

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

BEK Communications :
Cooperative, et al. :
vs. SmartNET, Inc. : Case No. PU-2967-03-666
Complaint :

TRANSCRIPT OF
HEARING

Taken At
State Capitol
Bismarck, North Dakota
July 19, 2006

BEFORE MR. ALLEN HOBERG
-- ADMINISTRATIVE LAW JUDGE --

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1 A P P E A R A N C E S
2 COMMISSIONERS PRESENT:
3 COMMISSIONER TONY CLARK
 COMMISSIONER SUSAN E. WEFALD

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COMMISSIONER KEVIN CRAMER

MR. DONALD A. NEGAARD
Pringle & Herigstad, P.C.
Attorneys at Law
2525 Elk Drive
P.O. Box 1000
Minot, North Dakota 58702-1000

MR. JEROD E. TUFTE
Tufte Law Office
Attorney at Law
106 West Broadway
P.O. Box 139
Steele, North Dakota 58482-0139

MR. MICHAEL J. MAUS
Hardy Maus & Nordsven, P.C.
Attorneys at Law
137 First Avenue West
P.O. Box 570
Dickinson, North Dakota 58602-0570

FOR THE COMPLAINANTS.

MR. BRUCE A. SELINGER
Kubik Bogner Ridl & Selinger
Attorneys at Law
26 Third Street East
P.O. Box 1173
Dickinson, North Dakota 58602-1173

MR. GLENN S. RICHARDS
Pillsbury Winthrop Shaw Pittman, L.L.P.
Attorneys at Law
2300 N Street, NW
Washington, D.C. 20037

FOR THE RESPONDENT.

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A P P E A R A N C E S (continued)

MR. WILLIAM E. BINEK
General Counsel
Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

FOR THE PUBLIC SERVICE
COMMISSION.

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1 (The proceedings herein were had and made
2 of record, commencing at 9:07 a.m., wednesday, July
3 19, 2006, as follows:)

4 MR. HOBERG: For the record, it's 9 a.m.,
5 a little bit after, on July 19, 2006. This is the
6 time and place scheduled in the Fort Totten Room in
7 Bismarck, North Dakota, for the administrative
8 hearing in the matter of the complaint of BEK
9 Communication Cooperative and numerous other named
10 complainants against SmartNET, Incorporated, doing
11 business as CallSmart.

12 In November of 2005, the Office of
13 Administrative Hearings received a request from the
14 Public Service Commission to provide an
15 administrative law judge to preside as hearing
16 officer in this matter. For the record, my name is
17 Allen Hoberg and I'm the duly designated hearing
18 officer.

19 Let's take appearances now from the

20 parties, starting with the complainant, then the
21 respondent, and then Commission counsel, please.
22 Mr. Negaard.

23 MR. NEGAARD: Good morning. Don Negaard.
24 I'm with the Pringle & Herigstad group -- or
25 Pringle & Herigstad law firm representing the rural

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1 telephone group. Also with me this morning at
2 counsel table is Jerod Tufte. He's the attorney
3 for BEK Telephone Communications, and Michael Maus,
4 who is the attorney for Consolidated Telecom and
5 their CLEC, Consolidated Communications Network
6 Inc.

7 MR. HOBERG: Thank you, Mr. Negaard. Mr.
8 Selinger, please.

9 MR. SELINGER: Yes. Bruce Selinger with
10 the firm of Kubik Bogner Ridl & Selinger,
11 representing the respondent, SmartNET. And Glenn
12 Richards is here today again from Washington, D.C.

13 MR. HOBERG: Thank you. Mr. Binek,
14 please.

15 MR. BINEK: My name is William Binek. I'm
16 counsel for the Public Service Commission. With me
17 at the table is Patrick Fahn, a public utility
18 analyst, and seated back in the corner is Annette
19 Bendish, also a public utility analyst. The Public
20 Service Commission staff is not here in an advocacy
21 role. We're counsel for the Commission and I will
22 have limited, if any, questions.

23 MR. HOBERG: Thank you, Mr. Binek. And,

24 of course, we also have members of the Public
25 Service Commission -- the North Dakota Public

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1 Service Commission. To my left, Commissioner Kevin
2 Cramer, Commission President Tony Clark and
3 Commissioner Susan wefald. Beginning with
4 Commissioner Clark, who has the telecommunications
5 portfolio, I will now ask for their opening
6 comments. Commissioner Clark, please.

7 COMMISSIONER CLARK: I would just like to
8 welcome everyone here this morning. One of the
9 issues that I hope will be addressed here today,
10 because it's an issue that I am not sure how to
11 work through and I don't think was addressed in the
12 record in the first hearing -- first, I'll say I'm
13 comfortable with the order that the Commission
14 issued. I do believe that the service being
15 provided is a telecommunications service, it's
16 basically an interexchange service provided through
17 VoIP, and I think given where current federal and
18 state law is, what we did was appropriate.

19 with regard to the issue of access
20 charges, what I am unsure of, and what I'd like
21 more on the record regarding, is the issue of where
22 extended area service comes into play, EAS, because
23 as I understand it, and feel free anywhere in the
24 record to correct me if I'm wrong, the real issue
25 in this case is what you have is calls being made

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1 from nonQwest towns in outlying areas called into
2 the Qwest exchange, and then from there changed to
3 VoIP, sent out as basically an interexchange call.

4 The concern is that EAS, itself, extended
5 area service agreements, as I understand it, are
6 there to provide in-lieu of payments for access
7 charges. And my question is if we -- the
8 Commission orders some sort of compensation, are we
9 in fact ordering a double compensation? In other
10 words, are rural companies already supposed to be
11 recovering through the EAS charge those access
12 charges that we'd be ordering -- access charges on
13 top of that?

14 So I'm trying to figure out and work
15 through in my mind how that all works. It may be a
16 problem with the EAS charge, itself, if you've got
17 some new form of communication that's getting
18 around that. But, anyway, that is certainly a top
19 issue for me and look forward to hearing from the
20 parties on that, if possible.

21 MR. HOBERG: Thank you, Commissioner
22 Clark. Commissioner Wefald, please.

23 COMMISSIONER WEFALD: Good morning.
24 welcome. I am looking forward to getting
25 information on the record regarding whether

10

1 SmartNET has a liability to pay access charges to
2 the complainants for the origination or termination
3 of interexchange telecommunication services.

4 The other day I asked, I said, have I
5 missed something, have briefs been filed so that I
6 can read ahead of time for this hearing, because
7 many times they are, and they said, no, you haven't
8 missed anything, so I'm going to have to just
9 listen very carefully today to everything that you
10 say and then have a chance probably to read them
11 over again, whatever you provide to us today after
12 the hearing, in order to get a really good
13 understanding of the issues that are before us.

14 Thank you. I'm looking forward to a good
15 record in this case.

16 MR. HOBERG: Thank you, Commissioner
17 wefald. Commissioner Cramer, please.

18 COMMISSIONER CRAMER: Thanks. Good
19 morning, everyone. Welcome. And I, as well, look
20 forward to a thorough and interesting hearing.

21 MR. HOBERG: Thank you, Commissioner
22 Cramer. Of course, this matter stems from a
23 complaint action, a previous hearing and a decision
24 following that hearing by the Commission.
25 subsequent to that order being issued by the

11

1 Commission, reconsideration was granted to provide
2 opportunity for additional evidence by the parties
3 to supplement the record in the original
4 proceeding. So this is a rehearing on the
5 complaint for the purpose of supplementing the
6 record to the extent the previous record from the
7 hearing was lacking information.

8 One of the issues stated by the Commission
9 in the original notice of hearing in this
10 proceeding was if the respondent is using the local
11 service facilities of the complainants, whether
12 respondent is liable to the complainants for
13 compensation for the use of those facilities.

14 Accordingly then, the purpose of this
15 rehearing is to supplement the record of the first
16 hearing to determine whether SmartNET is using the
17 complainants' facilities. Evidence will be offered
18 and argument made only on the issue of whether
19 SmartNET is using complainants' facilities and,
20 correspondingly, whether SmartNET is liable to the
21 complainants for compensation for such use and to
22 determine the types of compensation due the
23 complainants for such use, if any.

24 Of course, the burden of proof is still on
25 the complainants to prove their allegations by the

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1 greater weight of the evidence. And the procedure
2 we'll follow today, I'll call on the complainants
3 first to present their case. Mr. Negaard, how many
4 witnesses do you have today?

5 MR. NEGAARD: I have four witnesses, sir.

6 MR. HOBERG: Four witnesses?

7 MR. NEGAARD: Yes.

8 MR. HOBERG: It will be the same procedure
9 as at the last hearing, direct by Mr. Negaard,
10 cross by the respondent, Mr. Richards, and then
11 following that questions by Mr. Binek, questions by

12 the Commission and then such further questions from
13 counsel or the Commissioners as they may be
14 necessary. And then I'll call on the respondent to
15 present their case in regard to the issues today.
16 Mr. Richards, any witnesses you are calling today?

17 MR. RICHARDS: No, sir.

18 MR. HOBERG: Of course, any documentary
19 evidence we need eight copies for the record. It
20 looks like you have a lot of paper over there so
21 you probably have enough copies.

22 And no decision will be reached on this
23 matter today. The proceedings are being
24 tape-recorded and transcribed and they'll be
25 reviewed by the Commission later and the Commission

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1 will issue its final decision on reconsideration
2 and rehearing in this matter. If a party doesn't
3 agree with the final decision of the Public Service
4 Commission, they may have appeal rights or other
5 rights under North Dakota Century Code Chapter
6 28-32 or North Dakota Administrative Code Article
7 69-02.

8 Any questions about the procedures today,
9 Mr. Negaard.

10 MR. NEGAARD: Just one question. Where do
11 you want the witnesses to sit?

12 MR. HOBERG: Right in the middle there.

13 MR. NEGAARD: Okay. Thank you. Mr.
14 Richards, Mr. Selinger?

15 MR. RICHARDS: The only question I would

16 ask is, I don't know -- I think Mr. Negaard said
17 he's got four witnesses.

18 MR. NEGAARD: Yes.

19 MR. RICHARDS: Would Mr. Negaard be able
20 to summarize briefly the different focus of the
21 four witnesses so I'm not asking questions of
22 somebody and then they'll say, well, I've got a
23 witness later on that's going to really address
24 that issue. That would be useful for me so I don't
25 sort of stumble across and ask the same questions

14

1 to multiple people who are not experts in that
2 area.

3 MR. HOBERG: Are you going to do an
4 opening? Maybe you will be now.

5 MR. NEGAARD: Maybe I will be now. If I
6 did, I intended to keep it very brief, and I think
7 the facts and the evidence are what the Commission
8 is looking for. We hope to provide that to assist
9 them.

10 MR. HOBERG: Can you address Mr. Richards'
11 concern?

12 MR. NEGAARD: Sure, I can.

13 MR. HOBERG: Any other questions before we
14 start then? Mr. Negaard, please.

15 MR. NEGAARD: Good morning, President
16 Clark, Commissioner Wefald, Commissioner Cramer and
17 Mr. Richards. The four witnesses we intend to
18 call, Dean Anagnost testified earlier. Dean is a
19 professional engineer and will discuss the method

20 of measurement that the companies use, two specific
21 companies -- excuse me, three, BEK, CCNI, and
22 Consolidated Telecom, the methods that they use to
23 capture the information at their central office on
24 their switch to record the calls that are being
25 made to the SmartNET/CallSmart phone numbers.

15

1 Bruce Walth is employed by NISC. NISC is
2 the billing entity that bills for the three
3 companies. Mr. Walth will explain how his company
4 dials the switch, pulls the information off their
5 switch, captures the information that is then used
6 to print the CABS bills and to apply the state CABS
7 rates to those calls. BEK has not generated any
8 CABS bills. Consolidated has and CCNI has.

9 In the case of BEK and in the other two
10 entities, Mr. Walth will also talk about some usage
11 reports that they have prepared that show usage on
12 these telephone numbers, and this is just a
13 snapshot, a period in time. In the case of CCNI,
14 that's May, June and July of 2006. For
15 Consolidated, that's April, May and June of 2006.
16 And in the case of BEK, it's for the period of June
17 19th, 2006, through July 11th of 2006.

18 Ken Weisenberger is going to briefly
19 testify. He's the office manager, I believe, at
20 Consolidated and he's going to briefly testify
21 about some issues with the CABS bill to CallSmart
22 and SmartNET.

23 Then Jim Howard, who is with John

24 staurulakis, is going to talk about the access
25 bills and the features of the tariffs that are on

16

1 file and why those tariffs apply to the type of
2 service that's being used by CallSmart and SmartNET
3 on these exchanges.

4 MR. RICHARDS: Okay. Thank you. Your
5 first witness again was who, Mr. Negaard?

6 MR. NEGAARD: Dean Anagnost.

7 MR. HOBERG: Mr. Anagnost. Pull the chair
8 over to the center, please, kind of right in front
9 of the court reporter. Thank you.

10 MR. ANAGNOST: Good morning.

11 MR. HOBERG: Good morning. I need to
12 swear you in, Mr. -- is it Anagnost?

13 MR. ANAGNOST: Anagnost.

14 MR. HOBERG: How do you spell that?

15 MR. ANAGNOST: A-n-a-g-n-o-s-t.

16 MR. HOBERG: A-m?

17 MR. ANAGNOST: N as in Nancy.

18 MR. HOBERG: Okay. Mr. Anagnost -- and
19 this is for the benefit of all the other witnesses
20 that are testifying today, too. I'm required by
21 law to tell you that the maximum penalty for
22 perjury in this state is a Class C felony,
23 punishable by a maximum five years imprisonment,
24 \$5,000 fine, or both.

25 (Witness sworn.)

17

1 MR. NEGAARD: Your Honor, for the record,
2 I just have one -- I have two exhibits. These are
3 the downloads or prints from the website for
4 CallSmart. I think they'd help provide some
5 foundation for some of these witnesses. Exhibit 15
6 being the CallSmart website, the new one, and
7 Exhibit 16 is the old one from about the time the
8 complaint was filed. And I would like to offer
9 those, if there's no objection.

10 MR. HOBERG: Mr. Negaard, is this
11 numbering consecutive from the first hearing then?

12 MR. NEGAARD: Yes. At the first hearing
13 we used 1 through 8 and 20 and 21. So these aren't
14 necessarily in order, but by the time we get all
15 done, I'll be up to No. 20 so we'll have it all
16 filled in.

17 MR. HOBERG: Okay. Mr. Richards, any
18 objection to Exhibits 15 and 16?

19 MR. RICHARDS: No, sir.

20 MR. HOBERG: Okay. They are admitted.

21 MR. NEGAARD: I apologize on Exhibit 16,
22 there was a hole in the bottom of the box I hauled
23 them in, and for some reason some moisture found
24 its way in there during the dry summer.

25 And for the record, on the third page of

18

1 Exhibit 15, and it would be the fifth page of
2 Exhibit 16, there's some local phone numbers and
3 Mr. Anagnost is going to talk a little bit about
4 how the information is captured for calls to those

5 numbers.

6 DEAN ANAGNOST,
7 being first duly sworn, was examined and testified
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. NEGAARD:

11 Q. Could you tell us your name, please?

12 A. Yes. My name is Dean Anagnost.

13 Q. And where do you live?

14 A. I live in Bismarck, North Dakota.

15 Q. And you testified in this matter

16 previously?

17 A. Yes.

18 Q. And to refresh our memory, could you again
19 tell us about the -- tell the Commission and the
20 Commissioners about your background, your education
21 and work experience?

22 A. Yes. I'm an electrical engineer with
23 about 20-plus years of experience in the consulting
24 industry. My clients are traditionally
25 telecommunications providers and design firms. I'm

19

1 a registered professional engineer in nine states.

2 Q. Do you do any design work for any of the
3 telecommunications clients you have?

4 A. I do. I do design work and also manage a
5 design staff that also works for about 15
6 independent telephone companies throughout the
7 country.

8 Q. And could you tell us a little bit about

9 your current position, your occupation and how long
10 you've worked there?

11 A. Currently I work with Kadrmas, Lee &
12 Jackson, Incorporated. We're a consulting
13 engineering firm located primarily in North Dakota,
14 with offices in four other states. I'm currently a
15 principal and senior engineer of the company. My
16 primary responsibilities are the day-to-day
17 management of our telecommunications business unit
18 and also our electrical engineering business unit.
19 I'm also a director of our board and active in
20 corporate management of the firm.

21 Q. And how long have you worked there?

22 A. I have worked at Kadrmas, Lee & Jackson
23 for 15 and a half years.

24 Q. Are you familiar with the equipment that's
25 being used by Consolidated Telecom, Consolidated

20

1 Communications Network, Inc., which I have
2 referenced as CCNI, and BEK Communications
3 Cooperative, who I've referred to as BEK, to record
4 the information about interexchange calls being
5 made by these three companies' subscribers to
6 SmartNET's phone numbers for the purposes of
7 placing interexchange telephone calls?

8 A. Yes, I am. I have been affiliated as a
9 consultant with Consolidated Telecom for most of my
10 20-year career, been actively involved in the
11 design, provisioning and troubleshooting of their
12 telecommunications network. I have also been with

13 Consolidated Communications Network, Incorporated,
14 in the same capacity since their inception. I'm
15 less familiar with BEK Communications, as they are
16 not one of my direct clients, but do have a good
17 understanding of their network due to some other
18 affiliated clients that I also work with.

19 Q. Can you please tell the Commission how
20 these companies are able to record -- and when I
21 say "record," I also find I'm in error and I
22 apologize -- it's the fourth to the last page of
23 RTCG-16 that lists Bismarck telephone numbers for
24 CallSmart, 355-2255, and in Dickinson at that time
25 was 456-3711; in Exhibit 15, which is the current

21

1 website, lists the phone numbers 355-2255 and in
2 Dickinson 264-1000. Can you tell the Commission
3 how it is that these companies are able to record
4 and document this interexchange traffic that is
5 initiated utilizing their local facilities?

6 A. Yes. Because the individual customers of
7 CallSmart have not notified the telephone company
8 that CallSmart is their interexchange carrier of
9 choice, the methodology used by these companies to
10 record the calls is to identify calling patterns to
11 the access directory numbers that are used by
12 CallSmart to provide access into their network,
13 specifically the numbers that Mr. Negaard just
14 discussed, the 264-1000 number in the Dickinson
15 area and the 355-2255 number in the Bismarck area.

16 In the case of Consolidated Telecom and

17 Consolidated Communications Network, Incorporated,
18 they use their central office switching equipment
19 to identify the individual customers that are
20 placing calls to these access numbers, and then
21 they use their central office switching equipment
22 to record all calls from those specific customers
23 to these access directory numbers and then provide
24 the billing data in a standard industry format to
25 their billing center for further processing and

22

1 rating.

2 BEK Communications uses a slightly
3 different method. They use a system whereby they
4 identify all traffic into a specific region, and in
5 this case they're identifying traffic patterns of
6 subscribers that are placing calls into the
7 Bismarck area, and then they're collecting all
8 calls from all of their access lines that are made
9 into the Bismarck area and doing some processing on
10 that information to determine which calls are being
11 placed to the CallSmart access number. They then
12 record those calls and pass them along to their
13 billing center in a similar format as Consolidated
14 uses.

15 Q. And their billing center is the same, it's
16 NISC?

17 A. It is. It's NISC in both of these.

18 Q. And in your opinion, are these reasonable
19 methods for these companies to use to record the
20 usage of their local network facilities by the

21 customer of SmartNET's who are initiating
22 interexchange telephone calls over the local
23 network using the local phone company's facility to
24 do that?

25 A. Yes, because CallSmart is not adhering to

23

1 protocols that are normally used by other
2 interexchange carriers, the methods for identifying
3 and recording the traffic are somewhat limited and
4 this is the best method, in my opinion, for them to
5 be recording these calls under the given
6 circumstances.

7 MR. NEGAARD: I have nothing further from
8 this witness.

9 MR. HOBERG: Thank you, Mr. Negaard. Mr.
10 Richards.

11 CROSS-EXAMINATION

12 BY MR. RICHARDS:

13 Q. Just a couple questions, Mr. Anagnost.
14 You mentioned in your testimony -- and we can read
15 it back if I'm not -- that the customers of
16 Consolidated, CCNI and BEK have not informed
17 them -- have not informed those customers that
18 CallSmart is their long distance carrier of choice.
19 Was that your testimony?

20 A. That's correct.

21 MR. HOBERG: Not informed the carrier?

22 Q. (MR. RICHARDS CONTINUING) Have not
23 informed the carriers that CallSmart was their --
24 but these customers presumably have a 1 plus pick;

25 is that correct?

24

1 A. I would assume that. I don't know that as
2 a fact.

3 Q. So they do have a long distance carrier of
4 choice that's already been reported and in some
5 cases it may actually be the complainants; is that
6 correct?

7 A. That's possible.

8 Q. They're choosing not to use that long
9 distance carrier to dial another seven-digit
10 number; is that correct?

11 A. I can't speak for those customers, but I
12 would say that that would be a possibility, yes.

13 Q. And do you know the difference between 1
14 plus access and seven-digit dial access?

15 A. Yes.

16 Q. And can you explain briefly from a
17 technical perspective whether there are
18 distinctions when a customer gets 1 plus access
19 versus seven-digit access?

20 A. In the case of 1 plus access, the
21 significance of the digit 1 is to identify world
22 zone 1 in the international 163 standard of dialing
23 patterns, which is used to signify a specific
24 country. For world zone 1, North America is
25 designated as 1. The 1 plus dialing pattern first

25

1 identifies world zone 1, meaning that it's an
2 interexchange call, and then the seven digits or
3 ten digits following that directory number are used
4 to route the call to the specific destination
5 point.

6 In a seven-digit calling pattern, the
7 absence of the 1 plus indicator or a numbering plan
8 area code, which is the following three-digit code
9 in a ten-digit dialing pattern, indicates that it
10 is a call within a locally prescribed calling area.

11 Q. The distinction, if the type of access
12 that an interexchange carrier acquires from a local
13 telephone company in order to provide 1 plus access
14 is different than that would be provided to a
15 carrier that is providing seven-digit or other
16 types of access; is that correct?

17 A. I'm sorry. Would you restate that,
18 please?

19 Q. Would the type of access required by an
20 interexchange carrier to be purchased from a local
21 exchange carrier be different for a carrier that is
22 seeking to have 1 plus access for its customers or
23 equal access versus a carrier that is using a
24 seven-digit access number; is that correct?

25 A. The type of access purchased by the end

~

26

1 user?

2 Q. Purchased by the interexchange carrier.

3 A. By the interexchange carrier. That would
4 be predicated on the tariff, which is something

5 that I'm not really qualified to discuss.

6 Q. You mentioned in terms of capturing the
7 billing data, your clients are capturing the
8 billing data, they know how many minutes are being
9 billed, but they don't know where those calls are
10 going, do they?

11 A. They're capturing the billing data to the
12 local access numbers, yes.

13 Q. So they know that a call has been made,
14 they know the duration of that call, but they don't
15 know the termination point for that call; is that
16 correct?

17 A. They do not know the ultimate termination
18 point.

19 Q. So that call could be a local call; is
20 that correct?

21 A. I suppose it could be, yes.

22 Q. It could be an intrastate call?

23 A. Yes.

24 Q. It could be an interstate call?

25 A. Correct.

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1 Q. It could be an international call?

2 A. Correct.

3 Q. It could be for access to an ISP for
4 dial-up Internet access, as well; is that correct?

5 A. Yes.

6 Q. I'd like you to briefly explain to me
7 again the distinction between how BEK was capturing
8 the traffic versus how Consolidated and CCNI were

9 capturing the traffic. You went through that.
10 Frankly, I just didn't follow that. If you can
11 sort of summarize that one more time, highlighting
12 what the differences are, I'd appreciate that.

13 A. Certainly. They both use similar types of
14 equipment. They have the same central office
15 platform so the methodologies that they use for
16 capturing and recording are nearly identical. The
17 difference between how Consolidated approaches the
18 capturing versus BEK is Consolidated uses the
19 capabilities of their central office switch to
20 identify first which end users are placing calls to
21 the CallSmart access number, and then they're
22 recording usage specifically for those end users
23 that they have identified.

24 In the case of BEK Telephone, they're not
25 in advance identifying which end users are calling

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1 CallSmart. They are recording traffic for all
2 customers from the local exchange that are calling
3 to the Bismarck area -- any number in the Bismarck
4 area, and then they're asking their data center,
5 NISC, to sort out which calls were placed to the
6 CallSmart access numbers.

7 Q. Are these residential customers -- the
8 residential customers, are they typically flat-rate
9 customers for purposes of local calling?

10 A. To my knowledge, yes.

11 Q. And would BEK or Consolidated under normal
12 circumstances be capturing the minutes of usage for

13 flat-rate telephone calls?

14 A. Not for local calls, no.

15 MR. RICHARDS: No further questions.

16 MR. HOBERG: Thank you, Mr. Richards. Mr.
17 Binek, any questions?

18 MR. BINEK: No.

19 MR. HOBERG: Commissioner Clark, any
20 questions of this witness?

21 COMMISSIONER CLARK: Yes.

22 EXAMINATION

23 BY COMMISSIONER CLARK:

24 Q. On this issue of being able to determine
25 whether it's interstate or intrastate, how would

29

1 you propose the Commission deal with that? And if
2 there's another witness who is going to handle
3 this, just defer it to that person. You know, if
4 interstate and intrastate access were the same, it
5 would be sort of a moot point, but it's not.
6 There's a big difference between intrastate, at
7 least as of now, and interstate. How is the
8 Commission to incorporate that part of this? It
9 doesn't seem like we have the ability to know. We
10 can tell the minutes of use, but we don't know if
11 it's supposed to be interstate or intrastate access
12 being assessed to it.

13 A. I don't know that I have a good answer for
14 that relative to existing data. Going forward, the
15 interexchange carriers in general are required by
16 tariffs to operate with specific protocols, and

17 presently CallSmart is not operating under the
18 confines of one of those specific protocols. Those
19 protocols enable the identification of both the
20 originating and terminating destination points and
21 associated jurisdiction that applies to them, and
22 that's how we sort out whether it's intrastate or
23 interstate or the other combinations of those
24 jurisdictions. So it's really the operational
25 methods used by CallSmart being different from the

30

1 standards that are used by other interexchange
2 carriers that is causing a problem.

3 Q. Is there any way to mitigate that? Is
4 there any way where you would be able to tell the
5 interstate or intrastate nature of the call, or is
6 that just due to the nature of the technology an
7 impossibility to get that?

8 A. The technology is not the limiting factor,
9 no. It's just purely how they have chosen to
10 configure their network and do business.

11 Q. I ask this a little tongue in cheek, but
12 just to make sure that the record is clear, a few
13 times we've talked about recording calls that are
14 made from one of the rural exchanges to CallSmart.
15 Given the current headlines, I suppose it makes
16 sense to just clarify that. When you say recording
17 calls that are being made, you're talking about
18 just the minutes of use; correct?

19 A. Correct.

20 Q. Not the contents?

21 A. when we create a record, we create a
22 record of the originating, destination numbers and
23 the minutes that are used and some other parameters
24 that are used by the billing center to track that.

25 COMMISSIONER CLARK: I thought that was

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1 the answer. Thanks. That's all I have.

2 MR. HOBERG: Thank you, Commissioner
3 Clark. Commissioner Wefald?

4 COMMISSIONER WEFALD: I have no questions
5 of this witness. Thank you.

6 MR. HOBERG: Commissioner Cramer?

7 COMMISSIONER CRAMER: I have none.

8 MR. HOBERG: Mr. Negaard, any further
9 questions?

10 BY MR. NEGAARD: Just one quick question.

11 REDIRECT EXAMINATION

12 BY MR. NEGAARD:

13 Q. Mr. Richards asked you if it's possible
14 that a CallSmart customer could be dialing these
15 access numbers to make a local call. If that were
16 the case, they would have to dial a number of extra
17 digits in order to call somebody using a measured
18 service of some sort? If they use just the local
19 features to call, they can do that without dialing
20 the extra numbers; isn't that correct?

21 A. That is correct.

22 Q. So it would call for speculation, I guess,
23 to say whether or not someone would do that or not,
24 but would you agree with me it would seem unlikely

25 that someone would do that?

32

1 A. Yes.

2 Q. And prior to equal access that was
3 mandated so that consumers had their choice of long
4 distance carriers, whether it be the big carriers
5 like Sprint or AT&T -- prior to that time consumers
6 had to use a special dial-around feature to get to
7 an alternative long distance carrier, did they not?

8 A. Prior to the implementation and mandate of
9 feature group D technology in the equal access
10 world, that was a true statement. There were other
11 methodologies which are also generically included
12 in a discussion of equal access feature groups A
13 and feature groups B, which are basically dial-
14 around methods to reach an interexchange carrier
15 prior to the feature group D protocol
16 implementation.

17 Q. And would it be fair to say that the
18 method used for these calls is very similar to
19 those old dial-around methods that were used to
20 reach alternative interexchange carriers?

21 A. It's very similar to the feature group A
22 methodology, yes.

23 MR. NEGAARD: I don't have anything
24 further.

25 MR. HOBERG: Thank you, Mr. Negaard. Mr.

33

1 Richards?

2 RECCROSS-EXAMINATION

3 BY MR. RICHARDS:

4 Q. Your references -- I think I asked a
5 question before, which I thought you had punted to
6 the tariff person, but you're getting into a
7 discussion now about feature group A and feature
8 group B and feature group D. I think getting to
9 Mr. Clark's question as to identification, isn't
10 really the distinction that if CallSmart was a 1
11 plus carrier subscribing to feature group D access
12 under the tariffs, that the incumbent local
13 carriers would be able to then capture that
14 information?

15 A. Is the question if --

16 Q. Does feature group D service -- is
17 incumbent in feature group D service the ability of
18 the local carrier to capture the terminating call
19 information?

20 A. In the technical definition of the feature
21 group D protocol, that is the intention of it, is
22 to allow calls to be accurately identified and
23 routed to their appropriate destination.

24 Q. So the fact that CallSmart chooses not to
25 be a 1 plus carrier and subscribe to feature group

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1 D, for whatever reason they choose to do that, is
2 what is limiting the ability of the ILECs to
3 capture the terminating call?

4 A. Yes.

5 MR. RICHARDS: Thank you. No further

6 questions.

7 MR. HOBERG: Thank you. Mr. Binek,
8 anything further -- or anything? You didn't have
9 anything the first time, I guess.

10 MR. BINEK: No, not at this point.

11 MR. HOBERG: Commissioners, anything
12 further of this witness?

13 COMMISSIONER WEFALD: No.

14 EXAMINATION

15 BY COMMISSIONER CRAMER:

16 Q. I might just ask, carrying that one step
17 further -- we've talked about the distinction
18 between intrastate, interstate, international.
19 What about -- the other example Mr. Richards
20 referred to was -- I guess the question was, what
21 if a person was using the service for dial-up
22 Internet access. Again, that might seem unlikely.
23 I guess that would be my editorial comment. But is
24 that a problem, or would you have a suggestion for
25 the Commission how you would deal with

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1 distinguishing voice versus some other use?

2 A. Again, going backwards, there would be no
3 way to distinguish that in historical records, and
4 that is a possibility that that could be taking
5 place. Going forward, again, requiring the carrier
6 to comply with the protocols that all other IXCs
7 are forced to comply with would be the best
8 solution in my mind.

9 COMMISSIONER CRAMER: Thanks.

10 MR. HOBERG: Yes. Commissioner Clark,
11 please.

12 FURTHER EXAMINATION

13 BY COMMISSIONER CLARK:

14 Q. You may not be able to answer this
15 question and CallSmart doesn't have any witnesses,
16 but given your engineering background and perhaps
17 knowledge of how VoIP calls are routed, there must
18 be some ability to know when they're routed and
19 turned over into a VoIP call to where they're
20 going, because CallSmart in its own ads says the
21 calls cannot be placed to Alaska or Hawaii, so
22 there has to be some sort of identification that,
23 okay, you know, the carrier knows where it's going,
24 but is that just simply information that's not in
25 the hands of the local carriers, but is in the

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1 hands of CallSmart?

2 A. That is information that is not available
3 to the local carrier, but could be available to
4 CallSmart. The technology does allow that
5 information to be recorded and used to route the
6 calls and is available in the standard voice over
7 IP protocol. The reason that it's not available to
8 the local companies is because of the call
9 initiation process that's used by CallSmart. The
10 dialing of the local seven-digit access number
11 actually terminates the call on the local exchange
12 carrier's local network so that all other
13 information that is exchanged, the additional ten

14 digits that the customer must dial to reach its
15 destination, just fly through the local exchange's
16 network without any identity.

17 COMMISSIONER CLARK: Thank you.

18 MR. HOBERG: Any further questions of Mr.
19 Anagnost.

20 MR. RICHARDS: I just have one comment for
21 Mr. Clark. We did intend to bring Mr. Burke.
22 However, Mr. Burke is very ill in his hotel room at
23 this very moment, so, unfortunately -- he was
24 intending to be here and that's as a result why we
25 don't have a witness, but I just wanted to respond

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1 to that comment.

2 COMMISSIONER CLARK: Thank you.

3 MR. HOBERG: Thank you, Mr. Richards. Mr.
4 Negaard, please.

5 MR. NEGAARD: Just a followup on that a
6 little bit.

7 REDIRECT EXAMINATION

8 BY MR. NEGAARD:

9 Q. There's a dispute in this matter. Is it
10 normal for phone companies to keep more detailed
11 records of call patterns when there's some type of
12 dispute like this that exists?

13 A. In recent years it has been very normal,
14 yes.

15 Q. And that's something that these companies
16 do in the normal course of business in order to
17 document the information because of the dispute?

18 A. I think it's a company-specific decision,
19 but there are many companies that are doing that,
20 yes.

21 MR. NEGAARD: That's all I have.

22 MR. HOBERG: Thank you, Mr. Negaard. Any
23 further questions of Mr. Anagnost? Thank you.

24 MR. NEGAARD: Your Honor, my next witness
25 is Bruce Walth. It might be helpful -- I have five

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1 exhibits -- if I could get those organized and get
2 those to counsel so they can look at them and then
3 call Mr. Walth. I'll lay the foundation.

4 MR. HOBERG: So you need a couple minutes
5 to get organized here; is that correct?

6 MR. NEGAARD: Yes.

7 MR. HOBERG: Okay. We'll just take a
8 brief recess.

9 (Recess taken.)

10 MR. HOBERG: We're back on the record from
11 a short recess and Mr. Negaard is calling Mr. Bruce
12 Walth. Mr. Walth, did you hear the admonition I
13 gave earlier in regard to perjury?

14 MR. WALTH: Yes, I did.

15 (Witness sworn.)

16 MR. SELINGER: Your Honor, before we
17 begin, I'd like to object to this witness. We
18 started discovery back when this case began. They
19 had an obligation to disclose to us who their
20 witnesses are going to be, who their expert
21 witnesses are going to be. As of now, the only

22 person that's ever been disclosed has been Dean
23 Anagnost. We have not heard from any other
24 witnesses -- or heard from the complainants who any
25 other witnesses are going to be. Because of that,

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1 we are unprepared to deal with these witnesses and
2 we ask that they be excluded or be -- not be
3 permitted to testify.

4 MR. HOBERG: Mr. Negaard.

5 MR. NEGAARD: What specific discovery is
6 being referenced?

7 MR. SELINGER: We sent out interrogatories
8 dated March 3rd, 2004. In there we asked for
9 disclosure of expert witnesses, we asked for
10 disclosure of other witnesses, and it's ongoing.
11 The responses were that interrogatories are ongoing
12 and we will supplement those.

13 MR. NEGAARD: Your Honor, as you're aware,
14 there has been some ongoing disputes over discovery
15 on this matter. We had to file motions to get
16 information. I have not heard from Mr. Richards --
17 or from either Mr. Richards or Mr. Selinger
18 recently making inquiry about any outstanding
19 discovery. This was a new hearing. It was
20 specifically limited to two issues. I think that
21 it's perfectly reasonable that they would
22 anticipate and understand that there would be
23 additional witnesses called to give the Commission
24 the information that it needs to make a decision.

25 If Mr. Selinger needs a short recess or

1 something to look at the information or needs some
2 additional time to cross-examine this witness, Your
3 Honor, I'd have no objection to that, but I've had
4 no indication from Mr. Selinger that he felt that
5 outstanding discovery applied to this specific
6 hearing or that there was an issue concerning
7 discovery.

8 MR. HOBERG: But neither did you provide
9 them with a list of who you were calling to
10 testify.

11 MR. NEGAARD: They had not asked, Your
12 Honor, and so it was not provided.

13 MR. HOBERG: Mr. Binek, any comment on
14 that?

15 MR. BINEK: No.

16 MR. HOBERG: Anything further, Mr.
17 Selinger?

18 MR. SELINGER: I don't believe I have any
19 obligation other than my discovery request to
20 continue to ask who you're going to call for
21 witnesses. I believe that that's their obligation
22 to inform us.

23 MR. NEGAARD: Your Honor, the only time
24 I've ever seen in 27 years of practice where
25 anybody has ever made this type of objection on the

1 issue is whether there's some unfair surprise

2 that's experienced by the opposing party. This is
3 a regulatory agency. We're here to provide them
4 information to help them assist them, Your Honor,
5 and for Mr. Selinger or Mr. Richards to say that
6 they're surprised that these types of witnesses
7 would be here today presenting this kind of
8 information, I don't think they can hardly claim
9 surprise.

10 MR. HOBERG: I'm going to allow you to
11 present your witnesses, Mr. Negaard, but I
12 certainly entertain any requests you may have in
13 regard to followup or requests for a continuance to
14 formulate questions for cross-examination, whatever
15 you have in that regard, at a later date, whatever.
16 You may proceed, Mr. Negaard.

17 MR. NEGAARD: Thank you.

18 BRUCE WALTH,
19 being first duly sworn, was examined and testified
20 as follows:

21 DIRECT EXAMINATION

22 BY MR. NEGAARD:

23 Q. Mr. Walth, would you tell us where you
24 live?

25 A. Yes. I live in Mandan, North Dakota.

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1 Q. And would you tell the Commissioners about
2 your background, your education and your work
3 experience?

4 A. I have worked in the telecommunications
5 industry for 26 years -- over 26 years. I hold a

6 bachelor of science degree in computer programming
7 from North Dakota State College of Science,
8 Wahpeton, North Dakota.

9 Q. Could you tell us about your current
10 occupation, your job position and how long you've
11 worked at the company?

12 A. I'm a carrier access billing industry
13 consultant for NISC, National Information Solutions
14 Cooperative, and I have been employed by them for
15 over 28 years.

16 Q. Has NISC been in the business of
17 processing carrier access bills for interexchange
18 telecommunications traffic in North Dakota?

19 A. Yes, we have.

20 Q. And how long has NISC been doing that?

21 A. We have been processing and billing CABS
22 bills since its inception in 1984.

23 Q. And does your company normally perform
24 that service in the normal course of business for
25 BEK, Consolidated Telecom and CCNI?

1 A. Yes, we do.

2 Q. Could you tell the Commissioners how NISC
3 gets the call information from each of these
4 companies for the purpose of preparing these CABS
5 bills?

6 A. Yes. The call records that Dean mentioned
7 in his testimony, we dial into their switch and we
8 pull that equipment and transfer those calls onto
9 our computer equipment in Mandan.

10 Q. And in the case of Consolidated Telecom
11 and its affiliate CCNI, how long have you been
12 performing this function as to interexchange
13 traffic associated with SmartNET's customers?

14 MR. HOBERG: Mr. Negaard, just a second.
15 I need to change the tape. All right. Please
16 continue.

17 Q. (MR. NEGAARD CONTINUING) For the record,
18 I'll repeat the question. In the case of
19 Consolidated Telecom and CCNI, how long have you
20 been performing this function as to interexchange
21 traffic associated with SmartNET's customers?

22 A. For Consolidated Telephone we have been
23 doing that since October 22nd of 2003. For CCNI we
24 have been doing that since February 22nd of 2003.
25 In the case of BEK, we have been doing that since

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1 June 19th of 2006.

2 Q. Okay. Now, does NISC have software that's
3 written that allows NISC to rate an interexchange
4 telecommunication message in order to determine the
5 amount of charges that the interexchange carrier
6 owes for the use of the local network for the
7 origination of the interexchange call?

8 A. Yes, we do.

9 Q. And in the case of Consolidated Telecom
10 and CCNI, has NISC performed this function with
11 respect to SmartNET interexchange calls that
12 originated over their local network?

13 A. Yes.

14 Q. And in the case of those two companies has
15 NISC been doing so since 2003?

16 A. Yes, we have.

17 Q. Okay. Let me show you what's been marked
18 as Exhibit 12 and ask if you can identify that.

19 A. Yes. These are CABS bills that NISC
20 prepared on behalf of Consolidated Telecom for the
21 purpose of rating messages by SmartNET and applying
22 the North Dakota intrastate access tariff.

23 Q. And that's something that NISC has done in
24 the normal course of your business for your
25 customer?

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1 A. Yes, we have.

2 MR. NEGAARD: I would offer Exhibit 12.

3 MR. HOBERG: Any objection to Exhibit 12?

4 MR. RICHARDS: No.

5 MR. HOBERG: No objection?

6 MR. RICHARDS: No objection.

7 MR. HOBERG: Exhibit 12 is admitted.

8 Q. (MR. NEGAARD CONTINUING) Then showing you
9 Exhibit 13, I would ask you if you can identify
10 that for us, please.

11 A. Yes. These are CABS bills that we have
12 produced for CCNI for the purpose of rating
13 messages by SmartNET customers and applying again
14 the intrastate access tariff.

15 MR. NEGAARD: I would offer Exhibit 13.

16 MR. HOBERG: Any objection to 13?

17 MR. RICHARDS: No, sir.

18 MR. HOBERG: 13 is admitted.

19 Q. (MR. NEGAARD CONTINUING) At the request
20 of Consolidated Telecom, CCNI and BEK, has NISC
21 also prepared reports of call detail originating on
22 their local network that is placed to CallSmart
23 access numbers in Dickinson and Bismarck?

24 A. Yes, we have.

25 Q. Okay. Showing you what's been marked as

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1 Exhibit 9, can you identify that document?

2 A. Yes. This is a report that we produced
3 that has the detailed call information for BEK
4 starting from a period of June 19th of this year,
5 of 2006, through July 11th of 2006, and these are
6 the calls that terminated to the 355-2255 number
7 for BEK.

8 MR. NEGAARD: I would offer Exhibit 9.

9 MR. HOBERG: Any objection to Exhibit 9?

10 MR. RICHARDS: No, sir.

11 MR. HOBERG: Exhibit 9 is admitted.

12 Q. (MR. NEGAARD CONTINUING) Now, this
13 Exhibit 9 was just for a three-month period. If
14 you had been asked to, you could have prepared call
15 detail like this going back to 2003 when you
16 started polling these switches?

17 A. For BEK they only started reporting this
18 usage, you know, beginning on the first date --
19 that June 19th date.

20 Q. Fair enough. Then looking at Exhibit 10,
21 could you tell us what that is?

22 A. Yes. This is a detail call record report
23 that we produced for Consolidated Telecom. This
24 spans a period of February 22nd of 2006 through May
25 21st of 2006.

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1 MR. NEGAARD: I would offer Exhibit 10.

2 MR. HOBERG: Any objection to Exhibit 10?

3 MR. RICHARDS: No, sir.

4 MR. HOBERG: Exhibit 10 is admitted.

5 COMMISSIONER WEFALD: Excuse me. What
6 were the dates that you indicated for Exhibit 10?

7 THE WITNESS: Exhibit 10 is -- we started
8 with February 22nd of 2006 through May 21st of
9 2006.

10 MR. HOBERG: Why does it say April, May
11 and June?

12 THE WITNESS: Those are the actual bill
13 dates that that usage is billed on. So they have a
14 bill date of the 1st. These tie to those bill
15 dates.

16 Q. (MR. NEGAARD CONTINUING) Just by way of
17 explanation, the usage is recorded and then the
18 bill is rendered later?

19 A. That's correct. So like for the April
20 billing, Consolidated Telecom bills April 22nd to
21 May -- or to March 21st, so this would be three
22 billing periods worth of detail usage.

23 Q. And for Consolidated Telecom, you could
24 have produced detail like that going all the way
25 back to 2003, if asked to do so?

3 whether it's BEK or Consolidated?

4 A. It would be usage they recorded on their
5 switches and then we just pull that information
6 onto our computer.

7 Q. Has NISC verified the accuracy of any of
8 that information?

9 A. Yes.

10 Q. How do you verify the accuracy of the
11 information?

12 A. Well, in this case here we are just -- we
13 are looking at the usage information that we've got
14 on the usage reports and then we have tied those
15 minutes of use to the bills.

16 Q. That's not my question. My question is,
17 when you did the usage study, can you verify the
18 accuracy of any of the information that you're
19 polling on the switches of the ILEC?

20 A. All we are getting is the call records
21 that have been recorded.

22 Q. So whether those calls are being captured
23 correctly or incorrectly, you don't know -- you
24 don't know the answer to that?

25 A. No.

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1 Q. Whatever the switch produces, you're
2 recording?

3 A. Yes.

4 Q. So if a call is two minutes long and
5 you've recorded it at four minutes long, it's going
6 to show up as four minutes long, if that's what the

7 switch is telling you?

8 A. Whatever the switch has recorded is what
9 we would take, yes.

10 Q. You don't independently verify the
11 accuracy of the switch?

12 A. No.

13 Q. Thank you. With respect to the
14 information on the CABS bill, I haven't been
15 through every page, but it appears to me that all
16 of the traffic is being rated as intrastate
17 intraLATA; is that correct?

18 A. That is correct.

19 Q. And why is that?

20 A. Because we do not get a destination
21 number -- the final destination number, we have no
22 way of knowing anything other than that it's
23 intrastate usage.

24 Q. You know that it's intrastate versus
25 interstate usage?

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1 A. Well, again, by looking at the from number
2 and to number, it is the calls that are within the
3 state, within the LATA.

4 Q. The from number being the end-user
5 customer, the to number being the local phone
6 number, which are called local calls; correct?

7 A. In this case, yes.

8 Q. They're not toll calls, are they?

9 A. That is -- yeah, that is just a local
10 call.

11 Q. So why are they being rated then for
12 access charge purposes?

13 A. That is what we have been asked to do by
14 our companies.

15 Q. Would it be normal -- in the normal course
16 of business for NISC to rate local calls for access
17 charge purposes?

18 A. We do not know that they were finally a
19 local call. I mean, this is an interexchange
20 carrier.

21 Q. NISC has no idea where those calls are
22 going? You have no information -- you have no
23 information about what the SmartNET network is, do
24 you?

25 A. No.

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1 Q. You've never visited SmartNET, never spoke
2 to anybody at SmartNET?

3 A. No.

4 Q. So you have no personal knowledge about
5 anything other than the information you have been
6 provided by the complainants in this case; is that
7 correct?

8 A. That's correct.

9 Q. Would it be fair to say -- are you
10 familiar with the -- I think you say you do this
11 for lots of phone companies in North Dakota. So
12 you're familiar then with the differentials in the
13 access rates that are provided generally?

14 A. We apply the access tariffs. We don't

15 answer to the access tariffs as far as, you know,
16 the details of those. We are instructed to take
17 the access tariffs and apply them.

18 Q. Who instructed you to apply the intrastate
19 intraLATA rates to these charges?

20 A. Consolidated Telephone.

21 Q. And would it be fair to say -- and I think
22 Mr. -- I'm sorry -- President Clark suggested
23 earlier that the intrastate intraLATA rates would
24 be higher than the interstate access rates.

25 A. Generally that's correct, yes.

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1 Q. Do you have any idea on the magnitude of
2 that differential?

3 A. It's again by the tariffs. Be based on
4 their tariffs.

5 Q. So you have no specific knowledge of the
6 individual tariffs of the complainants?

7 A. Other than what we've applied to in these
8 bills, yes.

9 Q. I'd like to turn to -- it doesn't really
10 matter which page we go to, but let's use Exhibit
11 No. 12 for a minute, and these are not -- I guess
12 there are page numbers. I would like to turn for a
13 second to page 4 of Exhibit No. 12.

14 A. Yes.

15 Q. The assumption is when I look at this -- I
16 would like to walk down from the top. It says
17 feature group C. Do you see that?

18 A. Yes.

19 Q. What is feature group C?

20 A. In this case it's a nonequal access
21 feature. That is based on the format of the record
22 that we're getting off of the switch. Again
23 because -- as Dean mentioned, because it is not a
24 feature group D record, the format that gets
25 recorded comes to us in a nonequal access structure

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1 which ends up being --

2 Q. Are you certain of that answer, sir?

3 MR. HOBERG: Mr. Richards, you're cutting
4 off the witness at times.

5 MR. RICHARDS: I'm sorry. I apologize.

6 Q. (MR. RICHARDS CONTINUING) I'm sorry. Are
7 you certain of that answer that this is a nonequal
8 access feature group?

9 A. Well, the format that we're getting off of
10 the switch is not a feature group D. It is
11 recorded in a format where we are only getting
12 certain things like conversation time instead of
13 access time. So we are not getting the same type
14 of format as we would get off any other
15 interexchange carrier. We're not getting a feature
16 group D record.

17 Q. There are four individual rate elements
18 that are listed here. Where would I find the
19 actual rates that are applicable for each
20 individual per minute of use?

21 A. In their access tariffs.

22 Q. In their intrastate access tariffs?

23 A. Yes.

24 Q. And when I look at the -- and I'm not very
25 good at math, but if I take this one page 4, the

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1 average rate per minute is approximately -- I don't
2 have a calculator -- something of the magnitude of
3 about 14 cents a minute maybe?

4 A. Yes, probably.

5 Q. So if I went into the Consolidated Telecom
6 access tariffs, I would find an intrastate rate of
7 14 cents a minute?

8 A. You would find the individual rate
9 elements for each of these rates -- for each of
10 these rate elements that you see in the access
11 tariff.

12 Q. Are you doing CABS bills for Consolidated
13 with respect to the long distance services of North
14 Dakota Long Distance?

15 A. I believe they are not. They've got their
16 own long distance. They don't have North Dakota
17 Long Distance.

18 Q. I'm sorry. That's not my question.

19 BEK -- is BEK part of North Dakota Long Distance?

20 A. Yes.

21 Q. Do you produce CABS bills for North Dakota
22 -- for BEK that are then billed to North Dakota
23 Long Distance?

24 A. Yes, we do.

25 Q. And are they billed at the same intrastate

1 rates that are in the exhibit that are in their
2 intrastate tariffs?

3 A. Yes.

4 Q. And do you do CABS bills for CCNI and
5 Consolidated that are then sent to the long
6 distance companies of CCNI and Consolidated?

7 A. Yes.

8 Q. And they are at the same rates that are in
9 the tariffs that are here?

10 A. The intrastate usage is billed against the
11 intrastate rates, yes.

12 MR. RICHARDS: I have no further
13 questions.

14 MR. HOBERG: Thank you, Mr. Richards. Mr.
15 Binek, any questions of this witness?

16 MR. BINEK: Yes.

17 CROSS-EXAMINATION

18 BY MR. BINEK:

19 Q. The testimony thus far in this case has
20 been regarding calls originated by SmartNET on BEK
21 or Consolidated exchanges. Does this proceeding
22 include any issues relating to calls that are
23 terminated in BEK or Consolidated exchanges?

24 A. This does not include any terminating
25 usage; just originating.

1 MR. BINEK: Thank you.

2 MR. HOBERG: Thank you, Mr. Binek.

3 Commissioner Clark, any questions of Mr. Walth?

4 EXAMINATION

5 BY COMMISSIONER CLARK:

6 Q. Just one. Do the bills for CCNI -- does
7 that include both Consolidated's LEC property --
8 rural ILEC property and the CLEC exchange within
9 Dickinson?

10 A. CCNI would strictly be the CLEC property.
11 Consolidated Telecom would be the rural co-op
12 property.

13 Q. So everything that's in the evidence here
14 that's been submitted relates to the rural
15 property, not to the CLEC operation in Dickinson;
16 is that correct?

17 A. The -- Exhibit 13 is CCNI's.

18 Q. Okay.

19 A. Those bills are for the CLEC property.

20 Q. Okay. So 13 is for the CLEC property?

21 A. And 12 is for the --

22 Q. 12 is for the --

23 A. Rural co-op.

24 Q. -- rural co-op?

25 A. Yes.

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1 Q. And 10, the usage report?

2 A. 10 is for Consolidated co-op -- the
3 cooperative, the rural property, and then 11 would
4 be for CCNI, the CLEC.

5 COMMISSIONER CLARK: Got it. Thank you.

6 MR. HOBERG: Thank you, Commissioner

7 Clark. Commissioner wefald, please.

8 EXAMINATION

9 BY COMMISSIONER WEFALD:

10 Q. Yes. For the record, would you please
11 give the definition of CABS bill? We have been
12 referring to a CABS bill. Would you define that
13 for the Commission?

14 A. Sure. CABS, the acronym is carrier access
15 billing system is what CABS stands for, and the
16 billing just is to compensate for the uses of their
17 network.

18 Q. Since you've filed all these exhibits with
19 the Commission, I feel that I should at least
20 understand what they are telling me.

21 A. Okay.

22 Q. And so let's go first to 12, page 4, which
23 we just referred to. If you can just lead me
24 through the information on that one page so that I
25 can feel comfortable in looking at the other pages

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1 of this -- of the information that's been filed.

2 A. The different rate elements that you see
3 here are out of their intrastate access tariff.
4 what you're seeing here is four rate elements that
5 we are billing out of that tariff. Carrier common
6 line, that rate element compensates for the local
7 loop to the end-user subscriber. Local transport
8 facility and termination compensate for any
9 transport charges, anything that -- any transport
10 facility hauled. Local switching compensates for

11 the end office switch.

12 Q. Okay. And so the 6686, which is the
13 quantity, by originating under carrier common line,
14 that is the quantity of?

15 A. Minutes of use.

16 Q. Minutes of use.

17 A. Yes.

18 Q. All right. Thank you. And then the
19 amount following 6,686 minutes of use for carrier
20 common line originating rate 1, the amount is
21 listed as \$501.47, and how did you calculate
22 \$501.47?

23 A. In the intrastate tariff, the rate would
24 be listed for carrier common line, and once we got
25 the minutes of use developed, we would take the

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1 minutes of use times that rate to come up with that
2 charge.

3 Q. All right. And there was a mention made
4 of 14 cents a minute for access charges for
5 consolidated. If I added -- is there a way that if
6 I added up 501.47, 220.01, which is local transport
7 facility, \$9.80 for local transport termination and
8 211.35 for local switching, that totals \$942.63.
9 If I divided that by 6,686, would that equal
10 approximately 14 cents a minute?

11 A. Yes, and that would just be the average of
12 all the different rate elements combined.

13 Q. That's what I wanted to understand. Okay.
14 Thank you. And then it looks to me like there's a

15 slightly different format that is used in Exhibit
16 No. 9, so I'd like to have a chance to understand
17 the information in that exhibit, as well.

18 A. Exhibit No. 9 is actually for BEK, and so
19 this is just the call detail report that we
20 generated for BEK for calls to the Bismarck number,
21 the 355-2255 number.

22 Q. So if I may just go across on one line of
23 that so that I can understand again the information
24 that's included in that report, the first column --
25 and I'm looking at Exhibit No. 9, CallSmart study,

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1 and then it has a date, 6-19-2006. Would that be
2 the date the call was billed or placed?

3 A. When it was made, when it was placed.

4 Q. When it was placed. All right. And then
5 it says from 701-387-4748, that would be the local
6 telephone number from which this call was placed?

7 A. That is correct.

8 Q. All right. And then it indicates that it
9 went to the number that you're tracking?

10 A. That's correct.

11 Q. That's 355-2255. And then it indicates
12 the hour that that call was placed?

13 A. That was when the call was originated, so
14 this would have been done --

15 Q. In the evening?

16 A. Yes.

17 Q. All right. 19 hours 46 minutes. Then in
18 this particular call it only lasted 38 seconds; is

19 that correct?

20 A. That is correct.

21 Q. And then it went to -- what is this MOU?

22 A. The billed minutes of use, that would be
23 the minutes of use that would have been billed on
24 the CABS bill then.

25 Q. All right. And so in this case, although

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1 the call was only 38 seconds, it was billed for one
2 minute of use because that's probably your minimum
3 billing period?

4 A. It rounds to the nearest minute.

5 Q. Okay. And then the next one is -- what is
6 TGN? There's nothing listed in that column.

7 A. And these are different fields that would
8 have been available to us again on the call
9 records. That would have been trunk route numbers.
10 That would have been trunk route number off of
11 their switch.

12 Q. But there's no data indicated?

13 A. Right. And, again, we got whatever was
14 recorded.

15 Q. All right. And then I'm going to skip
16 several columns because there's nothing listed in
17 those next columns and go over to nnx. Is it firm
18 line, is that what that says up at the top?

19 A. That's actually the flrn. It's for from
20 lrn line.

21 Q. From?

22 A. So basically what we're doing there is

23 we're just associating that with a from line as to
24 where the call is made, so in this case here,
25 because it was from 701-387, we're just showing the

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1 call place that the call was from, in this case
2 Sterling.

3 Q. Okay. Thank you. Sterling, North Dakota.
4 And then the state code is 638 for North Dakota?

5 A. Yeah, that's the LATA code for North
6 Dakota.

7 Q. And 1604?

8 A. That is BEK's OCN number.

9 Q. Thank you. And then the name of the
10 company?

11 A. Yes.

12 Q. Thank you very much. And then I have just
13 one follow-up question. So then all of the data
14 about -- for example, would it mainly come like
15 from the bill MOU, that one minute on that line
16 would be transferred over then, and as far as your
17 billing --

18 A. In this case -- in this case BEK isn't
19 billing SmartNET.

20 Q. Yes.

21 A. Consolidated and CCNI are. So if we would
22 tie like Exhibits 10 and 11 to 12 and 13, that tie
23 would be drawn.

24 Q. Okay.

25 A. And when we did summarize these like in a

1 spreadsheet, we made sure that those minutes of use
2 tied to what we bill on the bill.

3 COMMISSIONER WEFALD: Thank you. That's
4 all the questions I have at this time.

5 MR. HOBERG: Thank you, Commissioner
6 wefald. Commissioner Cramer?

7 COMMISSIONER CRAMER: I have none.

8 MR. HOBERG: Thank you. Mr. Negaard, any
9 further questions of Mr. Walth?

10 MR. NEGAARD: None, Your Honor. Thank
11 you.

12 MR. HOBERG: You said none?

13 MR. NEGAARD: None.

14 MR. HOBERG: Any further questions of Mr.
15 Walth? Thank you, Mr. Walth.

16 THE WITNESS: Thank you.

17 MR. HOBERG: Your next witness.

18 MR. NEGAARD: We would like to call Ken
19 Weisenberger, please.

20 MR. HOBERG: Mr. Weisenberger, did you
21 hear the admonition I gave earlier in regard to
22 perjury?

23 MR. WEISENBERGER: Yes.

24 (Witness sworn.)

25 MR. HOBERG: Thank you. Mr. Negaard,

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1 please.

2 KEN WEISENBERGER,

3 being first duly sworn, was examined and testified

4 as follows:

5 DIRECT EXAMINATION

6 BY MR. NEGAARD:

7 Q. Mr. Weisenberger, could you please state
8 your name for the record, please?

9 A. Ken Weisenberger.

10 Q. And where do you live?

11 A. I live in Dickinson, North Dakota.

12 Q. Would you please tell the Commission a
13 little bit about your background and your
14 education?

15 A. I have a bachelor of science degree in
16 business administration from Dickinson State
17 University. I'm currently enrolled in the master's
18 of business administration program through the
19 University of North Dakota.

20 Q. And then, if you could, please explain
21 your work experience and your current occupation
22 and how long you've been there.

23 A. I have worked for Consolidated Telecom
24 since May of 1989, which is a little over 17 years.
25 I'm currently the director of finance and

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1 accounting. I'm responsible for the financial
2 operations of the business, the accounting
3 operations, revenue accounting, which is our
4 end-user billing functions, also our warehouse and
5 inventory functions.

6 Q. You heard witness Bruce Walth identify
7 Exhibits 12 and 13, and they are there, and he

8 testified that those were CABS bills prepared on
9 behalf of Consolidated Telecom and CCNI, the CLEC.
10 Were those committed to CallSmart, SmartNET?

11 A. Yes, they were.

12 Q. And did they ever dispute the accuracy of
13 those bills?

14 A. No, they have not. The only
15 correspondence we've had with CallSmart in regards
16 to that is that they have claimed that they are a
17 voice over IP provider, and they're, therefore,
18 exempt from those charges.

19 MR. NEGAARD: I have nothing further.

20 MR. HOBERG: Thank you, Mr. Negaard. Mr.
21 Richards, any questions of Mr. Weisenberger?

22 MR. RICHARDS: Just a couple.

23 CROSS-EXAMINATION

24 BY MR. RICHARDS:

25 Q. Mr. Weisenberger, are you aware -- has
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1 CallSmart ever ordered access services from
2 Consolidated?

3 A. I can't answer that question because I
4 wouldn't have access to that information.

5 Q. Do you send out the CABS bills to other
6 carriers, as well?

7 A. Yes, we do.

8 Q. Do you send out the CABS bill -- what do
9 you do with the CABS bill you get from
10 Consolidated?

11 A. The CABS bill we get from Consolidated?

12 Q. For Consolidated's long distance access
13 charges. I mean, do you just get that bill -- I
14 mean, I think we heard earlier from the testimony
15 that there's a CABS bill that is generated for
16 Consolidated's own long distance traffic that is
17 billed at the same rates that are apparently billed
18 to SmartNET, and I'm just curious, do you process
19 and pay that bill, as well?

20 A. Consolidated Long Distance resells long
21 distance. We have a contract with a secondary
22 carrier that actually carries the toll call. We
23 don't have the facilities to do that, so we have a
24 contract with an IXC, or interexchange carrier,
25 that actually carries the call for us, and then

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1 they are billed the access bill.

2 Q. So Consolidated Long Distance, itself,
3 doesn't pay access charges?

4 A. No, they do not.

5 Q. Their underlying carrier pays those access
6 charges?

7 A. That's correct.

8 Q. Are you aware of the rates that
9 Consolidated Long Distance charges for its end-user
10 customers?

11 A. Not specifically.

12 Q. Would you be aware, for instance, of --
13 and this is again from the Consolidated website --
14 that they've got a 500-minute long distance plan
15 for \$20 a month?

16 A. That sounds accurate.

17 Q. So they're charging their customers 4
18 cents a minute for -- if my math is correct, 4
19 cents a minute for long distance service?

20 A. That would be correct.

21 Q. For which their underlying carrier is
22 paying for intrastate access 14 cents a minute, and
23 do you know what the interstate access charge is?

24 A. I don't know it specifically. It's in the
25 2- to 3-cent range.

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1 Q. So your interstate access charge is in the
2 2- to 3-cent range and your intrastate access
3 charge is somewhere in the 14-cent range?

4 A. That sounds correct.

5 Q. And so you're charging 4 cents a minute
6 for long distance?

7 A. In that package, yes.

8 MR. RICHARDS: No further questions.

9 MR. HOBERG: Thank you, Mr. Richards. Mr.
10 Binek, any questions of this witness?

11 MR. BINEK: (Shakes head.)

12 MR. HOBERG: Commissioners, any questions
13 of Mr. Weisenberger? Commissioner Clark.

14 EXAMINATION

15 BY COMMISSIONER CLARK:

16 Q. I do have one following up on Mr.
17 Richards' example. With that package -- and I
18 don't have it in front of me, but it's 500 -- get
19 up to 500 minutes of usage for a flat \$20. You may

20 use 10 minutes or you may use 500; is that correct?

21 A. That's correct.

22 Q. So it's not for per-minute use. It's just
23 a block for \$20 up to 500?

24 A. That package, yes.

25 COMMISSIONER CLARK: Okay. That's all I

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1 have.

2 MR. HOBERG: Thank you, Commissioner

3 Clark. Commissioner Wefald, please.

4 EXAMINATION

5 BY COMMISSIONER WEFALD:

6 Q. Would you please tell me again what your
7 work is? And I had trouble understanding exactly
8 why you're on the stand today.

9 A. My department is responsible for sending
10 out and coordinating with NISC the billing to the
11 carriers. The CABS bill that you have in front of
12 you --

13 Q. Yes.

14 A. -- we send that out, we record all the
15 information, the revenues in our department, we get
16 the bills and go through them and file them, and
17 that's part of my department, is to send out those
18 bills. Some carriers don't actually get a paper
19 copy. They get an electronic file. We're doing
20 more and more of that. So in those cases NISC has
21 an agreement -- we have an agreement with some of
22 these large carriers to just directly send them the
23 electronic file. Some carriers we get the bill and

24 then we turn around, box it up and send it to the
25 carrier.

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1 Q. And did you send a bill to SmartNET?

2 A. Yes, we did. Every month we send them a
3 bill.

4 Q. Every month you send a bill. Since when?

5 A. The first bill was for Consolidated
6 Telecom -- I believe we sent -- I don't remember
7 exactly what the dates were. It's not in front of
8 me. But I believe the first bill for Telecom was
9 October of 2003.

10 Q. October of 2003. And each month you've
11 sent them a bill since that time?

12 A. Yes, we have.

13 Q. And did you ever receive a response from
14 SmartNET?

15 A. The only thing is, like I said, they've
16 stated that they're a voice over IP provider and
17 exempt from paying those charges. They've never
18 really sent us a formal dispute, you know,
19 disputing the rates or the bill, itself. So that's
20 the only information we have.

21 Q. Thank you.

22 A. You're welcome.

23 Q. So basically your testimony is just to
24 tell us that you have been trying to bill SmartNET?

25 A. Yes, we have.

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1 Q. And you have not had success in your
2 collection efforts?

3 A. That's correct.

4 COMMISSIONER WEFALD: All right. Thank
5 you.

6 MR. HOBERG: Thank you, Commissioner
7 wefald. Commissioner Cramer?

8 COMMISSIONER CRAMER: I have nothing.

9 MR. HOBERG: Any further questions of this
10 witness?

11 MR. RICHARDS: I've got a followup.

12 MR. HOBERG: Mr. Richards, please.

13 RE-CROSS-EXAMINATION

14 BY MR. RICHARDS:

15 Q. Following up on the Commissioner's
16 comment, you said that SmartNET said that they are
17 a VoIP provider and, therefore, exempt. Do you
18 have any reason to dispute the fact that they're a
19 VoIP provider?

20 A. I guess that's a technical thing and I
21 don't really understand the whole voice over IP
22 system, how that all works. Myself, personally, I
23 don't know if they're a voice over IP provider or
24 what specifically they -- how they claim.

25 Q. You don't know anything about the

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1 CallSmart network?

2 A. I know very little about it. You know,
3 what I've seen on their website and stuff and

4 discussions that I've heard.

5 Q. I'd like to go back to just the page 4 of
6 Exhibit 12 for one minute. This is the
7 Consolidated Telecom bill and there's four rate
8 elements here, carrier common line, local transport
9 facility, local transport termination, end office.
10 Do you know, Mr. Weisenberger, whether CallSmart
11 utilizes the carrier common line element of your
12 access tariff?

13 A. My understanding is that they do utilize
14 that piece. The carrier common line is the local
15 loop.

16 Q. And what about the local transport
17 facility?

18 A. That is the transport from the local loop
19 to terminate the call, the way I understand it.

20 Q. So you're saying that the transport
21 facility and the common line charge are different
22 transport facilities or the same transport
23 facility?

24 A. They would be different.

25 Q. So do you know whether -- based on your

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1 earlier statement that you had really no
2 familiarity with the CallSmart network, do you know
3 whether CallSmart uses local transport facility as
4 that rate element is part of the access tariffs?

5 A. Local transport facility is based on how
6 we have it filed in the -- we call it the LERG.
7 It's the local exchange routing guide. An

8 interexchange carrier requests using our network to
9 carry a long distance call, that is the normal
10 procedure we would follow, is what we have filed,
11 and that is to -- we would take that call and then
12 hand it off at the access tandem, which is -- which
13 would be Qwest's access tandem. And so whether
14 SmartNET uses the transport facility, I guess I
15 don't know how to answer that question.

16 Q. Do you know whether they use local
17 transport termination?

18 A. There would be a termination charge for
19 every call that is made that we terminate for them.

20 Q. Terminate for them where?

21 A. Well, this -- my understanding is that we
22 terminate it in Qwest's office in Dickinson.

23 Q. You say "my understanding." Do you know
24 firsthand or you've been told this information or
25 you have firsthand information regarding this

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1 issue?

2 A. I don't know. That's a switching
3 procedure that's outside my expertise. Just from
4 discussions and seeing that they have a local
5 number, my understanding is that that's where the
6 call terminates.

7 Q. And then the end office -- do you know
8 whether SmartNET utilizes end office?

9 A. End office is our local switch, and they
10 would use that as a customer picks up and dials
11 that number.

12 Q. Doesn't the customer pay for a local line?
13 Doesn't the customer have the right to make local
14 phone calls?

15 A. Yes, they do.

16 Q. And isn't the charges for a local phone
17 call included within the charge for the local line
18 that that customer gets billed every month?

19 A. Yes. We don't bill the customer for
20 anything other than the local service. SmartNET
21 bills them for their service, even though it's a
22 local call.

23 Q. I understand. And those end-user
24 customers are entitled to, if they have a flat-rate
25 plan, unlimited local calls; correct?

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1 A. That's correct.

2 Q. And so the fact is that all local calls
3 should be covered -- the cost of local calls should
4 be covered within the charges that you're billing
5 to that customer for a local access line; correct?

6 A. To the end user, yes, that local call is
7 unlimited. They can call a local number all they
8 want.

9 Q. Right. And so are you aware whether, for
10 instance, Consolidated has any connections between
11 the Consolidated switches and any CallSmart
12 facilities --

13 A. Repeat that.

14 Q. -- for transport?

15 A. Repeat that.

16 Q. Are there any transport facilities that go
17 between CallSmart facilities and Consolidated
18 facilities?

19 A. Again, that's a technical question. I'm
20 not sure I can answer that.

21 MR. RICHARDS: I have no further
22 questions.

23 MR. HOBERG: Thank you, Mr. Richards. Any
24 further questions of Mr. Weisenberger? Thank you,
25 Mr. Weisenberger. Let's take a 10-minute recess.

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1 (Recess taken at 10:38 a.m. to 10:50 a.m.)

2 MR. HOBERG: We're back from a short
3 recess and, Mr. Negaard, you have one more witness
4 to call; is that correct?

5 MR. NEGAARD: I do, sir. Jim Howard.

6 MR. HOBERG: Mr. Howard, did you hear the
7 admonition I gave earlier in regard to perjury?

8 MR. HOWARD: Yes.

9 (Witness sworn.)

10 MR. SELINGER: I just want to renew my
11 objection again as far as not disclosing him as an
12 expert witness.

13 MR. HOBERG: Okay. I assume you have the
14 same response, Mr. Negaard.

15 MR. NEGAARD: I do, Your Honor.

16 MR. HOBERG: And I have the same ruling.
17 Mr. Negaard, please.

18 MR. NEGAARD: For the record, too, I want
19 to point out that on August 30th of 2005 I did file

20 with the Commission certified copies of the
21 intrastate tariffs that are on file with the
22 Commission, and they're part of the Commission
23 records. I got those records from the Commission,
24 and I would assume that they're part of the record
25 here today.

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1 MR. HOBERG: Yes, if they're on file with
2 the Commission.

3 JAMES HOWARD,
4 being first duly sworn, was examined and testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. NEGAARD:

8 Q. Could you state your name, please?

9 A. Yes. It's James Edward Howard, Jr.

10 Q. And where are you employed?

11 A. I'm employed with the telecommunications
12 consulting firm of John Staurulakis, Incorporated,
13 headquartered in Greenbelt, Maryland, and I work
14 out of the Eagandale Corporate Center in
15 Minneapolis, Minnesota.

16 Q. And could you tell us about your
17 professional experience and your educational
18 background?

19 A. Yes. I have a B.S. in accounting from St.
20 Cloud State in St. Cloud, Minnesota. I'm the vice
21 president of business services for John
22 staurulakis, Incorporated. My responsibilities
23 include coordinating and oversight and product

24 development and review for competitive strategies
25 such as CLECs, toll resale, broadband services,

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1 mergers, acquisitions, things like that. I'm also
2 in charge of the Minneapolis branch office, and
3 there I assist our telecommunication clients with
4 various consulting needs ranging from separation
5 studies to regulatory issues, development of access
6 tariffs.

7 Q. And on whose behalf are you testifying
8 today?

9 A. I'm testifying on behalf of the rural
10 telephone group, known as the RTC Group.

11 Q. What is the purpose of your testimony?

12 A. Well, my purpose is to help support their
13 claim that the appropriate rates as should be
14 applied to the SmartNET services question in this
15 proceeding should be the individual RTCG's members'
16 state access tariff rates.

17 Q. Okay. And --

18 A. Can I correct that a little bit?

19 Q. Sure.

20 A. Should be the individual RTCG's members'
21 access tariff rates. May go beyond state.

22 Q. Previously I filed a brief with the
23 Commission outlining some old orders that -- they
24 were old because they followed shortly after the
25 divestiture of AT&T in which this North Dakota

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1 Public Service Commission held hearings from 1983
2 through approximately 1999 in three different
3 notices and proceedings in which it established
4 compensation methods between local exchange
5 carriers and interexchange carriers. Are you
6 familiar with those proceedings?

7 A. Yes, I am.

8 Q. Did you actually work with or participate
9 with the Commission and the companies in those
10 proceedings?

11 A. In those particular proceedings I helped
12 the RTC Group members develop cost studies and
13 preparation of their access rates to be used by
14 those member companies.

15 Q. And are you aware of the Commission's
16 prior ruling in this particular matter when the
17 Commission determined that SmartNET is an
18 interexchange carrier?

19 A. Yes, I am. The Commission stated that
20 SmartNET was providing telecommunication services
21 to end users located in separate local exchange
22 areas and is an interexchange telecommunication
23 company under the state code 49-21-01(8) and under
24 North Dakota Century Code 49-21-09.

25 Q. How do you understand that last section,

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1 49-21-09?

2 A. That the Commission may prescribe
3 reasonable compensation, terms and conditions for
4 the use of facilities between the companies for the

5 transfer of those communication services.

6 Q. And given that previous ruling by this
7 Commission, what rates do you believe or in your
8 opinion should apply for the use of the local
9 facilities by the SmartNET for the service that's
10 been described?

11 A. Well, since they have been deemed to be an
12 interexchange carrier, I think it's only right and
13 just that they be charged to the same extent that
14 any other interexchange carrier that provides
15 intrastate or long distance service in North
16 Dakota, and today that would be the RTCG's state
17 access tariffs, and they require the interexchange
18 carriers to pay access charges for interexchange
19 calls made by the complainants' customers.

20 These tariffs by law must be applied
21 uniformly to all interexchange carriers to avoid
22 undue preference and to make sure that there's no
23 discriminatory rate practices in place. The
24 phone-to-phone calls of SmartNET customers
25 basically impose the same burdens on ILECs and

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1 CLECs as other interexchange carrier calls. In
2 fact, if SmartNET was not providing the service,
3 some other interexchange carrier would be providing
4 the service and paying the ILECs and the CLECs
5 their access charges from their tariffs. So it's
6 my belief that SmartNET should pay their fair share
7 of the ILECs' and CLECs' costs of providing those
8 services.

9 Q. Okay. Are you aware that this Commission
10 stated in its findings of fact in its previous
11 order that Consolidated could be unable to
12 determine whether intraLATA access or interLATA
13 access charges or interstate access charges would
14 be applied to a specific call, and are you aware
15 that Consolidated in preparing their access bills,
16 referred to as CABS, billed all the calls to
17 SmartNET at the intrastate intraLATA rate?

18 A. Yes. Normally an interexchange carrier
19 would populate a call record with their
20 company-specific CIC code, carrier identification
21 code, and then enter the call-to number, the final
22 destination, and in this case not the SmartNET
23 dial-up number, but the final destination of the
24 party being called, and from the from number so
25 that the originating company would be able to

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1 determine the proper jurisdiction for each call.
2 Absent this detail, any agreement between SmartNET
3 and Consolidated in this particular case,
4 Consolidated decided to bill all the calls as
5 intrastate intraLATA.

6 Q. Absent the information listed in my last
7 question, and that is the CIC code --

8 MR. HOBERG: Mr. Negaard, just a second,
9 please. Why don't you start that question again,
10 please.

11 MR. NEGAARD: Sure.

12 Q. (MR. NEGAARD CONTINUING) Absent the

13 information that we discussed in the previous
14 question, the carrier giving the CIC code, CIC
15 code, is there any other option that could be used
16 to determine the proper jurisdiction for these
17 calls?

18 A. Yes. One of places that we can look is --
19 an example would be the access tariffs filed by
20 Qwest, formerly known as Northwestern Bell, in the
21 general obligations section of their tariffs,
22 general obligations of the customer, it's in
23 Section 2.3.10(A), located on sheet 11 that's in
24 Exhibit 17.

25 MR. NEGAARD: Just a minute, if I could.

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1 For the record, we have Exhibit 17, which is a part
2 of the tariff records that are already on file with
3 the Commission, but for the convenience of the
4 Commission, we've marked one page of that tariff as
5 Exhibit 17.

6 MR. HOBERG: So you're basically offering
7 this for just illustrative purposes?

8 MR. NEGAARD: Yes, Your Honor.

9 MR. HOBERG: Any objection to Exhibit 17?

10 MR. RICHARDS: No, sir.

11 MR. HOBERG: Exhibit 17 is admitted.

12 Q. (MR. NEGAARD CONTINUING) I'm sorry for
13 interrupting, Mr. Howard. Please continue.

14 A. So under A under number 1 there, it
15 basically says when the customer orders services
16 for interstate and intrastate use, the projected

17 interstate percentage of use and intrastate
18 percentage of use must be provided in whole numbers
19 to the telephone company.

20 Therefore, in this case, you know, one
21 could say that SmartNET could provide reasonable
22 percentages for a PIU -- what they call PIU, which
23 is percent interstate use, and a PIL, which is a
24 percent intraLATA use. But if that's unavailable
25 or it's unreasonable for them to do so, other

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1 alternatives could be agreed upon. An example of
2 this would be maybe to use a ratio from the
3 telephone company's other interexchange calls to
4 determine jurisdictional split. In this case one
5 could look at Consolidated Telecom and CCNI and
6 look at some past history and say, based on the
7 call patterns of our other interexchange calls that
8 we have, so many are interstate, so many are
9 intrastate intraLATA and so many are intrastate
10 interLATA.

11 Q. I show you what's been marked as Exhibit
12 18. Could you tell us what that is?

13 A. Exhibit 18 is a summary of Consolidated
14 Telecom's usage for the year 2005, and it splits up
15 the calls by jurisdiction and comes up with that
16 jurisdictional split I was talking about.

17 Q. And when you say "jurisdictional split,"
18 you mean between intraLATA?

19 A. Between interstate -- intrastate
20 intraLATA, interstate intraLATA, intrastate

21 interLATA, and interstate interLATA.

22 Q. So four different call jurisdictions?

23 A. Right.

24 MR. NEGAARD: I would offer Exhibit 18.

25 MR. HOBERG: Any objection to Exhibit 18?

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1 MR. RICHARDS: No.

2 MR. HOBERG: Exhibit 18 is admitted.

3 Q. (MR. NEGAARD CONTINUING) Next showing you
4 what's been marked as Exhibit 19, Mr. Howard, could
5 you tell us what that is?

6 A. Yes. This is basically the same type of
7 schedule for Consolidated Communications Networks,
8 Incorporated, detailing the same jurisdictional
9 breakdowns based on the year 2005 originating
10 minutes of use.

11 MR. NEGAARD: I would offer Exhibit 19.

12 MR. HOBERG: Any objection to 19?

13 MR. RICHARDS: No.

14 MR. HOBERG: Exhibit 19 is admitted.

15 Q. (MR. NEGAARD CONTINUING) So, again, these
16 are percentages that you've computed using the
17 actual experience of two of the companies that have
18 rendered CABS bills, carrier access bills, to
19 CallSmart.

20 A. That's correct.

21 Q. And were you a consultant with JSI -- I
22 think you already answered this -- during the 1980s
23 when these other access cases were held?

24 A. Yes.

25 Q. And in the summer of 2005, I believe it

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1 was in August of 2005, you submitted an affidavit
2 to the Commission containing information concerning
3 North Dakota interstate access tariffs; is that
4 true?

5 A. Yes.

6 Q. And to the best of your information and
7 knowledge, is that still accurate and correct?

8 A. To the best of my knowledge, yes.

9 Q. And you had an opportunity to review the
10 certified copies of documents that we submitted to
11 the Commission concerning the filings of access
12 tariff by a number of North Dakota companies,
13 including Consolidated Telecom, CCNI and BEK; is
14 that correct?

15 A. That's correct.

16 Q. And showing you what's been marked as
17 Exhibit 14, could you please tell us what that is?

18 A. Yes. When I filed the original affidavit,
19 inadvertently we forgot to put in the CCNI access
20 rates that were on file, so Exhibit 14 is a list of
21 those access rates.

22 Q. And so that should have been part of the
23 filing in 2005 and we're just offering this to
24 supplement the record; is that correct?

25 A. That's correct.

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1 MR. NEGAARD: We'd offer Exhibit 14.

2 MR. HOBERG: So, Mr. Negaard, I understand
3 Exhibit 14 is a supplement to his affidavit
4 previously filed in this matter?

5 MR. NEGAARD: Yes.

6 MR. HOBERG: Any objection to Exhibit 14?

7 MR. RICHARDS: No, sir.

8 MR. HOBERG: Exhibit 14 is admitted.

9 THE WITNESS: I had a couple other changes
10 there.

11 Q. (MR. NEGAARD CONTINUING) Okay.

12 A. In addition for the affidavit,
13 Consolidated was listed as Consolidated Telephone
14 Cooperative and Consolidated Telecom, Incorporated,
15 but those companies have since -- have been merged
16 and go by the corporate name of Consolidated
17 Telecom. However, their previous filed rates still
18 apply to their associated exchanges. And if I may,
19 it's not part of my record, but I have one change
20 in the affidavit --

21 Q. Okay.

22 A. -- after I had read it. And the rate in
23 the affidavit that I listed for Consolidated for
24 the originating access charge was .098512, and that
25 is only their carrier common line rate, it's not

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1 their toll rate, so it should have been
2 approximately 14 cents.

3 MR. HOBERG: So you're correcting your
4 affidavit as you just stated?

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THE WITNESS: Right.

Q. (MR. NEGAARD CONTINUING) Again then in summary, it's your opinion that the Commission should apply the companies' intrastate access tariffs and that there are ways to apply percentages should CallSmart dispute these bills on some other basis than the fact that they're a VoIP provider?

A. Yes. Basically it's my belief that the CallSmart customers a customer calls is a form of long distance and they are offering that service on a low-rate basis, it is functionally identical to any other interexchange carrier offering intralocal calling area service and these other companies have to pay access charges for our access tariffs and I believe that should apply to SmartNET, also.

Q. Thank you. Anything else you would like to tell the Commission, Mr. Howard?

A. I'll just open myself up to the questions.

MR. NEGAARD: Thank you.

MR. HOBERG: Thank you, Mr. Negaard. Mr.

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Richards, any questions of Mr. Howard?

MR. RICHARDS: Sure.

CROSS-EXAMINATION

BY MR. RICHARDS:

Q. Good morning, Mr. Howard.

A. Good morning.

Q. I've got a -- I want to understand a little bit about access services generally. You

9 have been a consultant in this industry for quite a
10 while. If I was starting up an interexchange
11 business today and I hired you to be my consultant
12 and I wanted to -- putting aside VoIP or not VoIP
13 for a moment, and I wanted to create a product
14 similar to the CallSmart product -- and you're
15 familiar with the CallSmart product in terms of how
16 they're doing two-stage dialing as opposed to 1
17 plus access; correct?

18 A. (Nods.)

19 MR. HOBERG: Is that yes? You need to
20 answer.

21 THE WITNESS: Yes. Yes. I'm sorry.

22 Q. (MR. RICHARDS CONTINUING) If we looked at
23 your -- the access service tariff that just got
24 marked as supplement to RTCG 14, how would we be
25 charged? What would you explain to me as to what

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1 my costs would be to begin providing this service?
2 I'm just focusing on the access service piece,
3 putting aside transport -- the interexchange
4 transport. So I want to create a two-stage dialing
5 company today in a Consolidated territory and offer
6 this. Can you explain to me and the Commission
7 what I would need to purchase from Consolidated in
8 order to establish service?

9 A. So if we were going to be ordering this
10 service from Consolidated, we look at their access
11 tariff and if it was an intrastate intraLATA call,
12 which is what this rate is --

13 Q. You're getting ahead of yourself here,
14 aren't you? I mean, we can't make calls yet. We
15 don't have -- there's no facilities.

16 A. If, I said. You're looking to see what
17 the rate would be? Is that what the question was?

18 Q. No. I'm looking to see -- I'm starting.

19 A. Yeah, you're asking what the rate would
20 be?

21 Q. What the rate would be for the facilities,
22 not for the per-minute rates.

23 A. Yeah, what the rate would be. So you
24 would be paying -- if you went to their tariff, you
25 would be paying for a tariff commonline charge.

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1 Q. And I'm looking at the tariff. Where are
2 you looking?

3 A. At 6.1.

4 Q. Again, you're getting ahead of yourself
5 here. I'm sorry.

6 A. I guess I don't understand the question.

7 Q. I haven't begun my service. I've hired
8 you as my consultant to start a two-stage dialing
9 company in Dickinson that would compete with
10 Consolidated. I don't have a facility yet in
11 place. I can't route traffic. You're telling me
12 what I'm paying for per-minute rates. I have no
13 connection between me and Consolidated; right? I
14 mean, doesn't there have to be -- isn't what
15 access -- isn't access actually a service that is
16 provided to an interexchange carrier for the

17 purpose of originating long distance calls? Is
18 that what access service is?

19 A. That's what it is.

20 Q. So the question is, presumably there has
21 to be some way for us to exchange traffic; correct?

22 A. (Nods.)

23 Q. Because your local customer is making a
24 phone call that because I don't do business on a 1
25 plus basis is not automatically handed off to the

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1 long distance carrier, and I'm asking you within
2 this tariff how do I provide that service.

3 A. How does Consolidated provide it?

4 Q. How does Consolidated -- what service does
5 Consolidated need to provide to the Glenn Richards
6 Long Distance Company in order for Glenn Richards
7 to make -- to facilitate a long distance call for
8 my new two-stage dialing customers?

9 A. Yeah. I would think -- again, I'm
10 answering this from Consolidated's standpoint --

11 Q. That's fine.

12 A. -- which is a little bit different than
13 what you asked. They would look at it as if it was
14 similar to a feature group A-type call, it was a
15 line-side connection, dial-around. That's what
16 they would look at it as, similar to that, and they
17 would apply the rates accordingly.

18 Q. Okay. So what's the difference between
19 feature group A and you used the term line-side?
20 It might be useful for folks to understand feature

21 group A and feature group D.

22 A. Well, D is interaccess -- I mean, is equal
23 access, so you got -- where the 1 plus calling
24 comes in, you would be designated as the carrier
25 for that particular customer. And you would have a

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1 trunk that your calls would go out on.

2 Q. Okay.

3 A. A line-side is you're connecting right
4 into the subscriber's line --

5 Q. Okay. So there would need --

6 A. -- is the easiest way to explain it.

7 Q. So there would need to be a trunk between
8 my facility and the Consolidated facility; correct?

9 A. Yes. Feature group D, yeah.

10 Q. And what about in feature group A?

11 A. It's a line-side connection. It goes
12 directly into the line.

13 Q. Which line? Whose line?

14 A. The customer. So you connected the
15 customer on the line-side of the switch.

16 Q. Let's be careful about when we say
17 "customer." Do we mean the --

18 A. The end-user customer. You're
19 connecting -- I mean, he's connecting to you. It's
20 a line-side. It's like you just have a line. It's
21 not a -- it's a number. It's just like you would
22 have, you would have a number, it's a line, it goes
23 into the end of the switch. I'm not an engineering
24 guru, but it's at the switch side. You would be

25 coming as an interexchange carrier into the switch

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1 side, it's a line-side. It's not a trunk. You
2 don't have a big trunk.

3 Q. So CallSmart would have a line into the
4 Consolidated switch, correct, so that when the call
5 came in -- and let's say we're doing this exactly
6 like CallSmart, a customer would dial a local phone
7 number and that call would then go from
8 CallSmart -- I'm sorry -- would go from the
9 Consolidated switch to CallSmart and then CallSmart
10 would take it out and route it; correct?

11 A. (Nods.)

12 MR. HOBERG: Is that yes? You need to say
13 yes.

14 THE WITNESS: Yes. Yes. I'm sorry.

15 Q. (MR. RICHARDS CONTINUING) And is that
16 charge in here somewhere? There's got to be a
17 connection charge. I'm getting -- you want to get
18 ahead. I'm not getting ahead yet to the per-minute
19 rates. All I'm asking for is, is there a charge on
20 the pages in RTCG 14 that would allow -- that is
21 comparable to what CallSmart would have to buy from
22 Consolidated in order to get that traffic?

23 A. The answer to that would be that there is
24 no rate there today.

25 Q. Okay. So the rates that you've provided

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1 here are not really relevant to the service that

2 CallSmart provides, are they?

3 A. The rates that are here today are the
4 rates that were set at the time of these access
5 proceedings, okay, and your type of call that
6 you're describing was not in existence.

7 Q. I'm sorry. I thought there was testimony
8 that our types of calls had been in existence for
9 long before -- access for 20 years.

10 A. Dial-around.

11 Q. For dial-around, right.

12 A. I'm saying they're similar to dial-around.
13 They act like dial-around.

14 Q. So the idea that -- so let's look again --
15 I'm still focused on RTCG 14. If we look at 6.1.1,
16 you've got a term called premium access. That's
17 feature group D access; is that correct?

18 A. That's what it would stand for normally.

19 Q. Right. It's not in here because
20 presumably all you're providing to carriers
21 today -- or all Consolidated Communications is
22 providing is feature D access, because no one else
23 is doing probably what CallSmart is doing?

24 A. No. When we filed these tariffs, we only
25 filed one rate. We did away with the distinction.

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1 You can still have functionally feature group A, B,
2 C and D, but we only have one rate.

3 Q. But that rate is for a trunk-side
4 connection that allows an end-user customer to dial
5 that call on a 1 plus basis; correct?

6 A. That rate is used in all cases.

7 Q. Right. So would you agree as a consultant
8 with more than 20 years of experience in the
9 industry that there's a difference between
10 two-stage dialing, which was in use 20 years ago
11 for people to dial around when there were no 1 plus
12 options, and 1 plus service? I mean, do you know
13 anybody that uses a dial-around service today?

14 A. Well, there was a distinction, and that
15 distinction was in the tariffs, feature group A, B,
16 C and D. When this one was filed, that distinction
17 was not put into the filings because the rates --
18 and the reason was because the rates would be the
19 same no matter which function you took. So that
20 functionality of it was taken away because we only
21 had one rate.

22 Q. And then there are some other charges
23 under -- hold that question. The access rate that
24 is in here of 0.29, that's 2.9 cents per minute,
25 correct, and that makes up, if you were following

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1 along before, the four rate elements that we
2 discussed from the CABS bill; is that correct?
3 That is a bundled number, or are there other
4 numbers that go to that?

5 A. This is only for the carrier common line.

6 Q. Where then do I find the per-minute rates
7 that were --

8 A. So if you went to the second page under
9 6.2.2 --

10 Q. Okay.
11 A. -- and you go down at the bottom there,
12 you'll see the local transport of .0076.
13 Q. Okay.
14 A. And if you go to the next page, you'll see
15 the local transport termination of .0145, and then
16 on 6.2.3 you'll see the local switching of .022.
17 Q. So if I add up the .029, the .0076, the
18 .0145 and the 0.022, that would be the number that
19 arguably we should be -- that CallSmart should be
20 paying for access if we were using these services?
21 A. If you were using all those services,
22 right.
23 Q. And let me doing some quick math. I don't
24 have a calculator. I'm sorry. I'm just
25 furiously -- it's about 7 cents a minute?

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1 A. Close. I think it's around 6.7.
2 Q. I'm sorry. 6.7?
3 A. 6.7.
4 Q. And this is the Consolidated -- the CCNI
5 access tariff --
6 A. Right.
7 Q. -- that was filed at the same time as the
8 Consolidated Telecom tariff?
9 A. No, it was not filed at the same time.
10 Q. The Consolidated -- what's the difference
11 between CCNI and Consolidated Telecom? CCNI is the
12 CLEC?
13 A. Is the CLEC.

14 Q. And Consolidated Telecom is the RLEC?

15 A. Is the ILEC.

16 Q. The ILEC. And they serve different
17 territories?

18 A. Correct.

19 Q. Why is there a seven-cent differential
20 then between the access rates? I think you just
21 changed your affidavit and said the rate was
22 approximately 14 cents a minute. Can you explain
23 why there's a seven-cent differential between the
24 Consolidated Telecom tariff and the CCNI tariff?

25 A. The Consolidated Telecom rate, were the

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1 original co-op properties, is based on their own
2 individual costs of doing business and the filing
3 rules that were in place when they made their
4 application. CCNI is based off of the rates that
5 were filed on behalf of -- when -- to equal the
6 rates. When the companies acquired US West
7 properties, there was an agreement made as to --
8 and stipulated to what the rates would be for those
9 companies. It wasn't based on individual costs of
10 each company. It was an agreed-upon stipulation.
11 So when CCNI made their filing, they mirrored that,
12 those rates.

13 Q. Who's the ILEC in the territory where CCNI
14 is the CLEC?

15 A. That would be Qwest.

16 Q. That would be Qwest. So you're saying
17 that the 6.7 at the time mirrored the Qwest rate?

18 A. No. It mirrored the rates that the other
19 ILECs that purchased Qwest exchanges in North
20 Dakota back in the late 1980s used. It was a
21 stipulated agreement, so they mirrored those rates.

22 Q. Do you know what Qwest's access rates are
23 in the ILEC territory where CCNI is the CLEC?

24 A. I don't know what those rates are.

25 Q. Are you familiar with the federal access

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1 tariffs of the complainants, sir?

2 A. Yes.

3 Q. And do you know what the federal access --
4 let me ask you another question. Do the
5 complainants in this case file access tariffs
6 individually or as part of NECA or some other type
7 of organization at the FCC?

8 A. The majority of them file -- the RTC Group
9 file as members of NECA.

10 Q. And do you know when then -- what the
11 federal rate is for access service tariffs?

12 A. It's somewhere between two and three
13 cents.

14 MR. HOBERG: Mr. Howard, what is NECA for
15 the record?

16 THE WITNESS: National Exchange Carrier
17 Association.

18 Q. (MR. RICHARDS CONTINUING) In your -- you
19 help others prepare then -- you're familiar then
20 with federal tariffs and federal FCC rules
21 regarding tariffs; correct?

22 A. Yes.

23 Q. Are you aware, sir, of a decision of the
24 FCC on April 27th, 2001, concerning reform of
25 access charges imposed by competitive local

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1 exchange carriers?

2 A. Somewhat, yes.

3 Q. You said somewhat. Is it your
4 understanding that CLECs are required by the FCC to
5 mirror the intrastate -- I'm sorry -- the
6 interstate access tariffs of the ILEC in that
7 service territory?

8 A. I would have to review that order to
9 refresh my memory on that.

10 Q. Would you know then what the Qwest
11 interstate access rate is in the service territory
12 where they are the ILEC, where CCNI is the CLEC?

13 A. I do not know that off the top of my head.

14 Q. As I understand the access tariffs and the
15 different pieces of the access tariffs, one piece
16 has to do with transport, which includes a facility
17 that connects the serving wire center to the
18 interexchange carrier point of presence. Would
19 that be a fair statement, sir?

20 A. That's correct.

21 Q. The fact that no facility exists between
22 SmartNET and Consolidated or CCNI in this case or
23 BEK suggests that an access rate that includes that
24 transport facility, that SmartNET should not have
25 to pay a transport charge within its access rates,

1 would that be correct, because we don't have a
2 facility that connects our facilities to the ILEC
3 facilities?

4 A. well, you don't have a facility that
5 connects directly, but I would say because you do
6 have an indirect connection -- at least it's my
7 opinion you have an indirect connection -- that
8 there should be some transport. Now, that
9 transport would be from the company's end offices
10 that would be in question, wherever exchange it may
11 be, to wherever the exchange that you're -- your
12 second exchange that you're dialing into, which in
13 that case would be Dickinson.

14 Q. Are you familiar with the architecture of
15 the CallSmart network?

16 A. Somewhat. Not entirely familiar.

17 Q. Do you know, for instance, where they may
18 have servers or routers or points of presence?

19 A. My understanding is those are in Bismarck.

20 Q. Right. And how would a carrier with a
21 point of presence in Bismarck buy access services
22 from an ILEC in Dickinson?

23 A. well, I mean -- you mean, physically how
24 they're going to do it or -- they'd get it through
25 their tariffs.

1 Q. But physically how do these pieces of the

2 tariff --

3 A. I mean, physically the connection in this
4 case would be -- I mean, it goes from wherever
5 Consolidated's exchange is. We'll use
6 Consolidated. It would go from there, hit the
7 exchanges of Qwest in Dickinson, and from there
8 whatever facility connection that you have with US
9 West at that point would bring you into Bismarck,
10 and then whatever -- to your point of --

11 Q. But could -- but could CCNI -- doesn't
12 Qwest need to be present in this architecture in
13 order for Consolidated to provide access services
14 to CallSmart?

15 A. In this setup, yes.

16 Q. Because if CallSmart doesn't have any --
17 does not have a POP -- and you understand CallSmart
18 doesn't use telephone switches, correct? What is
19 it your understanding of how they provide services?

20 A. I mean, it's my understanding you don't
21 have a direct connection to them. You don't have a
22 line that's directly connected.

23 Q. But we don't even have a telephone switch,
24 do we? I mean, we have routers and servers; is
25 that correct?

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1 A. You have routers.

2 Q. This is voice over IP. So is it your
3 understanding -- CallSmart, to your knowledge, has
4 not ordered access services out of the CCNI or the
5 Consolidated or the BEK access tariffs, have they,

6 to your knowledge?

7 A. To my knowledge, I don't know if you've
8 actually physically ordered it.

9 Q. But it's your testimony that CallSmart
10 should pay for service that they have not ordered
11 from these tariffs; correct?

12 A. Correct.

13 Q. And your testimony is based on, I think
14 what you used -- the terms were just and fair?
15 Because others do it, CallSmart should have to do
16 it; correct?

17 A. Correct. I'm basing that on the fact that
18 there is a use of those facilities.

19 Q. But the fact is that CallSmart's calls are
20 being -- CallSmart's customers are going through
21 the extra step of dialing a seven-digit number
22 whereas other long distance carrier customers are
23 not doing that; correct?

24 A. That's correct.

25 Q. And so there's a premium to the services

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1 that are being provided to those other
2 interexchange carriers, is that correct, because of
3 the ability to dial 1?

4 A. I already mentioned that in our tariffs
5 there is no differential between premium and
6 nonpremium. Even though that word is in that
7 particular filing, we have no distinction there
8 between the rates. The rates are the same whether
9 it's feature group A, B C or D.

10 Q. But there's a presumption in your
11 statement. The fact that you've tariffed this
12 doesn't necessarily mean that all of the services
13 that make up that rate are required in order for
14 CallSmart customers to make long distance calls
15 using the CallSmart network?

16 A. Oh, that would be correct. That's why
17 it's listed individually, the rate elements.

18 Q. Right. So pieces of this may not be
19 applicable to the CallSmart service; correct?

20 A. It's possible, yes.

21 Q. Are you familiar with DSL service, Mr.
22 Howard?

23 A. Yes.

24 Q. What's DSL service, digital subscriber
25 line service? Can you briefly explain that to me?

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1 A. There's not an easy way to explain it.
2 It's just a service that a subscriber can use to
3 transmit data.

4 Q. But it's over the -- I'm sorry. Let me
5 ask a question. I'm sorry. The DSL service
6 provided -- are you aware whether Consolidated or
7 CCNI or BEK or any of the plaintiffs --
8 complainants in this case provide a DSL service?

9 A. Yes, they do.

10 Q. So if I lived in a Consolidated territory
11 and I bought a DSL service from them, is it a fair
12 statement to say what DSL is, the same line comes
13 to my house; correct? They don't change my

14 physical -- what we're referring to as the
15 common -- my access line doesn't change?

16 A. It's the same line.

17 Q. Same line. And what is it now that -- I'm
18 sorry -- that the complainants do to make this a
19 DSL service? How is my line all of a sudden that
20 is now used for two-way voice able to get out and
21 become a broadband service?

22 A. I'm not sure the technical -- how it
23 works, but it's a frequency. I believe that's what
24 it is. It's a change of frequency.

25 Q. But it's over the same line --

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1 A. It's the same line.

2 Q. -- correct? They don't dig up and give
3 you a better line?

4 A. No. They don't put in a separate line.

5 Q. So to the extent that I live in Dickinson
6 now and I order a DSL service, let's say, for
7 instance -- are you familiar with Vonage?

8 A. Yes.

9 Q. Vonage is a VoIP company; is that correct?

10 A. Correct.

11 Q. And they offer their services as an
12 application that rides over a broadband connection?
13 You can't get Vonage service without having a DSL
14 or some other high-speed Internet connection --

15 A. That's correct.

16 Q. -- is that correct?

17 A. Right.

18 Q. Does Vonage allow subscribers to make long
19 distance calls --

20 A. Correct.

21 Q. -- to your knowledge?

22 MR. HOBERG: Is that a yes?

23 THE WITNESS: Yes.

24 Q. (MR. RICHARDS CONTINUING) When I use that
25 service, if I am a Consolidated -- if I am a

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1 Consolidated DSL customer, I'm going out -- I think
2 we established that the service goes out over the
3 same line that the customer has for voice services;
4 correct?

5 A. That's correct.

6 Q. would it be your position, sir, that
7 Vonage should be paying access charges, as well,
8 for the long distance calls that are originating
9 over that DSL line? Actually, let me strike that
10 question.

11 To your knowledge, does Vonage pay access
12 charges to the complainants in this case when
13 Vonage customers originate long distance calls over
14 a DSL line?

15 A. To answer your question, today they do
16 not.

17 Q. And are you familiar, sir, with -- and I
18 would like to also ask in terms of wireless
19 services. Wireless services are also treated
20 differently for access charge purposes; is that
21 correct?

22 A. That's correct.
23 Q. So to the extent that -- if we use an
24 intrastate interLATA call, say, between, I think,
25 what -- Bismarck and Fargo would be interLATA; is

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1 that correct?

2 A. InterLATA.

3 Q. Right. To the extent that I am a customer
4 in Bismarck with a Bismarck wireless phone number
5 and I call a friend in Fargo, that is a -- and that
6 call terminates on one of the -- on a local phone
7 line, what is the method of compensation in that
8 situation; do you know?

9 A. Well, they have a terminating rate that
10 they pay. It's not an access rate.

11 Q. But it's not an access rate. To your
12 understanding and knowledge, it's much less?

13 A. That's correct.

14 Q. It's closer, for instance, to a CLEC
15 reciprocal compensation rate?

16 A. That's correct.

17 Q. And CLEC reciprocal compensation rates are
18 for termination of local phone calls between local
19 phone companies; correct?

20 A. Right.

21 Q. So even though in my wireless example I
22 made an interLATA call, I am only subject to --

23 A. If that call is within that -- the CLEC's
24 calling area, their MTA, then you have the
25 reciprocal comp agreement which would apply. If

1 that goes beyond that, access charges would apply.

2 Q. And to the extent that I originate a call
3 from a wireline phone to a user that might be in
4 another LATA, as long as that local phone number is
5 local to me, is there an access charge charged to a
6 wireless carrier for a call that might be
7 interstate in nature?

8 A. Not to the wireless company, no.

9 Q. Thank you. We talked about -- Mr. Negaard
10 gave us a lot of paper concerning PIUs and I would
11 like to find that one page for a moment. I'm
12 sorry. It was Exhibit No. -- it's the one page
13 from the Qwest tariff.

14 MR. RICHARDS: I'm sorry. I've got a bit
15 too much paper here. Mr. Negaard, do you know what
16 that exhibit number is.

17 COMMISSIONER WEFALD: 17.

18 Q. (MR. RICHARDS CONTINUING) 17. I would
19 like to just look at that paragraph for a second
20 that you cited for purposes of trying to help the
21 Commission decide how much CallSmart should pay for
22 access services. You referenced Qwest's PIU. A
23 percentage of interstate usage is generally not
24 used for -- in terms of allocation of individual
25 call records; is that correct? PIU is generally

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1 used to determine whether a circuit should be
2 interstate or intrastate for purposes of deciding

3 which tariff to buy a circuit out of; is that
4 correct?

5 A. That is correct, but it's also used in
6 cases to allocate the minutes -- total minutes
7 where you don't have the detail.

8 Q. But for charging for CABS? For CABS
9 charges?

10 A. If you don't have the breakdown of the
11 individual -- the individual calls, you can -- the
12 question basically, I think, as it was described
13 before was that usually you have a CIC code and the
14 to and from numbers and from there you do the
15 jurisdictional for CABS billing.

16 Q. Right.

17 A. I'm saying absent that.

18 MR. RICHARDS: I have no further
19 questions. Thank you.

20 MR. HOBERG: Thank you, Mr. Richards. Mr.
21 Binek, do you have any questions of Mr. Howard?

22 MR. BINEK: Yes, I do have a couple
23 questions.

24 CROSS-EXAMINATION
25 BY MR. BINEK:

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1 Q. Earlier testimony -- I don't remember
2 which witness it was -- stated that the calls being
3 made to SmartNET are local calls. Do you agree
4 with that?

5 A. I don't agree because I think the call is
6 going beyond the local scope of that particular

7 company. It's terminating someplace outside of
8 that local calling area.

9 Q. I'm just trying to understand how this
10 works. A customer -- well, let's just use BEK's
11 situation with the call that the witness went
12 through explaining the call from Sterling that went
13 to the SmartNET or CallSmart number.

14 MR. HOBERG: Are you referring to Exhibit
15 9?

16 MR. BINEK: Right.

17 Q. (MR. BINEK CONTINUING) And just use the
18 first call. I think that was the one that they
19 were talking through here. That's a call,
20 originated -- it originated in Sterling, it went to
21 Bismarck and was terminated at the Qwest switch in
22 Bismarck; would that be --

23 A. The call gets passed through, not
24 terminated.

25 Q. Okay. Is that a local call from Sterling

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1 to Bismarck? Where does the call come to? The
2 call that's originated in Sterling and it comes to
3 Bismarck, what does it come to in Bismarck? Does
4 it come to a switch?

5 A. Well, it would go to the Qwest switch in
6 Bismarck.

7 Q. Okay. Comes to Qwest.

8 A. Then it's transferred or rerouted over to
9 SmartNET.

10 Q. And with that call, what is it that BEK,

11 in this instance -- what aren't they being
12 compensated for in that call? I'm just trying to
13 understand where the compensation is due and why
14 it's due. So what use of its facilities isn't
15 being paid for?

16 A. well, in that case it would be the carrier
17 common line, it would be their switch, any
18 switching that they would do and any transfer to
19 get it to -- if they're using a transport, to get
20 it to Bismarck.

21 Q. Is their customer in Sterling paying
22 anything for those facilities?

23 A. Not for that call.

24 Q. Now, Sterling to Bismarck, is that EAS?

25 A. I'm not sure, but it could be. we'll

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1 assume it is.

2 Q. Let's just assume it is. Is there any
3 compensation being made because of the EAS?

4 A. There is compensation for calls that are
5 made between the Sterling customers of BEK to
6 customers of Qwest that are originated in Sterling
7 and terminated in Bismarck, the true local call --
8 extended area service call. But this call goes
9 beyond.

10 Q. If you were doing a traffic -- a study for
11 the purposes of establishing EAS between Sterling
12 and Bismarck, would your study include traffic that
13 is originating in Sterling that would be going to
14 SmartNET or CallSmart?

19 say, Linton, nobody on that list is calling from
20 Linton to make a long distance call into Bismarck
21 to get charged an extra 3.9 cents a minute to go
22 through CallSmart. I mean, technically they could.
23 I know CallSmart advertises that it's available in
24 those communities, but really it's available
25 anywhere in America. It's just in certain towns

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1 that are served by BEK or Consolidated, you get EAS
2 so it's a free -- so to you as the customer it
3 looks like a free local call. If it wasn't for
4 EAS, this wouldn't even be an issue, would it,
5 because the carrier would be recovering some sort
6 of access charge for the interexchange carrier
7 that's placing the call from, say, Sterling to
8 Bismarck; is that correct?

9 A. Well, under what you're explaining there
10 it would be a 1 plus call probably and, yes, it
11 wouldn't be a problem.

12 Q. Does anyone make those feature group A
13 dial-around calls anymore? Is that even a service
14 that's really offered? I guess I haven't seen
15 10-10-220 commercials in a long time.

16 A. You hardly ever see it anymore. You know,
17 I couldn't say that there was any or wasn't any
18 more.

19 Q. Okay. Do dial-around-type services like
20 that pay access charges just the same as
21 traditional IXC feature group D?

22 A. Yes, they do.

23 Q. They do. On the -- Mr. Negaard handed out
24 some -- RTCG 19 and 18, which are Consolidated's --
25 CCNI and Consolidated's total monthly CABS billings

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1 and just broke down percentages. Do those -- of
2 interstate interLATA, interstate intraLATA, so on
3 and so forth. They're from 2005. Do those studies
4 include the 100 percent intrastate CallSmart
5 allocation? Do you understand what I'm saying?
6 For purposes of billing it appears that for the
7 last few years --

8 A. No. These would be all the other
9 carriers. It would not include them.

10 Q. Okay. So for the purposes of --

11 A. Because we don't know what theirs is.

12 Q. Right. But in the bills that Consolidated
13 has sent out, it's billed them as 100 percent
14 intrastate intraLATA; correct?

15 A. Yeah.

16 Q. So I'm just wondering when these numbers
17 were run, the total minutes of use, was that
18 included in the intrastate intraLATA originating
19 minutes of use for both Consolidated and for CCNI?

20 A. It's a good question. My assumption would
21 be no, but I would have to check.

22 Q. That would be something I think I
23 certainly would be interested in knowing just
24 because if the -- if your belief is that what the
25 Commission should focus in on is not where the call

1 is handed off, but on the fact that it terminates
2 somewhere else outside of the Qwest exchange that
3 CallSmart operates in, then it would seem to make
4 sense that it's not all intrastate intraLATA and
5 should not be included in that.

6 A. I agree.

7 MR. HOBERG: Are you asking him to file a
8 late-filed exhibit?

9 COMMISSIONER CLARK: Yeah. Either --

10 THE WITNESS: We'll do that.

11 COMMISSIONER CLARK: -- certify that
12 that's correct as you've stated here or that it
13 needs to be updated.

14 MR. HOBERG: Do you have that, Mr.
15 Negaard?

16 MR. NEGAARD: I'm not sure I've got it
17 entirely. If we could -- the witness seems to
18 understand it.

19 THE WITNESS: I understand it, yeah.

20 COMMISSIONER CLARK: The idea is we just
21 don't want this to be weighted too heavily toward
22 intrastate.

23 MR. HOBERG: So you're going to be filing
24 a late-filed exhibit then?

25 MR. NEGAARD: That would be No. 22.

1 MR. HOBERG: 22.

2 Q. (COMMISSIONER CLARK CONTINUING) You

3 had -- I'm guessing that you're offering those two
4 exhibits, as well as the Northwest Bell tariff, to
5 provide the Commission some options for how it may
6 wish to consider --

7 MR. HOBERG: Is that 17, 18 and 19?

8 COMMISSIONER CLARK: Right, 17, 18, 19.

9 Q. (COMMISSIONER CLARK CONTINUING) -- to
10 give the Commission some options for considering
11 how to deal with this issue, deciding the proper
12 interstate, intrastate jurisdiction. Would it be
13 appropriate to use the -- some of the recent FCC
14 orders dealing with VoIP carriers that said -- now,
15 this is for universal service obligations, but that
16 set -- I can't remember -- 80 percent, or something
17 like that, as an interstate allocation which, I
18 guess, would mean by definition that the remainder
19 is intrastate?

20 A. I mean, that could be another option, you
21 could use the federal defaults. It doesn't give
22 you the default between the state intra and
23 interLATA.

24 Q. That's true. Let's see. At least with
25 CCNI -- I said we'd set that aside. That is a

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1 little bit different issue, isn't it? You don't
2 have any question about EAS there. It's just
3 operating like any other local phone company, a
4 CLEC in this case in the Qwest exchange; correct?

5 A. Correct.

6 COMMISSIONER CLARK: That's all the

7 questions I have. Thank you.

8 MR. HOBERG: Thank you, Commissioner
9 Clark. Commissioner Wefald, any questions of Mr.
10 Howard?

11 COMMISSIONER WEFALD: Yes.

12 EXAMINATION

13 BY COMMISSIONER WEFALD:

14 Q. I need a little help with 18 and 19.
15 What's the difference in the information and why
16 are the numbers different between 18 and 19?

17 A. Difference in customers and their calling
18 patterns.

19 Q. Is it for the -- one is labeled at the top
20 Consolidated Telecom.

21 A. One is the Consolidated -- what you would
22 consider the old Consolidated Cooperative exchanges
23 and their acquired US West exchanges, and the other
24 one is their operation at -- their competitive
25 operation in Dickinson.

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1 Q. Is the Networks the competitive operation?

2 A. Yes.

3 Q. Thank you. So -- thank you. That's
4 helpful. But you don't know that any of these
5 phone calls for sure are intrastate that are being
6 handled on SmartNET?

7 A. For SmartNET?

8 Q. Yeah.

9 A. No, I don't. All we're saying here is
10 that like customers have a certain pattern to it,

11 and we're saying we can make that assumption with
12 them -- with theirs. On the other hand, that's why
13 I said they could offer up the PIUs themselves,
14 PILs, and say, here's what our actual from their
15 records if they have them. If they have better
16 records, let's use them.

17 Q. You haven't been able to -- there's no way
18 that you have been able to access those records --

19 A. No.

20 Q. -- from the company?

21 A. No.

22 Q. Why not? I mean, I'm just curious
23 about -- can't you ask for that in discovery?

24 A. We could have.

25 Q. But you didn't?

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1 A. But we didn't.

2 COMMISSIONER WEFALD: So there's no
3 information for the Commission on that issue.
4 Thank you.

5 MR. HOBERG: Thank you, Commissioner
6 wefald. Commissioner Cramer, any questions?

7 EXAMINATION

8 BY COMMISSIONER CRAMER:

9 Q. One just occurred to me. Did you consider
10 using one of these -- this information as the
11 default billing as opposed to a hundred percent
12 intraLATA when you came up with the billing?

13 A. You would have to ask Consolidated.

14 COMMISSIONER CRAMER: I understand. Thank

15 you.

16 MR. HOBERG: Anything further of Mr.
17 Howard, Mr. Negaard?

18 REDIRECT EXAMINATION

19 BY MR. NEGAARD:

20 Q. Mr. Howard, under the tariff in question
21 that you reference, the Northwest Bell tariff, the
22 obligation is on the interexchange carrier to file
23 that information with the local company; is that
24 not?

25 A. That's correct.

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1 Q. Another option could be if the EAS is a
2 problem, if this Commission would allow and
3 authorize the companies to block any calls going to
4 this local number -- the CallSmart numbers if those
5 -- if the Commission issued an order. The reason I
6 say that, it seems in life we're always dealing
7 with one issue -- one actor to the detriment of
8 many. One way that we could eliminate this problem
9 is to just block calls coming from the
10 complainants' call areas to the CallSmart number?

11 A. To the CallSmart number and ask them to
12 have a direct connect.

13 Q. And so that the traffic could be measured?

14 A. (Nods.)

15 MR. HOBERG: Is that a yes?

16 THE WITNESS: Yes, could ask them to have
17 a direct connect.

18 MR. NEGAARD: I don't have anything

19 further. Thanks.

20 MR. HOBERG: Mr. Richards, anything
21 further?

22 MR. RICHARDS: I do have a couple of
23 followups.

24 RE-CROSS-EXAMINATION

25 BY MR. RICHARDS:

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1 Q. Number one is, I would like to -- based on
2 the RTCG 15 -- 18 -- I'm sorry -- and RTCG No. 12,
3 I think it's probably useful for folks to sort of
4 frame this horrible problem that we're dealing with
5 today. If I look at -- I'm looking at RTCG No. 12,
6 which is the CABS bill, and I just pulled one out,
7 I pulled out December of 2005 because I needed a
8 2005 bill. They're not -- unfortunately, the
9 exhibits are not consecutively paged so I can't
10 really tell you where I'm at, but I can show you
11 what I've pulled out, but if you'll accept, subject
12 to check and Mr. Negaard has a copy, that the
13 December 2005 CABS bill detail summary of usage
14 charges, usage billing cycle October 22nd, 2005,
15 through November 21st, 2005, the total quantity of
16 Consolidated Telecom minutes that they wanted to
17 bill CallSmart for was 6,960. According to RTCG
18 18, the total CABS billing for this month was
19 1,924,425 minutes; is that correct?

20 A. I don't have an answer to that.

21 Q. which, again, we're all stumbling on our
22 math today, but represents far less than 1 percent

23 of all the CABS billing done by Consolidated
24 Telecom?

25 MR. HOBERG: would you agree with that,

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1 Mr. Howard?

2 THE WITNESS: It could be. I accept your
3 numbers.

4 Q. (MR. RICHARDS CONTINUING) And do you know
5 -- and in the month of December 2005, according to
6 that bill, Consolidated Telecom was attempting to
7 collect from CallSmart \$1,002.92. Do you know what
8 percentage, Mr. Howard, that represents of all the
9 CABS collections made by Consolidated Telecom that
10 month?

11 A. No, I don't.

12 Q. Do you work at all, Mr. Howard, on the --
13 on behalf of the long distance products or services
14 provided by Consolidated or North Dakota Long
15 Distance?

16 A. I don't work with Consolidated's --

17 Q. North Dakota Long Distance?

18 A. -- long distance. The North Dakota Long
19 Distance I have done some business with.

20 Q. And I think there was some earlier
21 discussion based on at least the website that North
22 Dakota Long Distance has a product where they offer
23 service at approximately 5 cents a minute; is that
24 correct?

25 A. That's correct.

1 Q. Can you explain to me then how North
2 Dakota Long Distance -- from a telecommunications
3 expert position, if North Dakota Long Distance has
4 access charges that could be as high as 14 cents a
5 minute for intrastate calls, potentially 2 to 3
6 cents or more per interstate access calls, how can
7 they afford to charge 5 cents a minute for long
8 distance?

9 A. Well, first of all, North Dakota Long
10 Distance doesn't pay each one of the individual
11 telcos in the state access charges. They're a
12 reseller so they use an underlying carrier and they
13 get charged so much by the underlying carrier, and
14 so their fee has to cover whatever the underlying
15 carrier is charging them. The underlying carrier
16 then accepts the responsibilities of the access
17 charges. And the reason that they can afford maybe
18 to pay 14 cents in North Dakota versus 2 to 3 cents
19 on the interstate side is because of their
20 averaging nationwide.

21 Q. And as you understand the CallSmart
22 service -- and if we looked -- I think Mr. Negaard
23 distributed the website -- it appears to only be
24 offered in a couple of jurisdictions in North
25 Dakota; is that correct?

1 A. That's correct.

2 Q. So to the extent that they were billed, as
3 requested by the complainants in this proceeding,

4 either 14 cents a minute for intrastate access
5 charges or 7 cents a minute for interstate access
6 charges, unless the company was hoping to, you
7 know, lose a lot of money, presumably they wouldn't
8 be able to continue to offer a 4-cent-a-minute
9 product or a \$40-a-month-all-you-can-eat product;
10 is that correct?

11 A. I would think they would have to relook at
12 their pricing.

13 Q. And at this point their pricing -- as I
14 think we've just discussed that there's a
15 consolidated plan of 500 minutes for \$20, which is
16 about 4 cents a minute, there's a North Dakota Long
17 Distance plan of about 5 cents a minute, so if
18 CallSmart was required to cover its access charges,
19 there's no conceivable way, from your perspective
20 as an expert in the industry, that they could
21 charge their end-user customers less than 4 or 5
22 cents a minute because they don't have this
23 averaging benefit that the complainants have; is
24 that correct?

25 A. There would be a good chance that that

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1 would be right.

2 Q. So the reality is that for customers who
3 are choosing the CallSmart program that requires
4 two-stage dialing, the likelihood is that the
5 service won't exist, frankly, if access charges are
6 imposed upon it; would that be your impression?

7 A. That would be a high probability.

8 MR. RICHARDS: I have no further
9 questions.

10 MR. HOBERG: Thank you, Mr. Richards. Any
11 further questions of Mr. Howard? Commissioner
12 Clark, please.

13 COMMISSIONER CLARK: I do have one.

14 FURTHER EXAMINATION

15 BY COMMISSIONER CLARK:

16 Q. Mr. Negaard had mentioned there would be a
17 blocking of traffic to certain phone numbers. Does
18 that happen currently? And I'm trying to think of,
19 say -- you know, let's say you have -- with any of
20 the companies that you're familiar with, if you
21 have some sort of large extended area service
22 offering and in one of the, say, central larger
23 towns you have a dial-up ISP, does -- are there
24 certain calling plans that permit that sort of
25 blocking, that say you can make calls within your

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1 area toll-free, but you can't call certain numbers
2 that are, say, dial-in internet service providers
3 so that you are running up hundreds of minutes of
4 use from an outlying town?

5 A. It's my understanding that that is part of
6 some of the packages that you cannot put dial-up
7 calls on them. Otherwise, you don't get the rate.

8 Q. Right. would something like that be
9 consistent with, say, this case where CallSmart is
10 basically arguing -- from the onset has argued that
11 they're basically an ISP, so is it conceivable that

12 that would be an entirely -- under a, say, rate
13 package like that, would be an entirely appropriate
14 way of handling this if you accepted their -- I
15 know you don't accept their presupposition that
16 they are an ISP, but if you did, could any of the
17 carriers just simply say, Look, if you're an ISP,
18 then you're an ISP and you could just block calls
19 to that number?

20 A. Under that case it would work pretty much
21 like Mr. Negaard had stated.

22 Q. Right.

23 A. You would give the authorization to say to
24 consolidated to those customers that we're going to
25 block those calls if you're going to this

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1 particular ISP. We're not getting compensated.

2 Q. Do carriers need permission from the PSC
3 to do that? If some of them are doing it already
4 to block ISP-bound calls, do they need PSC
5 permission to do that in this case?

6 A. I think there's some question of
7 jurisdiction there. I would say to be on the safe
8 side that they probably should get it. I think
9 they would also maybe have some problems on the
10 federal side.

11 COMMISSIONER CLARK: Thank you.

12 MR. HOBERG: Any further questions of Mr.
13 Howard? No further questions. Thank you, Mr.
14 Howard.

15 Are you resting, Mr. Negaard? Do you have

16 any further evidence to present?

17 MR. NEGAARD: Nothing at this time, Your
18 Honor.

19 MR. HOBERG: Thank you, Mr. Negaard. Mr.
20 Richards.

21 MR. RICHARDS: We rest.

22 MR. HOBERG: You rest. Okay. So there's
23 no other evidence to bring to the attention of the
24 Commission?

25 MR. RICHARDS: That's right.

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1 MR. HOBERG: All right. Mr. Binek, is the
2 Commission requesting briefs on this?

3 MR. BINEK: Yes, we would request briefs
4 and proposed findings.

5 MR. SELINGER: Your Honor, I guess we
6 would prefer to do oral arguments for the purpose
7 of Mr. Richards is going to go back, and it creates
8 a huge problem for CallSmart to submit briefs, and
9 if we could have him just summarize and basically
10 submit it on oral argument, it would be much more
11 beneficial, cost effective, and I think it would
12 be -- right now we know what the issues are and I
13 would rather have him summarize it instead of
14 briefs.

15 MR. HOBERG: Mr. Negaard, are you willing
16 to do oral argument?

17 MR. NEGAARD: There were a couple issues
18 addressed during the hearing that I could address
19 during some of the argument that I don't have at my

20 fingertips at this moment.

21 MR. HOBERG: well, it's typical, I know,
22 for briefs to be filed.

23 MR. NEGAARD: Typically I think, also, my
24 understanding, the Commission prefers that you have
25 the transcript ready so that that can be

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1 referenced. And I'm not sure at what point the
2 transcript would be ready.

3 MR. RICHARDS: If I may.

4 MR. HOBERG: Mr. Richards.

5 MR. RICHARDS: I think Mr. Selinger's use
6 of the term oral argument, what I think he's
7 suggesting is that we just summarize our positions
8 today and that that closes out the record. I don't
9 think Mr. Selinger really had in mind that we have
10 a separate oral argument that I would think of in
11 terms of an oral argument. And we are prepared
12 just to do a short summary today and close the
13 record.

14 MR. HOBERG: And not file a written brief?

15 MR. RICHARDS: And not file a written
16 brief, correct.

17 MR. HOBERG: well, that's not what the
18 Commission usually asks for. They usually have
19 written briefs closing the record. I guess I'm
20 having difficulty understanding why a written brief
21 would be --

22 MR. RICHARDS: I think to put it bluntly,
23 if I may, it's the cost of preparing any more --

24 any more legal service cost for a company that has
25 a couple hundred customers to continue this case.

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1 It's gone on for three years now. I mean, this is
2 just a small company with limited resources and we
3 just don't -- there's not a legal budget. So,
4 frankly, we would just prefer to close the record
5 and move forward. This has taken a lot of time and
6 effort on behalf of CallSmart to prepare for this
7 and they run a small business and so that, I think,
8 is the blunt answer.

9 MR. HOBERG: would it be acceptable to
10 hear CallSmart's closing argument and then receive
11 a brief from Mr. Negaard?

12 COMMISSIONER WEFALD: Yes.

13 MR. HOBERG: Mr. Binek?

14 MR. BINEK: If the Commission is all right
15 with it, I guess.

16 MR. RICHARDS: well, then we're going to
17 have to reserve a right to reply to that brief.
18 That's not acceptable to us. I can't accept that.
19 I don't know what he's going to write. I don't
20 know whether it's --

21 COMMISSIONER CLARK: I've never proposed
22 banning a party from filing a brief.

23 MR. RICHARDS: You always reserve the
24 right to respond to it.

25 MR. HOBERG: We'll hear closing argument

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1 from you, Mr. Richards, and then Mr. Negaard can
2 file a brief, and if you want to respond to it, you
3 can.

4 MR. RICHARDS: Fine.

5 MR. HOBERG: Mr. Richards, please.

6 MR. RICHARDS: When we started out this
7 morning, as I read the Commission's hearing notice,
8 there were three questions that we needed to answer
9 today: One, is SmartNET using complainants'
10 facilities? Two, if we are, are we liable for
11 compensation? Three, what type of compensation?

12 And as I understand the comments made
13 before the -- during the opening part of this
14 proceeding, the burden is on the complainants to
15 establish answers to all three of those answers,
16 and we are not even required to put on a case
17 because it's the complainants' burden to do so.

18 Well, it would be my impression after
19 almost three hours of testimony that the
20 complainants have failed miserably to meet the
21 standards that you have asked for at today's
22 proceeding.

23 Number one, none of the witnesses really
24 got up and talked about the SmartNET network or
25 whether we're using any of their facilities. What

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1 I think we heard was sort of impressions of people
2 of what they thought the SmartNET network was,
3 impressions of folks as to how we provide those

4 services, and what we may or may not be using in
5 terms of the facilities that the complainants
6 provide.

7 On cross-examination Mr. Howard admitted
8 that there might even be pieces of this access
9 tariff which they want to impose on SmartNET in
10 toto that wouldn't even be applicable to the type
11 of services that SmartNET is purchasing and
12 providing in North Dakota.

13 So at first blush I think really what the
14 question is, is when you look at the 19 -- the
15 orders that Mr. Negaard submitted as part of his
16 affidavit, a compensation arrangement was created
17 in the mid '80s for interexchange carriers just to
18 provide local -- to provide compensation to local
19 carriers for the provision of interexchange
20 services. Nowhere in those orders, do I read those
21 orders, is it stating that we are required to
22 purchase access services from any ILEC.

23 This morning Mr. Selinger and I parked on
24 the parking lot over to this side of the building.
25 There was another parking lot here we could have

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1 parked in front. We didn't come in the front door.
2 We came in a side door. It seems to me we both got
3 here.

4 And so the question that I think you need
5 to deal with is whether the way that we're
6 providing services in North Dakota is it illegal.
7 Is there anything that we are doing that conflicts

8 with the laws of North Dakota. It's not whether we
9 are somehow not paying their rates. The issue, as
10 I see it, is whether we are required to purchase
11 access services from them.

12 And if the answer to that question is no,
13 we can all go home because the law, as I read it,
14 does not require us in North Dakota to purchase
15 those access services. Second, what we've
16 determined -- so the answer to that is no. If,
17 however, you find that based on no record that
18 we're using their facilities, because no one of the
19 witnesses today -- they only had one company
20 witness. Frankly, none of the witnesses were from
21 the company. There were no technical witnesses.
22 Ask yourselves why they didn't bring someone here
23 today to address the factual question that you
24 asked for in your notice of hearing.

25 But the second question is, if you find

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1 against us, are we liable for compensation and what
2 type of compensation? well, we're going to have a
3 problem with that one, too. The tariffs that
4 they've got on file today don't provide for the
5 types of services that CallSmart needs. They've
6 admitted that they don't have a feature group A or
7 B tariff which would allow the two-step dialing
8 that CallSmart requires from its customers.

9 I'll be perfectly honest with you, I
10 haven't used a two-step dialing service, I think,
11 since about 1986. why anybody would use a two-step

12 dialing service in 2006 just sort of befuddles me,
13 but presumably CallSmart is offering some value.
14 Presumably -- and taken to its extreme, the fact
15 that CCNI is a CLEC that goes and competes against
16 Qwest, sells that customer on CCNI local service,
17 but then still has customers that are using
18 CallSmart service just sort of really -- maybe
19 these guys need to look at how they provide long
20 distance and the packages that they've got in a
21 competitive environment as opposed to imposing on
22 us access charges that I think any sane person
23 would agree bear no relationships to the cost that
24 they incur.

25 Access charges nationally are somewhere

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1 below a half a cent a minute. why they need to be
2 14 cents in the State of North Dakota -- I
3 understand all the public policy issues, but it
4 sounds like if you're a Sprint providing an
5 underlying service, you can average that out all
6 over the country, so in those few instances when
7 it's 14 cents, I've got enough places where I pay a
8 half a cent. So the question of are we liable for
9 compensation and the type of compensation, they
10 have failed to answer that question, as well.

11 From my perspective -- from my parochial
12 perspective, they have failed to meet the burden
13 that you've established today for them as the
14 complainants and, frankly, their case should be
15 dismissed.

16 MR. HOBERG: Thank you, Mr. Richards. Mr.
17 Negaard, you're going to be filing late-filed
18 Exhibit 22; correct?

19 MR. NEGAARD: Correct.

20 MR. HOBERG: How long do you want to file
21 your brief then?

22 MR. NEGAARD: Can I ask the court reporter
23 how long it will be before the transcript is ready?

24 THE REPORTER: About three weeks.

25 MR. NEGAARD: Three weeks. I would

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1 anticipate that the Commission wouldn't rule before
2 you get the transcript.

3 MR. BINEK: No. I would not recommend
4 that we do.

5 MR. NEGAARD: So if we could file it in
6 three and a half weeks after -- within five days
7 after the transcript would be fine.

8 MR. HOBERG: Within five days after the
9 transcript?

10 MR. NEGAARD: Yes. That would be fine.

11 MR. HOBERG: So about 30 days from now?
12 How long do you need to decide whether you're going
13 to file a response?

14 MR. RICHARDS: Two weeks.

15 MR. HOBERG: Two weeks. So 30 days and
16 two weeks. Is there anything else to bring to the
17 attention of the Commission, Mr. Negaard?

18 MR. NEGAARD: Not at this time. Thank
19 you.

20 MR. HOBERG: Any closing comments from the
21 Commission?
22 COMMISSIONER WEFALD: Thank you.
23 COMMISSIONER CLARK: No. Thank you.
24 MR. HOBERG: For the record, it's 12:15
25 and we'll close this hearing. Oh, I'm sorry.

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1 Bill.
2 MR. BINEK: We would also like to have
3 proposed findings filed.
4 MR. HOBERG: Proposed findings from?
5 MR. BINEK: Well --
6 COMMISSIONER WEFALD: Just Mr. Negaard.
7 MR. BINEK: We invite them from both
8 parties.
9 MR. HOBERG: So those will come with your
10 brief, I imagine, Mr. Negaard.
11 MR. NEGAARD: Yes.
12 MR. HOBERG: And if you decide you want to
13 file proposed findings, they can come with your
14 response brief, if you file it. Thank you. The
15 hearing is closed.

16 (Concluded at 12:15 p.m., the same day.)

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1 CERTIFICATE OF COURT REPORTER
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3 I, Denise M. Andahl, a Registered
4 Professional Reporter,

5 DO HEREBY CERTIFY that I recorded in
6 shorthand the foregoing proceedings had and made of
7 record at the time and place hereinbefore
8 indicated.

9 I DO HEREBY FURTHER CERTIFY that the
10 foregoing typewritten pages contain an accurate
11 transcript of my shorthand notes then and there
12 taken.

13 Bismarck, North Dakota, this 7th day of
14 August, 2006.

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17 _____
Denise M. Andahl
Registered Professional Reporter

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