

Exhibit 31

STATE OF SOUTH DAKOTA
COUNTY OF HUGHES

BEFORE THE PUBLIC UTILITIES
COMMISSION OF THE STATE OF
SOUTH DAKOTA

IN THE MATTER OF THE
COMPLAINT OF SOUTH DAKOTA
NETWORK, LLC, AGAINST
SPRINT COMMUNICATIONS
COMPANY LP

TC 09-098

IN THE MATTER OF THE
THIRD PARTY COMPLAINT OF
SPRINT COMMUNICATIONS
COMPANY LP AGAINST
SPLITROCK PROPERTIES,
INC., NORTHERN VALLEY
COMMUNICATIONS, INC.,
SANCOM, INC., AND CAPITAL
TELEPHONE COMPANY.

ORAL DEPOSITION OF
MICHAEL BURNS
AUGUST 10, 2011

ORAL DEPOSITION OF MICHAEL BURNS, produced as a witness at the instance of SPRINT COMMUNICATIONS COMPANY L.P., and duly sworn, was taken in the above-styled and numbered cause on August 10, 2011, from 8:06 a.m. to 10:49 a.m., before Terasa K. Schuller, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Magenheim & Associates, 3701 Kirby Drive, Suite 764, Houston, Texas.

1 transcript in the Iowa case, which is why I know you
2 were deposed by Mr. Steese, and then produced documents
3 specific to this case marked A+1 through A+60.

4 MR. MAGENHEIM: 62.

5 Q. (By Mr. Schenkenberg) I'm sorry. 62.

6 And I've marked as Exhibit 2 those
7 documents A+1 through A+62. Are those documents that
8 you collected and produced for us?

9 A. Yes.

10 Q. How did you go about pulling those documents
11 for production?

12 A. Just delegated it to Stacy Burns on my staff
13 and Kim Ward.

14 Q. And how did they go about pulling documents?
15 Do you know?

16 A. I believe they went to all the files that
17 pertain to South Dakota, Northern Valley.

18 Q. When you say "all the files," are those hard
19 files, e-mail files?

20 A. It would be both, yes.

21 Q. So any hard files in your offices. Right?

22 A. Correct.

23 Q. And e-mails on whose e-mail account?

24 A. It would be mine or Stacy's or Kim's.

25 Q. And would this be for One Rate Conferencing, A+

1 Conferencing or both, or are those different entities at
2 all?

3 A. It would be both.

4 Q. Are those separate entities?

5 A. They used to be.

6 Q. Okay. I'll get into that in a minute.

7 A. Okay.

8 Q. And has A+ slash One Rate maintained e-mail
9 correspondence that it has had with Northern Valley over
10 the years?

11 A. Correct.

12 Q. So in other words, if you'd had e-mails that
13 have come in over the years, you wouldn't have deleted
14 those?

15 A. No.

16 Q. So what we ought to have here is the universe
17 of e-mails between One Rate and Northern Valley from the
18 initiation of the relationship forward?

19 A. Correct.

20 Q. And as you look at these documents that were
21 produced, do you believe that that's captured, those
22 communications?

23 A. Yes.

24 (Exhibit No. 3 was marked.)

25 Q. Why don't you turn that over like that. We'll

1 A. Went back and reviewed the files on the case.

2 Q. Did you talk to anybody internally?

3 A. No. Well, in my company, yes.

4 Q. In your company?

5 A. In my company, yes.

6 Q. Who?

7 A. Stacy Burns.

8 Q. Okay.

9 A. And Kim Ward. She's our executive secretary,
10 and she keeps all the hard records and files.

11 Q. Anybody else?

12 A. That's it.

13 Q. I assume you talked with Mr. Magenheim. I
14 don't want to ask you about those conversations.

15 Anybody else you talked to in preparation
16 for this deposition?

17 A. No.

18 Q. You can turn that over.

19 Let's go back to the similarities and/or
20 differences between One Rate and A+. You said One Rate
21 and A+ used to be different companies. Is that what you
22 said?

23 A. Correct.

24 Q. Let's start with One Rate Conferencing. As I
25 understand it, at one time it was One Rate Conferencing,

1 LLC?

2 A. Correct.

3 Q. Does that entity still exist?

4 A. No, it does not.

5 Q. And what happened to that entity?

6 A. It was closed out of business.

7 Q. And when was that?

8 A. About two years ago.

9 Q. Why was that done?

10 A. Because One Rate was a billing strategy to
11 where it -- it was a pricing strategy where it was flat
12 rate, unlimited usage pricing customers so that we had
13 one group of customers, whereas A+ was a per-minute
14 billing strategy, so we had -- we decided to keep those
15 separate and treat those as two different, distinct
16 customer groups, and we grew those and we did that for
17 quite a while, and then finally the One Rate strategy
18 was kind of breaking down, it wasn't quite as popular,
19 it reached its growth curve, was headed down, so instead
20 of maintaining two separate books and sets of records,
21 we decided let's just incorporate it back into A+.

22 Q. Is the ownership the same between those two
23 companies?

24 A. Yes.

25 Q. What's the ownership?

1 A. Michael R. Burns, myself, and Robin Fisher, my
2 wife, own 100 percent of the stock in both companies.

3 Q. And you own a hundred percent of A+?

4 A. Correct.

5 Q. And A+ -- what's the full name, corporate name
6 of A+?

7 A. It's A+ Conferencing, Ltd., I believe.

8 Q. And you think that changeover occurred in 2009?

9 A. I believe. It takes a while for the State to
10 go through its technical procedures, but I believe
11 that's about right, 2009. We can get a date for you on
12 that.

13 Q. Do you have a title? Are you president?

14 A. President.

15 Q. Are there other officers of A+?

16 A. Robin Fisher, CFO.

17 Q. Okay.

18 A. Stacy Burns, COO, Mary Hawkins, CTO.

19 Q. That's technical officer?

20 A. Technology, chief of technology.

21 Q. Is A+ a Texas company?

22 A. Correct.

23 Q. Does A+ own any other corporations?

24 A. No.

25 Q. Or other business entities?

1 A. No.

2 (Exhibit No. 4 was marked.)

3 Q. I'm showing you Burns 4, which are some pages
4 from One Rate Conferencing dot com, and then the last
5 page is a page from A+ Conferencing. Just leaf through
6 those. Do these look familiar to you?

7 A. Yes.

8 Q. Do you maintain One Rate Conferencing dot com?

9 A. Yes.

10 Q. And A+ Conferencing dot com?

11 A. Yes.

12 Q. So these pages, do they represent services that
13 One Rate slash A+ are providing today?

14 A. Correct.

15 Q. The first page -- well, why don't you just
16 describe at a high level what business operations One
17 Rate -- and should I call you One Rate, A+? You use
18 both names on your website. How would you like me to
19 refer to your company today?

20 A. You can refer to it as A+ Conferencing.

21 Q. Okay. Can you describe at a high level what
22 conference operations A+ Conferencing is involved in
23 today?

24 A. A+ Conferencing is involved in audio, web and
25 desktop video conferencing services for businesses and

1 nonprofit organizations. They typically price --
2 pricing is based on a per-minute model, but it can also
3 be based on a flat rate, unlimited usage model, and
4 that's what A+ Conferencing does. The flat rate or the
5 One Rate is still a brand, it's just not a corporation.
6 It's still a brand, so if somebody wants to sign up and
7 have unlimited usage for ten-party conferences for a
8 month, they can prepay up front with a credit card and
9 they can get conferencing services that way, so it's a
10 flat rate, unlimited usage basis pricing model versus
11 A+, which is primarily a per-minute pricing, you pay as
12 you use. If you don't use, you don't pay.

13 Q. Just so we're clear on the record, you're
14 saying P-E-R dash minute, M-I-N-U-T-E?

15 A. Correct.

16 Q. Sometimes in transcripts that shows up as
17 "permanent."

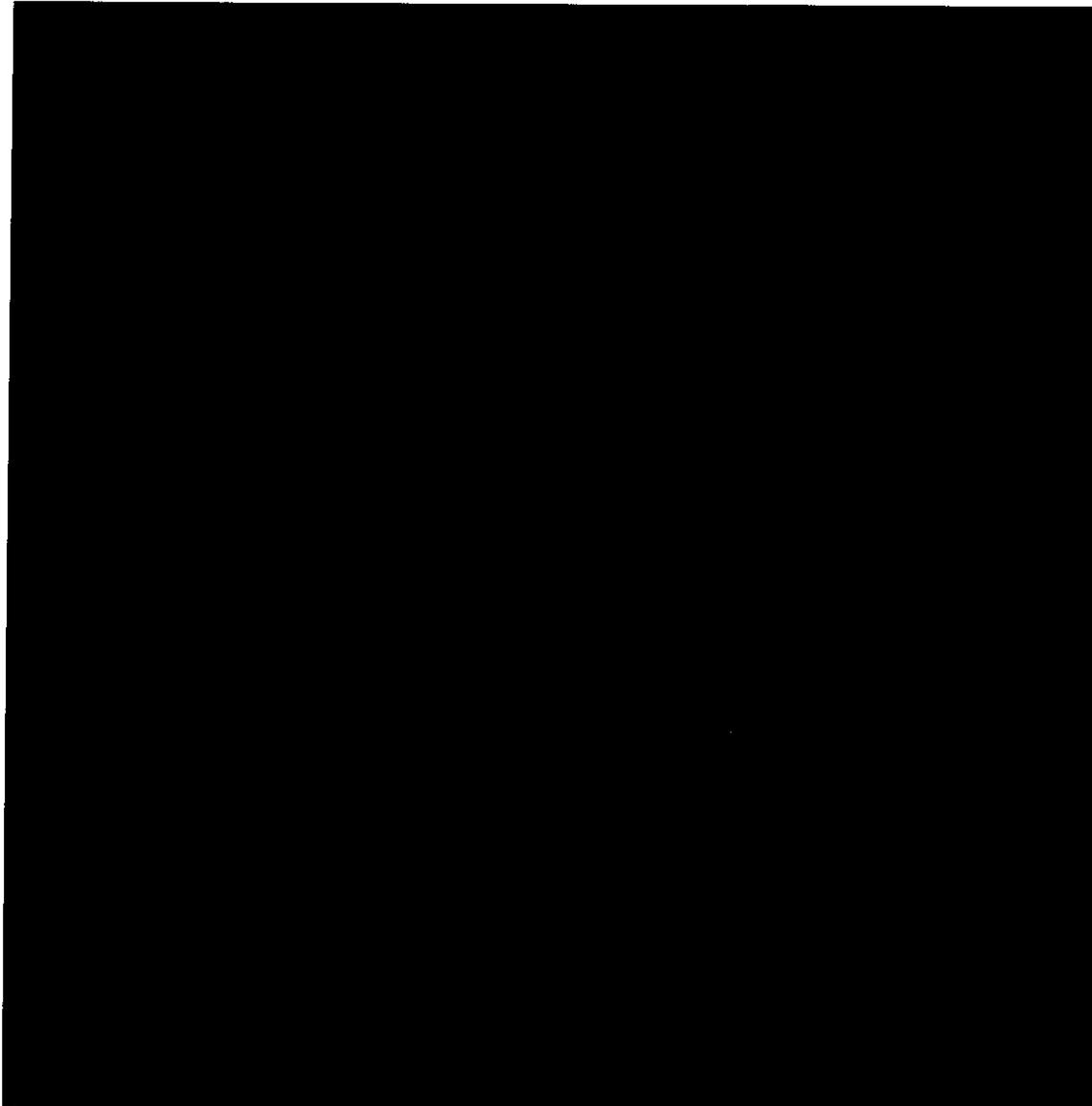
18 A. Okay, okay. Per minute, yeah, correct.

19 Q. And you understand, at least at a high level,
20 what the dispute is about that we're here today on?

21 A. To a certain degree, yes.

22 Q. I'm concerned today about calls that have been
23 dialed as long-distance calls delivered through to
24 Northern Valley and then to A+ -- numbers that have been
25 assigned to A+.

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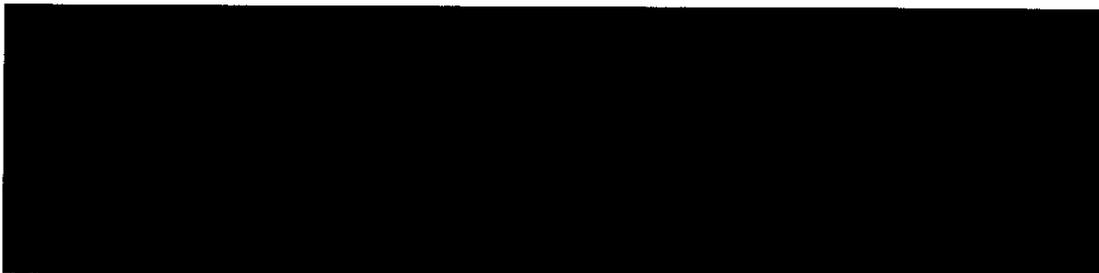


Q. I think we got you.

A. Yeah.

Q. So I don't want to talk much about the 800.

A. Okay.



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Q. Okay. What you refer to as a megacenter, is that a local exchange carrier facility?

A. Or one of my facilities.

Q. Where do you have facilities?

A. In Houston.

Q. Just in Houston?

A. Correct.

Q. What do you have in Houston?

A. I have our corporate headquarters, 10,000 square feet, and we have our ops center and we have our -- we have an array of conference bridges there. Our big cluster of conference bridges is in Houston, Texas.

Q. Do those conference bridges receive 8XX calls only, or do they also receive standard telephone number calls?

A. Both.

Q. The telephone numbers that are assigned to those bridges, are those Houston numbers?

A. Correct.

Q. And so you have you those numbers assigned by a

1 local provider here in the area?

2 A. Correct.

3 Q. What were you considering to be your four
4 regional megacenters when you wrote this?

5 A. Iowa had two and Kansas had one.

6 Q. Are you still in Iowa and Kansas?

7 A. Not in Kansas.

8 Q. But you're still in Iowa?

9 A. Yes.

10 Q. The A+ Conferencing brand, is that generally
11 8XX?

12 A. Primarily.

13 Q. And so if you are obtaining A+ brand service,
14 you're generally going to be paying you say a per-minute
15 as opposed to a flat rate?

16 A. Correct.

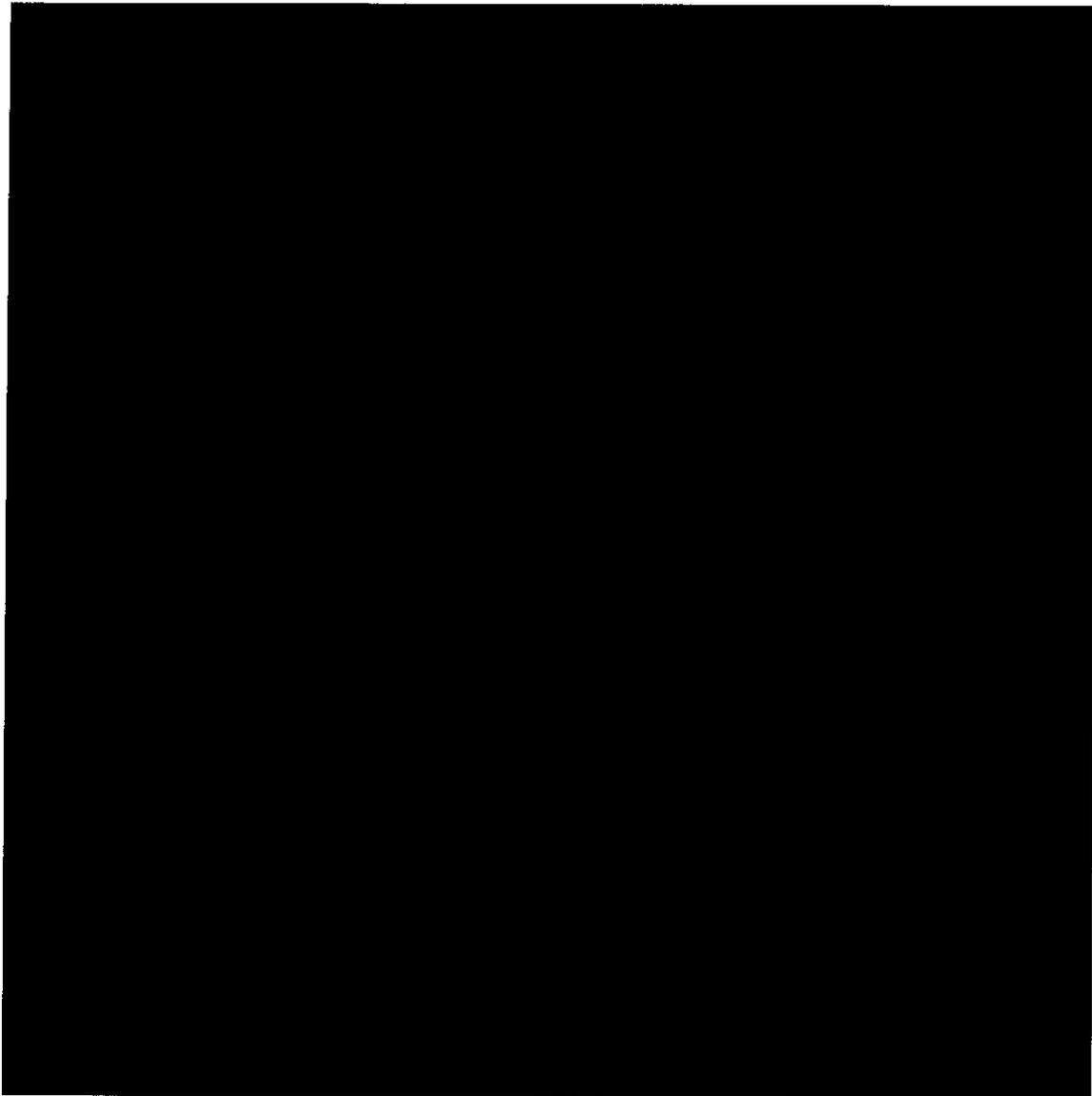
17 (Exhibit No. 5 was marked.)

18 Q. I'm showing you Burns 5. This is two pages
19 from A+ Conferencing dot com. Does this look familiar?

20 A. Yes.

21 Q. And we may not need to talk much about this, if
22 this is 8XX, but towards the top it says "A+
23 Conferencing provides mid to high volume customers,
24 agents, and resellers with some of the most effective,
25 reasonably priced conferencing services in the

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18 Q. And we'll talk more about that later.

19 Are 100 percent of A+'s customers paying
20 for the conferencing services, the toll-based
21 conferencing services that it offers?

22 A. State that question again.

23 Q. I understand your business plan to be that you
24 charge your customers a fee to obtain the conferencing
25 services that you provide.

1 A. Correct.

2 Q. And my question is is that true for all of your
3 customers, or are there some customers to whom you don't
4 charge a fee?

5 A. There are some customers that we have a free
6 trial, and so they can come on for a couple of weeks,
7 try it out for free using a toll number, we don't incur
8 any long-distance costs, and then we try to convert them
9 over, so there are a few free customers on there, but
10 they're on free trials. If they don't convert, then we
11 turn them off.

12 Q. I see.

13 A. Yeah.

14 Q. So outside of those free trial situations,
15 there wouldn't be anyone receiving service without
16 paying you for it?

17 A. Right.

18 Q. Does A+ make federal Universal Service Fund
19 payments?

20 A. Correct.

21 Q. How are those calculated? Do you know?

22 A. There's a formula that we go by that the FCC
23 provides us, or their staff.

24 Q. And it's based on the amount that you would
25 charge your customers for conferencing services and then

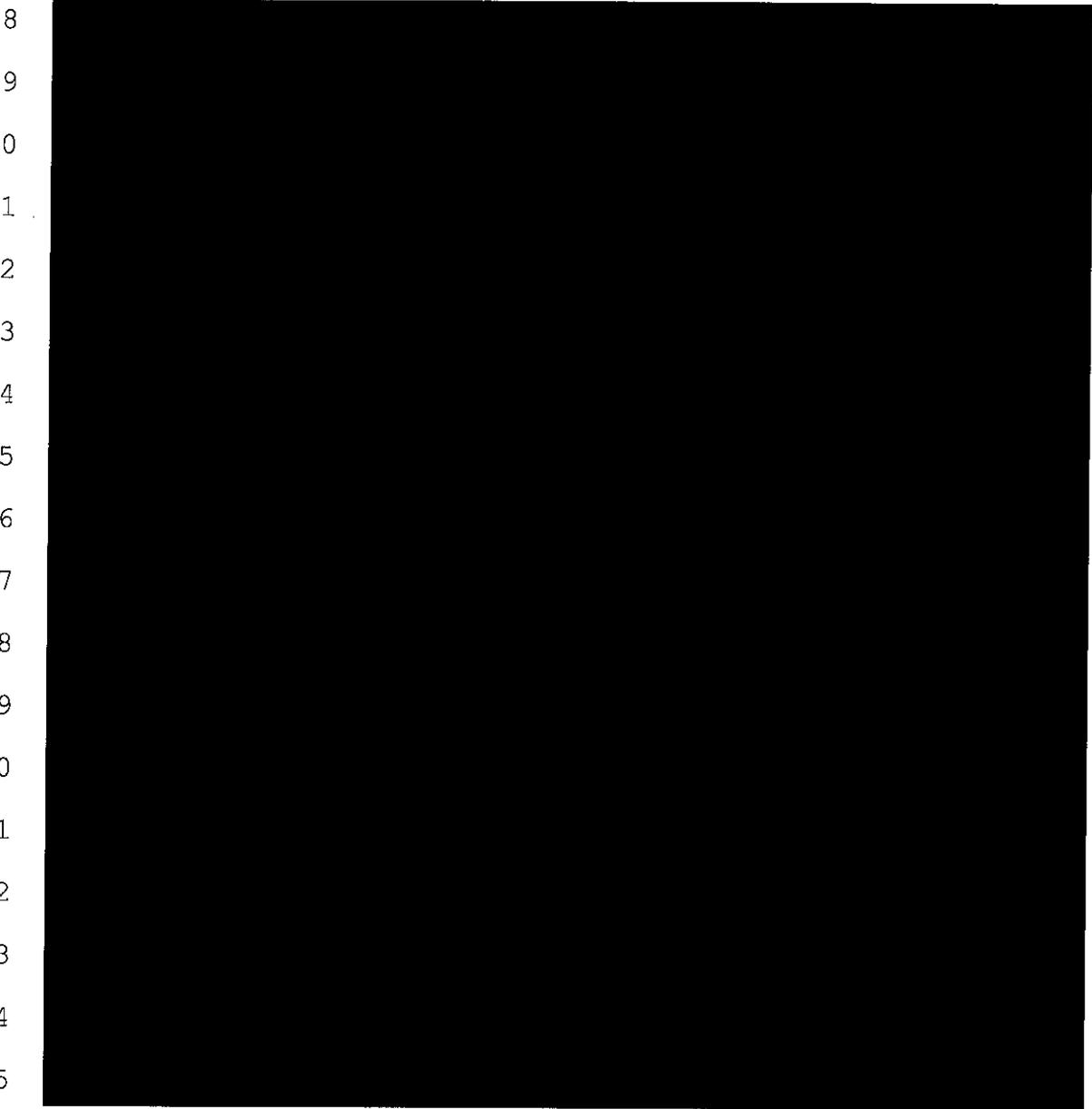
1 Q. You don't remember?

2 A. I don't remember.

3 Q. But certainly the bridge that went in at the
4 beginning of this relationship is still there, although
5 it's now in TDM, whereas it started in IP?

6 A. Correct, correct.

7 (Exhibit No. 12 was marked.)



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1 A. I don't understand that.

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Q. All right.

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(Exhibit No. 14 was marked.)

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1 testimony earlier about One Rate being wound down?

2 A. Correct.

3 Q. Did you go back and amend Exhibit 12 to reflect
4 the new name or do a formal assignment of that contract?

5 A. No, no.

6 Q. Was it just --

7 A. Just notified the parties.

8 Q. Did you notify the parties any other way than
9 through this document, Exhibit 14?

10 A. Possibly by phone.

11 Q. So the substance of Exhibit 14 is similar to
12 the substance of 13. Is that right?

13 A. This is a settlement. 13 is a settlement.
14 Right?

15 Q. Let me ask the question differently.

16 A. Okay.

17 Q. Yeah, you're right. 13 related to a settlement
18 with one particular carrier.

19 A. Uh-huh.

20 Q. Fourteen also deals with compensation paid to
21 you?

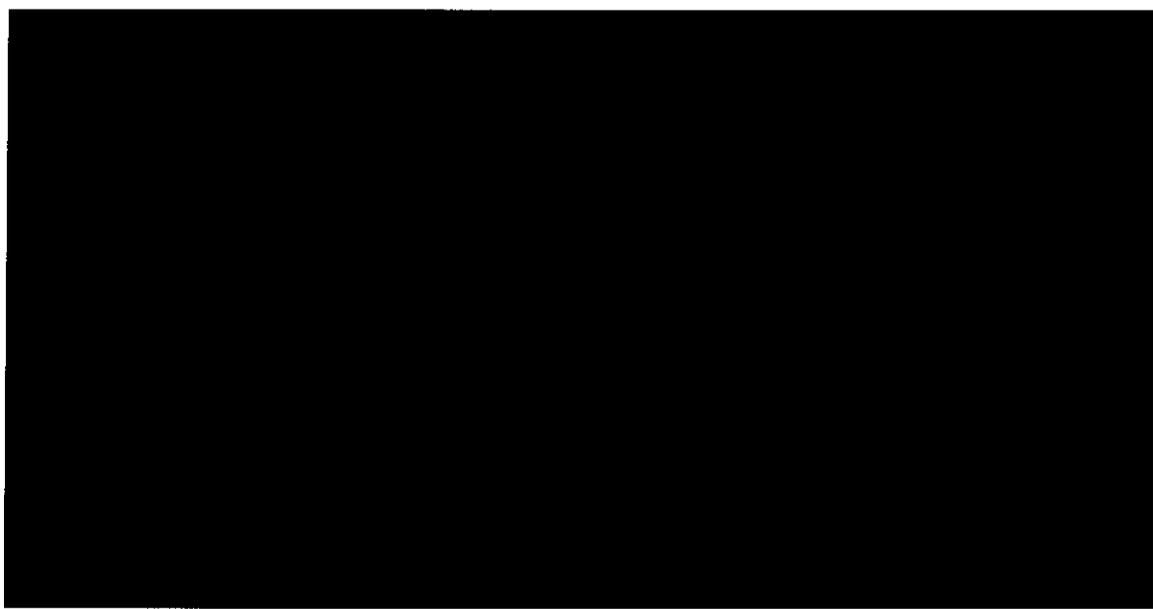
22 A. Correct.

23 Q. But it relates to IP carriers. Is that right?

24 A. An IP carrier is? How is that defined?

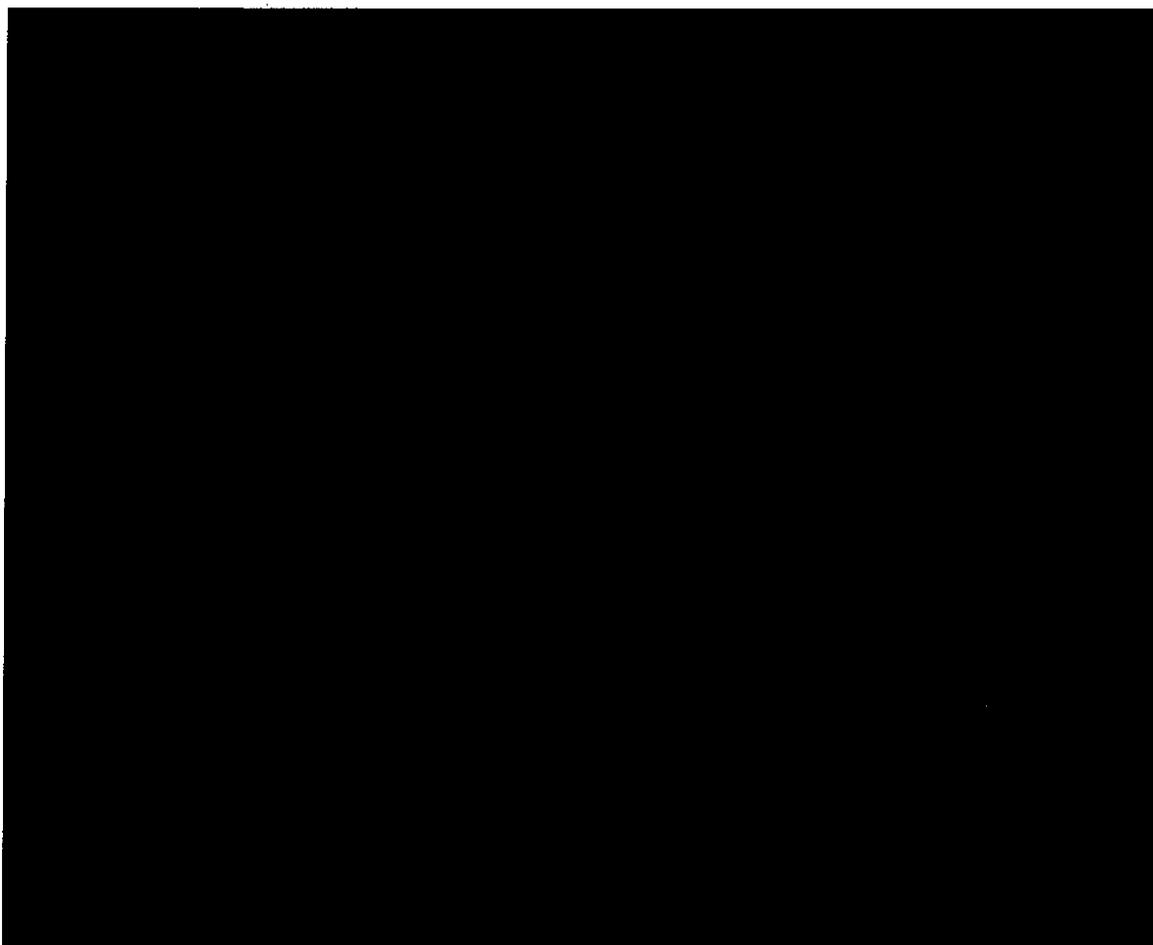
25 Q. Well, No. 2 says "NVC has undertaken

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Q. All right.

(Exhibit No. 15 was marked.)



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(Exhibit No. 16 was marked.)

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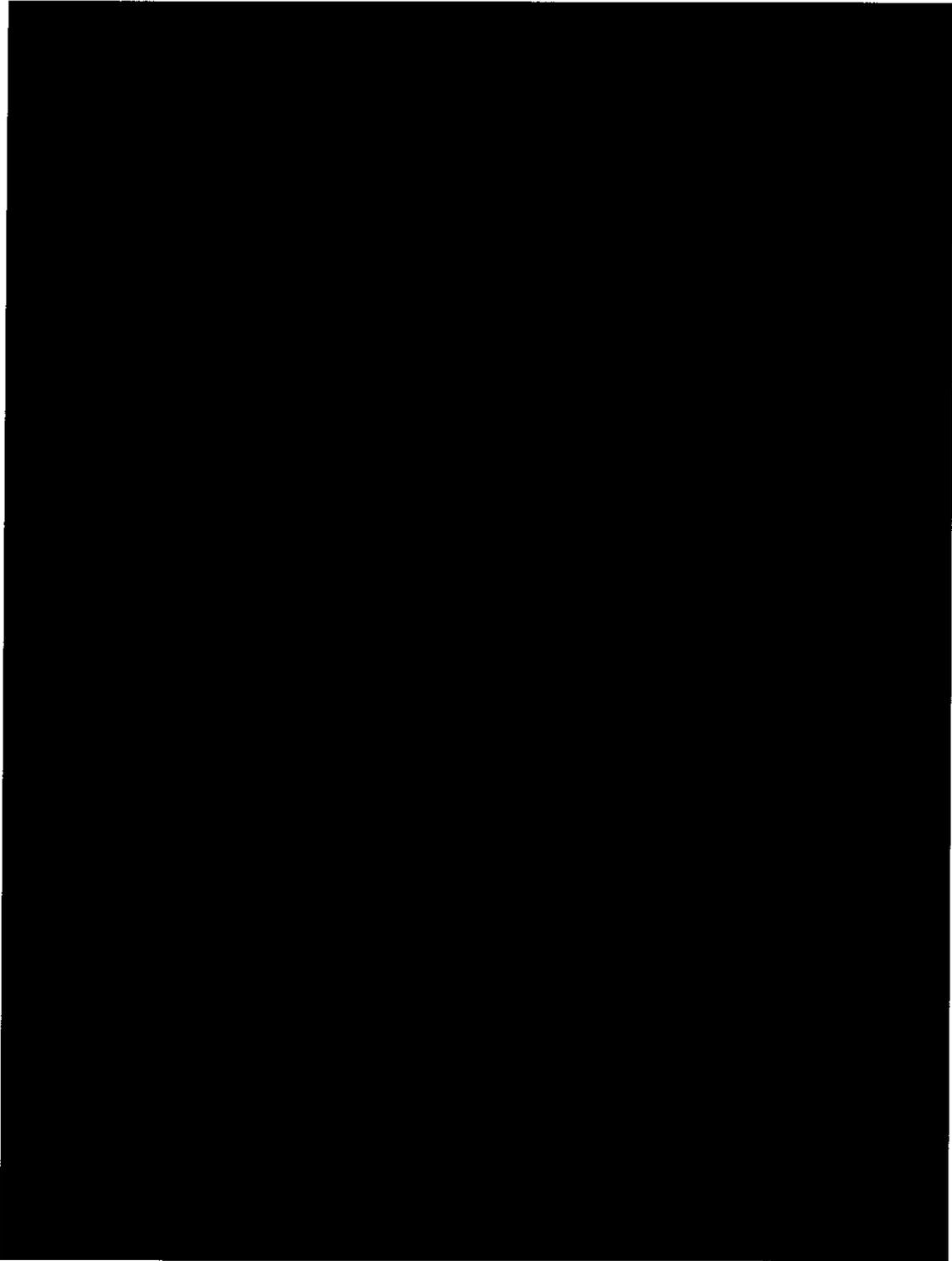
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1 Q. It's going to be streamed from the bridge over
2 the telephone line?

3 A. Correct.



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2 Q. And what's optimal on a DS3 TDM based bridge?
3 What would you like to see?

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A. Well, 672 ports, it could support three million
5 minutes, if it's spread throughout the day. The traffic
6 spread is daytime and nighttime.

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Q. And when is your heaviest usage period?

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A. I believe it's in the evening. We have a peak
9 in the morning from about 10:00 to 11:00 for business
10 traffic, a small peak typically in the afternoon around
11 3:00 p.m. for business traffic, and then we have the
12 residential traffic, which is usually MLM, multi-level
13 marketing companies, that are in the evening between
14 7:00 and 9:00 p.m.

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Q. And those MLM, what kinds of calls are those?

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Just give me an example.

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A. Most of those are either recruiting calls or

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they are motivational calls, meeting type calls with

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members where they talk about new products and services

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and motivate the sales force.

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Q. Folks taking their business -- I'm sorry --

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their evening hours to do that which they can't

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otherwise do during the day?

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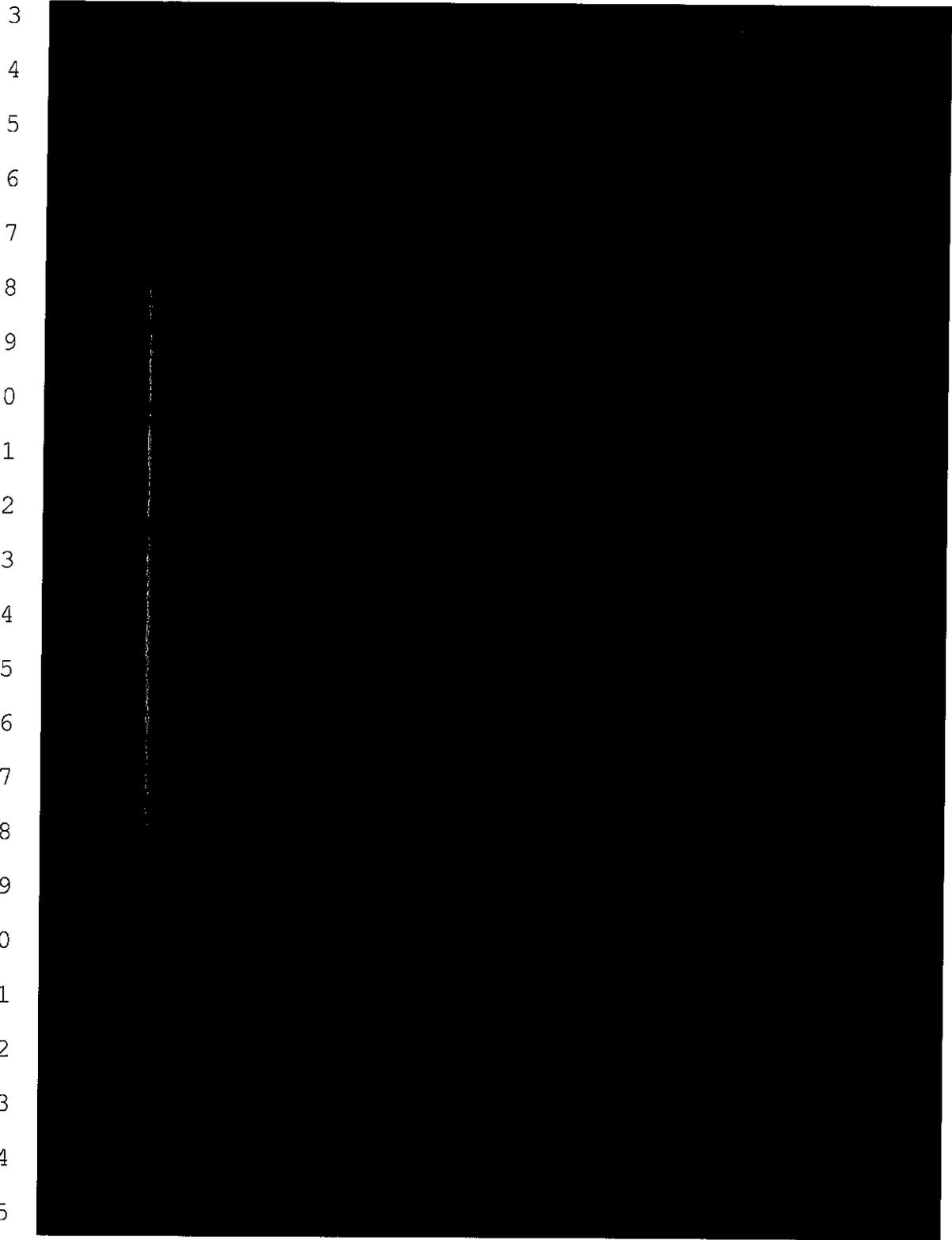
A. Right. We also have religious organizations

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that are on Sundays typically, and those broadcast the

1 services to the homebound.

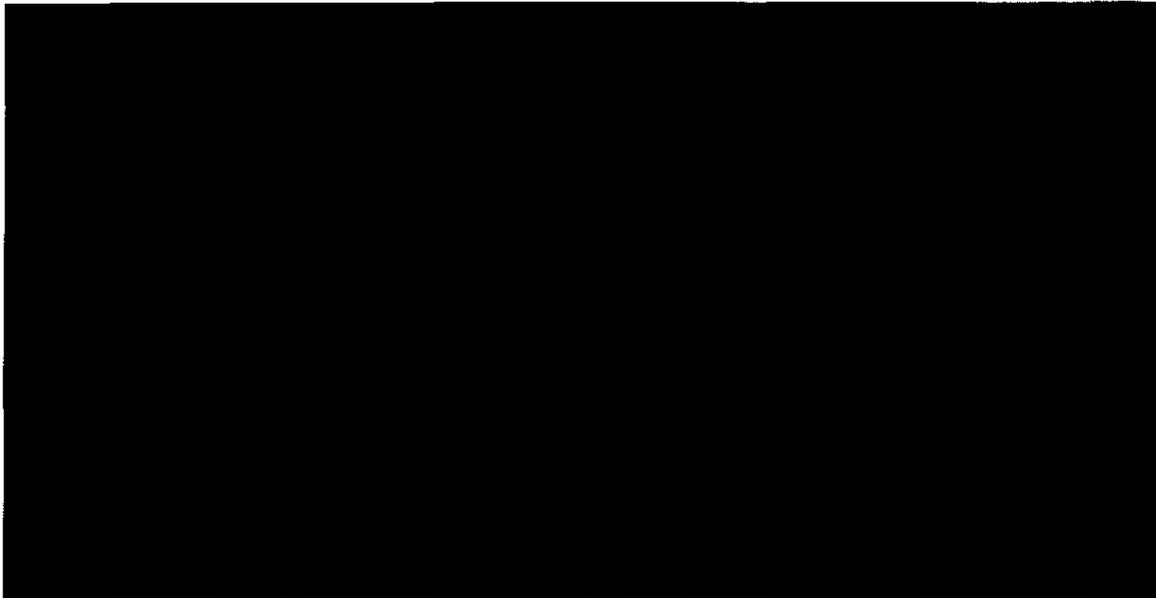
2 (Exhibit No. 19 was marked.)



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1 of toll-based reservationless, has that been marketed in
2 a consistent manner in the past as it is being marketed
3 now?

4 A. Correct.



14 Q. You don't often get a lawyer who doesn't use
15 all his time, but I have no further questions.

16 MR. SCHENKENBERG: David.

17 MR. CARTER: Okay. Thank you.

18 EXAMINATION

19 BY MR. G. DAVID CARTER:

20 Q. Mr. Burns, again, my name is David Carter. I'm
21 an attorney for Northern Valley Communications, as well
22 as Sancom. I just have a few follow-up questions, and I
23 hope this won't take more than about ten minutes or so.

24 Earlier you were testifying about your
25 facilities in Houston where you have a large number of

1 conference bridges located. Is that correct?

2 A. Yes.

3 Q. Do you know who provides the local exchange
4 service to those facilities?

5 A. Yes.

6 Q. And what company is that?

7 A. We have two. We have Level 3 and we have AT&T.

8 Q. Do you know whether Level 3 assesses access
9 charges for long-distance calls that are terminating to
10 the conference equipment in Houston?

11 A. They do assess access charges, yes. I pay a
12 monthly access bill to Level 3.

13 Q. Do you know whether they assess access charges
14 to the long-distance carriers that are sending traffic
15 to the bridges in Houston?

16 A. I don't know that.

17 Q. Do you know whether AT&T is assessing access
18 charges to the long-distance carriers that send traffic
19 to the bridges in Houston?

20 A. I don't know that either.

21 Q. We talked a little bit during the questioning
22 with Sprint about the withholding of payment,
23 specifically access charges by long-distance carriers
24 with regard to the traffic terminating on Northern
25 Valley's network. Do you recall that?