. I will be happy to continue the matter,

1 if need be, to do the necessary paperwork to formalize my
2 requests or I'll do whatever Your Honor wishes.

3 JUDGE COCHERES: Well, Mr. Love, we continue to
4 disagree. And the answer is we have set today as the day
5 for the hearing in this case. And that's what we're going
6 to have. And I see no reason to have the Commonwealth as
7 a party. They are not a utility. Their witnesses are
8 appropriate and that's going to be my ruling. So if Ms.
9 Feigley is going to be the first witness, she should come
10 up on the stand.

11 SANDRA FEIGLEY, called as a witness, having been
12 duly sworn, was examined and testified as follows:

13 JUDGE COCHERES: Good morning to you. Please sit
14 down. You've waited a long time, Ms. Feigley.

15 DIRECT EXAMINATION

16 BY MR. LOVE:

17 Q Ms. Feigley, can you give your full name for the
18 record?

19 A My name is Sandra Lee Feigley, F-E-I-G-L-E-Y.

20 Q And your address?

21 A Box 15541 Harrisburg, Pennsylvania 17105.

22 Q And are you employed?

23 A I'm self-employed.

24 Q And what do you do?

25 A I do property management.

1 Q And are you married?

2 A Yes, I am.

3 Q And who are you married to?

4 A I'm married to George Feigley who is a prisoner
5 at SCI Smithfield.

6 JUDGE COCHERES: I'm sorry, I didn't hear you. He's
7 a prisoner where?

8 THE WITNESS: He's incarcerated at SCI Smithfield
9 which is in Huntingdon.

10 JUDGE COCHERES: Okay. Thank you.

11 BY MR. LOVE:

12 Q Now, am I correct you began these proceedings?

13 A Yes.

14 Q And can you tell us a little bit about what
15 caused you to bring this action?

16 A The reason that I brought this action before the
17 PUC was because I, for many years, I've paid considerable
18 charges for the calls that I must receive collect from my
19 husband. And I felt that since these charges were limited
20 to calls coming from a prison that they constituted a
21 special charge being placed on me because I accepted the
22 calls from a prisoner. If I had accepted a call from
23 somebody in California or from somebody, even a collect
24 call from down the street, the charge would have been much
25 different.

1 Q Now, how long have you been getting phone calls
2 from your husband in prison?

3 A The past 22 years.

4 Q He's been in jail 22 years?

5 A Yes.

6 Q And do you get calls from any other people in
7 prison other than your husband?

8 A Yes, I do.

9 Q And how do these telephone calls come to you?

10 A They are placed collect calls to me.

11 Q And can you just briefly explain what happens
12 when the phone rings?

13 A Okay. When the prisoner places the telephone
14 call and I answer it, I get a recording telling me the
15 conditions surrounding the call, that they are being
16 recorded and that the call is being placed from an
17 institution, etc. It must last about 30 seconds or so.
18 And then I push a button on my phone to accept the call.

19 Q If you know, is that time of the announcement
20 charged?

21 A It is my understanding, although I never
22 actually timed it, that it is not.

23 Q Are there any voice overs during the call?

24 A There are interruptions which I'm pretty sure
25 would be included in the time that it tells you you have

1 two minutes left and then you have one minute left. And
2 sometimes you're also interrupted by clicking noises. I
3 don't know if that's caused by the recorder switching or
4 what causes that. But the conversation is oftentimes
5 disrupted.

6 Q Now, do you have a choice in the matter of who
7 would be carrying these telephone calls? What company?

8 A No, there is no choice.

9 Q And do you get bills for these calls?

10 A Yes, I do. I have brought one as evidence. The
11 calls are approximately three times higher than calls
12 placed outside of the system.

13 MR. LOVE: Your Honor, I'd like to mark these.
14 Would it be appropriate P-1?

15 JUDGE COCHERES: Yes, that's fine.

16 (Complainant's Exhibit No. P-1 was produced and
17 marked for identification.)

18 MR. LOVE: And I show you what I've marked as P-1.
19 And can you identify this document please?

20 THE WITNESS: Yes, this is a copy of one of my
21 telephone bills from March of this year.

22 JUDGE COCHERES: Excuse me, do you have a copy for
23 me?

24 MR. LOVE: I'm sorry.

25 BY MR. LOVE:

1 Q And can you take us through this document and
2 explain which of those calls are from your husband?

3 A The ones that are designated on the first page,
4 that would be the bottom section, they're designated as
5 from pay phone PA. And then the same would be true of the
6 second page, the top two sections. And you can see that
7 long distance calls from California, from Illinois or my
8 calls to them are much cheaper than the calls placed from
9 two hours away.

10 Q Can you just specifically look at a couple of
11 these, perhaps the one from Anaheim?

12 A Okay. For instance, I have two calls to
13 Anaheim, California which total approximately 15 minutes.
14 And there the charge would be \$4. And I have one call
15 from my husband which is the reduced weekend rate for 14
16 minutes is 6.78. And then you can see a five-minute call
17 from Smithfield costs 4.35. While on the second page, my
18 call to Downers Grove, Illinois for five minutes was only
19 1.55.

20 Q Are you familiar at all what -- how these
21 charges are accumulated?

22 A Somewhat. There is an initial placement call,
23 then there is a per minute charge. And in addition to
24 these two charges, there is also a \$.30 charge placed on
25 each call because supposedly it's placed from a pay phone

1 when in reality they are not pay phones. They do not
2 require the maintenance that a pay phone would require.
3 Nobody goes and picks up money. Nobody does anything.
4 These are just regular household type phones that you
5 would have on your desk or on your nightstand.

6 Q To the best of your knowledge, do these calls
7 involve a live operator?

8 A No, they do not. It comes through an automated
9 system.

10 Q And the pay phone has the ability to access a
11 live operator if need be; is that correct?

12 A Yes, that is correct.

13 Q Are you familiar with if there's any basic
14 surcharge for these calls other than the \$.30 charge that
15 you mentioned?

16 A Just the initial charge that I'm aware of placed
17 on each call that is placed. And that's somewhere in the
18 vicinity of \$3. I personally did not actually break them
19 down in to how many sets.

20 Q And the \$3 charge and the \$.30 charge are
21 automatic whenever you get a call regardless of the length
22 of the call?

23 A That's correct. If I would speak one minute,
24 they would be there or a half a minute. As long as I
25 accepted the call, I would be charged those prices.

1 Q Do you have any idea what the minute rate is for
2 your calls?

3 A No, I'm sorry, I do not.

4 Q Do you know what company is charging you for
5 these calls?

6 A Well, Bell Telephone is the collector of the
7 money for the calls who in turn pays money to AT&T who in
8 turn pays money to the Commonwealth. Under the old
9 contracts, I did have the percentages of what the money
10 was that was paid, but now I understand that has been
11 changed. I believe one company receives 25 percent or
12 pays to the Commonwealth 25 percent or the other may be
13 paid them 35 percent of the money collected. But there
14 again, I don't have my documents in front of me. I had
15 submitted them as evidence at one time.

16 Q If I just correct the witness, Your Honor. She
17 submitted initial pleadings that alleged 35 percent for
18 Bell and 50 percent for AT&T; is that correct?

19 A I believe so, yes.

20 Q And that was under the contract that was in
21 force when you began this action?

22 A That is correct.

23 Q Do you have any idea how much money that
24 generates for the Commonwealth each year?

25 A I have heard various figures. One of them I

1 heard was six million. But I believe that is not nearly
2 the amount of money that is paid to the Commonwealth.

3 Q And where did you hear that \$6 million figure?

4 A From various people who had seen copies of a
5 report.

6 MR. KOHLER: Your Honor, I'm going to object on
7 hearsay and relevance. I'm a little confused on Mr.
8 Guzzi's role since he's not a party. Is Mr. Guzzi
9 permitted to object?

10 JUDGE COCHERES: Mr. Guzzi has not entered his
11 appearance in the sense of a participant in this case. I
12 would certainly entertain his participation by virtue of a
13 special appearance on behalf of the witness. But he has
14 chosen to take a more quiet role.

15 MR. KOHLER: Your Honor, I'm going to try to be
16 patient and allow a broad record but try not at the same
17 time to go too far afield. I don't see, number one, the
18 question was asked for a hearsay response. Number two,
19 how much money the Commonwealth receives or doesn't
20 receive is not relevant to what AT&T charges -- to what
21 AT&T's charges are. The Commission rate might be, but the
22 overall revenue collection isn't.

23 MR. LOVE: Your Honor, I would respond by stating
24 with regard to hearsay, I believe it's a matter of public
25 record how much the Commonwealth makes on a contract. And

1 as such, should be allowed.

2 JUDGE COCHERES: Do you have the public records with
3 you?

4 MR. KOHLER: Your Honor, he can ask the Commonwealth
5 witness.

6 MR. LOVE: We're going to go through the
7 Commonwealth witness. What was the second objection, I'm
8 sorry?

9 JUDGE COCHERES: It was hearsay and relevance.

10 MR. LOVE: Relevance, again, back to my initial
11 point. If the question is what are the rates being
12 charged and are they reasonable? I believe that the
13 amount of money made on this contract by the Commonwealth
14 is relevant to these proceedings. And that's why I
15 believe the Commonwealth should be a party.

16 JUDGE COCHERES: You're half correct, sir. The
17 objection on the basis of hearsay is sustained.

18 BY MR. LOVE:

19 Q Do you have any idea, Ms. Feigley, how much more
20 you pay for these rates than other calls?

21 A I believe that I pay approximately three times
22 more for these calls than I do for other calls.

23 Q Now, does the cost of these calls have any
24 impact upon your ability to communicate with your husband?

25 A It certainly does. I would talk to him much

1 currently speak to him every day.

2 Q So if the rates were lower, you would speak
3 longer?

4 A That is correct.

5 Q Is there a limit on the amount of time you can
6 speak to him?

7 A It depends on the institution that one is in.
8 Some of them allow freedom to speak every day. Some give
9 permission to speak three times a week. Some institutions
10 give a time block. For instance, they may have either
11 three 15 minute calls a week or they may use those 45
12 minutes during the week in any way they wish. It varies.

13 Q Now, am I correct that you began this case
14 without an attorney?

15 A That's correct.

16 Q And did you submit a contract that existed at
17 the time that you began this case into evidence?

18 A Yes, I did.

19 Q And who was that contract with?

20 MR. KOHLER: Your Honor, objection. It wouldn't be
21 into evidence. He may attach it.

22 JUDGE COCHERES: I'm familiar with the document she
23 signed. I appreciate the objection. We'll worry about
24 that later. Mr. Love?

25 BY MR. LOVE:

1 more often, but I can't afford it. The charges -- I
2 believe that these charges are so excessive that they
3 constitute a tax on my free speech. They limit my ability
4 to speak to prisoners, to my husband. And I'm only one of
5 the poorest class of people in the state. The prisoners'
6 families are among the poorest people there are in
7 Pennsylvania.

8 Q And you had indicated also that you believe
9 there's a racial dimension to this. Can you explain why
10 you believe that?

11 A This is basically because most of the men who
12 are and women who are incarcerated in Pennsylvania are of
13 minority background. This tax is based on these telephone
14 calls that their families must accept in order to speak to
15 the prisoners. Many of these people I have spoken to have
16 had their phone service terminated. They are unable to
17 speak to them any more. This interferes with the family
18 as a unit. And it's just that most of these people are
19 black and then I guess next would be Hispanic. And the
20 minority of the people affected, I guess, would be white,
21 but we are poor. We cannot afford these calls. And they
22 should be -- we feel that our free speech is taxed.

23 Q How often does your husband call?

24 A At the present time, I speak to him seven days a
25 week. We try to limit them to a few minutes. But I

1 Q And who was that agreement with?

2 A They were addendums to contracts. Mr. Guzzi had
3 approved my receiving the telephone contracts, but I
4 believe Mr. Malcom is the person I actually got them from
5 at Camp Hill. And they constituted addendums that were
6 just added on each year which showed the percentages that
7 were paid to the Commonwealth and what each company
8 collected, the percentage paid to the Commonwealth.

9 Q And you attached these contracts to various
10 pleadings that you filed in this case?

11 A Yes, I did.

12 Q Okay. Now, were these contracts open to
13 competitive bidding?

14 A No, they were not. They were not put out for
15 bid. They were just renewed each time with an addendum.

16 Q Without a bidding process?

17 A That's correct.

18 Q Do you know how long that went on?

19 A For several years, I believe at least ten.

20 Q And to the best of your knowledge, was AT&T the
21 exclusive provider throughout those ten years?

22 A To the best of my knowledge, that is true.

23 Q And what percentage of the AT&T monies collected
24 from you goes to the Commonwealth, if you know?

25 A I believe it was 50 percent.

1 Q Now, does the -- you said your husband had been
2 in several different institutions; am I correct?

3 A Yes.

4 Q An he's currently in Smithfield?

5 A Yes.

6 Q And you live?

7 A In Harrisburg.

8 Q Is there any policy under the Department of
9 Corrections as to where to house individuals in relation
10 to their family?

11 A It is my understanding that the policy of DOC is
12 when a person initially goes to prison, that he is moved
13 far away from home. And they feel that the person should
14 earn his way back closer to home.

15 Q And so that policy means that the rates will be
16 even higher?

17 A Well, it would be even higher for most people,
18 yes.

19 Q Is there anything else you want to add?

20 A No, I believe that that covered the points that
21 I was interested in bringing up.

22 MR. LOVE: No further questions.

23 JUDGE COCHERES: Mr. Kohler?

24 MR. KOHLER: I just have a few questions. On one of
25 them, rather than trying to go through a series of

1 cross-examination questions, I want to see if we can
2 stipulate.

3 JUDGE COCHERES: Would it be better if we go off the
4 record for a few moments?

5 MR. KOHLER: That's fine.

6 JUDGE COCHERES: All right. Let's go off the
7 record.

8 (Discussion off the record.)

9 JUDGE COCHERES: Let's go back on the record.

10 MR. KOHLER: Your Honor, to clarify the record and
11 Ms. Feigley's testimony, counsel, let me see if I can
12 state the stipulation accurately. The -- Ms. Feigley made
13 some statements regarding AT&T providing service for ten
14 years without a competitive bid. The stipulation would be
15 that AT&T responded and was successful in a bid to provide
16 interLATA services to Commonwealth correctional facilities
17 in 1983 which contract was then extended for a number of
18 years, approximately ten years.

19 JUDGE COCHERES: Okay. So that I understand it, the
20 stipulation is that AT&T was the successful bidder in 1983
21 to provide interLATA telephone service to the
22 Commonwealth, Department of Corrections and that the
23 contract was extended for approximately a ten-year period;
24 is that correct?

25 MR. KOHLER: Yes, Your Honor.

1 JUDGE COCHERES: And Mr. Love, is that correct?

2 MR. LOVE: That's correct, Your Honor.

3 JUDGE COCHERES: Thank you.

4 CROSS EXAMINATION

5 BY MR. KOHLER:

6 Q Ms. Feigley, I just wanted to try to understand
7 your telephone bill a little bit better here. You
8 testified you live in Harrisburg; is that right?

9 A That's correct, right.

10 Q And your husband is incarcerated in Huntingdon?

11 A That's correct.

12 Q And what part of the state is Huntingdon in?

13 A It's in the middle part of the state, in
14 Huntingdon County.

15 Q Do you know what area code that is?

16 A 814.

17 Q And you're in the 717 area code; is that right?

18 A That's right.

19 Q Looking at your bill here, the call on page 1 of
20 this Feigley Exhibit 1, P-1, these are calls -- at the top
21 of the bill -- these are calls that you made from your
22 home; is that right?

23 A That's correct.

24 Q And you called places like Philadelphia,
25 Norristown, Pikesville and Anaheim; is that correct?

1 A Um-hum.

2 Q You specifically referred to a call to Anaheim.
3 That's Anaheim, California, right?

4 A That's correct.

5 Q That's not in Pennsylvania?

6 A That's correct.

7 Q Okay. Well, going to the bottom of the bill,
8 these are calls that your husband made to you at home; is
9 that right?

10 A That's correct.

11 Q So they would have been from the 814 area code
12 to the 717 area code; is that right?

13 A Yes.

14 Q That holds true on the second page as well; is
15 that right?

16 A That is correct.

17 Q And the call you referred to, I think that's
18 circled on the Exhibit, that was a call that you made to
19 Illinois; is that right?

20 A That is correct.

21 Q And that's not in Pennsylvania either; is it?

22 A No. But if you would like to compare a
23 three-minute one in Philadelphia which is in Pennsylvania
24 for \$.99 to my three-minute call from Huntingdon of \$3.81,
25 that would be okay. Both of those are in Pennsylvania and

1 just out one area code.

2 Q But to clarify, the calls on the top of the bill
3 on both pages, they're not collect calls or anything.
4 They're just -- you know what a one-plus call?

5 A Pardon?

6 Q Are you familiar with the term a one-plus call?

7 A When I must dial one first, yes, I'm familiar
8 with that.

9 Q Those are direct dial calls that you call?

10 A That is correct.

11 MR. KOHLER: I have nothing further.

12 JUDGE COCHERES: Any redirect?

13 MR. LOVE: No redirect, Your Honor.

14 JUDGE COCHERES: You're excused and thank you for
15 coming, Mrs. Feigley.

16 THE WITNESS: Thank you, sir.

17 MR. LOVE: I'd like to call Dianna Hollis to the
18 stand.

19 JUDGE COCHERES: Certainly.

20 DIANNA HOLLIS, called as a witness, having been duly
21 sworn, was examined and testified as follows:

22 JUDGE COCHERES: Please be seated and good morning
23 to you.

24 THE WITNESS: Good morning.

25 DIRECT EXAMINATION

1 BY MR. LOVE:

2 Q Ms. Hollis, can you give us your address please?

3 A 616 Light Street in Millersburg, Pennsylvania

4 17061.

5 Q And your occupation?

6 A I'm a registered nurse.

7 Q And are you married?

8 A Yes, sir.

9 Q And to whom are you married?

10 A Douglas Hollis.

11 Q And do you live with Mr. Hollis?

12 A No, sir.

13 Q And where does he live?

14 A Currently he's at Frackville, State Correctional
15 Institution at Frackville.

16 Q Now, are you a member of any advocacy groups or
17 anything of that nature?

18 A Yes, sir, I am. I am a member of the
19 Pennsylvania Prison Society. I am also the chairperson of
20 Pennsylvania CURE which means Citizens United for the
21 Rehabilitation of Errants.

22 Q Is there a national organization -- you
23 indicated Pennsylvania. Is there a national chapter also?

24 A Yes, there's a national organization of CURE.

25 It was found in 1975 in San Antonio, Texas. And there are

1 51 states that have chapters now. The national office is
2 in Washington D.C.

3 Q What type of organization is CURE? What is
4 their interest?

5 A CURE is an advocate group for not only inmates
6 but their families. We're interested in humane
7 incarceration. We are interested in all kinds of reform
8 to lesson the crime through criminal justice reform. Some
9 of these reforms have included banning guards who were
10 being used as -- banning inmates who were being used as
11 guards, increasing the use of halfway houses for parolees.

12 Q And who founded CURE, if you know?

13 A Yes, Charles Sullivan and Pauline Sullivan in
14 Texas. Charles was a former priest and his wife, Pauline,
15 was a former nun.

16 Q And can you give us a brief synopsis of the
17 philosophy of CURE? I know you've done that somewhat.

18 A Yeah. Well, the basic philosophy of CURE is an
19 advocate group who believe in the humane treatment of
20 inmates. We're a pro-family organization. We also stand
21 for prisoner's rights.

22 Q Are there a lot of family members involved in
23 CURE?

24 A Yes, the organization consists of family
25 members, friends, ex-inmates, inmates themselves.

1 Q And did you indicate you're the executive
2 director of Pennsylvania CURE?

3 A Yes, I'm the chairperson.

4 Q And who did you succeed in that position?

5 A Ms. Lois Williamson unfortunately passed away
6 last year unexpectedly and she was executive director.

7 Q Was Lois involved at all in the telephone issue
8 if you recall?

9 A Yes, she was. She was very critical of the
10 newly organized phone system. Also she was a very
11 advocate opponent to the present system of the phone calls
12 being monitored.

13 Q So CURE has been involved in this issue for some
14 time; is that correct?

15 A Yes, sir.

16 Q Now, can you briefly tell us a little bit about
17 the Pennsylvania CURE Chapter?

18 A Pennsylvania CURE Chapter is made up of family
19 members, friends, people that are interested in
20 maintaining a humane criminal justice system or an
21 advocate system. There are 35,000 men, women and children
22 that are incarcerated in the Commonwealth's warehouse
23 prison system. And CURE is a big advocate for
24 rehabilitation of these people.

25 Q Now, why is CURE concerned about the telephone

1 issue?

2 A CURE is concerned about the telephone issue
3 because personally it puts a big financial burden on the
4 family. I know myself. I had met my husband in 1982.
5 We've been together ever since then. He's a life sentence
6 inmate. For 16 years I know the cost of the telephone
7 calls every month. It's one of my biggest bills every
8 month.

9 Q How often does he call you?

10 A Well, right now maybe twice a week. There was a
11 time where he could have gotten two phone calls a day, of
12 course, he didn't with my job. But right now it's about
13 twice a week, not to our doing.

14 Q Have the rates increased? Have the rates
15 changed much over the 16 years that you've been
16 communicating with him by telephone?

17 A I think the rates have increased. It has caused
18 a more financial burden on us.

19 Q What kind of problems does the high rates -- the
20 rates that are charged cause you, if any?

21 A Well, for myself personally, I've had to
22 maintain two jobs. Since 1983, I've worked two jobs. I'm
23 the sole supporter of my family. My husband -- they get
24 very little wages in the institution. When you need
25 something, you know, it's a family member where the burden

1 lies. Not only for myself, but for other family members
2 that I have known, they're poor. They're not lucky maybe
3 to have two jobs. They can't afford the cost of the phone
4 calls. They have had to refuse phone calls. Some of the
5 family members have had their phones disconnected because
6 they can't afford the price of the phone calls.
7 Communication, therefore is limited. It's cut back. It's
8 a lack of support.

9 I think phone calls, visits and letters, I think are
10 very important in the rehabilitation process of an inmate.
11 They need that family support.

12 Q As the head of CURE, what are your impressions
13 of the role of the family in rehabilitating an inmate?

14 A Well, the family support is very important while
15 they're incarcerated just for the emotional support and
16 the financial support. But also when they get out, they
17 need someone out there that's going to be there for them,
18 to support them so they don't go back to maybe the old
19 ways of stealing or drugs or whatever. They need that
20 support system so that when they are released, they can
21 return to society and be productive.

22 Q So CURE believes in rehabilitation of offenders;
23 is that correct?

24 A Yes, we believe everyone deserves to be.

25 Q And you believe that the family is an important

1 part of that rehabilitation process?

2 A That's the most important part of an inmate is
3 the family support.

4 Q And do you believe that these phone rates
5 negatively impact the ability of a family member to
6 contribute to the rehabilitation process?

7 A Yes, I do. Also the District of Columbia, DOC's
8 policy which was mentioned before about housing the
9 inmates as far away from home, that places an added burden
10 because the phone calls now cost more.

11 MR. KOHLER: Your Honor, we're going a little far
12 afield

13 JUDGE COCHERES: What is your objection?

14 MR. KOHLER: Objection, relevancy.

15 JUDGE COCHERES: Okay.

16 MR. LOVE: Your Honor, the DOC has a policy that's
17 been alluded to by this witness and the previous witness
18 that they place inmates as far away from their family as
19 possible when they initially are incarcerated. The
20 relevance to this situation is that that causes the phone
21 calls to be longer distance and more costly. And it adds
22 to the burden of the family. The reasonableness of the
23 rates is exacerbated by this DOC policy. So we believe
24 that it's important that you look at both that policy
25 sending people as far as way as possible and the rates in

1 order to understand the burden that these rates cause on
2 the family members.

3 MR. KOHLER: Your Honor, jumping ahead a little bit.
4 When we get into what rates AT&T actually charges, AT&T
5 charges for inmate service calls. It is not distant
6 sensitive. It is the same whether you call down the
7 street assuming it crosses the LATA boundary or across the
8 country.

9 Your Honor, I don't have any problem with the
10 testimony on behalf of CURE. I'm not going to object on
11 relevancy. I just would like not to go too far afield.

12 JUDGE COCHERES: All right. Well, you're right, Mr.
13 Kohler, you are jumping ahead. But currently, I'm going
14 to overrule your objection and allow the witness to
15 continue.

16 MR. LOVE: Thank you.

17 BY MR. LOVE:

18 Q If your husband was at Camp Hill, would that
19 affect the rates that you would pay for these calls?

20 A Yes, it would.

21 Q How so?

22 A The phone calls would not cost as much.

23 Q Would it be a local call essentially?

24 A No, it would be -- well --

25 Q It would still be a collect call, but it

1 wouldn't be a long distance call?

2 A Where I live now it still would be, yes. But it
3 wouldn't be as long of a distance as to where he is.

4 Q It would be within the same area code, would
5 that be fair to say?

6 A Yes.

7 Q So you were talking about the impact of the DOC
8 policy on yourself and others. Was there anything more
9 you wanted to add?

10 A Just about the phone calls, but also with the
11 inmate now being farther away in distance, it makes it
12 harder for the family to physically travel to visit which
13 means the phone calls are even more important, you know
14 because they don't have that frequent visit. So they
15 depend on the phone call.

16 Q Now, if -- the previous witness indicated that
17 the costs are about three times as high. Would you agree
18 with that or have any comment on that statement?

19 A Yes, you have a copy of some of my phone bills.
20 There's a phone call I made.

21 Q Let me show you those. If you could look at
22 that and explain what it is.

23 A This is my AT&T telephone calls that were made.
24 Most of these are from my husband, collect calls from a
25 pay phone. That's when he was housed at Coal Township.

1 Plus my other phone calls that I made to other places.

2 Q Can you pick a couple of examples and read them?

3 A Sure. January the 14th, 1999 at 8:52 p.m., I
4 called my daughter in Steelton which is not a collect
5 call.

6 Q Steelton, Pennsylvania?

7 A Steelton, Pennsylvania.

8 MR. KOHLER: Who is this letter from and to?

9 MR. LOVE: It's a phone bill.

10 MR. KOHLER: I'm sorry.

11 THE WITNESS: I made a call to my daughter in
12 Steelton in the evening for 15 minutes. And it cost
13 \$1.65. My husband called me 8 p.m., it was an evening
14 call for 15 minutes. And the price was \$7.35, quite an
15 increase. And the distance from Millersburg to Steelton
16 and Millersburg to Coal Township is about the same I would
17 say. So there was quite a big difference there.. That's
18 just one example.

19 MR. LOVE: Can you read a couple more examples
20 please?

21 MR. KOHLER: Your Honor, I don't know whether the
22 bills are being introduced as an exhibit or but in any
23 case, I can walk up and stand behind the witness, but
24 counsel ought to have copies. If we can have them at some
25 point, we can go forward.

1 Q And what is your monthly income?

2 A My monthly income is limited to my Social
3 Security disability and my disability from the Army which
4 totals right now about 1800 hundred a month.

5 Q Does your wife have any income?

6 A Her income has stopped except for the company is
7 giving her some -- I forget what they call it -- it's like
8 a disability pay. But that is to cease some time in July.

9 Q And do you have medical bills associated with
10 her illness?

11 A In the last month, we've spent well over \$4000
12 just on several medications that she has to have.

13 Q So is it fair to say these phone calls impose a
14 significant burden on you?

15 A Serious right now.

16 Q Is there anything else you want to add?

17 A No, sir.

18 MR. LOVE: Thank you. No further questions.

19 JUDGE COCHERES: Cross.

20 CROSS EXAMINATION

21 BY MR. KOHLER:

22 Q I think you indicated at one point that you
23 called an AT&T operator from, correct me, from a prison
24 phone and asked what the rates were?

25 A Yes, sir, I did.

1 Q And they indicated it was a \$3.30 surcharge?

2 A No, sir, I'm sorry. You're mixing the two up.
3 I called on the bills on my home phone. I called AT&T and
4 that lady that I spoke to there at AT&T, she's the one
5 that broke down the \$3.30 and \$.25 a minute.

6 Q It was from your home, but it was related to
7 phones calls?

8 A It was related, yes.

9 Q And she indicated there was a \$3.30 surcharge,
10 and then I believe you said that there was then a rate of
11 \$.25 a minute?

12 A Yes, sir.

13 Q Could that have been \$.27 a minute?

14 A It didn't work out on the phone bill if it did.
15 If you work it out at \$.25 and \$3.30, it works out to
16 \$7.05. And that's the rate she gave me.

17 Q Could your recollection be a little bit vague
18 about what rates she gave you back then?

19 A No, sir, because she gave me the \$.25 and \$3.30.
20 And whenever we added them up on the phone, it came out to
21 \$7.05. That's the figure she gave me.

22 MR. KOHLER: One moment, Your Honor. Nothing
23 further.

24 JUDGE COCHERES: Any redirect, counselor?

25 MR. LOVE: None, Your Honor.

1 JUDGE COCHERES: The witness is excused. Thank you
2 for coming, sir. And I might add that you're correct in
3 your math.

4 THE WITNESS: I was an engineer, sir. I know my
5 math.

6 MR. LOVE: Your Honor, I'd like to ask that we take
7 our lunchtime recess at this time so I can make some
8 additional copies of these exhibits and make the afternoon
9 go a little smoother.

10 JUDGE COCHERES: I don't have a problem with that.
11 I was going to raise the issue myself. As Mr. Kohler
12 knows from appearing in front of me, I eat regularly. So
13 we'll be back on the record at quarter after one. Please
14 be back in your seats.

15 MR. LOVE: Thank you, Your Honor.

16 (Whereupon, at 12:15 p.m., the hearing recessed for
17 lunch and reconvened at 1:25 p.m., the same day.)

18 MR. LOVE: A couple bits of housekeeping, Your
19 Honor. I made additional copies of P-2 so that each party
20 would have a complete set.

21 JUDGE COCHERES: Give three to my Court Reporter and
22 she can give one to me.

23 MR. LOVE: And I made copies of Ms. Hollis's records
24 also. I don't know if you have any objection if we mark
25 those.

1 JUDGE COCHERES: They'll be marked Exhibit P-3.

2 (Complainant's Exhibit No. P-3 was produced and
3 marked for identification.)

4 MR. LOVE: I'd like to call John Malcom to the
5 stand.

6 JUDGE COCHERES: I'm not going to swear Mr. Malcom
7 in right of way, so just relax a little bit. There's one
8 small piece of housekeeping information that I wanted to
9 pass on here.

10 Mr. Love, I have given the Court Reporter the
11 original and two copies of what is labeled undisputed
12 facts which is a stipulation. And it is admitted into the
13 record. I have designated in red across the top of the
14 document that it is proprietary. And I would also note
15 for the record that the caption is somewhat incorrect.
16 And the reason is that it carries the second caption and
17 docket number for Bell Atlantic. That case has been
18 dismissed. It's over.

19 MR. LOVE: We're overly optimistic, Your Honor.
20 Sorry about that.

21 JUDGE COCHERES: Well, you've been overly optimistic
22 on almost all of the pleadings you've sent me. And I
23 would note that you continue to add Bell Atlantic's
24 caption to all of your pleadings. And it's just simply
25 not appropriate.

1 MR. LOVE: Sorry, Your Honor.

2 JUDGE COCHERES: All right. Now, sir, if you stand
3 up.

4 JOHN MALCOM, called as a witness, having been duly
5 sworn, was examined and testified as follows:

6 JUDGE COCHERES: Thank you. Please be seated and
7 good afternoon to you.

8 THE WITNESS: Good afternoon to you.

9 DIRECT EXAMINATION

10 BY MR. LOVE:

11 Q Mr. Malcom, can you give your full name for the
12 record?

13 A Yes, it's John, B, as in boy, Malcom,
14 M-A-L-C-O-M, Jr.

15 Q And your current position?

16 A I'm the telephone technology services manager
17 for the Commonwealth of Pennsylvania.

18 Q And what are your responsibilities in that
19 position?

20 A I manage the telephone system for the
21 Commonwealth of Pennsylvania, all of the voice activities.

22 Q And how long have you held that position?

23 A That would be 19 years.

24 Q Same position or have you been promoted or?

25 A Well, we change titles about every two or three

1 years. The title I'm using now was provided to me in
2 1986. It went away for a few years, came back. But I do
3 the same thing. We manage the networks, we manage the
4 equipment, everything.

5 Q And just briefly, your educational background?

6 A I'm a graduate of Bowdoin College in Brunswick,
7 Maine. I also have an MBA.

8 Q And your prior experience to working for the
9 Commonwealth of Pennsylvania?

10 A Well, let me put it this way, I walked in to
11 Bell of Pennsylvania as a trainee, management trainee in
12 March of 1959.

13 Q And how long did you work for Bell of
14 Pennsylvania?

15 A For 12 years.

16 Q And from there, you went?

17 A Started our own firm for a couple of years and
18 then I came with the Commonwealth and have been doing this
19 ever since.

20 Q Okay. Now, within your responsibilities, does
21 that include the contract between Bell, AT&T and the
22 Commonwealth of Pennsylvania on behalf of the Department
23 of Corrections?

24 A It includes the current contract between the
25 Commonwealth and Bell and the former contracts between the

1 Commonwealth and AT&T and all of the service orders that
2 were alluded to this morning that are in between.

3 Q And just so we have a better understanding,
4 where does the Pennsylvania Department of Corrections fit
5 into this contract, if at all?

6 A They are an agency of State Government. My
7 office is responsible for the overall management of all of
8 the voice telecommunications systems which includes those
9 in the Department of Corrections, both their
10 administrative system and this contract that involves pay
11 phone. This is one contract that involves pay phones and
12 the inmate service.

13 Q And when you say pay phones, what do you mean by
14 that?

15 A Public pay phones such as you would see in the
16 hall right outside here.

17 Q Are those all pay phones or is there a public
18 private pay phone or how does that work?

19 A I'm not sure where you're going with that. Let
20 me answer it this way, that the pay phones that are under
21 the jurisdiction of the Commonwealth, in other words, the
22 Governor's office, are all provided currently by local
23 exchange companies. There are no private companies which
24 is the distinction I think you're headed for as is now
25 allowed by the law in our operation. And the Commonwealth

1 owns nothing.

2 Q Would they be pay phones that are on
3 Commonwealth property?

4 A Yes.

5 Q So the contract includes pay phones on
6 Commonwealth property and all of the Department of
7 Corrections' pay phones or telephones?

8 A Well, they have pay phones in -- on Commonwealth
9 property. One was alluded to this morning being in the
10 visitor's area.

11 Q Right.

12 A Plus the inmate's systems, yes, because they are
13 considered telephones.

14 Q Can you tell me how much of the contract is DOC
15 calls and how much are these other pay phones, if you
16 know?

17 A Frankly not really in this. But the greatest
18 majority of calls are on the inmate side as you would
19 suspect. To put that in prospective for you, we have
20 jurisdiction over about 2,000 pay stations. Now, that's
21 the public phones. And they're in places like state parks
22 and so forth. Now, this is public knowledge. State
23 parks, buildings, right out here in the hallway, over in
24 the capital as you saw at lunchtime. Not a lot of heavy
25 uses typically.

1 Q I might ask Mr. Kohler a question. Do you know
2 how many pay stations there are within the Department of
3 Corrections?

4 A I can't give you an exact number. I don't know.
5 I can guess. But you're probably better off asking --

6 Q Well, just roughly.

7 A You're talking about inmate stations or the
8 public pay phones?

9 Q Inmate stations?

10 A My figures are dated because they may have added
11 some. But let's say you have 24 institutions times 25
12 would be how much?

13 Q If I told you there was 1,360 such stations --

14 A It's probably what was in the RFP that created
15 this contract. I suspect there are more today.

16 Q And do you have any ideas of the breakdown of
17 the revenues generated by the inmate calls versus the
18 other calls, the overall revenues?

19 A Yes, the majority of the revenues come from the
20 inmate side.

21 Q And how much is the average revenue per year?

22 A The contract itself makes about \$6 million a
23 year. It seems to be growing a little at this point, but
24 it's hard to tell.

25 Q And how much of that six million is generated

1 through inmate calls, if you know?

2 MR. KOHLER: Your Honor, I'm going to object to
3 relevancy in how much the Commonwealth receives by an
4 aggregate or by pay phone or at least an aggregate is not
5 relevant to the rates that AT&T charges.

6 JUDGE COCHERES: Well, now wait a minute. He's
7 already testified as to what the aggregate is. He said
8 the total for the entire contract is about \$6 million a
9 year.

10 MR. KOHLER: I may have objected late, Your Honor.
11 But the line of questioning is going to the revenues
12 collected by the Commonwealth which is not relevant to the
13 rates that AT&T charges.

14 JUDGE COCHERES: And what is your response, Mr.
15 Love?

16 MR. LOVE: Well, I can't think of anything that's
17 more relevant, Your Honor. The rate or the contract and
18 the revenues generated by the contract are part and parcel
19 of the same thing. There's a contract between the
20 Commonwealth and AT&T to provide phone service in exchange
21 for certain revenues. And I think to look at a contract
22 and to look at the rates, you have to look at a contract
23 and you have to look at every element of the contract.
24 And that's what I'm doing.

25 MR. KOHLER: Your Honor, if he wants to ask how much

1 revenue does the Commonwealth receive from AT&T, that
2 might be a relevant question.

3 MR. LOVE: On this contract.

4 JUDGE COCHERES: Well, I thought the --

5 MR. LOVE: That's what I thought he answered.

6 JUDGE COCHERES: That's an interesting nuance. All
7 right. At least at this point in the examination, I find
8 that the questions are somewhat preliminary in the
9 foundational format. And I'm willing to certainly give
10 Mr. Love the flexibility necessary to establish a
11 direction. So the objection is overruled.

12 BY MR. LOVE:

13 Q The question was of that six million, do you
14 have any idea how much is generated by the inmate phones?

15 A Well, I've already said most -- to give you a
16 number, I can't do that. It's obviously available. We
17 get a monthly report of that thing.

18 Q Five million, five and a half million?

19 A Probably five.

20 Q Five. Now, you're familiar with the current
21 contract, I take it?

22 A Absolutely.

23 Q And how did you become familiar with that?

24 A Well, because I guess I wrote it, not the
25 contract per se, but the RFP lawyers, of course, get

1 involved in the legalistics of the contract. But
2 basically I was the lead person from the Commonwealth side
3 from General Services on the Commonwealth, yes.

4 Q So the current contract was put out to bid?

5 A Absolutely.

6 Q And are you familiar with the prior contract?

7 A Absolutely.

8 Q Do you recall when the prior contract was put
9 out to bid?

10 A Originally in 1988. As a result of Judge Harold
11 Green's Order to deregulate the pay phone, we had 30 days
12 to do an RFP.

13 Q So the contract had not been put out to bid
14 between 1988 and 1999; is that right?

15 A No, it is not correct.

16 Q And why did you decide to put this particular
17 contract out to bid?

18 A In what year?

19 Q This new contract.

20 A We had this contract out in 1992. We had it out
21 again in I guess you can say, since it takes so long to do
22 these things in particular, this type of technology, in
23 '94.

24 Q When you say out, out for bid?

25 A On the street, yes.

1 Q Go ahead.

2 A This project actually had an RFP one, two,
3 three, four times.

4 Q And you said it was time. What factors go into
5 the decision as to what time it is?

6 A Well, the Commonwealth has a policy of trying to
7 put operations that can be competitive on the street from
8 time to time so that other vendors have an opportunity to
9 participate. And as you know from the telephone business,
10 that didn't happen until 1984. So we've been trying to do
11 what we can ever since.

12 And there also are some industrial telephone
13 industry factors here that when in this case Commissions
14 start to become effective for us, the customer, then it's
15 time to put it on the street.

16 Q Okay. Now, who was the prime contractor in the
17 old contract?

18 A At&T.

19 Q Who was --

20 A Well was the first contract. There was two
21 really, Bell and AT&T. Now, because you had -- remember
22 you got at that point in '88, you got your intraLATA and
23 your interLATA operation. They came together the next
24 time around which was the '92 one that went over into '93
25 and it went over in to there. That was awarded to AT&T.

1 Bell was a sub along with every other local exchange
2 company in the Commonwealth.

3 Q Which contract would have been in effect in
4 April of 1998 when Ms. Feigley began this procedure?

5 A Extensions of the contract that was put together
6 at that time.

7 Q And the prime contractor was AT&T at that time?

8 A Yes.

9 JUDGE COCHERES: Excuse me, I got lost here. In
10 1998 when -- what contractor were you working pursuant to?
11 Was there a contractor let bid in 1998?

12 THE WITNESS: No, there were extensions made really
13 of the one that went back to '88. If you look at Mrs.
14 Feigley's files from this morning, she has copies of the
15 service orders, all duly authorized that were added to
16 that contract to keep us going during all of these
17 acquisition proceedings. So you're really looking at one
18 that goes back if you want to go all the way to '88.

19 JUDGE COCHERES: Stop. I'm confused.

20 MR. KOHLER: I'm confused too.

21 JUDGE COCHERES: You told me that the first contract
22 was let in 1988, right? And the successful bidders were
23 Bell and AT&T, correct?

24 THE WITNESS: Correct.

25 JUDGE COCHERES: All right. Now, you then told me

1 that the contract was let again in '92 and '94; is that
2 right?

3 THE WITNESS: No, it was put on the street.

4 JUDGE COCHERES: What does that mean?

5 THE WITNESS: It went to bid. Our request for
6 proposal was issued in '92 and then again in '94. I think
7 I'm right on those years. And the -- this will fill you
8 in, Your Honor. The one in -- that started in '92 was
9 enjoined. That's the one I mentioned went to Court.
10 Judge Craig upheld the injunction. And we started again
11 per his order. So we had the next addition.

12 JUDGE COCHERES: Before you leave that point, if the
13 contract process was enjoined, does that mean that you
14 were required to extend the existing '88 contract?

15 THE WITNESS: Yes.

16 JUDGE COCHERES: There we go. Now, let's move to
17 '94. What happened in '94?

18 THE WITNESS: We got a result and we, the
19 Commonwealth, threw it out.

20 JUDGE COCHERES: You threw it out?

21 THE WITNESS: We threw it out.

22 JUDGE COCHERES: What does that mean?

23 THE WITNESS: It means that the whole RFP process
24 was declared by the Commonwealth as is allowed by the
25 process null and void.

1 JUDGE COCHERES: Okay. And would that --

2 THE WITNESS: Do it again.

3 JUDGE COCHERES: And would that have resulted again
4 in an extension of what was the '88 contract?

5 THE WITNESS: Well, the fact we threw it out, yes.

6 JUDGE COCHERES: You had to have somebody providing
7 service.

8 THE WITNESS: Yes.

9 JUDGE COCHERES: All right. While you did it again?

10 THE WITNESS: Correct.

11 JUDGE COCHERES: Okay. And how long did that
12 process take to start over again? If you throw it out,
13 don't you rebid it?

14 THE WITNESS: Yes, we rebid. This is not an easy
15 technology. It probably took a year or more to get it
16 back on the street. Some of the things that kept changing
17 had to be basically rewritten except for style. And
18 that's the one that was awarded and subsequently signed
19 February 10, 1999.

20 JUDGE COCHERES: 1999.

21 THE WITNESS: We're in it now.

22 JUDGE COCHERES: So whatever was -- that's how AT&T
23 kept on going from 1988?

24 THE WITNESS: That is correct.

25 JUDGE COCHERES: Okay. Now, it makes a little more

1 sense. Sorry to interrupt you. Wait a minute here. Mr.
2 Kohler, do you have a comment?

3 MR. KOHLER: I'll wait my turn. I'm still a little
4 confused, but I'll wait my turn.

5 BY MR. LOVE:

6 Q Can you tell us the major differences between
7 the current contract and the contract that was in effect
8 when Ms. Feigley filed her action in April of 1988, other
9 than the fact that there's a new prime contractor?

10 A I don't believe there are any really. There's
11 been changes in the technology, but that would happen
12 anyway.

13 O Why is it -- what's the difference of having a
14 prime contractor versus a subcontractor? Is there any
15 difference?

16 A Well, the Commonwealth typically does deal with
17 one contractor, thus a prime. If there's a consortium
18 involved which this obviously was and is, we still want
19 one prime for us to contract with. The contracts with the
20 subs are up to that prime.

21 Q Well, why did you switch from AT&T to Bell?

22 A Bell submitted a -- a matter of fact, they
23 submitted two proposals. On the request for proposal,
24 AT&T submitted zero. AT&T subbed to Bell.

25 Q And are the rates different or the same?

1 A Which rates?

2 Q The rates under the old contract and under the
3 new contract?

4 A Let's go back to the rates again. Which rates
5 are you talking about, the Commission rates or are you
6 talking about the rates of the telephone calls, all of the
7 above?

8 Q All of the above.

9 A Well, the rates on telephone calls, let's start
10 with that, they tend to vary with the industry without any
11 question. And everybody has read it in the
12 Telecommunications Act of 1996, and I'm sure recognizes
13 even from their home phone bills that long distance rates
14 which is AT&T's business have come down significantly over
15 recent years.

16 Q So is this as a result of the Telecommunications
17 Act of 1996?

18 A It's a result of the competition that started
19 with the divestiture and was continued with the Act of '96
20 which was really an amendment of the Telecommunications
21 Act of 1934. We, the Commonwealth, have obviously taken
22 advantage of it. Because the second part of your question
23 was the Commission rates. And, yes, they have changed and
24 gone up. The percentages went up as a result of this
25 competition, yes.

1 Q Commission rates are the rates that the
2 Commonwealth gets?

3 A As commissions, yes. Percentages, yes.

4 Q That percentage has gone up?

5 A Yes, it has.

6 Q Do you know the numbers?

7 A The current contract has a range in it for both
8 intraLATA which we're not talking about today. But it's
9 obviously a factor. That's between 32 and 38 percent of
10 gross billed revenue. That's an important distinction and
11 is obviously public knowledge. The rates -- the
12 Commission rates on the interLATA piece are between 47 and
13 50 percent.

14 Q Now, that Commission rate is a percentage of the
15 gross revenues?

16 A Gross billed revenues.

17 Q Gross billed revenues.

18 A Billed is important.

19 Q So the Commonwealth is taking as much as 50
20 percent?

21 A We could. At the moment, we don't, no.

22 Q At the moment what are they taking?

23 A Forty-seven percent. I better explain that for
24 the Judge's edification anyway.

25 Q Go ahead.

1 A Part of this contract includes service
2 administrators provided by one of the subs at correction
3 facilities. As long as they are out there, and there's a
4 scale of numbers, numbers that are out there that can
5 change these Commission rates because there's a cost to
6 them obviously. And as long as the numbers that are out
7 there now, we're at 47. Should we reduce it by those
8 levels that are in the contract and, therefore, public
9 knowledge, the rate would grow closer to 50 and could
10 become 50. Remember it's an AT&T interLATA.

11 Q Now, interLATA is sort of like long distance
12 calls?

13 A This is long distance within the state.
14 Somebody made the distinction intrastate. And that's all
15 we're talking about here I understand. Yes, they are
16 calls that cross a LATA boundary of which there are six in
17 Pennsylvania. Therefore, they got to be carried by an
18 IXC, interexchange carrier. And the one under contract to
19 us is AT&T.

20 Q And the intraLATA calls are essentially local
21 calls?

22 A No, there is a distinction there that's becoming
23 important. Some firms are saying local calls. You would
24 think calling your friend across the street as long as
25 there's no toll barrier, that's a local call, local

1 exchange we call it. We're not talking about those calls.
2 We're talking about calls that have a toll charge but are
3 inside a LATA boundary. They are purviews. The LATAs
4 were set up to build a fence around the Bell system when
5 they broke them in to seven companies.

6 Q If you recall, what were the percentages under
7 the prior contract?

8 A If you want to go back to -- oh, gosh, I don't
9 know. Obviously, we have that. But you would think prior
10 to the '88, prior to '88, that's a place to start. I'll
11 show you what's happened. Inmate stations were considered
12 public telephones in the tariff. And in many respects,
13 they still are. I think that's why some of the confusion
14 is in the industry today. At that point, two, three, four
15 percent was the Commission.

16 Q Two, three, four percent?

17 A Yeah, depending on who you were dialing. And
18 somebody mentioned probably what is a service order this
19 morning in 1983. That's all it would have had to have
20 been. And I may have gotten 5 percent for corrections for
21 some reason. I don't know. The competition really
22 started with Judge Green's dictum in 1988. And it's been
23 a very interesting ball game ever since as you obviously
24 gather.

25 Q Do you have any idea what they were in April of

1 '98 when Ms. Feigley started this action?

2 A Yes, that I think -- and I could have kicked
3 myself this morning, frankly, when that came up because I
4 don't know what that is. But I think I put that Amendment
5 into place in January of '97 which was the last extension.
6 The files Ms. Feigley has would show that. And at that
7 time it was when we got to the 50 percent which is the
8 interLATA. Frankly, I don't remember. I think the intra
9 was 26 or something like that. That was the extension I
10 did. The last extension I did of that contract is the one
11 where the sizeable commission, if you want to look at it
12 that way, occurred.

13 Q If you recall, what was the total amount of the
14 commission that the Commonwealth made when the rates were
15 2 and 4 percent?

16 A I have no idea.

17 Q Moving on now. Can you give us an overview of
18 what the pin system is? The system that the inmates
19 utilize to access this contract, this phone system?

20 A Yes. Let's break the equipment that we use at
21 corrections in to three parts. You have the telephone,
22 you have what we'll call for this purpose control
23 equipment, and let's make the third part the monitoring
24 and recording.

25 Monitoring came up this morning, recording didn't.

1 And that's actually more pertinent. Now, the pin system
2 involves all three obviously but is keyed to the control
3 room.

4 The equipment that is in each of the state
5 correctional institutions requires an inmate pin to
6 access. It is an automated system. It functions through
7 an automated attendant and was, as expressed this morning,
8 there's no human intervention. There cannot be. We will
9 not allow it.

10 That does a couple of things. All to the benefit
11 really of the inmates and the inmate families because it's
12 all cost. Prior to the introduction of these automated
13 systems, and they started being developed in about 1988
14 also, all of these calls went through live operators. So
15 that fraction of the inmate population that was bent on
16 continuing their various activities of an unlawful nature
17 shall we say within the walls of our prisons were scamming
18 live operators. And it also affected that a live operator
19 costs a higher surcharge than an automated operator.

20 An automated operator hasn't been around all that
21 long either. That came in after divestiture as well. But
22 how it simply works is that the inmates complete a form
23 with their authorized -- so many pin numbers on their pin
24 list. And they process that through the Department of
25 Corrections. And the equipment that we have in each

1 prison has it in it. And what happens is that when the
2 inmate puts in the pin number, the control system comes
3 back and says, hi, you want to make a call, put the number
4 in and the way they go. If the system recognizes the
5 number, it processes it in very much the way it was
6 described this morning.

7 If it is not on the pin system, it will reject it.
8 And the inmate cannot make the call. And I'd be happy to
9 answer more questions. But that's essentially how it
10 works. It's similar to going to the MAC machine.

11 Q Well, hopefully Mr. Shaffer can expand on that.

12 A He certainly can tell you how corrections uses
13 that.

14 Q What is the voice recognition system?

15 A Voice recognition is something new in the
16 current contract. Many of you are aware that that
17 technology had been introduced a few years ago not very
18 satisfactorily. It's getting better.

19 In other words, if you have a cold, your voice may
20 not recognize you in the machine. It's a voice print.
21 And we are putting it in a game to help the cost factor as
22 well as reduce some of the activity in the prisons that we
23 view as not appropriate. And that is the potential black
24 marketing of pin numbers. And that happens because
25 typically, on average, an inmate has about ten numbers on

1 a pin list. It's rare to find one with 20. Although Mr.
2 Shaffer can testify far better than I can on that. But
3 that is industry average. We have inmates that seem to be
4 bent on continuing their businesses from inside. And they
5 may influence another inmate to allow one of their phone
6 numbers to be on the other pin.

7 JUDGE COCHERES: That's a very well emphatic way of
8 putting that.

9 THE WITNESS: I'm trying, Your Honor, some inmates.
10 The point is that, again, you're looking at a voice print.
11 So if the wrong inmate, shall we look at it that way, puts
12 the pin in, you have to speak your name into the system
13 and, of course, it won't be recognized so it will reject
14 the call. It will cut down still further and make far
15 more useful and friendly for the largest majority of
16 inmates who are, unfortunately, there for whatever.

17 BY MR. LOVE:

18 Q Are you familiar with the rates that are charged
19 under the current contract?

20 A Rates for calls?

21 Q Calls.

22 A Yes.

23 Q I'd like to show you an Exhibit that you have
24 given me which I've labeled P-4, AT&T cost calculations,
25 15-minute call duration.

1 (Complainant's Exhibit No. P-4 was produced and
2 marked for identification.)

3 THE WITNESS: Yes.

4 BY MR. LOVE:

5 Q Are you familiar with that document?

6 A Yes, I am.

7 Q And who composed that document?

8 A I did.

9 Q And when did you compose it?

10 A Well, originally in 1988. It was something we
11 were doing then. And actually in view of this hearing, I
12 just changed it yesterday as you see. The change, Your
13 Honor, was the per call compensation line. It's the -- if
14 you look to the right, it's the one just before the equal
15 sign. That is a new input and it is a cent figure that
16 was mentioned this morning. One is correctly and one, I
17 suspect, incorrectly. And it is a result of the
18 Telecommunications Act of 1996.

19 Q And can you correct the record on that
20 particular column? What is that about, that \$.30 charge?

21 A What per call compensation means that as a
22 result of the Act of '96, carriers are ordered to
23 compensate pay phone owners for the use of their pay phone
24 to make calls for which they normally, and I'm being
25 generic here, but they normally do not collect revenue.

1 The major input here was 800. And you're all familiar
2 with dialing the 800 numbers. And the lobby in Washington
3 had got this, part of the Act and simply said that
4 competition created this in a bunch of small pay phone
5 operators which were now getting into the business as a
6 result of the Act and rightfully so.

7 And said, hey, wait a minute, we're not making any
8 commission on these. We don't carry the calls, therefore,
9 we want some compensation for using the box. And that's
10 what it's all about. The FCC in their wisdom put a test
11 figure on the street of \$.27.4. And those of us in the
12 business find it kind of hard to bill \$.04 on a coin
13 station. So most carriers went to 28. One of them went
14 to 30 and so on. And I cannot explain this. I don't
15 really know the derivation of why the ruling now is that
16 inmate telephones fall into this category. That's an
17 interesting point.

18 There is no possible way that somebody from the
19 public, you know, could walk up to an inmate station and
20 make a call or we got some corrections people that need to
21 be replaced. And so I don't know, but that's what it is.
22 It's something that we don't control. AT&T does not
23 control it and it is on the bills. Ms. Feigley mentioned
24 it this morning and the other lady did too. And I think
25 it was misinterpreted.

1 MR. KOHLER: Your Honor, I think this is good
2 testimony. I actually wanted to talk to Mr. Love at lunch
3 about trying to straighten out the record on what AT&T
4 actually charges. And there was some testimony this
5 morning, and I didn't go in to it too deeply with the
6 witnesses that was incorrect and inconsistent with the own
7 bills they were putting forward.

8 Mr. Malcom's testimony is correct. And Ms. Calega
9 will explain how that comes across on the bill and try to
10 complete the circle for you. But I wanted to state that
11 at this point. This is helpful because it's clearing the
12 record.

13 THE WITNESS: Thank you. Let me explain this chart
14 those. I originally did it because the newspapers get
15 involved, Your Honor, on this very question from time to
16 time. And the one involved here happened to be the
17 Philadelphia Inquirer. And so I said, okay, I got to make
18 this simple to understand because it really is.

19 The AT&T side is far more simple to understand than,
20 frankly, is the Bell side at this point. Bell still is in
21 the mode of so much for the initial period, so much for
22 extended period and a rate band area. So you got to set
23 down and push a pencil. AT&T charges one rate intrastate,
24 interLATA period, \$.27.

25 So what this was designed to do was to take an

1 absolute apples-to-apples. Because another comparison
2 being made this morning was apples and oranges at best.
3 We have an inmate station, that's the top set of blocks.
4 And we have a public telephone as you would find out here
5 in the hall or in the visitor's location.

6 Now, remember this is an AT&T one. So that we're
7 comparing apples and apples. You have a permitted charge
8 of \$.27. I picked 15 minutes for the time because as you
9 will probably learn later, one of the time frames
10 corrections tends to use is 15 minutes of calling. So I
11 thought that's good so everybody can understand that.

12 Minutes of the call being 15, the transport charge
13 is just the multiplication. The service charge is the
14 surcharge. That's an important distinction. There's a
15 surcharge on lots of calls that are not directly dialed.
16 Person to person has a surcharge. An automated attendant
17 has one surcharge. A live operator has another surcharge,
18 higher.

19 You can see if you look at this chart that on the
20 inmate side, the service charge is a one-time charge. And
21 it was correctly described this morning. Regardless of
22 how long the call lasts, it's \$3. You can see on the
23 public pay phone side, that surcharge is 2.10. The
24 difference being \$.90.

25 You can see I've added on the per call compensation.

1 You're going to hear that referred to as PCC and just
2 added it up. It's that simple, folks. The difference
3 between an inmate call and a public call in the same
4 circumstances is \$.90, the difference in the surcharge.

5 BY MR. LOVE:

6 Q Is it possible for you to break down that \$3
7 into different --

8 A No, I can't. These kinds of cases have been
9 heard in other states. And that question comes up as
10 well. No, I can't do that. And that definitely would be
11 proprietary on the part of AT&T or any other carrier. But
12 I will say this about it. There are two major factors
13 that are in. And they're in the \$.90.

14 Remember the 2.10, the 2.10 is charged to any of us
15 going out here in the hall and making a collect pay phone
16 station-to-station call between these cities. Now, so
17 we're talking about \$.90. Now, you breakdown the \$.90 in
18 that somebody has to pay for the control equipment in the
19 prisons and the monitoring and recording equipment. This
20 entire contract is at no cost to the Commonwealth, zero.

21 Plus, of course, we get commissions which you get on
22 pay phones anyway. And the other factor that is in that
23 \$.90 is that there is much evidence in the business.
24 Statistics are available that the -- I don't want to use
25 the word fraud -- that the uncollectible -- let's use bad

1 MR. LOVE: Your Honor, Ms. Hollis brought these
2 today. I didn't have a chance to make copies. I'll be
3 happy to make copies at the break or whatever the Court
4 pleases. I was going to have her read a few examples
5 rather than introduce.

6 JUDGE COCHERES: In that case, Mr. Kohler, I suggest
7 you go up and look over her shoulder.

8 MR. KOHLER: Thank you.

9 THE WITNESS: Did you still want a couple more
10 examples?

11 MR. KOHLER: I'm fine.

12 MR. LOVE: Go ahead.

13 THE WITNESS: I called Quakertown, Pennsylvania for
14 19 minutes. Now, that's further away than where my
15 husband was incarcerated. And that cost was \$5.70. And
16 it was 19 minutes and it was farther away. And most of
17 his phone calls are like \$7.35 for 15 minutes. I called
18 Scranton, Pennsylvania which is farther away yet. And for
19 11 minutes, that call was \$3.30. And that 15 minute call
20 from my husband was still like \$7.35.

21 BY MR. LOVE:

22 Q And the carrier of those calls was?

23 A AT&T.

24 Q Same carrier that carries the prison calls?

25 A Yes.

1 Q Would you agree with Ms. Feigley's statement
2 that they're approximately three times as high as the
3 other calls?

4 A Or maybe higher, a little higher maybe.

5 Q Are you familiar at all with the surcharges that
6 Ms. Feigley discussed?

7 A Quite honestly I wasn't until today until I
8 heard her talk about them.

9 Q If the charges were similar to the charges for
10 these other calls, what impact would that have upon you
11 and your husband?

12 A Well, it certainly would put less of a financial
13 burden on me and other family members and allow us more
14 communication. Sometimes things go on in your family that
15 you need to talk to your husband about or vice versa. And
16 it would give you more opportunity to do that.

17 Q And what are your monthly phone bills running?

18 A Two hundred to \$300 a month.

19 MR. LOVE: I have nothing further.

20 MR. KOHLER: Can I just review the bills? One
21 moment, Your Honor.

22 CROSS EXAMINATION

23 MR. KOHLER: Let's see if we can do this from here.
24 If I have to come up and actually show you the bill, I
25 will. The first call you testified about was -- well, let

1 me come up. May I approach the witness, Your Honor?

2 JUDGE COCHERES: Certainly. It was from her house
3 to Steelton.

4 BY MR. KOHLER:

5 Q The first call you testified was a 15 minute
6 call from your husband to Millersburg; is that correct?

7 A Right.

8 Q And the location here was?

9 A That was Coal Township at that point.

10 Q And Coal Township is in the 717 area code; is
11 that right?

12 A Just changed. At that point it was 717.

13 Q And was making a call to the 717 area code?

14 A Right.

15 Q Now, do you know whether that call is an
16 intraLATA call or an interLATA call?

17 A I'm not sure I follow you.

18 Q All right.

19 A I'm not sure I understand what your question
20 was.

21 Q Strike the question. When you get a call from
22 your husband, you heard Ms. Feigley's testimony about the
23 message that precludes the call. Is that your experience
24 also?

25 A Yes, it is. Sometimes they go through that

1 recording and you're saying hello, hello, hello. And
2 then, you know, finally maybe it will connect. Sometimes
3 it doesn't connect so you hang up again. I've gone
4 through the same recording.

5 Q And at the end of the recording is there always
6 a question as to whether you want to accept the call?

7 A Yes, will you accept this call?

8 Q And does it ask you to respond?

9 A Yes. If you accept this call, press one now.
10 If not, hang up.

11 Q So you have to make an affirmative action in
12 order to accept the call; is that right?

13 A Yes.

14 Q And you have to press one to accept the call?

15 A Right. You can hang up or press one.

16 Q Now, you can also communicate with your husband
17 by letter; is that right?

18 A Yes.

19 Q And I would guess you frequently do; is that
20 correct?

21 A Yes, but sometimes mail takes a week maybe
22 sometimes to get through. Sometimes there's matters that
23 you really need to talk to him about before then, you
24 know, that can't wait for a week or however long.

25 Q And you can also visit your husband if you

1 choose; is that right?

2 A Yes.

3 Q And I suspect that you do; is that fair?

4 A But there are sometimes, ten days, two weeks go
5 buy or something comes up. There's a distance between
6 your visits. Our phone calls are monitored. So you have
7 to be very careful of what you say. Your phone call could
8 be cutoff. So besides letters and visits, you have no
9 privacy to discuss things. And I'm not talking about
10 sexual things. I'm talking about private matters between
11 a man, a wife and a family.

12 Q So you have more privacy if you visit or write
13 letters?

14 A You have no privacy on the telephone. Where my
15 husband is incarcerated right now, every phone call is
16 monitored.

17 MR. KOHLER: Nothing further, Your Honor.

18 MR. LOVE: A few redirect.

19 JUDGE COCHERES: No redirect?

20 MR. LOVE: A few redirect.

21 JUDGE COCHERES: Oh, fine.

22 REDIRECT EXAMINATION

23 BY MR. LOVE:

24 Q You indicated that the phone calls are
25 monitored; is that correct?

1 A Yes, sir.

2 Q What that always the case, if you know?

3 A No, it wasn't, not until a couple years ago.

4 Q So this monitoring is something new?

5 A Within the last several years, yes.

6 Q Now, Mr. Kohler indicated that you had the
7 option of visiting Doug. Can you explain when visiting is
8 permitted and for how long?

9 A You're allowed one visit a week and you can
10 visit the whole day. It might be 8:30 until 3:30 unless
11 it gets crowded. You are only required to be permitted to
12 stay an hour. If it gets crowded, they ask you to leave.
13 And you may have a visit once a week. And it has to be
14 from like a Monday to a Sunday. It has to be between
15 those days.

16 Q And you indicated you work two jobs; is that
17 correct?

18 A Yes, I do.

19 Q And how many days off a week do you normally
20 get?

21 A One day off during the week and that's with my
22 husband.

23 Q So you normally take your day off and visit your
24 husband?

25 A I usually go during the week. I work every

1 other weekend double shifts.

2 MR. LOVE: Nothing further.

3 JUDGE COCHERES: The witness is excused.

4 MR. LOVE: I would like to call Robert France to the
5 stand, Your Honor.

6 ROBERT FRANTZ, called as a witness, having been duly
7 sworn, was examined and testified as follows:

8 JUDGE COCHERES: Thank you. Please be seated. And
9 good morning to you.

10 THE WITNESS: Good morning, sir.

11 DIRECT EXAMINATION

12 BY MR. LOVE:

13 Q Mr. Frantz, can you give us your full name and
14 address for the record please?

15 A My name is Robert Frederick Frantz, F-R-A-N-T-Z.
16 I live at 3130 Trolley Bridge Circle, Quakertown, PA, zip
17 code 18951.

18 Q And are you a member of any advocacy groups of
19 prison issues?

20 A I'm a member of PA CURE. I'm a member of the
21 Greater Friends Board. I'm also a member of the
22 Pennsylvania Prison Society. And I'm President of the
23 Organization for Parole Relief.

24 Q Can you briefly explain what those organizations
25 are and what their mission is?

1 A Pennsylvania CURE works on programs for inmates
2 for better conditions basically. The Greater Friends
3 works on programs for inmates and also publishes a monthly
4 newsletter that goes out to families, friends all across
5 the country and not just in Pennsylvania. The Prison
6 Society works on issues of rehabilitation for inmates
7 whenever they're released to help them, to help families
8 with visits, to help with medical problems such as that.

9 And the Organization for Parole Relief, it's new.
10 It's something that I have organized in the last several
11 months by dealing with State Senators and State
12 Representatives in order to get them to look into the
13 issue of why inmates are over their minimums whenever they
14 are first-time offenders. There is approximately 9000
15 inmates over their minimum. Approximately 6500 of them
16 are first-time offenders. And that's state figures, not
17 mine. I have collected information from these inmates
18 across the state. Right now we're at about a 15 percent
19 bracket of that number. And that's being presented to the
20 Senators for an independent investigation.

21 Q And how long have you been involved with these
22 prison advocacy groups?

23 A I've been involved with them officially since
24 probably about October of '97.

25 Q And what led you to become interested in these

1 issues, if anything?

2 A I was incarcerated myself from December 8th,
3 1992 through September 4th of 1997. And I knew the
4 inconsistencies of what happens with the DOC and with the
5 parole board and with the state in general. And I went
6 out to work with these organizations to help them with my
7 knowledge from the inside to get some of this changed for
8 the inmates.

9 Q Now, where were you incarcerated? You indicated
10 you were in jail.

11 A I was incarcerated for most of my time at Coal
12 Township near Shamokin.

13 Q And is that part of the Pennsylvania Department
14 of Corrections system?

15 A Yes, sir.

16 Q That's the state correctional institute in Coal
17 Township?

18 A Yes, sir.

19 Q And are you married?

20 A Yes, sir.

21 Q How long have you been married?

22 A I've been married 42 and a half years.

23 Q And did you ever have occasion to call your wife
24 when you were incarcerated?

25 A Yes, sir, I did. I called her from Shamokin

1 depending on the allowance. Sometimes it was once a week
2 and then other times it got lenient, and you were allowed
3 to call three or four times a week even.

4 Q And do you recall how much it cost for those
5 calls?

6 A I think on my statement there that I gave you,
7 back in August of '93, a call for approximately 18 minutes
8 was \$5 and some cents.

9 Q Now, you have given me some phone records. Are
10 those reflective of these?

11 A Yes, sir. I will tell you that item number six
12 and seven, for some reason when I copied them, they did
13 not copy the prices on item six and seven. But one, two,
14 three, four and seven does have the prices that was listed
15 on the phone bill.

16 MR. LOVE: Your Honor, I have -- Mr. Frantz has
17 given me three copies of these phone bills. If I could
18 ask the Court's indulgence, I would like to submit these
19 into evidence.

20 JUDGE COCHERES: We'll mark them as documents P-2.
21 For the purposes of your examination, please give one copy
22 to Mr. Kohler and one copy to the witness and I'll pass on
23 my copy for right now.

24 (Complainant's Exhibit No. P-2 was produced and
25 marked for identification.)

1 BY MR. LOVE:

2 Q Now, you were indicating that you had made a
3 call to your wife when you were incarcerated. Can you
4 please show us where that would be reflected in these
5 documents?

6 A Okay. On the top page there I have a number one
7 circled up in there. The date of the bill is August 18th,
8 1993. You'll see the calls there from Shamokin and
9 Waymart. They were both to my home phone. The calls from
10 Waymart was from another inmate that was coming to his
11 wife who was at that time living there with my wife
12 helping her out.

13 But the one from Waymart, for instance, on number
14 three at 8:24 a.m. was the 717 area from Waymart which was
15 15 minutes and it was \$5.65. The -- I'm sorry not
16 Waymart, number five item, the Shamokin item. Number 5
17 was 7:18 p.m. That was a 13 minute call that cost \$4.30.
18 If you go back to item seven, sheet seven, you'll see
19 number 17 which is a call from the same Waymart
20 Institution in Shamokin. It's a 15 minute call. And that
21 call now costs \$7.05.

22 Q The date of that call is what?

23 A The date of the first call was August 10th of
24 '93. The most recent call that I brought a sheet was for
25 April 25th, of '99.

1 Q What, if anything, occurred between those two
2 dates as far as the phone system, if you know?

3 A The phone system has -- the prices had gone up
4 quite a bit and they put the phone system in. It was a
5 phone system that went in where when you first got on the
6 phone and you connected through to your party or to my
7 wife in this case, they gave a little spiel about this
8 coming from a correctional institution. If you want to
9 accept it, press one. Don't do a three-way, don't do
10 different connections so on and so forth or you'll be
11 disconnected. Then they --

12 Q They added that?

13 A That's at the beginning, yes.

14 Q So that's been added since the first call?

15 A It's been changed. It was basically the same.
16 The first call at Shamokin SCI Coal Township was done by
17 operators. In '96, I think it was '96, approximately '96,
18 it was changed over to computer-initiated. And then '97,
19 when the new phone systems went in where you had a set
20 time, it was computer-generated with that particular
21 statement.

22 Q If you know, is this when the monitoring of
23 phone calls also began?

24 A At the beginning of '97 monitoring of phone
25 calls began at that time at Coal Township.

1 Q Now, in '93, did you have -- was there any limit
2 to the number of people you could call?

3 A It was permitted in '93 -- the institution
4 opened on May 27th of '93. And when we first got there,
5 there was only 27 inmates on the first bus load. So we
6 was rattling around in a pretty empty place. It took them
7 until the end of the following year of '94 to get Coal
8 Township filled.

9 So it was not -- it was restricted. You didn't get
10 as many phone calls as you wanted. But the guards did
11 permit you to have a phone call a day if your work
12 schedule and everything permitted it. And then they cut
13 it back to two a week.

14 Q Did you have to give a list of numbers to call
15 back then?

16 A Not at that time, no, sir. That did not go into
17 effect until '97.

18 Q So you could call anyone you wanted back then?

19 MR. KOHLER: Your Honor, I'm going to object. This
20 line of questioning has nothing to do with AT&T's rates.

21 JUDGE COCHERES: Mr. Love?

22 MR. LOVE: Your Honor, there was a substantial
23 change in the methodology of inmate phone calls around
24 '96. And I'm just trying to get on the record the changes
25 that were made because it is relevant to the charges that

1 are being charged. There was some additional anti-fraud
2 devices added. Monitoring, as he's testified, was added
3 and there were costs incurred. In order to be fair to all
4 parties, we have to talk about the costs as part of the
5 overall picture of how much these calls cost.

6 JUDGE COCHERES: I agree. Continue. The objection
7 is overruled.

8 BY MR. LOVE:

9 Q All right. Mr. Frantz, you were indicating that
10 initially you could call any number of people and this was
11 limited.

12 A Yes.

13 Q And you also testified that the monitoring
14 equipment was added?

15 A Yes.

16 Q And this all occurred around 1996?

17 A Late '96, somewhere around there.

18 Q And did it, to the best of your knowledge,
19 increase the costs of these phone calls?

20 A Yes, it did at the time. I'm sorry, the phone
21 bills did not show up on here for some reason when I
22 printed them out for item five and six that I gave you.
23 But if you look at item seven, they did printout. I don't
24 know the reason for that.

25 But if you look on '97, the rate for 15 minutes is

1 now \$7.05. Included in that is that initial spiel that
2 the operator or the computer gives. I pay for that. On
3 June the 22nd, in fact, as it's already installed on some
4 of the phone systems in some of the prisons now, there's a
5 new spiel sticking out. They go through the initial thing
6 about coming from a correctional institution and so on and
7 so forth and then to accept it, press one.

8 Now, they interrupt my phone calls with my son
9 approximately every four minutes or so on an average at
10 any time because it just started this week. Every four
11 minutes or so, the computer breaks in and says this phone
12 call is coming from a correctional institution which
13 they've already told me at the beginning of the
14 conversation. But they interrupt my conversation in 15
15 minutes, three or four times and I'm paying for that
16 again. So I'm paying for the initial spiel plus my phone
17 call is interrupted.

18 Q Can you talk over that?

19 A No, you cannot.

20 Q Now, you indicated your son is incarcerated; is
21 that correct?

22 A Yes, he is.

23 Q And where is he incarcerated?

24 A He's at SCI Waymart up in Wayne County, sir.

25 Q And so you continue to receive phone calls.

1 Even after your release, you now receive phone calls
2 rather than make phone calls?

3 A Yes, sir.

4 Q When did your son go to jail?

5 A My son was incarcerated in August of '93, sir.

6 Q Now, have you ever had occasion to utilize a pay
7 phone at the prison and call home?

8 A Yes, sir, I have. Whenever we visited my son
9 back in approximately March, I called AT&T. And I
10 questioned AT&T personnel on the phone of what a breakdown
11 of the \$7.05 was. The information that the lady very
12 graciously gave me after we discussed it for some time was
13 that I was paying \$.25 a minute for the phone call, and I
14 was paying a \$3.30 surcharge which totaled the \$7.05.

15 Now, this came from her, from AT&T. I questioned
16 this surcharge on what was done. And she says, well, the
17 surcharge is a portion of the bill that is paid back to
18 the Commonwealth of Pennsylvania. There was also a
19 phone --

20 Q I'm sorry, the \$3 surcharge goes to the
21 Commonwealth of Pennsylvania?

22 A Part of that. She said a portion of that goes
23 to the Commonwealth of Pennsylvania. Now, there's also a
24 pay phone at SCI Waymart that's available for the general
25 public, but not available to an inmate. That is in the

1 visiting area as you enter and leave to visit with an
2 inmate. So as a matter of interest on the way out two
3 months ago, I stopped and I said to my wife, I said I'm
4 going to make a phone call. So I picked up the phone,
5 asked for an operator, got the operator on. And I asked
6 her, I said I would like the charges to call from here to
7 my home phone. And I gave her the phone number. She came
8 back and she said is that automatic or operator assisted?
9 I said operator assisted. That's what I want from this
10 phone call, a collect call. And she came back and she
11 said the figure was \$1.92 surcharge and \$.16 per minute
12 which is a big difference from what the charges my son
13 pays in that. The phone that I had in my hands at that
14 time is not available to an inmate, but is probably about
15 200 feet or so plus or minus from where the phones for the
16 inmates are.

17 So it's a difference of \$2.73 or \$.71 or something
18 like that difference in the phone bills from what I pay to
19 call out of that pay phone to my home phone compared to
20 what an inmate pays from a pay phone inside. And both of
21 these phones are on prison grounds.

22 Q And are you employed?

23 A No, sir, I'm retired, disability.

24 Q And does your wife work?

25 A No, sir, she worked up until two months ago.

1 She has been diagnosed as a multiple myeloma cancer
2 patient. And she is not able to work at all. Right now
3 she's not able to do anything.

4 Q So you live on a limited fixed income; is that
5 right?

6 A Very limited, yes, sir.

7 Q How often does your son call?

8 A Well, due to the finances, he knows what they
9 are, he calls twice a week. He would like to call more
10 because of the condition of his mother, but he calls twice
11 a week because it costs \$7.05 to call for 15 minutes. And
12 he's trying to -- knowing the finances, he tries to help
13 keep them down.

14 Q Now, are his calls limited to 15 minutes?

15 A Yes, sir, 15 minutes and you're cut off. If you
16 don't have your conversation done at that point, they'll
17 cut you off in the middle of a line.

18 Q So if he -- if the rates were lower, would he
19 have the ability to call more frequently?

20 A Definitely.

21 Q How often could he call?

22 A They cut them rates down to the rate that it
23 would cost to call from -- if he would call with the rates
24 that I was able to place that call from, it would be like
25 \$4.30 some cents. He could call four times a week in

1 place of two times a week for what he is paying. Two
2 times a week cost \$14.10. If he called at the rate that I
3 was able to make that phone call from the prison phone,
4 \$4, he would be able for call three or four times for that
5 same rate and, you know, at this point talk to his mother
6 who, like I said, is in very ill health and not in
7 promising health, put it that way.

8 Q How old is your wife?

9 A My wife just turned 60.

10 Q And your son is how old?

11 A My son is 40.

12 Q Has he always been in Waymart?

13 A Other than the initial at Camp Hill which
14 everybody goes to Camp Hill for two or three or four
15 months. And he's been at Waymart ever since.

16 Q Now, you had heard some earlier testimony about
17 a policy with the Department of Corrections to house
18 inmates far away from your family. Are you familiar with
19 that?

20 A Yes, sir, I read the directive whenever I was an
21 inmate.

22 Q And is that partly why your son is at Waymart as
23 opposed to somewhere closer to where --

24 A I would say yes that that's a good possibility.
25 We don't know for sure. But that's where they sent him.

1 My wife had talked to a State Senator and asked for a
2 closer institution, which there is several closer, due to
3 the fact of her health even back then and the idea of
4 being able to get to see him. But it was denied and he
5 was sent to Waymart.

6 Q As both an ex-offender and an advocate, do you
7 have any thoughts on the families' role in the
8 rehabilitation process?

9 MR. KOHLER: Objection, relevancy, Your Honor.

10 JUDGE COCHERES: Counselor?

11 MR. LOVE: Your Honor, it's our contention that the
12 high rates charged for inmate calls which we contend are
13 much higher than rates on almost every other circumstance
14 impede the ability of inmates to rehabilitate themselves.
15 And as such, the public interest is in favor, in my
16 opinion, of rehabilitating inmates. And this policy is an
17 impediment to that process and, therefore, relevant to
18 these proceedings.

19 MR. KOHLER: A little far fetched, Your Honor.

20 JUDGE COCHERES: Mr. Love, I'm having trouble
21 accepting your problem here. I think I clearly told you
22 the subject of today's hearing is the size, the alleged
23 unreasonable size of AT&T's interLATA charges.

24 MR. KOHLER: Your Honor, if I could add, intrastate
25 interLATA charges.

1 JUDGE COCHERES: Yes, I don't have jurisdiction
2 beyond the boundaries of Pennsylvania. Do you think that
3 financial hardship is a criteria that a Commission uses to
4 set rates for telephone service for any utility service in
5 the Commonwealth?

6 MR. LOVE: I think financial hardship is a factor
7 that is utilized in certain activities of the Public
8 Utility Commission but not necessarily in the setting of
9 rates. I think there's discussions in cutoff terminations
10 and other areas of interest to the Public Utility
11 Commission that this would come in to play. So I think it
12 is relevant to the business of the Public Utility
13 Commission.

14 I think that my understanding of the case law as to
15 what is reasonable is something that is reasonable and
16 just. And I am putting forth the proposition that the
17 high rates charged to inmate families is not just because
18 it's only those individuals that pay these high rates.
19 And there's an important reason for them to be doing what
20 they're doing, an important public reason for them to be
21 doing what they're doing. And to pose a burden on this is
22 unjust and, therefore, relevant to these proceedings.

23 MR. KOHLER: Your Honor, can I?

24 JUDGE COCHERES: Certainly, Mr. Kohler.

25 MR. KOHLER: I think Mr. Love is coming about it

1 from the wrong way. Your Honor, the Commission has no
2 discretion to charge different customers different prices
3 -- different customers under the same circumstance
4 different prices for the same service.

5 The Commission does have jurisdiction and is
6 involved in numerous programs to try to relieve any
7 financial hardship involved with low income customers in
8 paying those rates. And, you know, Mr. Love's argument
9 may be relevant to what those programs should involve and
10 whether there should be additional programs potentially
11 for families of inmates. But I don't see what relevance
12 they have to what AT&T's rates for inmate services should
13 or shouldn't be.

14 JUDGE COCHERES: Do you understand the distinction
15 that Mr. Kohler just drew for me?

16 MR. LOVE: I heard him. I'm not sure I understand
17 him or agree with it.

18 JUDGE COCHERES: Well, I'm sure you don't agree with
19 it. But let me go back to what you said. You said that
20 this Commission administers public regulation in certain
21 aspects by focusing on the economic hardship to the
22 customer. And I agree with you. They do.

23 And I have substantial history, as every judge does,
24 in hearing what we have called ability-to-pay cases.
25 Whatever the utility is gas, electric, water, but gas and

1 electric particularly and telephone. And if the customer
2 is unable to pay the bill, then one of my duties as a
3 Judge is to set up some sort of payment plan where our
4 income low customer can pay the current charges plus
5 something towards their arrearage.

6 Now, there is a bright line between that and the
7 rate setting procedure for utilities to charge. And based
8 on my experience, the Commission does not normally take in
9 to account the impact of the charges on the customer.

10 There are some limited exceptions, for example -- and I
11 know that Mr. Kohler as a representative of the telephone
12 company is familiar with them -- and that is Lifeline
13 rates. In instances where the customers can justify that
14 their income is so low that their continuation as a
15 customer is in doubt, the Commission will allow a tariff
16 in effect that sets a special rate in the parlance for a
17 poor person to receive limited phone service.

18 But that rate is set as part normally of an overall
19 rate case and is a requirement the Commission has imposed
20 on telephone companies generally. After that, nothing
21 comes to mind immediately where there is a direct
22 correlation between the customer's ability to pay the bill
23 and the size of the rate set by the Utility Commission.

24 MR. LOVE: If I might respond, Your Honor, I'm
25 sorry.

1 JUDGE COCHERES: The testimony you are offering,
2 while it may come under the general rubric of the public
3 interest, it is, at best, an indirect influence. And I
4 say indirect because of one particular case that sticks in
5 my mind that was mine. It dealt with a water company that
6 is located not too far from Frackville. And if you've
7 been up in that area, you know that that is not the
8 wealthiest part of Pennsylvania. I can't speculate about
9 it.

10 But when I drove up there for the hearings, I was
11 not impressed by the wealth of the population that lived
12 there.

13 MR. LOVE: You have that. That is why the prisons
14 are up there, Your Honor.

15 JUDGE COCHERES: It could be. It could very easily
16 be. And I had people walk into my Courtroom and have the
17 nerve to suggest that these people could take a really big
18 increase. And I was not pleased with that because I had
19 seen the general condition that was in that area.

20 And my Commission ultimately accepted my
21 recommendation that a really big increase in rates was not
22 such a good idea for the Frackville area. And that was
23 based in part and very indirectly on the general economic
24 conditions of the geographic area.

25 Those two instances; the Lifeline rates and my

1 experience with the water company are the only two
2 instances that come to mind where the ability-to-pay by
3 the customer influences the setting of rates. Now, I've
4 said my piece about ruling on the objection. Is there
5 something more you want to tell me?

6 MR. LOVE: Yes, Your Honor. Through this witness
7 and other witnesses, we're attempting to show as Ms.
8 Feigley indicated that a certain class of people are
9 charged three times the normal rate. It's alleged that
10 they are being charged three times the normal rate.

11 This particular class of people largely consists of
12 family members of individuals who are incarcerated.

13 Now, it's our contention that this particular class
14 of individuals are, for the most part, low-income people.
15 And the burden of charging -- and let me add these people
16 committed in crimes. They did not commit any crimes. And
17 what they're doing is of a public good trying to
18 strengthen family ties of people who have gone astray.
19 And it is an important part of the rehabilitation process
20 as Ms. Hollis of CURE has testified to.

21 So it's our position that they are attempting to do
22 something good, that they are people generally of limited
23 means because people who go to jail statistically are
24 people of limited means. And they are being singled out
25 and being charged three times the rate of other folks. So

1 the burden is that much more significant on this
2 particular class of people which is why Ms. Feigley goes
3 so far as to suggest that this is an unconscionable tax on
4 her free speech.

5 MR. KOHLER: Your Honor, just getting back to my
6 original point, I don't want to sound like a harsh
7 individual. I have some sympathy with Mr. Love's views.
8 But the way that the law is set up to deal with that
9 circumstance is and the Utility Commission maybe could
10 have a role in this, I don't know, is to set up programs
11 to help those individuals pay their bills.

12 You know, it gets back to businesses have to recover
13 their costs. That's what the Commission's jurisdiction
14 looks at when it regulates utility rates. There's always
15 the flip side of the coin where the customers have to be
16 able to pay those rates. And those are typically dealt
17 with by the Commission under two completely separate
18 roles.

19 And it may be that families of inmates deserve, you
20 know, some sort of rate paying program to help them pay
21 their bills. I certainly don't want to be the judge of
22 that. But this line of testimony is not relevant to what
23 AT&T's rates should or shouldn't be.

24 JUDGE COCHERES: I have to agree. I have sat
25 through -- even in that water case, I sat through lots of

1 testimony. I told you I drove up to the Frackville area.
2 I went there because the Commission requirement is that
3 when we have a rate case, it's to the best of our ability
4 that we at least have hearings in the territory where the
5 company renders service. So the customers can come and
6 tell us about the company.

7 And I had many of those kinds of cases. Many of
8 them I had gone and listened to many witnesses, retirees
9 like Mr. Frantz who tell me they're on a fixed income. I
10 had legislators testify that the entire population,
11 significant portions of the entire population of the area
12 are on limited fixed incomes. And that's particularly
13 true, for example, in the Scranton area. I've had other
14 elected officials tell me the same thing. The legislature
15 has never amended the Public Utility Code to allow the
16 Commission to use directly information about the ability
17 of the customer to pay the rate as a criteria for setting
18 the rate. Therefore, I must rule that the objection
19 should be sustained.

20 MR. LOVE: For the record, I'd like to note that
21 we're dealing with a very small class of individuals,
22 people who receive phone calls from correctional
23 institutions, largely family members. And this particular
24 small group is being charged, we're alleging, three times
25 the normal rate. And that's why we bring this issue to

1 your attention.

2 JUDGE COCHERES: Please continue, sir.

3 BY MR. LOVE:

4 Q Mr. Frantz, were there any other phone bills
5 that you wanted to allude to on your phone records that
6 you brought today? And if so, could you point them out?

7 A The only thing that I showed was the idea that
8 the phone calls from SCI Waymart is for 15 minutes is
9 \$7.05 on Exhibit 7. From SCI Coal Township which is item
10 17 and 18 which exchange is -- 644-3140 is the number.
11 They're both in the 570. That is also for a 15 minute
12 call, \$7.05. The information that I have submitted here
13 in testimony and on my documents there that I had given
14 you came directly from AT&T personnel and from these
15 bills.

16 Q So I believe you indicated that your son calls
17 approximately twice a week?

18 A Yes, sir.

19 Q And that would be \$14.10 as a weekly charge?

20 A Yes.

21 Q And for a month, we're talking \$60, roughly \$60?

22 A Well, usually more because he'll call sometimes
23 more than twice a week because of his mother being quite
24 ill and not knowing the status. He tries to call maybe
25 one or twice because he knows the finances.

1 debt. That might be even better. The bad debt on the
2 inmate calls is higher than the bad debt on the public
3 same collect call side. And there's all kinds of
4 statistics about that. Part of that is what I alluded to
5 as the cost of why we use this control equipment to keep
6 the costs down so that the fraud stays at a minimum.
7 Somebody has got to pay the bill.

8 Q Now, can you just walk us through the particular
9 ones that you've mentioned on this chart?

10 A Well, I've gone across the various charges, Mr.
11 Love. The reason we picked different cities was to just
12 give -- actually in this case it was a reporter, the feel
13 because, you know, some people come from different areas
14 of the State. Camp Hill is obviously right out here in
15 the middle part of the state. Dallas is up here in
16 Commonwealth territory, kind of northeast to us and
17 Huntsville, you'll have to ask Deputy Commissioner
18 Shaffer.

19 Q So the rates are all the same?

20 A I have stated that the intrastate interLATA rate
21 for AT&T is the same regardless of distance. Time is the
22 only factor.

23 Q Now, moving on, you had indicated earlier that
24 the Commission's portion of this contract is 47 percent
25 and generates approximately \$6 million a year.

1 A Well that includes the public side, yes.

2 Q Right. And five million or so of that is from
3 the DOC; is that right?

4 A Yes, that's what I said.

5 Q Now, where does that money go?

6 A The -- by law, money coming in to the
7 Commonwealth unless it is by law designated as going in to
8 a special fund -- and the best example of that that
9 everybody would be familiar with is known as the motor
10 license fund. That would be your registrations and
11 license fees, driver's license fees. There is a special
12 fund that that goes directly in to and has to do with what
13 it can be spent for.

14 In the case of anything that is not a special fund
15 account, the law says the money must go in to the
16 Commonwealth general fund. Now, the Department of
17 Corrections has had for many, many years a fund known as
18 the inmate general welfare fund. And they have used
19 traditionally the monies coming from the pay phone
20 revenues which is the commission for inmate benefits
21 through that fund.

22 And when we got in to the higher commission scales,
23 and I was not involved in these meetings, but I'm
24 obviously aware of the outcome, a decision was made by the
25 administration that the Department of Corrections would

1 continue to receive the \$3 million that they have been
2 getting traditionally for many years from our pay phone
3 operators, you know, the inmate station. And the
4 remainder of the funds would remain in the general fund to
5 be used for who knows.

6 Q Do you recall approximately when that decision
7 was made?

8 A Let me take a guess. I'm going to guess
9 probably fiscal year starting -- it might have been fiscal
10 year starting July 1, '97. It certainly was in fiscal
11 year '98. I think if we check it, I think we probably
12 will find it was July 1, '97.

13 Q So that would be the current administration that
14 made this decision?

15 A Yes.

16 Q And you indicated that traditionally all of the
17 money had gone to the inmate general welfare fund?

18 A Of the inmate commissions.

19 Q Correct.

20 A Commissions off of inmate calls, yes.

21 Q And that was traditionally about \$3 million a
22 year?

23 A It had grown to that. Obviously when we're down
24 to 4 and 5 percent or 2 and 3 percent, it wasn't kicking
25 in things like that.

1 Q And then in '97, it jumped to 6 million?

2 A Well, it grew. But, yes, that's where I went to
3 the 50 percent commission from a much lower figure. You
4 asked that before, I believe, and I really didn't answer.
5 There was somewhere around 25 or 26 before that.

6 Q What do you attribute this significant increase
7 in revenues for the Commonwealth?

8 A We got a lot of traffic. And competition said
9 if AT&T doesn't want the business, MCI does.

10 Q So this was as a result of the --

11 A Competition.

12 Q -- the competition?

13 A Absolutely.

14 Q Was that the Telecommunications Act of 1966 -- I
15 mean 1996?

16 A Yes, the combination of all things that had gone
17 on of bringing other people into the business and bringing
18 competition.

19 Q So the deregulation, spurred on by that
20 particular Act, virtually doubled the revenues of the
21 Commonwealth in this particular contract?

22 A Yes, to the detriment of the revenues of the
23 long distance carrier I might add.

24 Q And to the detriment of the families to pay
25 these commissions.

1 A I can't say that because the rates are something
2 that we didn't get in to. The rates we used, and we
3 covered that on this chart, are the very same rates the
4 public has except for that \$.90.

5 Q But a large percentage of that contract is
6 inmate phone calls?

7 A Yes, it is.

8 Q 90 percent?

9 A And that figure is available actually.

10 Q So the excess is just going to the general fund
11 of the state; is that correct?

12 A By law it has to. Now, it would then get by
13 budget allocation going somewhere, and I don't have any
14 idea.

15 Q Are you familiar with other state contracts of a
16 similar nature?

17 A To some extent, yes.

18 Q Have any other states tried to reduce those
19 rates for inmate calls?

20 A The only one that I know of that tried was
21 Wisconsin. And I really don't know what happened. The
22 thrust there was to, I guess, reduce the cost of inmate
23 calls for some reason. I don't know. Who knows? But
24 that's kind of the way that RFP was being developed. And
25 I really don't know what happened to it. It's certainly

1 information we could determine.

2 There was one other state and I'm trying to think
3 who it was. I guess it was Tennessee was trying -- they
4 actually put the inmate calls on a state network for an
5 entirely different business. No different reason. It
6 turned out to be a disaster. And it was not to, if you're
7 implying, to reduce the cost of inmate calls below that of
8 the public. That wasn't why they did that. But they're
9 redoing their process right now and that's not happening.

10 Q Is it fair to say that but for the
11 Telecommunications Act of 1996 and the resulting
12 competition, the Commonwealth would still be getting the
13 \$3 million a year?

14 A Well, my crystal ball is not really that good.
15 But the factors you mentioned that directly impacted the
16 fact that these commission rates have gone up
17 significantly is certainly a correct one.

18 Competition that was created, it was the purpose of
19 that Act to create competition to drive costs down and to
20 drive prices down. And it certainly has created that
21 without any question. And I don't think anybody would
22 deny that.

23 Q But it hasn't created any competition for
24 inmates or their families; is that right?

25 A They're with one contract, one employer and one

1 option. They are only because they are incarcerated in
2 our facility. And the contract is ours and we have one
3 carrier on that contract. There was a case a few years
4 back that could have impacted the inmate world as it was
5 definitely going to impact the colleges and universities
6 and so forth known as billed party preference.

7 And the FCC finally, sorry to use this term again,
8 Judge, threw it out. The decision on pay phone
9 compensation in the FCC has pretty well taken the issue.
10 And there is a brand new law that's now in place that says
11 that as you make a long distance call, many of you have
12 experienced it I'm sure, you have the right to get the
13 cost before you place the call. That's being done in a
14 variety of ways depending on the technology that's being
15 used to provide the pay phone service.

16 And it's going to be expensive for the carriers
17 which means it's going to be expensive for the users in
18 the long run. The fact is though those two factors have
19 caused the FCC to decide against any ruling for billed
20 party preference. And while I'm using a term you may
21 never have heard before, that is the only way that we
22 could possibly provide what you're suggesting. And then
23 you have that issue of who's going to pay for the control
24 equipment and all of the rest of it?

25 JUDGE COCHERES: Just a minute.

1 MR. LOVE: Can I confer with Mr. Kohler for one
2 second?

3 JUDGE COCHERES: Certainly. We'll be off the
4 record.

5 (Discussion off the record.)

6 BY MR. LOVE:

7 Q Mr. Malcom, do you know if the contract is a
8 public document?

9 A The contract is a public document, yes. Now,
10 there are three parts to the contract. You have what I
11 suspect is in your hand now which is a lot of the legalese
12 and so forth. We typically refer to that in our own
13 language as the standard conditions.

14 But there are two other parts to the ultimate
15 contract using the Commonwealth definition. The request
16 for proposal or whatever the procurement document was that
17 developed that or led to that document, plus the response
18 of the awarded vendor. So in this case we have an RFP, we
19 have the Bell Atlantic response and we have what we refer
20 to as a blue-back contract.

21 MR. LOVE: Okay. I want to show you -- again, Your
22 Honor, I apologize. I just have one copy that Mr. Kohler
23 has provided to me. But I'd like to make copies of it
24 later this afternoon and submit them as an Exhibit.

25 JUDGE COCHERES: That will be P-5. What are you

1 showing a contract?

2 MR. LOVE: Yeah.

3 (Complainant's Exhibit No. P-5 was produced and
4 marked for identification.)

5 MR. KOHLER: Your Honor, just so the record is
6 clear, this is a document that we've produced in discovery
7 to Mr. Love. We marked the document proprietary because
8 it came from our records and we were uncertain of whether
9 it was a public document or what restrictions it might be
10 subject to. It's now been clarified that it is a public
11 document, so AT&T would have no objection to removing that
12 classification.

13 JUDGE COCHERES: Fine. Thank you.

14 BY MR. LOVE:

15 Q Mr. Malcom, is that the contract we've been
16 discussing?

17 A It certainly appears to be. I'm only up to page
18 15.

19 Q I think Section 5.2 indicates the term of the
20 contract. Can you tell us what the term is?

21 A 5.2. You're way up in the front. I was looking
22 at 5.20. Term, yes.

23 Q And what's the term?

24 A Well, do you want me to read it?

25 Q Yeah.

1 A The term of this contract shall commence on the
2 effective date defined below and shall expire on December
3 31st, 2001, subject to the other provisions of the
4 contract. The effective date shall be the later of
5 January 1, 1999 or the date the contract has been fully
6 executed by the contractor and by the Commonwealth, all
7 approvals required by Commonwealth contracting procedures
8 have been obtained and the contract has been sent to the
9 contractor.

10 And there is another paragraph. It says that the
11 Commonwealth is hereby granted two successive options to
12 renew the term of the contract for a period of one year
13 each, which shall begin respectively at the expiration of
14 the then current term, upon the same terms, covenants and
15 conditions, provided, however, that the contract has not
16 been terminated. And then do you want the next paragraph
17 too, Mr. Love?

18 Q Yes, please.

19 A Next paragraph is notice of the election by the
20 Commonwealth to exercise each option hereunder shall be
21 given to the contractor in writing at least 90 days prior
22 to the expiration of the then current term, provided,
23 however, that the Commonwealth's right to exercise any
24 option hereunder shall not expire unless and until the
25 contractor has given the Commonwealth written notice of

1 the Commonwealth's failure to timely exercise its option
2 and 15 days opportunity from the Commonwealth's receipt of
3 the notice to exercise its option.

4 And then it has a concluding sentence in it. No
5 further instrument shall be required to be executed to
6 renew the term of the contract.

7 Q Now, if you could turn to Section 5.16, the rate
8 section.

9 A 5.16, okay.

10 Q Now, you've been thorough and I don't want to be
11 repetitive. Is there anything new in there that we
12 haven't gone over?

13 A In 5.16?

14 Q Yeah, the rates.

15 A Well, this just refers to the, again, the other
16 part of this contract which is the RFP proposal paragraph.
17 And I think we've covered that. One of the things that
18 does get in to, I guess it's that paragraph, I'm not sure.
19 It's in the document anyway that we will check from time
20 to time to make sure that the rates being charged by the
21 -- what could be various carriers. In this case it's --
22 well, it looks like AT&T, obviously, then Bell and GTE.
23 They are still within the constraints that we put in the
24 original RFP which simply said that those rates may not be
25 higher than those of the dominant carrier for the same

1 services.

2 Q Now, Section 5.17, commissions, is there
3 anything new in that section that we haven't gone over?

4 A Again, I think not. But I should point out that
5 I've said earlier, so that this all ties together, that
6 this is a range of commissions. Let's talk about the
7 intrastate, intraLATA, interLATA, excuse me.

8 Q Correct.

9 A Being 47 to 50. What we did in the final
10 negotiation on this was create that little matrix that I
11 mentioned to you earlier that involved the number of
12 service folks that are in the field that are supplied by
13 the contractor. And that is done. And those pages are
14 inserted in the actual response that is part of this
15 overall contract and initialed by myself and the sales
16 manager from Bell Atlantic in making that part of the
17 contract.

18 Q And moving on to Section 5.23, subcontractors.
19 Is there anything new you'd like to add based on that
20 information?

21 A Not that I'm aware of, no.

22 Q Just one final question, Mr. Malcom. Has the
23 competition in the phone industry peaked or is it getting
24 more intense as the years go by?

25 A Good question. I should retire and try to

1 answer that for very high fees. Mr. Love, I wish I knew.
2 Some folks in the room are very well aware that my
3 prediction all along for this divestiture under the Act of
4 '96 and so forth is that we're going to end up in this
5 country with five or six AT&T's, if that makes sense, in
6 other words, big companies.

7 And what has transpired in the last four or five,
8 six months, my crystal ball is getting to be more accurate
9 all the time with these mergers and acquisitions that are
10 going on. If you're driving at the point do I see
11 commissions increasing more, the answer is no.

12 Q You think they've leveled off?

13 A Oh, as a matter of fact, in a period of time
14 much to the unhappiness of the then representative of AT&T
15 in the later stages of I guess it was '96 when I was
16 trying to negotiate a rather good, as by implication
17 you've decided that our last extension was a very
18 satisfactory one from the Commonwealth standpoint. They
19 weren't very happy with me. And, in fact, during that
20 period of time, AT&T had made the decision they were going
21 to get out of business. And they added some changes,
22 reorganizations and here we are.

23 Now, at this point in time, if you were to ask me
24 where U.S. Sprint, the long distance Sprint in this
25 business, this is a very narrow business. Pay phones and

1 inmates are very narrow, very unusual. I don't know where
2 they are. Believe it or not, they did not participate in
3 this acquisition. They had been in once before. I don't
4 know. It's one of those things that a business makes a
5 business decision.

6 But, again, if you're talking about -- I mentioned
7 where I think commission rates are going. Let me take it
8 to the transport rates. Do I see transport rates in this
9 business changing a whole lot in the next couple of years?
10 No. We're getting to a point where, in my opinion,
11 because, obviously, I'm not proprietary in that
12 information. I try to guess because it's my business to
13 guess.

14 If I guess right, I'm doing well. If I don't, I
15 didn't make too much money. But the -- I think that we've
16 seen -- you'll notice on the long distance rates which you
17 even talk about at home, they're leveling off. They're
18 all playing games around \$.10 a minute where we'll give
19 you this and give you that. That's telling us something
20 that we've reached a plateau some place, I think.

21 MR. LOVE: Thank you very much, Mr. Malcom. No more
22 questions.

23 MR. KOHLER: Just a few questions, Your Honor.

24 CROSS EXAMINATION

25 BY MR. KOHLER:

1 scenario under which both Bell and AT&T essentially were
2 both general contractors continued from '88 until '99?

3 A Yes, there were several contracts. In fact, if
4 you look at the service order, there's separate service
5 orders for each.

6 Q Okay. And under those previous contracts, it
7 was Bell that was responsible for the local and the
8 intraLATA part of the service and AT&T that was
9 responsible for the interLATA part of the service; is that
10 right?

11 A AT&T only the interLATA. The better answer for
12 you is Bell and the other LECs in which prisons are
13 located.

14 Q Right. And the way the scenario is changed is
15 now there's only one general contractor, that being Bell;
16 is that right?

17 A Correct.

18 Q And AT&T is a subcontractor for the sole purpose
19 of providing interLATA services; is that correct?

20 A As a sub to Bell, yes.

21 Q Now, in questions from Mr. Love, you talked a
22 little bit about the payment of commissions from AT&T to
23 the Commonwealth. So the way that works is that AT&T
24 through their -- by way of their subcontract relationship
25 with Bell pays a commission obligation to Bell who turns

1 Q Mr. Malcom, I think you testified that the
2 Commonwealth receives from the inmate business
3 approximately \$5 million a year. Now, that's not all from
4 AT&T, right?

5 A No, that's right. There is some intraLATA
6 business from the local exchange carriers in there, yes.

7 Q Yes. And there would be received from GTE and
8 from Bell; is that right?

9 A Large, yeah. The biggest part being out of the
10 Graterford Prison outside of Philadelphia.

11 Q Now, you lost me a little bit in the beginning
12 of your testimony about how the contract progressed from
13 '88 to the present. AT&T was one of the general
14 contractors in 1998, I'm sorry, 1988, the other being
15 Bell; am I right there?

16 A As a result of an RFP, yes.

17 Q And then there were several RFP's issued in the
18 interim. But for one reason or another, none of them
19 resulted in a contract?

20 A An actually executed contract, correct.

21 Q And so the result was that the '88 contract was
22 extended until a new contract was signed in February of
23 99; is that right?

24 A Through, yes, painful negotiation.

25 Q So if I understand your testimony right, the

1 that money over to the Commonwealth. Is that the way it
2 works?

3 A That's the way it is intended under the new
4 contract, yes. Has it started yet? No. As a matter of
5 fact, we were working on it again yesterday.

6 Q Under the old contract, AT&T paid the
7 commissions, correct?

8 A The way it works -- let's talk about the old
9 contract. AT&T sent the commission checks to a large
10 group of addresses that we provided. In other words, the
11 welfare hospital and X, Y, Z got their check and so on.
12 The ones in the hallway out here go to general services
13 because they have the building, that sort of thing, same
14 thing with Bell, General, United, ALLTEL and so forth.
15 The state parks got their checks directly.

16 Q Okay. You mentioned that the payment of the
17 arrangement for the payment of commissions under the new
18 contract is being worked out. What's happening now? Is
19 AT&T paying commissions?

20 A They're still going direct. And Bell is putting
21 together the file now so that as the prime, they will come
22 indirectly.

23 JUDGE COCHERES: Your saying then that AT&T under
24 the new contract will pay to Bell which will turn the
25 money over as one lump sum.

1 THE WITNESS: No, our intention at this point in
2 time is that those locations that have been getting checks
3 over all of these years that still have pay phones will
4 continue to get that check. But instead of potentially
5 getting two or three or whatever, they will get one.

6 JUDGE COCHERES: They'll get it from Bell?

7 THE WITNESS: Yes.

8 JUDGE COCHERES: Okay.

9 BY MR. KOHLER:

10 Q Now, when Mr. Love was going through the
11 contract with you, you testified about a provision in the
12 RFP that established end-user rate ranges for the general
13 contractor and the subcontractor; is that right?

14 A You mean the commission ranges?

15 Q No, the end-user rate ranges. Maybe I
16 misunderstood you.

17 JUDGE COCHERES: He's saying end-users meaning
18 customers, people who use the phone.

19 BY MR. KOHLER:

20 Q Let me ask it a different way. Are there any
21 restrictions in the contract or the RFP which is part of
22 the contract that you're aware of that restrict the rates
23 that AT&T can charge to end-user customers?

24 A Yes, they cannot charge more than the dominant
25 carrier. And now, that dominant carrier, as I'm sure you

1 know and probably the Judge, is a questionable subject
2 right now because of what the FCC is doing. AT&T
3 themselves for some years because of their dominance in
4 the business when divestiture occurred was considered the
5 dominant carrier. Their rates still must be filed with
6 the FCC and the PUC and must be approved.

7 Q But I just want to -- does the Commonwealth
8 still consider AT&T the dominant carrier?

9 A Absolutely.

10 Q And so my question is what is actually the rate
11 ceiling in the contract since AT&T is both the ceiling and
12 the subcontractor?

13 A If you want to look at it that way, you could
14 make a case that there isn't any. But the fact is that if
15 they decided to raise that, they're going to have to
16 convince the FCC and the PUC that they should do that.
17 And you're going to have MCI and Sprint right behind them.

18 Q Understood. So is it true that it's AT&T that
19 sets its rates for inmate services, not the Commonwealth?

20 A Oh, absolutely.

21 Q And AT&T could decrease or increase those rates
22 as long as it was approved by the regulators without
23 violating the contract?

24 A With our concurrence. Remember, we retain a
25 30-day termination on everything.

1 Q Okay. Now, you talked a little bit about
2 dial-around compensation or you called it a per call
3 compensation.

4 A Um-hum.

5 Q And you testified, I believe, that you were a
6 little bit puzzled about why that applied to inmate
7 services. Is the reason, putting aside the rationale, is
8 the reason that it applies to inmate services because --
9 because the FCC ordered that it apply to inmate services?

10 A I don't know that. I've tried to find in the
11 FCC documentation the term inmate. And up to now, I
12 haven't been able to find it. And on the intraLATA side,
13 there's apparently been a ruling. I haven't seen that yet
14 either. But I had a call on it the other day that gives
15 them an option because I'm concerned about that on this
16 contract.

17 On this contract on the intraLATA side, it's an
18 important point on your question. The intraLATA is being
19 carried by a firm called Qwest. Now, my question was,
20 okay, on this PCC, how is Qwest compensating Bell Atlantic
21 since Bell Atlantic owns them both in their territory at
22 least?

23 And it turns out that the -- apparently the ruling
24 gives one option or another. And one is to actually pay
25 it. In other words, to charge the customer the \$.30 which

1 is what's happening on the IXC side, the interexchange
2 carrier side and, of course, remit it direct to the pay
3 phone ownership.

4 The other option is to reduce the percent commission
5 commensurately to be compensated for what they charge the
6 customer but they're not remitting it. So you're taking
7 some of the accounting out of the process. At least
8 that's what it means to me. Those are apparently the two
9 options that I discovered over the last week or so.

10 Q Would it surprise you that AT&T is strongly
11 opposed to per call compensation both for pay phones and
12 inmate services?

13 A It wouldn't surprise me in the least. If
14 they're looking for another vote, they should ask.

15 Q Now, you're not sure why, but you are aware that
16 AT&T has a per call compensation obligation in the inmate
17 services context; is that right?

18 A Yes.

19 Q Now, do you know who AT&T pays that per call
20 compensation to?

21 A I don't know who specifically or how. But they
22 are supposed to be paying it to the owners of the phone.
23 That's why I've gotten in those areas because the owners
24 of the phones vary depending on what -- by and large,
25 Bell, I guess.

1 Q Right. The Commonwealth is not getting that?

2 A Oh, no, we own nothing and don't want to.

3 MR. KOHLER: Understood. Nothing further.

4 JUDGE COCHERES: Before we have redirect, there's a
5 couple questions that I have for you because I want to
6 understand your chart that you did. Do you have what you
7 call P-4, the chart that you prepared?

8 THE WITNESS: Yes.

9 JUDGE COCHERES: Good. When you say that the
10 commission, that the Commonwealth receives 50 percent of
11 the gross billed revenue, does that mean that the -- since
12 it is gross billed revenue that you get 50 percent of
13 \$7.35 on line one of your column?

14 THE WITNESS: Good question. I don't know. I doubt
15 it on the \$.30. Prior to that, yes.

16 JUDGE COCHERES: So you'd get 50 percent on \$7.05?

17 THE WITNESS: I think, yes. Yes, assuming it was
18 billed.

19 JUDGE COCHERES: And I always thought that Albion
20 was sort of just South of Erie?

21 THE WITNESS: I'm going to suspect you're right.

22 JUDGE COCHERES: I had the honor of being there
23 once.

24 THE WITNESS: Fortunately I have not.

25 MR. LOVE: Hopefully it wasn't winter.

1 JUDGE COCHERES: It was winter. Okay. Is there any
2 redirect?

3 MR. LOVE: No redirect, Your Honor.

4 JUDGE COCHERES: Fine. The witness is excused and
5 thank you for coming.

6 THE WITNESS: Thank you.

7 MR. LOVE: I call Deputy Commissioner Shaffer to the
8 stand.

9 JOHN SHAFFER, called as a witness, having been duly
10 sworn, was examined and testified as follows:

11 JUDGE COCHERES: Thank you. Please be seated. Good
12 afternoon to you, sir.

13 THE WITNESS: Good afternoon.

14 DIRECT EXAMINATION

15 BY MR. LOVE:

16 Q Good afternoon, Mr. Shaffer. I appreciate you
17 coming.

18 A Good afternoon.

19 Q Your full name again for the record please.

20 A My name is John S. Shaffer, S-H-A-F-F-E-R.

21 Q And your current position?

22 A I'm the Deputy Secretary for Administration with
23 the Pennsylvania Department of Corrections.

24 Q And how long have you held that position?

25 A Since December of 1997.

1 Q And prior to that, what position did you hold?

2 A I was the deputy superintendent for facility
3 management at the state correctional institution in
4 Somerset.

5 Q And how long were you at that position?

6 A I was there from 1992 to 199 -- it gets a little
7 complicated. I was the warden for the Allegheny County
8 jail for most of the year of 1996. But I was essentially
9 at Somerset from '92 until '97 except for that interim
10 period when I was at the Allegheny County jail.

11 Q And how long have you been with the Department
12 of Corrections except for this brief period when you were
13 with the Allegheny County Jail?

14 A I have been with the Commonwealth since May 25th
15 of 1977. I've been with the Department of Corrections
16 since April of 1986.

17 Q And what are your responsibilities in that
18 position briefly?

19 A My current position?

20 Q Yeah.

21 A I'm responsible for all fiscal administration.
22 I'm responsible for construction, engineering and
23 operations, food service, all of the inmate health care,
24 all of the staff development and training, bureau of human
25 resources, equal opportunity.

1 Q Briefly, what's your educational background?

2 A I have a Bachelor's Degree in sociology from
3 Westminster College. I have a Master's Degree in public
4 administration from the University of Pittsburgh, and I
5 have a PhD in public administration from the University
6 of Pittsburgh.

7 Q Do you have knowledge of the current telephone
8 system that the Department of Corrections operates?

9 A Yes.

10 Q Do you have knowledge of the current contract
11 under which that service is provided?

12 A Yes.

13 Q And can you give me just a little bit of an idea
14 of how far back your knowledge would go with regard to the
15 telephone issue?

16 A I served on two RFP committees. The most recent
17 one that resulted in a contract awarded in February of
18 '99. And I served on the one just prior to that that
19 resulted in the Commonwealth rejecting that and not
20 awarding that.

21 Q Would that have been the 1994 bid that Mr.
22 Malcom discussed?

23 A To use his date, I mean it stretched over so
24 many years, '94, '95, '96. It was a long drawn out
25 process.

1 Q Can you give us a description of how an inmate
2 would access the telephone system?

3 A An inmate fills out a form that he may list up
4 to 20 telephone calls on. In addition, he can list -- the
5 form allows for up to four attorneys. We make exceptions
6 if somebody has multiple counsels. But generally the list
7 is 20 personal phone calls and four attorney calls. The
8 inmate submits that list. It is input into the inmate
9 telephone control system. Once it's input, then the
10 inmate can place the calls as previously described. Do
11 you want me to go through and repeat what we've already
12 heard?

13 Q No, just to fill in the blanks so to speak. You
14 say there's two attorney calls?

15 A The form itself allows four lines. Most inmates
16 don't have four attorneys. There are exceptions. Some
17 have more and we make accommodations for that.

18 Q Are there time limits placed on calls?

19 A Yes, sir.

20 Q And what are the time limits? Are they uniform
21 or are they different for different people?

22 A It's based on the inmates custody level.
23 There's a classification system. All inmates receive a
24 classification level which can change based on their
25 behavior and various factors. A custody level five inmate

1 is an inmate who's housed in the restrictive housing unit.
2 Those inmates can only access the phone for bonafide
3 emergency purposes, legitimate purposes and legal calls.
4 Custody level four inmates are permitted three 15 minute
5 calling blocks per week. Understand a calling block does
6 not necessarily mean a straight 15 minutes. A calling
7 block could be three five minute calls, it could be 15 one
8 minute calls, but essentially a custody level four inmate
9 gets three 15 minute phone calls per week. Custody level
10 three inmate --

11 Q At his discretion as to which way he utilizes
12 his time?

13 A Yes, custody level three inmate can make one 15
14 minute call block per day. It could be any combination.
15 Custody level one and two inmates generally have unlimited
16 access to the phone. They are cutoff after 15 minutes.
17 But they can get right back on and call again.

18 Q Do you recall Mr. Frantz testifying this
19 morning? Were you present when he testified?

20 A Yes, I was.

21 Q He indicated his son was at Waymart. Do you
22 know what custody levels Waymart generally houses?

23 A All of our facilities house inmates of all
24 custody levels. Waymart is classified as a security level
25 two. There's a distinction between the security level

1 classification of an institution and the custody level
2 classification of an inmate. We do classify Waymart as a
3 security level two facility. But within the confines of
4 that facility, we have inmates ranging from custody level
5 two through five.

6 Q You don't know what level Mr. Frantz's son was
7 at?

8 A No, sir, I do not.

9 Q Does the Department of Corrections have a role
10 in the development of the request for funding proposals
11 for telephone services?

12 A We have representation on the RFP committee,
13 yes.

14 Q And who would that representative be?

15 A I was on that committee. We also had
16 Superintendent James Morgan who is the superintendent of
17 the State Correctional Institute at Smithfield. And we
18 had Mr. David Garlinger who is our Chief of the Support
19 Services Division who essentially handles radio and
20 telecommunications services and vehicle maintenance
21 services for the Department of Corrections. Those are the
22 three Department of Corrections' representatives. There
23 are also representatives from other state agencies as
24 well.

25 Q So you participated in the last RFP; is that

1 fund.

2 MR. KOHLER: None of it is relevant, Your Honor. As
3 the evidence is clearly --

4 MR. LOVE: It may not be relevant to Mr. Kohler's
5 position, but my client is here to protest the high rates
6 of telephone calls which have been going up, up, up in her
7 20 years of phone calls. And it's certainly relevant to
8 her position. And that's why I'm putting it on the record
9 or attempting to put it on the record.

10 JUDGE COCHERES: It is irrelevant. The motion is
11 granted.

12 MR. LOVE: Note my objection for the record.

13 JUDGE COCHERES: Your exception is automatic, sir.

14 (Complainant's Exhibit No. P-9 was produced and
15 marked for identification.)

16 BY MR. LOVE:

17 Q Now, Deputy Shaffer, I want to show you a
18 Pennsylvania Department of Corrections Monthly
19 Institutional Profile which I am marking P-9 dated
20 February 28th, 1999. And I'll ask you if you're familiar
21 with this document?

22 A Yes, I am.

23 Q And I draw your attention to the section
24 regarding race, the DOC total, at the bottom line, DOC
25 total under raise. Is it correct on the --

1 MR. LOVE: Your Honor, there's no foundation for
2 this. I mean, the fact of the matter is that in an inmate
3 service scenario, AT&T cannot tell what the race of either
4 the person calling is or the called person is. What the
5 statistics are of the racial makeup of a given
6 correctional facility has absolutely nothing to do with
7 what AT&T's rates should or shouldn't be in this -- in
8 this case.

9 I understand Mr. Love's -- the argument Mr. Love
10 wants to make. But it's not relevant to the case in the
11 standard that the Commission is going to apply in this
12 case. And it's getting late in the day more important.

13 JUDGE COCHERES: No, it's not getting late in the
14 day. We'll be here for as long as it takes.

15 MR. KOHLER: I understand, Your Honor.

16 JUDGE COCHERES: All right. Mr. Love?

17 MR. LOVE: Your Honor, my client when she filed her
18 complaint in April of 1998 alleged that the system was
19 racist because it had a disproportionate impact on racial
20 minorities, people of color. And she testified earlier
21 this morning about the same thing without any objection
22 from Mr. Kohler. And I'm merely trying to get the
23 accurate numbers of the racial characteristics --

24 MR. KOHLER: Your Honor, let's put the document in
25 the record and leave it at that.

1 JUDGE COCHERES: Fine. It's stipulated in. Move
2 on.

3 MR. LOVE: Thank you, Your Honor.

4 BY MR. LOVE:

5 Q Deputy Commissioner Shaffer, you heard some
6 testimony -- were you here this morning when several
7 family members of inmates testified?

8 A Yes.

9 Q And they essentially stated that they were of
10 the belief that contact with family members was important
11 in the rehabilitation process. Would you agree with that
12 statement?

13 A Yes.

14 Q And would that include communications by
15 telephone?

16 A Yes.

17 Q And were they correct that the Department of
18 Corrections has a policy that inmates, when they enter the
19 system, get sent to the institution farthest away from
20 their family?

21 A No.

22 Q Could you clarify that?

23 A There is no formal written or official policy to
24 that effect.

25 Q There's no policy whatsoever that dictates the

1 positioning of an inmate with respect to his family?

2 A An inmate's placement in our system is based on
3 his programming needs, his custody level and various other
4 factors.

5 Q And has nothing to do with where their family
6 members are located?

7 A When where possible we try to accommodate that.
8 But, frankly, that is a lesser criterion than the ones I
9 previously stated.

10 Q Didn't Commissioner Horn attempt to introduce
11 such a policy about a year ago?

12 MR. GUZZI: Objection, Your Honor, calls for
13 hearsay.

14 JUDGE COCHERES: Mr. Love?

15 MR. LOVE: Commissioner Horn is his boss. I would
16 assume he knows what he's doing.

17 JUDGE COCHERES: You've never been in State
18 Government, have you?

19 MR. LOVE: I am from Philadelphia, Your Honor.

20 MR. KOHLER: It's also irrelevant, Your Honor.

21 MR. GUZZI: If the Secretary of Corrections issues
22 such a verbal command to his field staff, he could have
23 subpoenaed the Commissioner himself.

24 JUDGE COCHERES: As a matter of fact, I'll overrule
25 the objection. I don't believe that it's hearsay. It's a

1 directive issue in the ordinary course of business.

2 MR. KOHLER: Your Honor, it is irrelevant though. I
3 mean, there is now evidence on the record that our rates
4 are distant sensitive. So what the Department of
5 Corrections' policy is to placing inmates in facilities,
6 no matter what it is, could not be relevant to this case.

7 JUDGE COCHERES: How do you respond to that, Mr.
8 Love?

9 MR. LOVE: I would agree with Mr. Kohler for once.

10 JUDGE COCHERES: Good. Move on. The objection is
11 sustained. And it's the second time you two have agreed.

12 MR. LOVE: Sorry. I stand corrected, Your Honor.

13 BY MR. LOVE:

14 Q Are you familiar at all with the breakdown of
15 the \$3 surcharge that is put on each phone call?

16 A No.

17 Q You don't know the breakdown?

18 A No, sir.

19 Q This 50 percent commission or 47 percent
20 commission that the Commonwealth takes, are you familiar
21 at all with where that money goes and for what?

22 A All I know is the \$3 million per year goes to
23 the Department of Corrections in the general welfare fund.
24 The remaining goes to the Commonwealth general fund.

25 Q It's all profit?

1 A It is commissions paid from the inmate telephone
2 from the phone companies.

3 Q But it's not to pay for any services that your
4 organization renders?

5 A Indirectly you could say that. I mean, it goes
6 into the general welfare fund. And from that, all state
7 appropriations flow. So, indirectly, some of that money
8 does come back, although it may not be that exact dollar
9 bill.

10 Q Right. As part of the general appropriations to
11 the Department of Corrections?

12 A Among other state agencies, among all state
13 agencies.

14 JUDGE COCHERES: What was the general appropriation
15 for your agency during the last fiscal year '98-99?

16 THE WITNESS: Approximately \$1 billion.

17 JUDGE COCHERES: One billion. Thank you.

18 MR. LOVE: I have nothing further, Your Honor.

19 JUDGE COCHERES: Good.

20 MR. KOHLER: No cross.

21 JUDGE COCHERES: No cross? All right. In that
22 case, the witness is excused. Thank you for coming, sir.

23 THE WITNESS: Thank you.

24 MR. LOVE: Your Honor, I'm going to rest at this
25 time with the understanding that Mr. Kohler is going to

1 call the AT&T person and I will have the opportunity to
2 cross-examine her rather than call her as of
3 cross-examination.

4 JUDGE COCHERES: All right. Mr. Love, I'm not sure
5 what your general experience is but I'm going to get you
6 started down the right road. And that is do you wish to
7 move your exhibits in?

8 MR. LOVE: Oh, I'm sorry, Your Honor. I always
9 forget that.

10 JUDGE COCHERES: That's important Mr. Love

11 MR. LOVE: I'd like to move P-1 through 9 into
12 evidence, Your Honor.

13 JUDGE COCHERES: P-1 through 7 are admitted. P-9 is
14 admitted. P-8 is not admitted.

15 MR. KOHLER: No objection, Your Honor.

16 JUDGE COCHERES: That helps.

17 (Complainant's Exhibit Nos. P-1 through P-7 and P-9
18 were admitted into evidence.)

19 JUDGE COCHERES: All right. We're going to take a
20 break. It's 20 minutes after by the clock above your
21 head. Be back in your seats by 3:30 please.

22 (Whereupon, a brief recess was taken.)

23 JUDGE COCHERES: Let's go back on the record. Mr.
24 Kohler, I see your witness is here.

25 MR. KOHLER: Yes, Your Honor. We will get in to

1 Proprietary information. I'll let you know when that
 2 occurs. But we do, assuming Ms. Feigley has or is going
 3 to sign the acknowledgment, we will not have to clear the
 4 room. Mr. Geller is fine.
 5 JUDGE COCHERBS: Okay. And I assume the people
 6 behind you are your folks.
 7 MR. KOHLER: Well, one is my folk and the other
 8 works for Mr. Geller.
 9 JUDGE COCHERBS: Okay. All right. Can you please
 10 raise your right hand?
 11 PATRICIA CALGA, called as a witness, having been
 12 duly sworn, was examined and testified as follows:
 13 JUDGE COCHERBS: Thank you. Please be seated and
 14 good afternoon.
 15 THE WITNESS: Good afternoon, Your Honor.
 16 DIRECT EXAMINATION
 17 BY MR. KOHLER:
 18 Q Good afternoon, Ms. Calga.
 19 A Good afternoon.
 20 Q Can you state your name and business address for
 21 the record, and you might want to spell your name for the
 22 Court Reporter.
 23 A My name is Patricia Calga, C-A-L-G-A. My
 24 address is 1600 Market Street, Philadelphia, Pennsylvania
 25 19103.

1 Q And by whom are you employed?

2 A AT&T.

3 Q And can you tell us what your present job is with AT&T?

4 A I currently am -- my title is docket manager. I work in the law and government affairs department for AT&T. My responsibilities generally include docket management, regulatory work, overseeing tariff files, resolving customer complaints.

9 Q And how long have you been in that position?

10 A I've been in my current position for three years approximately. I've been in the law government since divestiture in various capacities.

13 Q I won't go into your various positions with AT&T over the years, but can you summarize your past and present responsibilities with AT&T?

16 A I began with AT&T as the secretary to the vice president in law and government affairs. As I stated, I currently work as a docket manager for Pennsylvania. I oversee all of the active dockets for Pennsylvania. In addition, overseeing tariff filings, working with the Commission's staff on the tariff filing and the resolution of customer complaints.

23 Q And is it true you've been doing that back almost since divestiture?

25

1 A Yes.

2 Q Now, during this period, did your job involve
3 familiarity with not only the tariffing process, but the
4 manner in which AT&T's rates and prices are regulated by
5 the Commission?

6 A Yes, that's correct.

7 Q And were you active in submitting documents and
8 doing whatever was necessary to comply with that
9 regulation?

10 A Yes, I am. I am and I was.

11 Q In that capacity, are you familiar with how the
12 regulation of AT&T's rates and services have changed over
13 the years?

14 A Yes, I am generally. Prior to divestiture, AT&T
15 and the Bell companies were under a rate base rate of
16 return regulation post divestiture with the introduction
17 of interLATA competition. The Commission transitioned to
18 an operating ratio for the regulation of interexchange
19 carriers.

20 Q And that was done by the Commission through
21 orders back around divestiture?

22 A Yes.

23 Q Now, can you explain your understanding of what
24 the difference in regulation is between rate base rate of
25 return and operating ratio?

1 A Yes. Basically, rate base rate of return
2 permits a return on capital, while operating ratio permits
3 a return on total sales.

4 Q Now, has -- when was divestiture?

5 A 1984.

6 Q Has this operating form of regulation -- strike
7 the question. What type of carrier has AT&T historically
8 been in Pennsylvania?

9 A An interexchange carrier.

10 Q And is the typical acronym for that an IXC?

11 A Yes, it is.

12 Q Now, you've testified what the rate regulation
13 is. Was that for all IXCs or just for AT&T?

14 A That was for all IXCs.

15 Q Now, has this operating ratio for rate
16 regulation for IXCs also changed overtime?

17 A Yes, it has. With the passage of Chapter 30,
18 Chapter 30 of the Pennsylvania Public Utility Code
19 deregulated a vast majority of services for interexchange
20 carriers. The only services that are still regulated by
21 the Commission are EAS, extended area services, and
22 zero-plus services which are services through an
23 aggregator. And this includes services such as pay
24 phones, phones in hotels, hospitals. And this also
25 includes inmate services.

1 Q Now, for the record, when was the Chapter 30
2 passed, do you know?

3 A I believe it was 1995 -- 1993, sorry.

4 Q Now, under the current form of regulation of the
5 services that are still subject to regulation, are these
6 services regulated on a service-by-service basis?

7 A Yes, they are.

8 Q And what is your understanding of how the
9 Commission has been regulating AT&T's rates for zero-plus
10 service since the passage of Chapter 30?

11 A The Commission hasn't developed a specific
12 standard for regulating on a service-by-service basis.
13 But I know from working with the Commission's staff that
14 generally they focus on the relationship between the price
15 of the service or the revenue of the service and the
16 underlying cost of the service.

17 Q Now, are you -- do you have a general
18 familiarity with AT&T's provision of inmate services in
19 Pennsylvania?

20 A Yes, I do.

21 Q And can you give a brief overview of AT&T's
22 activity in that market?

23 A Yes, AT&T serves local, state and federal
24 correctional facilities. They're all served through a
25 collect call system, collect call only system which is

1 installed specifically for the correctional facility. The
2 service providers for the inmate services are selected by
3 the governmental entity that would issue an RFP.
4 Companies would provide bids on the service. If AT&T
5 would win the bid for the service, they would provide the
6 portion of the service for which they bid on.

7 And currently AT&T provides interLATA services for
8 state correctional facilities as a subcontractor to Bell
9 Atlantic.

10 Q Does AT&T charge the same rates regardless of
11 the type of correctional facility?

12 A Yes.

13 Q Are these rates governed by Commission tariffs?

14 A Yes, they are.

15 Q Now, let's get in to -- there's been some
16 general discussion about AT&T's rate design. And Mr.
17 Malcom shed some light on that. Let's get into that area.
18 Can you basically describe the rate structure of inmate
19 services?

20 A Yes, there are three components of the rate
21 structure for AT&T's inmate service. The first service is
22 the prison collect surcharge which is a surcharge that is
23 applied to every call to recover the costs that are unique
24 to providing service from a correctional facility.

25 Q What's the second component?

1 doesn't matter where you're calling from or where you're
2 calling to or what time of day you called.

3 Q Okay. Now, let's take the first component of
4 prison collect surcharge. Are you familiar with what the
5 level of that surcharge is in Pennsylvania?

6 A Yes, I am.

7 Q And what is it?

8 A It's \$3. I'm sorry, what was -- was that your
9 question?

10 Q Yes. What is the level of the surcharge?

11 A It's \$3 per call.

12 MR. KOHLER: Your Honor, I'd like to mark as AT&T
13 Exhibit 1, I happen to have a certified authenticated
14 document which I'll give the Court Reporter.

15 MR. LOVE: Are you marking this?

16 MR. KOHLER: At&t Exhibit 1. Does Your Honor have a
17 preference as to how the exhibits are marked?

18 JUDGE COCHERES: That's fine with me.

19 (AT&T Exhibit No. 1 was produced and marked for
20 identification.)

21 BY MR. KOHLER:

22 Q Now, can you identify this document, Ms. Calega?

23 A Yes, this is a portion of AT&T's intrastate
24 tariff for the state of Pennsylvania which defines AT&T --
25 a service called AT&T prison collective controls which

1 A The second component is pay phone compensation
2 surcharge which Mr. Malcom has already spoken about in
3 quite an amount of detail. That's the FCC ordered pay
4 phone surcharge which is \$.30 for every call placed from a
5 pay phone.

6 Q Now, has the FCC ordered the surcharge or have
7 they ordered AT&T's obligation to pay per call
8 compensation?

9 A They ordered AT&T's obligation to pay per call
10 compensation.

11 Q And is the purpose of that surcharge to recover
12 the costs incurred under that obligation?

13 A Yes, it is.

14 Q And what's the third?

15 A The third is the transport charge which is the
16 charge for transporting the call from origination to
17 termination. That rate that is currently tariffed in
18 Pennsylvania is a \$.27 postalized rate which went into
19 effect last June of 1998. Prior to June of 1998, there
20 was a distant sensitive charge for the transport. But now
21 it's just a flat \$.27.

22 Q Now, you use the term postalized charge. What
23 do you mean when you say postalized charge?

24 A It means that there is no distance or time of
25 day sensitivity to that rate. It's a flat rate. It

1 correct?

2 A That's correct.

3 Q And did they -- were you familiar with the bids
4 that were submitted?

5 A Yes.

6 Q How many bids were submitted?

7 A As I recall, this last one we had three bids.

8 Q And who were those three?

9 A There was two separate proposals from Bell. And
10 I can't recall who was the third one.

11 Q Is it a situation where you take a low bid?

12 A No, sir.

13 Q Was the low bid the one that was given?

14 A I don't recall whether it is or not. An RFP is
15 not a low-bid situation. It doesn't necessarily have to
16 go to low bid.

17 Q Was it the company that offered the greatest
18 commission that was awarded the contract?

19 A That was one factor of several.

20 Q What were some of the other factors?

21 A Who could provide the best call control
22 processing equipment, the most reliable equipment, things
23 like that.

24 Q And you had heard testimony today that this
25 contract has generated about \$6 million in profit. Do you

1 couple of years. But I don't know if it was prior to
2 that, I really don't know.

3 Q And can you tell the Court what the inmate
4 general welfare fund is?

5 A The inmate general welfare fund is a fund that
6 is established to provide services for inmates. A lot of
7 that money is spent for recreational equipment;
8 basketballs, softballs, volleyballs, things like that. It
9 provides for inmate entertainment. For example, we
10 occasionally contract for concerts, magicians, things like
11 that. It's also used for therapeutic services. It all
12 goes for the direct benefit of inmates.

13 Q Okay. I'm going to show you administrative
14 manual volume 30M022.01 revised dated October 16th, 1990
15 and ask you if you could identify this document.

16 JUDGE COCHERES: We will mark this as?

17 MR. LOVE: P-6, I'm sorry.

18 (Complainant's Exhibit No. P-6 was produced and
19 marked for identification.)

20 THE WITNESS: Yes, I'm familiar with this document.

21 BY MR. LOVE:

22 Q And is that the regulations that govern the
23 inmate general welfare fund procedures?

24 A Yes.

25 Q Now, are there any statutes that dictate the use

1 of these funds?

2 A Not that I'm personally aware of.

3 Q Are there any regulations that dictate the use
4 of these funds?

5 A Only our internal guidelines as far as I know.

6 Q And these are your internal guidelines?

7 A Yes, sir.

8 Q And if I turn to Roman Numeral ten on page 5.
9 Just to save some time, I'll briefly run through the
10 categories; recreation and athletics, audio, visual,
11 outside entertainment, library, artist programs, visiting
12 room area, day room recreation area, chapel activities,
13 Christmas, CCC, which I assume is community correction
14 centers?

15 A Correct.

16 Q And other one time purchases approved by
17 counsel. Would that be a fairly accurate portrayal of the
18 areas that these monies are spent?

19 A Yes.

20 Q Now, when I look at that last section, other one
21 time purchases by counsel, what would inmate accounts
22 receivable be?

23 A Supplies necessary to operate the following
24 income producing services not approved, inmate accounts
25 receivable. Essentially we don't use that for that

1 purpose. What this directive allows us to do if we ever
2 chose to was to offset the administrative costs of our
3 inmate account receivables department for those services
4 provided for the direct benefit of inmates, processing
5 checks and things like that. We don't currently do that.

6 Q So you don't use money from this account for
7 that purpose, is that what you're saying?

8 A We do not currently charge administrative costs.

9 Q But the monies come from this fund -- I'm sorry.

10 A You lost me. What are you talking about?

11 Q There's a cost of doing the inmates accounts,
12 correct?

13 A There's a cost of business which the
14 Commonwealth absorbs. It is not passed on to the inmates
15 or to the inmate welfare fund.

16 Q But it is in here as a category?

17 A It is a category but we did not use it.

18 Q Barber shop and cosmetology?

19 A That's to purchase equipment for the barbershop.
20 For example, barber chair, combs, all the supplies
21 necessary for those programs. Those are inmate training
22 programs. And they also provide those services to
23 inmates, the haircuts. And for females, the cosmetology
24 services.

25 Q And the inmate has to get a haircut; am I right?

1 A There is a grooming directive. There are some
2 exceptions.

3 Q If they don't get a haircut, they can be thrown
4 into the restrictive housing unit; is that correct?

5 A Subsequent to a due process hearing, yes.

6 Q Shoe repair, what's that about?

7 A There are some facilities for an inmate trade
8 program. They teach inmates how to repair shoes. And
9 some of the equipment may be purchased out of the general
10 inmate welfare fund if it's for the benefit of the inmate.

11 Q And whose shoes do they repair?

12 A Other inmates' shoes. And there is a program
13 available that employees could bring their shoes in and
14 they would pay for the cost of the materials. And that
15 would go back into the inmate general welfare fund.

16 Q And the Commonwealth does have an obligation to
17 provide shoes to inmates?

18 A That is correct.

19 Q And repair them when they're not working
20 properly?

21 A That is correct.

22 Q And hobby and craft shops, what's that?

23 A Again, there's an inmate trade program where
24 they learn to make things. Generally it's woodworking.
25 There are some leather crafts, things like that. And this

1 would be to purchase the equipment for those income
2 producing shops as the inmates make things; birdhouses,
3 signs, jewelry boxes, etc. Then they are sold to the
4 general public, to inmate families, to employees, to the
5 general public. And the monies go back in the welfare
6 fund.

7 Q And the automotive?

8 A Same thing. We repair staff vehicles at the
9 cost of materials and supplies. This category is to
10 purchase the tools necessary to run the program.

11 Q Tailoring?

12 A Essentially the same thing as shoe repair. It's
13 a trade program where we buy sewing machines and related
14 equipment so the inmates can learn the trade of tailoring.

15 Q And does that include tailoring staff clothes
16 also?

17 MR. KOHLER: Your Honor, we're going awfully far
18 afield here. I'd just like to move the proceeding
19 forward.

20 JUDGE COCHERES: Where are we going, Mr. Love? He's
21 asking for an offer of proof.

22 MR. LOVE: I'm just trying to detail where the
23 revenues that are generated by the contract are going.

24 MR. KOHLER: Your Honor, this line of questions has
25 been irrelevant from the beginning. I've let it go on.

1 MR. LOVE: I'll be happy to move on. The document
2 speaks for itself. I'll go on.

3 JUDGE COCHERES: Fine.

4 BY MR. LOVE:

5 Q Turning back to number two, the scope. Inmate
6 general welfare consists of non-appropriated funds for the
7 following services: Inmate individual account sales from
8 commissary, hobby craft functions, personal services
9 available to institutional employees, collect call
10 telephone commissions. So this is where this is part of
11 the revenues of this fund; am I correct?

12 A The inmate telephones?

13 Q Yeah.

14 A Yes.

15 Q And that's \$3 million worth?

16 A Per year, yes.

17 Q And how much is the total spent on this? How
18 much is the total -- I'll withdraw that question. Next,
19 I'd like to show you the 1998-99 inmate general welfare
20 fund budget August 4, 1998 marked P-7.

21 (Complainant's Exhibit No. P-7 was produced and
22 marked for identification.)

23 BY MR. LOVE:

24 Q Could you identify this document?

25 A This is the 1998 and 1999 inmate general welfare

1 fund budget where we allocate funds to each institution
2 out of the inmate general welfare fund.

3 Q Now, on page 3, am I correct that's the '98-99
4 budget for each institution of the overall budget?

5 A That's correct.

6 Q And am I correct the total is 4.192750?

7 A Yes.

8 Q So about 75 percent of the revenues from this
9 fund are generated from the telephone contract; is that
10 correct?

11 A Yes.

12 Q Now, I see item number 6 major purchases,
13 Cambridge Springs - day-room furniture, \$10,000. What
14 would that be?

15 A Furniture for the day room in Cambridge Springs.

16 Q And then Chester visiting room furniture,
17 \$15,000?

18 A Same thing visiting room furniture for the state
19 correctional institute of Chester.

20 Q Is the state obliged to provide furniture for
21 the visiting room?

22 A We do.

23 Q And you also take some funds out of this?

24 A That's correct.

25 Q And the Cresson, install yard lighting, 24,000.

1 Isn't it an obligation to provide lighting for the yard?

2 A We do.

3 Q Same with the yard fence at Laurel Highlands?

4 A Correct.

5 Q What's the markup on commissary items?

6 A Five percent on all items except cigarettes.

7 which is \$.02 per pack.

8 MR. KOHLER: Your Honor, we're getting farther away
9 from the case by the minute.

10 MR. LOVE: I'm just about finished this line of
11 testimony.

12 MR. KOHLER: We're getting into commissary markup
13 and we started the case about AT&T's rates.

14 MR. LOVE: There is a reason for all of this.

15 JUDGE COCHERES: And you're going to tell me right
16 now.

17 MR. LOVE: There has been a debate within the
18 Department of Corrections over the years on how to use
19 this telephone money. And I want to get into that with
20 Deputy Commissioner Shaffer on what the Department of
21 Corrections' philosophies have been with regard to the
22 revenues from the telephone companies. I'm just trying to
23 give us a starting point for that debate.

24 MR. KOHLER: Your Honor, this is all interesting but
25 what does that have to do with AT&T's rates? I mean

1 that's what this case is about.

2 JUDGE COCHERES: Well put, Mr. Kohler. What does
3 this have to do -- we know that now the \$3 million goes in
4 to the prison welfare fund. We know how it's spent and we
5 know what the total fund is. Why should I care what they
6 use -- whether they buy visiting room furniture from it or
7 anything else?

8 MR. LOVE: Ms. Feigley brought a complaint
9 concerning her telephone rates.

10 JUDGE COCHERES: Yes.

11 MR. LOVE: And we're concerned about the amount of
12 those rates.

13 JUDGE COCHERES: Yes.

14 MR. LOVE: And as such, we'd like to know where the
15 money goes. And that's what this is about.

16 MR. KOHLER: Your Honor, we'll stipulate we don't
17 have control over where the money goes which is about the
18 only thing that's relevant to -- the only thing that's
19 relevant is that we pay the Commonwealth a certain amount
20 of money. That's not even on the record yet. But that we
21 pay the Commonwealth a certain amount of money as
22 commissions in order to provide -- in order to get their
23 business. Where that money goes simply isn't relevant to
24 this case. It may be public information. It may be
25 interesting, but it's not part of this case.

1 JUDGE COCHERES: Mr. Love, the expenses that the
2 Department of Corrections incurs are not helping you.

3 MR. LOVE: I'll move on then, Your Honor.

4 JUDGE COCHERES: Good. Let me qualify that. The
5 expenses that they incur or the money they take to use the
6 commissions for is one thing. The expenses they incur in
7 terms of rendering phone service is relevant. Get the
8 distinction.

9 MR. LOVE: That is what I'm trying to get at, Your
10 Honor. That there is a certain amount of costs associated
11 with a contract and a certain amount of profit. And right
12 now we're looking at the profit portion of the contract.

13 MR. KOHLER: Your Honor we're supposed to be looking
14 at the cost and the relationship of costs and revenue of
15 AT&T for this service, not the Commonwealth.

16 Your Honor, the last time I checked the Commonwealth
17 is not regulated by the Public Utility Commission. In
18 fact, the Public Utility Commission is an arm of the
19 Commonwealth. You know, there may be a forum for this,
20 but it's not here.

21 JUDGE COCHERES: Mr. Love, a lot of what he's saying
22 makes real good sense.

23 MR. LOVE: It goes back to my initial argument where
24 I believe the Commonwealth is an indispensable party. It
25 takes two to contract; the Commonwealth and AT&T. And I'm

1 trying to examine this contract in its totality so I can
2 make a record of this proceeding.

3 JUDGE COCHERES: The contract says to AT&T pay the
4 money. And it says pay the money to the Commonwealth.

5 MR. LOVE: Right. And we've seen for the last 20
6 years that's been paid, it has gone higher and higher and
7 higher from 2 percent to 50 percent. And I suggest to you
8 that this is relevant. The fact that the Commonwealth can
9 go from 2 percent to 50 percent is extremely relevant to
10 what Mrs. Feigley's phone bill is. And that's what
11 brought us here today.

12 JUDGE COCHERES: It is relevant in the historical
13 context that the Commonwealth has been able to garner more
14 money from the telephone industry. All right. I don't
15 deny that. But I don't care what the prison system spends
16 the money on except for those telephone related expenses.

17 And you had Mr. Malcom testify that the Commonwealth
18 owns nothing. Now, do you -- what Mr. Kohler has alluded
19 to is that when a complainant such as Mrs. Feigley
20 challenges a particular rate before a utility, it doesn't
21 have to be AT&T, but it is in this case, what we examine
22 are the reasonableness of the costs incurred by the
23 utility.

24 Now, it's true that one portion of the costs that
25 are incurred by AT&T go to paying the Commonwealth, the

1 Department of Corrections. Some of it doesn't go to the
2 Department of Corrections. You haven't even focused on
3 that yet.

4 MR. LOVE: I'm trying to get there, Your Honor. I
5 will not ask anymore questions about current expenditures.
6 I just want to ask a couple about the history of the use
7 of this fund and then I'll move on if you'll permit me.

8 JUDGE COCHERES: All right.

9 MR. LOVE: Mr. Shaffer, I'm showing you an Exhibit I
10 marked P-8. It's a letter from November 6, 1991 from then
11 Commissioner Lehman to the Honorable Stewart Greenleaf,
12 Chairman of the Senate Judiciary Committee.

13 (Complainant Exhibit No. P-8 was produced and marked
14 for identification.)

15 MR. GUZZI: Your Honor?

16 JUDGE COCHERES: Yes, Mr. Guzzi.

17 MR. GUZZI: I'd ask for an offer of proof from Mr.
18 Love regarding this letter. It is to the Senator written
19 by Commissioner Joseph B. Lehman. If Mr. Shaffer is not
20 the author of the letter, I don't know what he can testify
21 to as to that letter.

22 MR. LOVE: I would object to Mr. Guzzi. If he wants
23 to be a party, I'd be happy to let him be a party.
24 Otherwise, I don't think he has a right to ask for an
25 offer of proof.

1 JUDGE COCHERES: Well, that is an interesting
2 question, Mr. Guzzi.

3 MR. KOHLER: Well, let's start with is this
4 proprietary? It's a private letter to a state senator
5 from a commissioner.

6 JUDGE COCHERES: Let me deal with Mr. Guzzi first.
7 But I can answer your question real easy. If it's on
8 department letterhead that the Commonwealth paid for, it's
9 not proprietary. All right.

10 MR. KOHLER: Objection overruled, Judge?

11 JUDGE COCHERES: Yeah. Mr. Guzzi, you have been
12 noticeably silent which is fine. You have entered your
13 appearance in spite of whether the subpoena should be
14 issued which I took to be a special appearance. And
15 that's fine. I don't have a problem with that. You have
16 not signed my green appearance sheet here which is for
17 attorneys basically. And I'm not suggesting you have to.
18 I have not questioned your role here. I have hinted that
19 it could be in the role of a special appearance.

20 This is one of your major clients here sitting on
21 the witness stand subject to a subpoena. Clarify what
22 you're doing in my Courtroom and I'll then make a decision
23 as to whether I think you're allowed to speak in terms of
24 raising an objection.

25 MR. GUZZI: Well, my role here today, Your Honor, is

1 to protect the interest of my client which today is Deputy
2 Shaffer as well as the Commonwealth of Pennsylvania
3 Department of Corrections. I would request that the Court
4 indulge me in granting me a special appearance for the
5 limited purposes for which I just stated.

6 JUDGE COCHERES: Mr. Love, do you have a response?

7 MR. LOVE: I have no objection to him entering an
8 appearance.

9 JUDGE COCHERES: That's not what he said.

10 MR. LOVE: I don't know of any -- I don't know of
11 the legal term that he's referring to as a special
12 appearance just to raise an objection. I'm not familiar
13 with that. Either you're in or you're out from what I
14 know of the law.

15 JUDGE COCHERES: Well, I will permit Mr. Guzzi to
16 participate in the defense of his client who is on the
17 stand. That is the only time he has -- without prodding
18 from me -- opened his mouth. And I think it is
19 appropriate where a witness is here by subpoena that they
20 may be defended by their own in-house counsel. So Mr.
21 Guzzi and the Department of Corrections, as I've already
22 ruled, is not a party to this proceeding.

23 His subsequent completion of my appearance form will
24 not make him a party to the proceeding as did the pleading
25 he submitted to defend against the subpoena. So in that

1 respect, I will now consider the objection.

2 MR. LOVE: Can I just for the record --

3 JUDGE COCHERES: Yes.

4 MR. LOVE: -- make a statement. My understanding of
5 these situations is that if his client wants to confer
6 with his attorney, he has every right to do so off the
7 record. For the record, I state that once an individual
8 appears on the record, I think they should be considered
9 part of the record and a party.

10 JUDGE COCHERES: Well, as I explained to you in a
11 private conversation in my office on the subject of
12 subpoenas, the system by which the Commission uses the
13 issuance of subpoenas as a procedure strikes me as poorly
14 laid out. And --

15 MR. LOVE: I'll agree with that, Your Honor.

16 JUDGE COCHERES: Although we're in total agreement,
17 I also informed you that when I was on the rules committee
18 which reviewed this section of the Commission regulations,
19 I lost the battle to change it. And so I must enforce
20 that system as it is laid out. And I think that also
21 gives rise to the problem that we have now where the
22 subpoena has been issued and, obviously, Mr. Guzzi has
23 been attending all day in the company of his client. And
24 I'm going to allow him to defend his client on the stand.

25 Now, Mr. Guzzi, you have raised what I believe is a

1 hearsay objection.

2 MR. LOVE: I don't believe he characterized it as
3 such.

4 JUDGE COCHERES: Yeah. But you said the witness
5 isn't the author of the document, nor is he the recipient
6 of the document.

7 MR. GUZZI: That would be correct, Your Honor.

8 JUDGE COCHERES: And do you have a response, sir?

9 MR. LOVE: Your Honor, this is a public document
10 from the Commissioner of Corrections to the Chairman of
11 the Senate Judiciary Committee. And I think it falls
12 under the hearsay exceptions thereof.

13 MR. GUZZI: Your Honor, I'm not objecting to the
14 entry of the letter into evidence. I'm just objecting to
15 having Deputy Shaffer testify as to whatever it is Mr.
16 Love wants him to testify about regarding this letter. He
17 is neither the author, the recipient and as far as we know
18 has no direct knowledge of this letter.

19 MR. LOVE: Can I give an offer of proof, Your Honor,
20 to maybe clear some of this up?

21 JUDGE COCHERES: Fine.

22 MR. LOVE: Again, it was indicated that the
23 commission rates were as low as 2 percent and that they're
24 now as high as 50 percent. I'm just trying to get the
25 Department of Corrections' position on the utilization of

1 their portion of those revenues from a historical
2 prospective. And this letter gives me that.

3 MR. KOHLER: All of which is completely irrelevant,
4 Your Honor.

5 JUDGE COCHERES: What does a letter dated November
6 6, 1991 have to do with her complaint in 1998 that her
7 rates are too high?

8 MR. LOVE: Because Commissioner Owens in 1988 felt
9 distressed at the profits that were being made by this
10 contract to the point that he wanted to offer rebates to
11 family members. Commissioner Lehman was equally concerned
12 about the large amount of profits that were being made
13 from this contract to the point that he was the one who
14 designated that the monies go to the inmate general
15 welfare fund feeling that that was what he called an
16 equitable, excuse me, equitable arrangement for the use of
17 telephone revenues.

18 And now we have a position where the Commonwealth is
19 -- has a windfall of several million dollars going into
20 the general fund. So I'm just trying to show how, at
21 first, Commissioner Owens wanted to give the money back to
22 the families. Commissioner Lehman wanted the money to be
23 used for inmates. And now under the current
24 administration and the current contract, we have a
25 windfall of several million dollars going into the general

1 just outlines what the services that we are providing
2 through correctional facilities, through inmate service
3 facilities. And at the bottom of the page, it identifies
4 the surcharge rate of \$3 per call.

5 Q Now, down at the bottom of that page there,
6 there's a notation that says effective December 15, 1995.
7 Is that when this rate -- when this particular level of
8 the surcharge became effective?

9 A Yes, this rate became effective on that date and
10 it is currently in effect right now.

11 Q Okay. Let's go on to -- I believe you said the
12 second component was the pay phone surcharge. And both
13 you and Mr. Malcom talked in some detail about what that
14 is. You may have already put this on the record, but are
15 you aware of what the level of the pay phone surcharge is?

16 A What we're charging for?

17 Q Yes.

18 A AT&T is currently charging \$.30 per call.

19 MR. KOHLER: Your Honor, I'd like to mark a document
20 as AT&T Exhibit Number 2.

21 JUDGE COCHERES: So marked.

22 (AT&T Exhibit No. 2 was produced and marked
23 for identification.)

24 BY MR. KOHLER:

25 Q Can you identify this document?

1 A Yes, this is another section within AT&T
2 Communications of Pennsylvania's intrastate tariff which
3 outlines the various surcharges that are added to operator
4 services zero-plus calls for interLATA calls.

5 Q Now, there's been some talk in the proceeding
6 about comparing AT&T's prices for different types of
7 calls. Is the variation in price between different
8 zero-plus services generally due to the level of
9 surcharges which are on this page?

10 A Yes.

11 Q And let's just go through it really briefly so
12 that people understand what the various services are. The
13 first one is collect?

14 A Correct.

15 Q Now, let's take a step back. AT&T Exhibit 1, is
16 that the surcharge for just inmate services?

17 A Yes, it is.

18 Q And are these, in essence, the other surcharges
19 that are applicable to other types of costs?

20 A Yes, that's right.

21 Q Okay. The first one is collect. You probably
22 don't have to go into what a collect call is. But there's
23 two categories; automated calls and operator-assisted
24 calls. Can you explain what the difference is there?

25 A Yeah. The automated is when there's no operator

1 involved in placing the call. The second call operator
2 assisted is when the operator actually dials the number
3 for you.

4 Q Now, why doesn't AT&T charge more for a live
5 operator call?

6 A I believe actually Mr. Malcom had spoke about
7 this in his testimony too. It is generally more expensive
8 for a person to place a call than it is to put the
9 machinery in place to do it on an automated basis.

10 Q Now, bill the third party. That's when you
11 don't bill it to the call party, but you bill it to
12 another party; is that correct?

13 A Correct.

14 Q And the surcharge is the same there?

15 A Correct.

16 Q Cent paid. Do you know what that is?

17 A That's a non-coin service. That's when you're
18 not using coins to place the call. You're just billing it
19 to a credit card.

20 Q And?

21 A And there's two different rates. There, again,
22 the automated where you can do it yourself, where you can
23 actually get an operator on the phone and give them your
24 credit card number or your calling card number. And they
25 will charge it to your calling card. And that's more

1 just outlines what the services that we are providing
2 through correctional facilities, through inmate service
3 facilities. And at the bottom of the page, it identifies
4 the surcharge rate of \$3 per call.

5 Q Now, down at the bottom of that page there,
6 there's a notation that says effective December 15, 1995.
7 Is that when this rate -- when this particular level of
8 the surcharge became effective?

9 A Yes, this rate became effective on that date and
10 it is currently in effect right now.

11 Q Okay. Let's go on to -- I believe you said the
12 second component was the pay phone surcharge. And both
13 you and Mr. Malcom talked in some detail about what that
14 is. You may have already put this on the record, but are
15 you aware of what the level of the pay phone surcharge is?

16 A What we're charging for?

17 Q Yes.

18 A AT&T is currently charging \$.30 per call.

19 MR. KOHLER: Your Honor, I'd like to mark a document
20 as AT&T Exhibit Number 2.

21 JUDGE COCHERES: So marked.

22 (AT&T Exhibit No. 2 was produced and marked
23 for identification.)

24 BY MR. KOHLER:

25 Q Can you identify this document?

1 expensive.

2 Q And cent paid coin, that's when you are using
3 coins; is that right?

4 A Correct. So there is no differentiation between
5 automated or operator assisted because there would be no
6 operators involved in that.

7 Q Now, the person-to-person calls, is the
8 difference there that you're asking for a specific person?

9 A Correct.

10 Q And the surcharges are much higher there; is
11 that right?

12 A Yes.

13 Q And what's the level?

14 A \$6.50.

15 Q Okay. Going down to the one we've been talking
16 about. The second component, is that down at the bottom
17 of the page there?

18 A Yes, it is. It's the third charge from the
19 bottom of the page, the public pay phone surcharge which
20 is \$.30 per call.

21 MR. KOHLER: Okay. Your Honor, I'd like to mark a
22 document as AT&T Exhibit 3.

23 JUDGE COCHERES: So marked

24 (AT&T Exhibit No. 3 was produced and marked
25 for identification.)

1 MR. KOHLER: I'll try to move quickly through this,
2 Your Honor.

3 BY MR. KOHLER:

4 Q Can you identify this document, Ms. Calega?

5 A Yes, this is another section from AT&T's
6 intrastate tariff which defines -- this is the definition
7 part of the tariff which defines what the public pay phone
8 surcharge is and how it's applied.

9 Q Without going into the words of the page, is the
10 bottom line that the public pay phone surcharge is applied
11 when there's a per call compensation obligation?

12 A Correct.

13 Q I think you testified that the third component
14 of the rate was the transport charge?

15 A Yes.

16 Q What is the transport charge?

17 A It's \$.27 per minute.

18 Q And what does the term transport charge refer
19 to?

20 A It's just the charge for carrying the call from
21 point A to point B.

22 MR. KOHLER: Your Honor, I'd like to mark this as
23 AT&T Exhibit 4.

24 JUDGE COCHERES: So marked.

25 (AT&T Exhibit No. 4 was produced and marked
for identification.)

1 BY MR. KOHLER:

2 Q Can you identify the document?

3 A Yes, this is another section from AT&T's
4 intrastate tariff in Pennsylvania which shows the price
5 schedule for operator station calls on an interLATA basis.
6 And this is the rate that would be applicable to a call
7 placed from an inmate facility in Pennsylvania.

8 Q And is that the postalized rate we're talking
9 about where you have the same rate for the initial period
10 as for each additional period?

11 A Yes.

12 Q And also is there the same rate for --
13 regardless of what the mileage is?

14 A That's correct.

15 Q And if they're a different rate, would that mean
16 that the rate was distant sensitive?

17 A Yes.

18 JUDGE COCHERES: Excuse me, is that a one or a
19 two-page document?

20 MR. KOHLER: One page, Your Honor.

21 JUDGE COCHERES: You accidentally gave me two and
22 I'm trying to figure out what the difference is.

23 THE WITNESS: It was a trick.

24 MR. KOHLER: I hope they're the same.

25 JUDGE COCHERES: Good.

1 BY MR. KOHLER:

2 Q Now, are all of Exhibits 1, 2, 3 and 4
3 Commission approved parts of the tariff?

4 A Yes, they are.

5 Q Your Honor, I think this is already in the
6 record, but I want to ask Ms. Calega some questions about
7 the stipulation of facts. I have copies for anybody who
8 doesn't have it. Does the witness have a copy?

9 A Yes, I do.

10 Q Before we do that, were you here this morning to
11 hear the testimony from Ms. Feigley and the other
12 witnesses?

13 A Yes, I was.

14 Q And do you recall that there were some exhibits
15 introduced which were bills that were received by the
16 various witnesses?

17 A Yes, I recall that.

18 Q And there was some discussion of the rates and
19 discussion of the charts and what the other underlying
20 rates were.

21 A Yes.

22 Q Was that discussion accurate?

23 A No, it was not.

24 Q Are the rates as you have described them just
25 now?

1 A Yes.

2 Q And have you reviewed those bills?

3 A Yes, I have.

4 Q And have you at least on the calls you were able
5 to get to at lunch verified that the charges are
6 consistent with the rates you described this afternoon?

7 A Yes, I was able to verify that.

8 Q Now, there was some confusion this morning over
9 whether the rate was \$.25 or \$.27. Do you recall that?

10 A Yes, I do.

11 Q Were you able to get an explanation for why that
12 appeared to be the case over lunch?

13 A Yes, I was. The rate that was on the bill that
14 -- the price I believe was for a 15 minute phone call.

15 Q Your Honor, let's refer to an exhibit so you can
16 actually see it, if I can find mine.

17 JUDGE COCHERES: I believe that would be P-2.

18 MR. KOHLER: Bear with me for one second, Your
19 Honor. Here we go. Yes, P-2, Your Honor. And let's
20 refer to what the witness marked as Number 7 which I
21 believe is the exact, the last page of the exhibit.

22 THE WITNESS: Right. I took a look at one of the
23 phone calls that I believe was a 15 minute phone call.
24 And I think it was the one placed on April the 6th. I
25 think that's correct. It was a 15 minute phone call

1 placed from a collect call from an inmate facility. The
2 price of the call came to \$7.05. If you break that down,
3 it comes to -- it's \$.27 for 15 minutes plus a \$3
4 surcharge which equals the 7.05. What doesn't appear on
5 that bill is there's another section on the bill under
6 other. There would be another section on that bill under
7 other surcharges and taxes where you would have to total
8 up all of the calls from an inmate facility and multiply
9 that by the \$.30. And that would come out as one number
10 in the other surcharges and taxes part of the bill.

11 Q So the per call compensation surcharge is billed
12 on a different part of the bill, is that correct, in the
13 beginning of the bill; is that correct?

14 A Correct.

15 Q Now, you have P-1, Exhibit P-1 at the stand with
16 you?

17 A I don't have that in front of me, no.

18 MR. KOHLER: Your Honor, if I could refer to Exhibit
19 P-1. I don't recall whose bill this is.

20 JUDGE COCHERES: It's Mrs. Feigley's.

21 BY MR. KOHLER:

22 Q You see at the top of the bill where it says pay
23 phone recovers, pay phone usage fee imposed.

24 A Yes, I see that.

25 Q And there's a charge of \$9.

1 A Right.

2 Q Is that what you're talking about?

3 A Yes, I am. That \$9 on this particular bill is
4 for 30 calls.

5 Q So if you were to identify the charge for the
6 \$7.05 call, it's actually \$7.35. The billing is just
7 split; is that right?

8 A That's correct.

9 Q And who does AT&T's billing in this context?

10 A The local carrier would do AT&T's billing. I'm
11 not sure in this context who it was. It was probably Bell
12 Atlantic.

13 Q Okay. Now, let's move on to the stipulation of
14 facts. First of all, have you reviewed this?

15 A Yes, I have.

16 Q And do you agree with all of the statements
17 here?

18 A Yes, I do.

19 Q A lot of these have already been explained by
20 Mr. Malcom so I'm going to skip over them. Going to
21 number 6 and, Your Honor, I'll try to stay away from the
22 proprietary record. It says here that AT&T contracts with
23 a third party to provide anti-fraud services and devices
24 for the system. Can you explain a little bit about what
25 that means?

1 A Yes, we contract with a company called --

2 JUDGE COCHERES: Stop.

3 MR. KOHLER: Proprietary.

4 JUDGE COCHERES: We all can read the name of the
5 company. Just tell us what the company does.

6 MR. KOHLER: The third party.

7 THE WITNESS: The third party provides anti-fraud
8 devices which are some of the software type devices that
9 Mr. Malcom has spoke about earlier. It's programming in
10 to the phone for the pin number system that inmates use,
11 the new voice recognition systems that are being put in
12 place. It would screen and prevent 800 number calls, 900
13 number calls. Those are the sorts of things that the
14 anti-fraud services provide for.

15 MR. KOHLER: Okay. Now we're moving on to number 7.
16 This lists some of the costs. Your Honor, we are going to
17 have to go on to the proprietary record here. We might as
18 well do it here.

19 JUDGE COCHERES: Yes. And what I'm thinking is do
20 you have any other examination of this witness remaining
21 that is not proprietary?

22 MR. KOHLER: Good question, Your Honor. No.

23 JUDGE COCHERES: Okay. As I look out across the
24 audience, the only way I see here who probably hasn't
25 signed the agreement is Mr. Malcom.

1 MR. KOHLER: Your Honor, I'm okay with Mr. Malcom
2 staying in the room. I think he understands that this is
3 proprietary.

4 (Proprietary testimony continues on the following
5 page.)

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1 BY MR. LOVE:

2 Q Just a couple final questions, Your Honor. Are
3 you familiar with the commission rate that Bell charges
4 under this contract?

5 A No, I'm not. I'm sorry, the commission to the
6 state through the Commonwealth of Pennsylvania?

7 Q Right.

8 A I thought we had established before that it was
9 the 47 percent.

10 Q That was the AT&T rate.

11 A Okay. You're right. No, I'm not privied to
12 that part of the Bell Atlantic contract with the
13 Commonwealth of Pennsylvania.

14 Q And finally, you do agree that inmate telephone
15 calls are subject to PUC regulation?

16 A Yes.

17 MR. LOVE: Nothing further.

18 MR. KOHLER: I have a few questions on redirect,
19 Your Honor.

20 JUDGE COCHERES: Fine. Wait a minute. Let me think
21 about that for a moment. Let's go off the record for just
22 a moment.

23 (Discussion off the record.)

24 JUDGE COCHERES: Ma'am, when you said you prepared
25 AT&T Exhibit 5 on a regional basis, what was the region

1 geographically you were talking about?

2 THE WITNESS: I believe it was the mid-atlantic
3 region.

4 JUDGE COCHERES: So that would be Virginia North to
5 New York?

6 THE WITNESS: Virginia North to New Jersey and
7 Pennsylvania.

8 JUDGE COCHERES: Not into New York?

9 THE WITNESS: Correct.

10 JUDGE COCHERES: Can you easily name the states that
11 you're talking about?

12 THE WITNESS: No, I cannot. I would have to verify
13 that.

14 JUDGE COCHERES: Okay. That's all I wanted to know.

15 MR. KOHLER: I can, Your Honor.

16 JUDGE COCHERES: Well, unless Mr. Love has an
17 objection, I'd like to know for the record.

18 MR. KOHLER: Well, if Mr. Love is willing to
19 stipulate to that.

20 JUDGE COCHERES: He said he doesn't have an
21 objection. The mid-atlantic region for AT&T the way they
22 organized their business is Virginia, District of
23 Columbia, New Jersey, Maryland, West Virginia and
24 Pennsylvania.

25 JUDGE COCHERES: And Delaware?

1 MR. KOHLER: And Delaware.

2 JUDGE COCHERES: I suspected that was there.

3 MR. KOHLER: It equates to Bell Atlantic South, if
4 you will.

5 JUDGE COCHERES: Yes. I understand. Now, you had
6 redirect?

7 MR. KOHLER: Yes, sir. Before I do redirect, can I
8 just have a moment to confer with the witness?

9 JUDGE COCHERES: Yes, we'll be off the record.

10 (Discussion off the record.)

11 REDIRECT EXAMINATION

12 BY MR. KOHLER:

13 Q Now, Ms. Calega, Mr. Love asked you a series of
14 questions about the profitability of the service. And I
15 believe what he -- the term he kept using was under the
16 DOC contract or under the contract. Do you recall that
17 line of cross?

18 A Yes, I do.

19 Q Were your statements intended to address the
20 intrastate component of the service?

21 A Yes.

22 Q Does AT&T also provide interstate service under
23 the DOC contract?

24 A Yes, we do.

25 Q And by whom is that service regulated?

1 A That is regulated by the Federal Communications
2 Commission.

3 Q And does AT&T also have rates on file with the
4 Federal Communications Commission for inmate services?

5 A Yes.

6 Q And are those rates higher or lower than those
7 charged in Pennsylvania?

8 A Those rates are higher.

9 Q And have you done a profitability analysis of
10 AT&T's interstate rates?

11 A No, I have not.

12 Q Is that because those rates are not at issue in
13 this proceeding?

14 A That's correct.

15 Q Is it possible that the DOC contract is
16 profitable even though AT&T's intrastate rates may not be?

17 A Yes, if you took the interstate rates into
18 consideration.

19 MR. KOHLER: Nothing further.

20 JUDGE COCHERES: Mr. Love?

21 MR. LOVE: Nothing further, Your Honor.

22 JUDGE COCHERES: The witness is excused. I thank
23 you for coming. Mr. Kohler, do you have another witness
24 for me?

25 MR. KOHLER: No, that's it.

1 JUDGE COCHERES: Let me start you down the same road
2 that I sent Mr. Love.

3 MR. KOHLER: I move AT&T Exhibits 1 through 5 into
4 the record, Your Honor.

5 MR. LOVE: No objection.

6 JUDGE COCHERES: Without objection, they're
7 admitted.

8 (AT&T Exhibit Nos. 1 through 5 were admitted into
9 evidence.)

10 JUDGE COCHERES: All right. Have we finished the
11 testimony portion of this hearing?

12 MR. LOVE: We have, Your Honor.

13 JUDGE COCHERES: Good. Let's talk for a few
14 minutes. It's been a long day. I appreciate the
15 cooperation that I've seen on the other side of the Bench.
16 In my own personal count, Mr. Love, the only document of
17 yours that I appear to be missing is P-5. And I'm going
18 to go off the record for just a moment. Let's do that.

19 (Discussion off the record.)

20 JUDGE COCHERES: I think we resolved Exhibit P-5.
21 The Court Reporter has a copy and she and I will arrange
22 to make two additional copies; one for her and one for me.

23 Nw, are there any other administrative details that
24 I need to deal with before we get to a question of whether
25 we need briefs or not? Hearing no administrative details,

1 Mr. Love, do you intend to prepare a brief on this case?

2 MR. LOVE: I'd like to do a short closing and a
3 brief.

4 JUDGE COCHERES: All right. Are you familiar with
5 the Commission regulations with regard to the preparation
6 of briefs and the number of copies?

7 MR. LOVE: I will make myself familiar with those,
8 Your Honor.

9 JUDGE COCHERES: Good. Because I can tell you off
10 the top of my head, you need about nine copies.

11 MR. LOVE: I do recall reading that yesterday,
12 original and nine.

13 JUDGE COCHERES: I think. It's been a long time
14 since I had to look it up.

15 MR. KOHLER: Yeah, it is original nine, Your Honor.
16 I file all to many briefs with the Commission.

17 JUDGE COCHERES: Yes, I'm only too well aware. All
18 right. And that's not counting the copy you give me. All
19 right. Let me give you my standard spiel on the
20 preparation of briefs.

21 First of all, as Mr. Kohler reminded me, as I just
22 found in our regulation, you have to file the original and
23 nine copies. The -- my offices use Word 60 as a word --
24 as the word processing system. If you do not use that in
25 your office, that's fine. There are other systems and

1 theoretically I'm able to convert them. But I do require
2 that you give me a hard copy and a diskette. What system
3 do you use, Mr. Love, do you know?

4 MR. LOVE: I think we have 60.

5 JUDGE COCHERES: Okay. Fine. If you don't, just
6 tell me what you're using. That's the important part is
7 that you tell me.

8 MR. LOVE: I will make sure that's identified.

9 MR. KOHLER: We use Word Perfect, Judge, but we'll
10 be glad to convert it for you before we give it to you.

11 JUDGE COCHERES: Yes. And my experience with your
12 co-worker, Ms. Creed, who will be in front of me tomorrow
13 and Friday is that your documents do not convert easily.
14 So if you can convert it to 60, I would appreciate it.

15 MR. KOHLER: I'm sure Ms. Calega will remind me.

16 JUDGE COCHERES: Well, if she's the lady who will
17 have the ultimate responsibility, that's fine. But I've
18 had some difficulty with your co-worker's presentations in
19 the last two weeks. Mr. Love, I do not recognize you as a
20 regular member of the Public Utility Bar.

21 MR. LOVE: It's my first appearance, Your Honor.

22 JUDGE COCHERES: Well, I'm sure you have been able
23 to discern there are certain differences in the way we do
24 things between whatever law you have practiced like in the
25 Courts of Common Pleas or the Federal Courts.

1 And one of the problems you may run in to is that
2 you may wish to look at case law from this Commission.
3 And I will tell you that there are two public utility
4 reporter systems. One is called the Pennsylvania Public
5 Utility Commission Reporter which I believe no longer is
6 printed. I don't know what the last volume is. But they
7 ran out of money to do the contract and they finally
8 stopped.

9 There's also something called the Public Utility
10 Reporter which is now in its fourth edition which carries
11 nationally many public utility decisions, some of which
12 are ours. And you may also find on lexis. It is my
13 understanding, although I can't tell you what the lag time
14 is, but the lexis likes to put all of our decisions on
15 line. I have access to lexis. And I have access to all
16 of the published volumes you may find.

17 In the event you decide, and I have no clue as to
18 how you would actually do this, but in the event you would
19 decide to use a Commission decision that is not published,
20 and that happens most frequently with people who are
21 members of the utility bar and know that there's a lag
22 time, then I require that a copy of that decision be
23 included with your brief. I no longer go to the file room
24 to find copies of Commission's past decisions.

25 We will be closing the record today. And there is

1 some importance to that. In our parlance, and I'm sure as
2 a member of the Bar, you understand that the evidentiary
3 record is closed. And unfortunately, it has been my
4 experience with the utility bar that occasionally somebody
5 gets what I call an afterthought and wants to add
6 something to the record after the record is closed.

7 I don't like that if the idea to do that is executed
8 by simply stapling it to the back of a brief. There are
9 some ways to reopen the record including a petition to
10 reopen the record with a request to recognize public
11 documents with a copy of a document and the indication of
12 where it was. There are ways to do it.

13 The brilliant afterthought, as I call it, in
14 stapling it to the record at ten after one in the morning
15 and then sending it to be printed will result in me saying
16 bad things about you personally and your mother.

17 MR. LOVE: She passed away, Your Honor.

18 JUDGE COCHERES: Well, it's a pet peeve and I always
19 raise it. I don't expect a problem. There are a few
20 lawyers who violate that rule. But when they do, they get
21 on my list. And it is one I keep.

22 You should know what will happen in terms of this
23 case. First of all, I don't know if you plan to order a
24 copy of the transcript. That is a business relationship
25 between you and the Court Reporter.

1 Second, the Court Reporter by contract with this
2 agency in this case is required to produce the transcript
3 within 15 working days; am I right? So no copy of the
4 transcript will be available before 15 working days from
5 this date. I don't know what that means in terms of your
6 calendar since I didn't bring one to the Bench with me.

7 But I now need to know from you how long do you need
8 to prepare a brief?

9 MR. LOVE: Well, I guess I have to determine whether
10 or not I'm going to get the transcript. Is there any
11 informal applications available to waive costs under these
12 circumstances?

13 JUDGE COCHERES: No.

14 MR. LOVE: To be on the safe side, assuming I do
15 order the transcript, 30 days after receipt of the
16 transcript.

17 MR. KOHLER: That will be fine with me.

18 JUDGE COCHERES: All right. We have two briefing
19 systems. The primary one is the one we never use as set
20 forth in the regulation and that uses the system that
21 you're probably most familiar with. And that is the party
22 with the burden of proof writes a brief first and a party
23 that didn't have or parties that didn't have the burden of
24 proof write a brief in response. We can use that system
25 in this case if that's the way -- do you want to use that

1 one?

2 MR. LOVE: That's what I'm use to.

3 JUDGE COCHERES: Let me tell you what the other
4 system is so you know what's behind door number two. The
5 other system is that both parties submit main briefs at
6 the same time and both parties submit reply briefs at the
7 same time, two rounds. More time consuming and you're not
8 interested. Fine. Your brief will be due in 30 days and
9 Mr. Kohler's brief will be due within 30 days of receipt
10 of your brief. And if the 30th day falls on a weekend, go
11 to the following Monday. After I receive Mr. Kohler's
12 brief, I will do something that normally has significance
13 to me only.

14 MR. KOHLER: Could I just clarify, Your Honor?
15 There's only going to be two briefs filed?

16 JUDGE COCHERES: That's right. Much like the
17 Commonwealth Court uses. That's not the system that you
18 normally use.

19 MR. LOVE: No reply brief to his briefs?

20 JUDGE COCHERES: Right. No reply briefs, just two
21 briefs. I will officially close the record after receipt
22 of Mr. Kohler's brief. This is not of any significance to
23 you but it is to me. The reason is the statute I think
24 requires that a Judge do his decision within 90 days of
25 the close of the record. Obviously, if I close the record

1 today and then we take three weeks to do the transcript
2 and 60 days to do the briefs, I don't have much of that 90
3 days left. So I officially close the record upon the
4 receipt of the final round of briefs. When I finally do
5 the decision in this case and it will likely be in the
6 90-day period, I will tell you that I am allowed to go
7 over under some limited circumstances. But when I receive
8 it, it will be sent to you much the way Mrs. Feigley
9 received my first initial decision. It will come in by
10 registered mail, return receipt card. And with that is a
11 standardized cover letter which tells you what your
12 exception and reply exception period is.

13 And I don't expect to -- I'm not going to please
14 everybody on everything I write. So somebody is going to
15 want to file exceptions and somebody is going to want to
16 file reply exceptions. And that's what that information
17 is for. I don't -- it's in our regulation what the
18 standard time frame is.

19 And then the Commission is -- only if exceptions are
20 filed, the Commission is required to review it. If you
21 are completely satisfied with what I've done and so is Mr.
22 Kohler, highly unlikely situation, but if you are
23 completely satisfied, then no exceptions are filed and the
24 Commission has the option of reviewing my decision because
25 they want to or just letting it glide and then it becomes

1 final.

2 Even in the second scenario of letting it glide in
3 and it becomes final, it's highly improbable that's going
4 to be in this case, you would get a subsequent
5 notification from the Commission that my decision became
6 final. So you wouldn't miss anything. And that -- and
7 that would also mark the beginning of the appeal period.
8 Do you have any questions about the proceeding?

9 MR. LOVE: None, Your Honor.

10 JUDGE COCHERES: Good. Then I want to thank you
11 very much. I think I understand both sides here. I will
12 look forward to receiving your brief. And our contract
13 and our Reporters are usually very good about --

14 MR. LOVE: I was going to do a little closing but if
15 you don't want to hear --

16 JUDGE COCHERES: Yes, you asked to do that. Fine.
17 Do your closing.

18 MR. LOVE: I want to focus on what we consider to be
19 important.

20 JUDGE COCHERES: That's fine.

21 MR. LOVE: Sandra Feigley filed her complaint with
22 the PUC in April of 1998, concerned about the high rates
23 of charges for her phone calls to her husband George and
24 other individuals. She alleged that the rates are so high
25 that she construes this as a tax on free speech. And if

1 it is a tax, then taxes have to be uniformly applied. And
2 we believe that this tax is not uniformly applied because
3 it targets primarily the families of inmates serving time
4 in the Pennsylvania Department of Corrections without any
5 good reason why those people would be singled out for
6 higher rates than other folks.

7 She further alleges that racism enters into the
8 picture because of the predominantly high number of people
9 of color in the system. As the record indicates, she
10 filed against Bell and AT&T but not against the
11 Commonwealth of Pennsylvania or the Department of
12 Corrections. Bell was dismissed. Although we are asking
13 for reconsideration of that. And the Department was not
14 brought in, but we're thankful that the Commission allowed
15 a subpoena to bring them in to testify.

16 The testimony that we provided today indicates that
17 part of the AT&T charges which are at issue before the
18 Commission's reasonableness of those charges includes a \$3
19 surcharge. Without getting into the particulars of the \$3
20 and what not, it's fairly clear that 47 percent of the
21 rate charged by AT&T is directly handed over to the
22 Commonwealth.

23 We heard testimony from Mr. Malcom that that
24 generates over \$5 million per year for the Commonwealth.
25 Three million dollars of which goes to the Department of

1 Corrections. We've heard testimony from the Department of
2 Corrections that that \$3 million is then placed in the
3 inmate general welfare fund which has been the traditional
4 recipient of those funds for some time now as long as Mr.
5 Shaffer could recall.

6 We've heard testimony that AT&T was the prime
7 contractor of the contract with the Commonwealth of
8 Pennsylvania Department of Corrections to provide inmate
9 services going back to I think it was 1984 or somewhere
10 around there until this year when a new contract was
11 issued in February going back to 1/1/99 which made Bell
12 the prime contractor and AT&T a subcontractor.

13 Ms. Feigley testified that she has been making phone
14 calls to her husband for 23 years and that the rates have
15 risen over that period of time and again. We've heard
16 testimony that AT&T collected this rate and primarily was
17 the collector. And now I guess Bell is the collector.

18 The testimony of Mr. Malcom indicated that with the
19 passage of the Telecommunications act in 1996, there was a
20 great deal of burst of competition. And because of this
21 competition, the Commonwealth chose to gain substantial
22 additional revenues without providing any additional
23 services for those extra revenues.

24 And those revenues jumped from three million a year
25 up to over \$5 million a year. So due to the passage of

1 this bill to promote competition, the Department or the
2 Commonwealth has realized \$2 million additional revenues
3 for which they provide no additional services.

4 Now, the irony of this is that while competition was
5 promoted by the Telecommunications Act of 1996, inmates
6 seem to be suffering more so under this Act. It's allowed
7 the Commonwealth to extract a larger commission from AT&T
8 than was previously done. Inmates cannot use prepaid
9 cards. They cannot choose their competitor. They cannot
10 use 1-800 numbers. All the things that we're bombarded
11 with with commercials in the free world. So they are
12 hamstrung into a every increasing exclusive contract that
13 provides excess revenues of \$2 million to the Commonwealth
14 for no apparent reason other than the structure that we
15 currently are operating under.

16 This is how we come to the issue that this is, in
17 fact, a tax that is being imposed upon the families of
18 inmates in the system. And we draw the Court's attention
19 to a decision called Supervisors of Manheim Township
20 versus Workman. Appears at 38 A 2nd, 73. It's a Supreme
21 Court case in Pennsylvania.

22 And basically it talks about what is a tax and what
23 is a contract. And it says charges made in connection
24 with such operations are based upon contract rather than
25 taxation because those who consume the product or receive

1 the service and do so voluntarily, either as individuals
2 or as a distinct group and thereby agree to pay the price
3 of the product furnished or services rendered. Such
4 charges are separate charges for commodity as any other
5 person sell commodities.

6 The Court goes on to state that they must be
7 reasonably proportional to the value of the product of
8 services received. Or if imposed without due regard to
9 that requirement, the charge provided for by the ordinance
10 is in effect, undoubtedly a tax. And the obligation to
11 pay it could be treated only by the township's exercise of
12 its general taxing power.

13 As a tax, it is palpably violative of our
14 constitutional provision requiring uniformity of taxation.
15 It's our contention that the Telecommunications Act has
16 created a \$2 million windfall for the Commonwealth of
17 Pennsylvania without giving anything back to the
18 individuals receiving the service. As such, it is a tax
19 and not a contracted-for service. And because AT&T is
20 collecting this tax on behalf of the Commonwealth, they
21 are by implication involved in the taxation of a certain
22 group of people without any services rendered.

23 And that certain group of people is clearly subject
24 to equal protection in the uniformity clause of the
25 constitution. And that's our argument that this is a tax

1 that AT&T is collecting on behalf of the Commonwealth
2 through this 47 percent commission.

3 Very briefly on the issue of race. We've introduced
4 documents that indicate 55 percent of the public
5 corrections are African American. 9.5 percent are
6 Hispanic. So we have two thirds of the individuals
7 incarcerated in the system are people of color. Given the
8 fact that most folks call family, we can deduce that the
9 individuals that are paying this high rate are also people
10 of color. And as such, the burden falls unfairly upon
11 people of color who have to pay this tax.

12 We also would like to just stress again that we
13 believe that these folks, rather than be charged a higher
14 rate than everyday citizens, should be at least charged a
15 similar rate or even a less rate as they are a part, an
16 important part of the rehabilitation that we all hope that
17 everyone in the system avails themselves of so that they
18 can get out of jail, lead productive lives and not return
19 to prison which is one of the most costly operations in
20 the State Government and one of the most costly ways of
21 housing individuals on the public charge.

22 Finally, we would just like to say, we will do this
23 in our motion, that we would like the Court to reconsider
24 its motion dismissing Bell via summary judgment because
25 we've now heard evidence that Bell is the prime contractor

1 as of January 1st, 1999. They own the phone systems.
2 They handle the local calls. They take the money from
3 AT&T and pass it on to the DOC. We'd also like to add the
4 Department of Corrections as a party as they are the
5 individuals that are really benefiting vitally from the 47
6 percent commission from availing themselves of the
7 Telecommunications Act of 1996 to put \$2 million
8 additional money in the state coffers without offering any
9 services.

10 And I don't think that was the intent of the
11 Telecommunications Act to allow these sorts of situations
12 to occur. And that's why we're here asking the Court for
13 some form of relief. Thank you.

14 JUDGE COCHERES: And do you have some definition of
15 the relief you're expecting?

16 MR. LOVE: We would like the Court to rule that this
17 charge and this 47 percent commission that AT&T is
18 collecting is unreasonable and go so far to suggest that
19 it is a tax and it has an impact on people of color.

20 JUDGE COCHERES: And of those remedies, how many are
21 within the jurisdiction the Commission grants?

22 MR. LOVE: I contend they are -- they all are. We
23 heard from the AT&T representative that this contract is
24 under the jurisdiction of the PUC. And if they are and if
25 AT&T is collecting a 47 percent commission from the

1 Commonwealth, then that is part of this Commission's
2 regulatory responsibility.

3 JUDGE COCHERES: Well --

4 MR. KOHLER: Can I briefly respond?

5 JUDGE COCHERES: All right.

6 MR. KOHLER: I will be very brief.

7 JUDGE COCHERES: Fine.

8 MR. KOHLER: What Mr. Love's client has to show in
9 order to be successful in this case is essentially that
10 AT&T violated the Public Utility Code, not the tax code,
11 not the Pennsylvania Constitution, not any other law
12 because the Commission only has jurisdiction over the
13 Public Utility Code.

14 The issue here is whether AT&T is violating the
15 Public Utility Code by charging an unjust and unreasonable
16 rate for a particular service. The standard that the
17 Commission has utilized in looking at this type of service
18 is a relationship between revenue and cost of that
19 service. I don't think there's any doubt that that
20 relationship between revenue and cost justifies the rate.

21 You know, AT&T is sort of in a way in the middle
22 here. We have a situation where there is downward
23 pressure on rates because the people that are charged
24 those rates think they're way too high. And one wants
25 AT&T to lower their rates. At the same time, in this

1 particular market, historically there's been an upward
2 pressure on costs. And that leaves AT&T with one choice
3 whether to provide the service or withdraw from the
4 market.

5 And that, in fact, as Mr. Malcom pointed out has
6 become a closer and closer call. We entered in to this
7 contract. We are charging the rates we currently charge.
8 We're incurring the costs we currently charge. But the
9 evidence shows that our intrastate rates with a reasonable
10 profit and reasonable contribution to overhead are not
11 recovering our costs. And there's a legitimate question
12 whether the contract itself is profitable or is losing
13 money, taking in to account the interstate rates.

14 That is really all that is at issue as to whether
15 AT&T violated the Public Utility Code. The other
16 arguments are interesting. But they're just not within
17 the Commission's jurisdiction because they're essentially
18 allegations of violations of laws which the Commission
19 doesn't administer.

20 JUDGE COCHERES: Mr. Love, I don't want you to be
21 incorporating a false sense of security.

22 MR. LOVE: Don't worry about that.

23 JUDGE COCHERES: If you research the Public Utility
24 Commission case law on appeal, I believe there's an old
25 case. And when I say old, I don't mean relatively your

1 age or mine, I mean perhaps within the last 10 to 20 years
2 that the Commission attempted to impose a remedy either on
3 Philadelphia Electric Company or perhaps Pennsylvania
4 Power and Light Company to alleviate a racial
5 discrimination problem. And the Commonwealth Court very
6 clearly told the Commission that was within the
7 jurisdiction of the Pennsylvania Human Relations
8 Commission. And that we had no authority to act in that
9 area. I have not looked at that decision in quite a
10 while. And I don't want to misrepresent its content.

11 MR. LOVE: I understand.

12 JUDGE COCHERES: But I, in preparing my decision for
13 this case, I will at least review it to see whether or not
14 it has any applicability to the arguments that you have
15 raised.

16 In addition, since you live and work in
17 Philadelphia, you may be familiar with a small electric
18 company there called PECO. And I have a distinction of
19 being the Judge in one of their financial restructuring
20 cases. I'm the guy who created the train wreck that got
21 so much publicity in the Philadelphia area a couple of
22 years ago.

23 The reason I say that and bring your attention to
24 that case is not because it was one of my moments of glory
25 but because one of the issues in that case was whether

1 This Commission had the authority to rule on
2 constitutional issues. And the parties in that case
3 provided in their briefs citations to material that
4 indicated we don't. And I was required to agree.

5 However, the question in that case is or rather was
6 the ruling on the constitutionality of our own statute.
7 So it is not exactly the same as what you are proposing
8 here. I will tell you that there is likely no appellate
9 opinion on it because a settlement was reached after the
10 Commission rendered its decision to settle the appeals as
11 well. And even worse, I was so time pressed that when I
12 wrote that decision, I don't think I cited the cases that
13 the parties cited to me.

14 And I do want you to understand the concept of our
15 view of constitutional issues has been litigated. And to
16 the best of my knowledge, again, we don't have the
17 authority. So I'm bringing these things to your attention
18 because I expect if you raise those issues in your brief,
19 you must look at those cases in accordance with the
20 Commission. And since I know those cases exist, I thought
21 I'd give you a running headstart. Is there anything else
22 I need from you gentlemen?

23 (No response.)

24 JUDGE COCHERES: Okay. Thank you.

25 MR. LOVE: Thank you, Your Honor.

1 MR. KOHLER: Thank you.

2 (Whereupon, at 5:04 p.m., the hearing adjourned.)
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1 I hereby certify that the proceedings and evidence
2 are contained fully and accurately in the notes taken by
3 me during the hearing of the within cause, and that this
4 is a true and correct transcript of the same.
5
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9 AMY S. KRISKO
10 Court Reporter

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12 reproduction of the same by any means unless under the
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