

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MORRIS COUNTY
DOCKET NO. MRS-L-3626-08
APP. DIV. NO. _____

UNIVERSITY COMMUNICATIONS, :
INC., et al., :
Plaintiffs, : TRANSCRIPT
v. : OF
NET ACCESS CORPORATION, : TRIAL
et al., :
Defendants. :

Place: Morris County Courthouse
Washington & Court Streets
Morristown, NJ 07963

Date: September 29, 2009

B E F O R E:

HONORABLE ROBERT J. BRENNAN, J.S.C., AND JURY

T R A N S C R I P T O R D E R E D B Y:

KENNETH ELLMAN, PRO SE, (Box 18, Newton, New
Jersey 07860)

A P P E A R A N C E S:

RONALD COLEMAN, ESQ., (Goetz Fitzpatrick, LLP)
Attorney for the Plaintiffs.

FENG LI, ESQ., (Sole Practitioner)
Attorneys for Defendant Net Access Corporation

KENNETH ELLMAN, (Pro Se)
Defendant.

Megan Walter, AD/T 596
KLJ Transcription Service, LLC
P.O. Box 8627
Saddle Brook, NJ 07663
(201) 703-1670 - Fax (201) 703-5623

Audio Recorded
Operator - John P. Artihis

1 letter?
2 A It's basically an election of UCI to terminate
3 their agreement with NAC, Net Access Corporation.
4 Q To your knowledge then, did UCI terminate
5 this agreement with Net Access Corporation as a
6 business decision that they made?
7 A I believe so.
8 Q At the time they made that decision had they
9 adequately prepared to relocate and get service to
10 replace Net Access Corporation?
11 A I believe at that point they were, you know, if
12 not fully completed, very close to being completed with
13 preparations to relocate.
14 Q What about the renumbering?
15 A That had not been completed at that point.
16 Q Should the renumbering have been completed
17 before they terminated the agreement?
18 A It could have been, however, there were
19 discussions both between UCI, and NAC, and the
20 previously mentioned Voxel to continue services so
21 those IP addresses could be utilized in the new data
22 center.
23 Q This was then a business decision made by
24 University Communications to renumber or not?
25 A Correct.

1 Q This was not a decision made by Net Access
2 Corporation?
3 A Correct.
4 (Record remains on, no colloquy)
5 Q To your knowledge, did Net Access Corporation
6 and Kenneth Ellman ever tell University Communications
7 they had to relocate?
8 A No, not to my knowledge.
9 Q The decision to relocate then was completely
10 under the control of University Communications?
11 A As far as I'm aware, yes.
12 MR. ELLMAN: I have no further questions.
13 Thank you.
14 THE COURT: All right. Anything further?
15 MR. LI: No, Your Honor, I have no questions.
16 THE COURT: Mr. Coleman, anything further?
17 MR. COLEMAN: No, thank you.
18 THE COURT: Thank you, sir. You may step
19 down. Next witness, Mr. Ellman.
20 MR. ELLMAN: I call Jason Silverglate.
21 THE COURT: Mr. Silverglate, please come up.
22 Watch your step as you come up.
23 (Record remains on, no colloquy)
24 THE COURT: Before you have a seat, if your
25 faith permits you to do so, you may place your left

1 hand on the Bible that's there before you. Raise your
2 right hand. Face our court clerk.
3 J A S O N S I L V E R G L A T E, DEFENDANT ELLMAN'S
4 WITNESS, SWORN
5 COURT CLERK: Please state your name for the
6 record, spell your last name.
7 THE WITNESS: Jason Silverglate, S-I-L-V-E-R-
8 G-L-A-T-E.
9 THE COURT: Go ahead, Mr. Ellman.
10 DIRECT EXAMINATION BY MR. ELLMAN:
11 Q Mr. Silverglate, what is your role in
12 University Communications?
13 A Owner.
14 Q Are there any other owners?
15 A No.
16 Q when did University Communications start in
17 business?
18 A 1997.
19 Q And what was the business that you started?
20 A Shared web hosting.
21 Q Did there come a time that you made a
22 decision to do business with Net Access corporation?
23 A Yes.
24 Q Why?
25 A Convenience.

1 Q How did you determine that?
2 A Proximity.
3 Q To what?
4 A My home.
5 Q Where were you located at that time?
6 A My home or my business?
7 Q Where was the address of your home?
8 A I was in Franklin Lakes.
9 Q And what did you purchase at that time from
10 Net Access Corporation?
11 A Co-location and bandwidth.
12 Q Where was Net Access Corporation located at
13 that time?
14 A Somewhere in Parsippany. I think either in 17 19
15 or in the old building somewhere down the road.
16 Q At the time you made a decision to do
17 business with Net Access Corporation could you have
18 chosen another company?
19 A Yes.
20 Q How long did you do business with Net Access
21 Corporation?
22 A Four or five years I think.
23 Q Were there times you didn't pay your bills
24 when they were due?
25 A At times.

1 Q Why?
2 A Financial issues.
3 Q Could you explain?
4 A Didn't have the money.
5 Q When you didn't pay your bills from Net
6 Access Corporation were you getting the services from
7 them though?
8 A Yes.
9 Q And what did you do with those services? Did
10 you use them for yourself or you resold them?
11 A Little bit of both.
12 Q When you didn't pay your bills on time what
13 did Net Access Corporation do?
14 A Depends.
15 Q To the best of your recollection can you
16 explain how you became aware that Net Access
17 Corporation wasn't paid?
18 A E-mail, phone call, personal visit.
19 Q From who?
20 A Variety of people.
21 Q Do you remember their names?
22 A Kathy Lopez, Alex Rubenstein, and occasionally
23 Blake Ellman.
24 Q And what did they say to you?
25 A Depends.

1 Q What did they say to you in relation to bills
2 and payment of bills?
3 A A variety of things. Want me to go through them
4 all?
5 Q Do you recollect them saying that you owed
6 them money and you didn't pay?
7 A Sometimes they said that.
8 Q And what would you answer them?
9 A I would pay either very shortly, or when I could,
10 or any other assorted methods of payment.
11 Q How did you pay your bills, what method of
12 payment?
13 A Usually via credit card.
14 Q You ever use checks?
15 A Occasionally.
16 Q Whose credit card did you use?
17 A It was either mine or my mother's.
18 Q You use credit cards in your own personal
19 name or your business name?
20 A I believe it was a little bit of both.
21 Q What percentage of the bills would you say
22 were paid with your own personal credit card?
23 A I don't recall.
24 Q What percentage of the bills would you say
25 were paid with your mother's credit card?

1 A I don't recall.
2 Q Would you say more than half the bills were
3 paid with your mother's credit card?
4 A I don't know.
5 Q Did there come a time when you couldn't pay
6 your bills to Net Access Corporation?
7 A Yes.
8 Q And can you explain to the Court and the jury
9 why?
10 A Cause NAC raised our rates to usurious levels.
11 Q Did you have a contract with Net Access
12 Corporation?
13 A Yes.
14 Q Did they violate that contract?
15 A At times.
16 Q How?
17 A Unilaterally changing terms of the contract.
18 Let's see, not providing the services we're paying for
19 at times.
20 Q And I show you what's been previously marked
21 as Exhibit 2, Network Access Agreement. And the date
22 on the Network Access Agreement appears to be April
23 30th, 2003. It also has a fax date of February 5th '04.
24 I ask you if you've ever seen this agreement before.
25 (Record remains on, no colloquy)

1 A Yeah.
2 Q Does it bear your signature?
3 A Yep.
4 Q Did you enter into that agreement on behalf
5 of your company?
6 A Yes.
7 Q Why?
8 A We had no choice.
9 Q You had no choice?
10 A Correct.
11 Q Could you please explain?
12 A Well, per Net Access Provision 6, they could raise
13 our rates with 45 days notice. And we had nowhere else
14 to go.
15 Q And that's the reason you entered into the
16 contract? Because of that --
17 A Pretty much.
18 Q -- provision?
19 A We had no other choice.
20 Q Did you want the services that were sold to
21 you?
22 A We wanted the services like that, but hopefully
23 from a better landlord.
24 Q Better landlord?
25 A Yes.

1 Q You mean data center?
2 A Correct.
3 Q Why didn't you go to another data center?
4 A We were looking. We could not find any suitable
5 facilities in the area. And the time -- the time
6 allotted by the provision in the contract did not
7 afford us any leeway but to sign what they put in front
8 of us.
9 Q Perhaps I'm not making myself clear. I'm
10 trying to find out why you entered into that contract
11 with Net Access Corporation.
12 MR. COLEMAN: Objection. He asked it, he
13 answered it. And now he's really arguing with the
14 witness.
15 THE COURT: I'll permit it.
16 BY MR. ELLMAN:
17 Q Perhaps you did not understand my question.
18 I'm asking you, when you signed that contract did you
19 sign it as a result of your own decision?
20 A I signed the contract to protect my business.
21 Q Was that a decision you made?
22 A Yes.
23 Q Did someone else make that decision for you?
24 A No.
25 Q Did you consult with anyone when you made

1 that decision?
2 A Probably.
3 Q Do you know who you consulted with?
4 A Variety of staff members.
5 Q And then what -- you made a decision then to
6 sign the contract?
7 A We had nowhere else to go, so yes.
8 Q Did you try to find another data center
9 before you signed that contract?
10 A Yes.
11 Q What data centers did you visit or contact?
12 A We contacted Equinix, Gateway Colocation, some
13 other facilities in New York City, I don't recall their
14 names, NYI. Those are all the names I can just
15 remember off the top of my head, but there were quite a
16 few.
17 Q And none of those data centers could satisfy
18 your requirements?
19 A Not in the time frames allotted.
20 Q Well, what was the time frame? You signed --
21 A Forty-five day-ish.
22 Q No. Again, I -- I apologize to the Judge and
23 jury. My question is, you signed that contract, you
24 made decision to sign that contract, before you signed
25 it you checked with other data centers, am I correct?

1 A Correct.
2 MR ELLMAN: I know I'm leading the witness,
3 Your Honor. I ask the witness to be declared a hostile
4 witness so I can engage in some leading.
5 MR. COLEMAN: I don't see that he's met the
6 requirements for declaring him a hostile witness.
7 THE COURT: He's the adverse witness. He can
8 lead him.
9 MR. ELLMAN: Thank you. I'm sorry I didn't
10 make that request.
11 BY MR ELLMAN:
12 Q You went ahead and signed that contract,
13 right?
14 A Correct.
15 Q You said you looked at other data centers
16 before you signed it, correct?
17 A Correct.
18 Q Why did you look at those other data centers
19 before you signed the contract?
20 A Because we were unhappy with the massive increase
21 Net Access imposed upon us.
22 Q Massive increase in what, sir?
23 A The massive increase in the rates Net Access
24 imposed upon us.
25 Q Are those rates reflected in that contract?

1 A Yes.
2 Q Can you show me where?
3 A Page 6 and Page 7.
4 Q Were you here when the previous witness, Mr.
5 Cennami, testified?
6 A Yes.
7 Q Those rates are the same rates that Mr.
8 Cennami testified were normal rates for the industry?
9 A I think they were normal style pricing is what he
10 was getting at.
11 Q Normal what?
12 A Style pricing, i.e., 95th percentile billing, per
13 rack charges, etcetera.
14 Q You heard his testimony, correct?
15 A Yes.
16 Q Do you disagree with Mr. Cennami's testimony
17 relating to the pricing?
18 A I don't think he specifically testified to
19 pricing, but I disagree with that's what you're
20 implying.
21 Q Now, did you have another data center that
22 was going to give you a cheaper price than Net Access
23 offered you?
24 A Yes.
25 Q Who were they?

1 A Almost everyone.
2 Q Why didn't you move there?
3 A We didn't have the time.
4 Q You had to sign that contract because of time
5 considerations?
6 A Yes.
7 Q Please explain that.
8 A To negotiate, procure, orchestrate a move out,
9 renumber IPs, procure bandwidth is a many multi-month
10 process. Much, much, much, much, much longer than the
11 45 day notice or whatever the -- the terms here
12 provided for.
13 Q You -- you -- you keep referring to 45 days
14 notice, but isn't that notice of your intention to
15 terminate the contract? That 45 days plus other
16 periods is how much notice you have to give?
17 A Let's see here. The term is -- is rather fuzzy in
18 terms of what it is. I think we argued about that many
19 times, but.
20 Q We're not talking about you signing this
21 contract and now wanting to break the contract. We're
22 talking about why you signed the contract. Am I making
23 sense to you?
24 A Yes.
25 Q When you signed that contract you said you

1 checked with other data centers, correct?
2 A Correct.
3 Q And you checked their pricing?
4 A Correct.
5 Q And you checked their facilities?
6 A Correct.
7 Q And you could have moved to another data
8 center if you so wished, couldn't you?
9 A No.
10 Q That's what I'm asking you, why not? It
11 wouldn't be because of the contract you had not yet
12 signed, would it?
13 A We didn't have enough time before to accomplish a
14 move out, plan a move out, and orchestrate a move out,
15 and everything associated with said move out in the
16 time allotted before Net Access would terminate
17 services.
18 Q So, before you signed that contract you had a
19 previous contract with Net Access Corporation?
20 A Correct.
21 Q And you were -- had some of your equipment
22 located there, correct?
23 A We had all our equipment located there.
24 Q And at that time that previous contract, when
25 you signed that did you enter into that as a business

1 decision?
2 A That was a fairly good contract.
3 Q When did you decide that you may not like the
4 contract that you now have in front of you that you've
5 been reading from and looking at?
6 A When Alex put it in front of me.
7 Q Did you know that your contract was up for
8 renegotiation?
9 A It was not.
10 Q Had your existing contract expired?
11 A It did not.
12 Q Then why was that new contract entered into?
13 A I believe, my opinion, and is -- is that Net
14 Access was I guess the right word is jealous and greedy
15 and wanted to put us in the position of financial
16 distraught in order to acquire us.
17 Q I'm trying to understand your answer to my
18 question. You said you had a contract with Net Access
19 Corporation that had not expired?
20 A Correct. There was, I believe, six -- six to
21 eight months left on the previous contract.
22 Q And were you told by Net Access Corporation
23 they were terminating that contract?
24 A I was told Net Access that they were raising my
25 rates and I could take it or leave it.

1 Q Did they give you notice of raising your
2 rates?
3 A Yeah.
4 Q How much notice did they give you?
5 A They e-mailed me one ay and said these are the --
6 what we're going to be doing with the rates and you
7 have, per the Contract Term 6, to do what you want to
8 do.
9 Q And you have no idea how much notice?
10 A I don't recall how much notice, no.
11 Q Did Net Access give you the notice requited
12 under the contract?
13 A Yes.
14 Q When Net Access gave you that notice had they
15 violated the contract?
16 A No.
17 Q Now, why then did you decide to enter into a
18 new agreement with Net Access?
19 A I believe I already answered that.
20 Q And your answer was that you had no place
21 else to go?
22 A Correct.
23 Q In the entire New York, New Jersey,
24 Metropolitan area, Net Access is the only data center
25 you could go to?

- 1 A In the time frame allowed for our unique needs,
2 yes.
- 3 Q What was it that was so special about Net
4 Access Corporation's data center?
- 5 A Nothing was special in Net Access Corporation's
6 data center. It was a rather sub-par data center.
- 7 Q Then why did you feel that you couldn't get
8 the services at another data center?
- 9 A When we originally designed the DedicatedNOW
10 product line it called for bakers' racks, which is a
11 very non industry standard set up. It's basically,
12 well, bakers' racks, 6 foot wide, 18 inches deep
13 compared to the typical data center environment, which
14 is normal racks which are 3 feet deep, and 1 foot wide,
15 and 8 feet tall. And that -- most data centers that
16 are of caliber in the area wouldn't take those racks.
- 17 Q Why?
- 18 A I don't know. They --
- 19 Q When you say --
- 20 A They -- they didn't -- I think Equinix said it
21 didn't look pretty.
- 22 Q When you said these racks, you mean this
23 would be your equipment that you wanted in there?
- 24 A It was the bakers' racks.
- 25 Q This is a specification you wanted for your

- 1 company?
- 2 A It was a specification we discussed with Net
3 Access and this is what we wanted to use.
- 4 Q Is this a specification that you decided you
5 wanted to use for your company?
- 6 A Yes.
- 7 Q This was not a specification made by Net
8 Access Corporation?
- 9 A No.
- 10 Q No other data center would take them?
- 11 A To the best of my knowledge, we didn't find a data
12 center that could accommodate the amount of space, and
13 the amount of power, and the amount of -- an have an
14 on-site location for us to be there.
- 15 Q So, are you saying Net Access Corporation was
16 giving you a service that you couldn't get elsewhere?
- 17 A That sounds pretty close to it.
- 18 Q Is that the reason why you signed the
19 contract with Net Access Corporation?
- 20 A We had nowhere else to go when we signed the
21 contract with Net Access Corporation.
- 22 Q But when you say you had nowhere else to go,
23 would that have been a business decision you made or
24 something Net Access Corporation imposed on you?
- 25 A I don't seem to get the question.

- 1 Q Did Net Access Corporation impose anything on
2 you that would cause you not to have any other place to
3 go?
4 A I don't believe so.
5 Q I show you a letter, and unfortunately this
6 letter has actually been marked twice, it says here it
7 was previously marked as DE-13, a court exhibit, a
8 letter from Podvey Sachs, May 17th, 2004. They were, I
9 believe, University Communications' attorneys. I show
10 you that letter now. Have you seen that before?
11 A Yes.
12 Q Was that letter sent out with your
13 permission?
14 A Yes.
15 Q Why did you send it out? I mean, why did
16 your attorney send it out?
17 A Cause our new facility was -- was ready.
18 Q Your facility was ready?
19 A Correct.
20 Q What does that letter say?
21 (Record remains on, no colloquy)
22 A It says we were entering -- we were in
23 negotiations to purchase Net Access bandwidth outside
24 of NAC's data center. And pursuant to the time
25 required to give notice, per Net Access contract, to

- 1 cancel we were issuing cancellation notice for our
2 service to be -- to end July 17th.
3 Q Is it true then that your company sent a
4 letter to Net Access Corporation terminating its
5 services?
6 A Yes.
7 Q And is it true you gave a specific date of
8 termination?
9 A That's the date implied by the contract.
10 Q Is that the date you chose to terminate the
11 services?
12 A That's the date implied by the contract.
13 Q Does the contract have a date when it's going
14 to end?
15 A If you mathematically do the terms of the -- of
16 what's required for us to cancel and the time the
17 contract was signed, then, yes, that's the date.
18 Q The key word is required for you to cancel,
19 isn't it?
20 A Correct.
21 Q Who decides what date you wish to cancel, Net
22 Access Corporation or you?
23 A Date we wish to cancel is decided by terms of the
24 contract and us.
25 Q Who makes the decision to terminate the

1 contract with Net Access Corporation?

2 A We did.

3 Q And did you choose the date to terminate that
4 contract or did Net Access Corporation tell you we're
5 terminating the contract?

6 A We chose to terminate the contract.

7 Q You made that as a business decision?

8 A Yes.

9 Q And did you understand when you made that
10 decision certain consequences would result?

11 A That we'd be moving out of Net Access, yes.

12 Q Did you understand when you moved out your
13 servers that you had to renumber them?

14 A Some servers still had left to be renumbered.

15 Q Why did you terminate the contract before
16 renumbering all your servers?

17 A We believed there would be sufficient time to
18 finish renumbering all the -- all the servers before
19 another three month extension or whatever the contract
20 terms said would kick in.

21 Q Did you, as a businessman, set enough time
22 for your own company to renumber those servers? Before
23 you move out.

24 A Before I move out. Based upon our information
25 from third parties and whatnot, we believed it was

1 sufficient time.

2 Q Was there enough time?

3 A Almost.

4 Q Well, when you moved out of the data center
5 were all your servers renumbered and ready to go to the
6 new data center?

7 A Not all.

8 Q Why?

9 A Customers took way too long to respond to what was
10 required of them to renumber.

11 Q And who asked them to renumber those
12 customers?

13 A Who asked?

14 Q Yes. Was it Net Access Corporation?

15 A We renumbered the customers.

16 Q You asked your own customers to renumber?

17 A Correct.

18 Q And you also renumbered some of your machines
19 that you had control over?

20 A Correct.

21 Q And you then set a termination date too soon
22 to complete your renumbering?

23 A That was the end result.

24 Q Why didn't you just renumber your machines
25 before you moved out?

1 A We were in the process of.

2 Q Why did you set a termination date that
3 didn't leave your company sufficient time to renumber?

4 A We believed it would be sufficient time, but, as I
5 said, the customers took a lot longer than they should
6 have.

7 Q So, you didn't have a relationship with your
8 customers to renumber on time?

9 A When you're renumbering over 1,000 machines where
10 each machine is individual customer and each customer
11 can potentially have thousands of their own customers
12 who individually might need to renumber, you're talking
13 about thousands and thousands of people you need to
14 coordinate with to renumber said IPs.

15 Q Why didn't you notify all those customers
16 before you terminated the contract?

17 A We did.

18 Q You notified them to renumber?

19 A Yes.

20 Q And did they?

21 A They took their sweet time.

22 Q Is that somehow the fault of Net Access
23 Corporation?

24 MR. COLEMAN: Objection. He didn't testify
25 it was the fault of Net Access Corporation.

1 THE COURT: He's being asked whether it was.
2 Overruled.

3 BY MR. ELLMAN:

4 Q Is that somehow the fault of Net Access
5 Corporation that your customers didn't renumber in
6 time?

7 A No.

8 Q Not at all?

9 A No.

10 Q Did Net Access do anything or Kenneth Ellman
11 do anything to prevent your customers from -- and
12 yourself from renumbering your machines on time?

13 A I don't believe so.

14 Q Why did you apply to the Chancery Court for
15 an order to take Net Access IP addresses?

16 A We didn't apply for a Chancery order to take Net
17 Access IP addresses. We applied for an order to use
18 them for a short period of time in order to complete
19 our renumbering.

20 Q How much time did you need?

21 A I think we needed another 90 days.

22 Q How much time did the order give you, if you
23 recollect?

24 A I don't recall.

25 Q You went to the Chancery Court and told them

- 1 you needed to use Net Access's IP address space?
2 A Amongst other things.
3 Q Is that address assigned to Net Access
4 Corporation?
5 A Yes.
6 Q Is the -- do you have address space assigned
7 to University Communications?
8 A Yes.
9 Q Had you applied for your own address space
10 before the move out?
11 A Yes.
12 Q And the reason why you needed to use Net
13 Access Corporation IP address space was what?
14 A To renumber.
15 Q Using -- to renumber? Explain that. I don't
16 understand. Renumbering's not done with Net Access
17 Corporation IP addresses, is it?
18 A We needed to use NAC so we could -- so our
19 customers could still be online so we could renumber
20 them.
21 Q So, if you didn't take Net Access
22 Corporation's IP addresses your customers would be
23 offline?
24 A We didn't take Net Access IP addresses.
25 Q What did you say?

- 1 A We did not take Net Access IP addresses.
2 Q After you moved out of the data center did
3 you make portable those IP addresses and take them with
4 you to your data center?
5 A Not exactly, no.
6 Q What did you do?
7 A We purchased service from a NAC reseller who
8 purchases service from NAC.
9 Q What's the name of that reseller?
10 A Voxel.
11 Q And after you used those IP addresses for 30
12 days did you continue to use Voxel?
13 A I don't recall.
14 Q You don't recall? Who would recall that?
15 A I don't know.
16 Q Who in your company's responsible for that?
17 A I am. It was five years ago, six maybe.
18 Q After you moved to the new -- your new data
19 center you continued then to use Net Access bandwidth?
20 A We continued to use Voxel bandwidth.
21 Q And where did Voxel get their bandwidth from?
22 A A portion of Voxel's bandwidth was acquired from
23 Net Access.
24 Q Why? Did you specifically ask for that?
25 MR. COLEMAN: Objection. The Court already

1 ruled on this line of questioning about the post-move
2 source --
3 MR. ELLMAN: He raised --
4 MR. COLEMAN: -- of bandwidth.
5 MR. ELLMAN: He raised it, Your Honor, in his
6 answers.
7 MR. COLEMAN: He answered your question. He
8 answered the question, but we're now going into this
9 whole area that the Court ruled was inappropriate for
10 Mr. Li to question him on, which was how -- how
11 University Communications operated its data center
12 after leaving the -- the -- the Net Access facilities.
13 I don't understand what the relevance is.
14 MR. ELLMAN: He raised the Voxel name in this
15 -- his testimony just now, saying he did that. And my
16 offer of proof is, in fact, that he not just took IP
17 addresses from Net Access, but he --
18 THE COURT: Well, you don't have to give me
19 an -- an offer of proof to determine whether this
20 question is appropriate or not.
21 MR. ELLMAN: It's an issue he raised.
22 THE COURT: I'll -- I'll permit the question
23 in terms of the -- the use of the NAC space as being
24 relevant to the services provided. Go ahead.
25 BY MR. ELLMAN:

1 Q Did you ever have any of your customers ask
2 you whether you used Net Access Corporation bandwidth
3 or connectivity?
4 A At times.
5 Q Why would they ask you that?
6 A Because we tried to market NAC bandwidth as a
7 quality service.
8 Q So, you actually told your customers you're
9 using Net Access Corporation bandwidth because it was a
10 good selling point, isn't it?
11 A We tried to make it sell. It's marketing.
12 Q Why would Net Access Corporation bandwidth
13 have a good reputation?
14 MR. COLEMAN: Your Honor, this is a -- now
15 we're -- again, there's no question about the quality
16 of the bandwidth in this case. There's a question
17 about the quality of the data facility. There's a
18 question about the -- there are a number of disputes,
19 but quality of bandwidth was -- was never an issue
20 raised. And by the way, none of this -- none -- we
21 haven't raised anything, but it -- it's just not in
22 this case.
23 MR. ELLMAN: Your Honor, I have an abuse of
24 process claim. And it's my duty and a burden on me to
25 prove that the plaintiffs in this case brought an

1 action against me and Net Access corporation knowing
2 full well that there were no grounds to the action and
3 for ulterior motives.

4 THE COURT: All right. Let's not have a
5 speech. I'll -- I'll permit the question.

6 THE WITNESS: Can you repeat the question
7 please?

8 BY MR. ELLMAN:

9 Q If we had a stenographer I'd read it back.
10 I'll try and repeat it. Why did you tell your
11 customers that you are offering Net Access Corporation
12 bandwidth?

13 A Because we were collocating Net Access and we only
14 used Net Access bandwidth.

15 Q And why? Why would you want them to know
16 that?

17 A Otherwise we'd be hiding who we were using.

18 Q Did you just say that Net Access Corporation
19 bandwidth had a good reputation?

20 A No. You said that.

21 Q What was the reputation of Net Access
22 Corporation bandwidth?

23 A Net Access had no reputation in the industry we
24 were -- we were serving.

25 Q Did any of your customers ever ask you if you

1 used Net Access Corporation bandwidth?

2 A Only after we made the market for Net Access
3 bandwidth in our -- in our market segment.

4 Q Why did you make that market?

5 A Cause that was the only provider we were using.

6 Q Whose decision was that?

7 A It was Blake and Alex's.

8 Q As to what provider you would use?

9 A We were forbidden from bringing in external
10 bandwidth providers.

11 Q Yes, but whose decision is it in a company
12 like yours to decide what facilities they use and what
13 bandwidth they're going to use?

14 A The facilities we use is up to me. And the
15 bandwidth we use was, I wanted to bring other bandwidth
16 providers, but I was not allowed to.

17 Q And if you wanted other bandwidth providers
18 you could go to another data center, couldn't you?

19 A I could also use Net Access data center as well.

20 Q Yes.

21 A But I was forbidden.

22 Q And you decided to do what?

23 A Decided to do what in terms of what?

24 Q What did you decide to use, another data
25 center or the Net Access data center?

1 A I was -- in 2002 I decided to use Net Access data
2 center. In April 2003, I was forced to use Net Access
3 data center.
4 Q Yes, yes, forced. I recollect that. Now,
5 how did you become aware that Net Access Corporation
6 was forcing you to stay in their data center?
7 A There were, I believe, a few negotiations where we
8 requested that that provision, i.e., the price raise
9 provision, be removed from said contract to prevent
10 this type of behavior from happening again. However,
11 that provision was not allowed to be removed.
12 Q You said this type of behavior. What type of
13 behavior?
14 A Basically usurious raising of rates.
15 Q Was it your testimony here that Net Access
16 did not violate the contract?
17 A Usury is not violating the contract as far as I
18 know.
19 Q Did Net Access Corporation only charge you
20 the rates authorized by the contract?
21 A They charged me other rates that were not
22 authorized by the contract from time to time.
23 Q They charged you rates that were not
24 authorized by the contract?
25 A Correct.

1 Q So, this contract here is already marked in
2 evidence. And I would like you to show me if this is
3 the contract what we call Exhibit D-11 it's the Network
4 Access Agreement Net Access Corporation with your
5 company. What rates did they charge you that are not
6 authorized by that contract?
7 A They charged us connectivity fees to connect our
8 upstairs colo to our downstairs colo. They charged us,
9 I would call it rather silly, a multitude of fees for
10 leaving a monitor connected to a server. They charged
11 us, let's see if it's in the contract or not, --
12 Q Is there anything in the contract that says
13 those charges are included in the rate?
14 A Doesn't say they're not included in the rate.
15 Q doesn't say they're not included. So, you
16 figure then under the contract that you can have
17 anything that's not mentioned in the contract?
18 A I didn't say anything.
19 Q Well, does the contract specific services you
20 purchased?
21 A Yes.
22 Q And does it describe what you're going to be
23 charged for those services?
24 A Yes.
25 Q And did Net Access charge you in excess of

1 what the contract says?
2 A Yes.
3 Q So, will you point in the contract to a
4 service where there's a price and where Net Access
5 charged you more?
6 A For the services listed in the contract did not
7 charge me more than the service listed.
8 Q Well, then if -- if -- if -- are you saying
9 Net Access Corporation did not charge you more than
10 what this contract says they're allowed to charge you?
11 A They made up little fees here and there to charge
12 me extra.
13 Q But there's pricing in the contract for
14 specific services, correct?
15 A Correct.
16 Q Did Net Access adhere to those prices?
17 A To the prices that are listed in the contract,
18 yes.
19 Q Now, these other services, how did you obtain
20 them from Net Access Corporation if they're outside of
21 the contract?
22 A Some weren't obtained. Some were just silly
23 little fees that were not obtained from net Access,
24 they were just fees.
25 Q Well, how did -- what did -- you just got a

1 bill in the mail from Net Access Corporation for some
2 fee? How did this arise?
3 A Pretty much. We get a bill from Net Access
4 Corporation for just a fee.
5 Q And you knew nothing about it?
6 A After the first few fees I asked Alex what these
7 fees were and he said, oh, your guys left a monitor
8 plugged into a server so we're charging you whatever
9 amount per each incident, which is not listed in the
10 contract.
11 Q It's not listed in the contract?
12 A No. And we weren't charged for such things
13 before, but they magically appeared after this contract
14 was signed.
15 Q Well, did you -- were you then using services
16 that are not in the contract?
17 A No.
18 Q You said you had a monitor plugged into a
19 server?
20 A Correct.
21 Q And it's not listed in the contract?
22 A Correct.
23 Q So, then when you --
24 A So, that's not a service?
25 Q What?

1 A That's not a service.
2 Q What is it?
3 A It's a monitor plugged into a server that we --
4 that we plugged in.
5 Q Does it use electricity?
6 A It used electricity that we -- that we payed for.
7 Q And power. So, what was the connected charge
8 you were hit with?
9 A Leaving the monitor plugged into the server.
10 Q What was the amount of that charge?
11 A I don't exactly recall.
12 Q Was it more than \$10,000?
13 A No.
14 Q Was it more than \$5,000?
15 A I don't think so.
16 Q Think it was more than \$1,000?
17 A It was probably around there.
18 Q For how long a period of time?
19 A From when, I guess, this contract maybe came to
20 inception to when we left.
21 Q Did you dispute these bills?
22 A Yes.
23 Q And how did you dispute them?
24 A I said, what is this? He said, it's a bill for
25 leaving the monitor plugged into the -- into the

1 server.
2 Q And then what happened?
3 A I said, I'm not paying it. He said, well, then
4 I'll turn you off.
5 Q What did you do?
6 A I paid it.
7 Q Why didn't you dispute the bill further?
8 A I disputed it every time it came up.
9 Q I mean, why didn't you take action to dispute
10 it if you felt that Net Access was charging you
11 improperly?
12 A What action?
13 Q Consult an attorney and say, I'm being
14 charged bills I shouldn't be charged for.
15 A I believe we're here now.
16 Q You believe what?
17 A I believe we're here now, aren't we not?
18 Q For that?
19 A It's a package deal.
20 Q I'm asking you, do you believe this
21 proceeding at any time was about those type of charges?
22 A This proceeding, I believe, was about NAC's unfair
23 business practices and to save my business.
24 Q What were the unfair business practices?
25 A I believe that the price increases were an effort

1 to put financial strain on us to sell to them. And
2 Alex said many times, if -- if you excuse the language,
3 Your Honor, why don't you give the fuck up and sell to
4 us already.
5 Q These price increases, how did you become
6 aware that there was a price increase demand?
7 A By the notice Alex gave us.
8 Q Relating to wanting to give you notice of
9 increased rates which you would have a choice to take
10 or not take, correct?
11 MR. COLEMAN: Objection. Market managing.
12 THE COURT: Sorry?
13 MR. COLEMAN: Market managing.
14 THE COURT: It's cross. I'll permit it.
15 THE WITNESS: Can you repeat the question
16 please?
17 BY MR. ELLMAN:
18 Q These rate increases that Net Access
19 Corporation asked you to pay, are they reflected in
20 that contract now signed?
21 A Correct.
22 Q And that contract you signed of your own
23 volition?
24 A I signed it to protect my business, with no place
25 else to go.

1 (Record remains on, no colloquy)
2 Q We've been through that before about no place
3 else to go. I'm not going to --
4 A Yes.
5 Q -- rehash the previous questioning.
6 (Record remains on, no colloquy)
7 Q I show you what's been previously marked
8 Court DE 12. It's the security agreement entered into
9 between Net Access Corporation, University
10 Communications, and Jason Silverglate, signed in front
11 of a Notary Public on November 20th, 2003. And I ask
12 you if you've ever seen it before.
13 (Record remains on, no colloquy)
14 A Looks like it's all there.
15 Q Is that your signature on that agreement?
16 A Yes.
17 Q Is that agreement attached to a answer and
18 counterclaim filed by Kenneth Ellman and Net Access
19 Corporation if you look at the cover page? First page
20 of the whole document.
21 A Oh, the whole thing? Okay. Yes.
22 Q Does it have a court stamp received on it?
23 A Yes.
24 Q And what exhibit is that security agreement
25 to that document?

1 A DE-12 I think. Oh, this, sorry. It's Exhibit 2.
2 Q Now, why did you enter into this security
3 agreement?
4 A You forced us to.
5 Q We forced him to?
6 A Yes.
7 Q At the time you entered into the security
8 agreement did you have counsel?
9 A Yes.
10 Q What was the name of your counsel?
11 A Collin Scott.
12 Q What firm did he work for?
13 A Podvey Sachs.
14 Q Did you tell your counsel you were being
15 forced into signing this agreement?
16 A Yes.
17 Q What did your counsel say to you?
18 MR. COLEMAN: Objection. He's asking for
19 attorney/client conversations. We're not defending on
20 the basis of advice of counsel.
21 THE COURT: Sustained.
22 BY MR. ELLMAN:
23 Q You just said you told your counsel that you
24 were being forced to sign the security agreement,
25 correct?


1 MR. COLEMAN: Objection. He's -- I -- I made
2 the mistake of not objecting to that question soon
3 enough, but I don't see why he should be allowed to
4 repeat it.
5 MR. ELLMAN: I -- I -- I was told earlier and
6 I understand that if you don't make an objection in
7 time you waive the right to make the objection.
8 THE COURT: I'm not going to let you go into
9 the attorney/client privilege.
10 BY MR ELLMAN:
11 Q At the time you signed the security agreement
12 had you reviewed it with your counsel?
13 A Yes.
14 Q And you signed it in front of a Notary
15 Public?
16 A Yeah.
17 Q And did there -- was there a purpose for the
18 security agreement?
19 A I don't believe so.
20 Q Did you read the security agreement before
21 you signed it?
22 A Yes.
23 Q I call your attention to Page 1 of 12. It
24 says, "Purpose of this Security Agreement". Are you
25 familiar with that?

1 A I've seen it.
2 Q What does it say? I ask you to read just a
3 few paragraphs.
4 A Which paragraphs?
5 Q Starting under the heading, "Purpose".
6 A "The purpose of this security agreement and the
7 basis upon which it shall be interpreted is the secure
8 party, Net Access Corporation, wants protection and
9 safety from any failure of the debtor, University
10 Communications, Inc., to pay the debt owed to Net
11 Access Corporation by the debtor as of the date of this
12 agreement or any future debt of any kind that may be
13 incurred by debtor and owed to the secure party."
14 Q Is there another paragraph?
15 A Yes.
16 Q What does it say?
17 A "The debtor and Jason Silverglate believes and
18 herein states that the debtor's business relationship
19 with the secure party is of great value to the debtor
20 and that the debtor and Jason Silverglate wants to
21 continue such business relationship.
22 Debtor wants to pay the debt already incurred to
23 the secure party and wants to protect the secure party
24 from any possible loss by failure of debtor to pay the
25 secure party past, present, or future debts. Debtor

1 wants to continue to do business with -- with the
2 secure party in the future."
3 Q What was the reason you felt you had to sign
4 the security agreement?
5 A We were -- there's a multitude of reasons. When
6 it comes down to it is we offered to pay the bill in
7 the full amount, \$149,898. And Blake said that even if
8 you pay the full amount we would use our contractual
9 rights to make your life very difficult.
10 Q I'm sorry, we would use what?
11 A Our contractual rights to make your life very
12 difficult.
13 Q Even if you did what?
14 A Paid the full amount.
15 Q What did that mean?
16 A I inferred from it that he would use his 45 day or
17 whatever notice period to raise our rates yet again.
18 Q Did he?
19 A I believe that the threat was that such -- if we
20 do not sign said agreement that they would do that.
21 And that --
22 Q Well, did -- did this agreement that you
23 signed, the security agreement, raise your rates in any
24 way?
25 A The security agreement did not raise our rates.

CERTIFICATION

1
2
3 I, Megan E. Walter, the assigned transcriber, do
4 hereby certify the foregoing transcript of proceedings
5 at the Morris County Superior Court, on September 29
6 2009, on Tape No. 09-220, Index No. from 0001 to 7438;
7 Tape No. 09-221, Index No. from 0001 to 7180; Tape No.
8 09-222, Index No. from 0001 to 7415; and Tape No.
9 09-223, Index No. from 0001 to 3912, is prepared in
10 full compliance with the current Transcript Format for
11 Judicial Proceedings and is a true and accurate
12 compressed transcript to the best of my knowledge and
13 ability.

14 
15 _____
16 MEGAN E. WALTER AD/T 596
17 KLJ Transcription Service
18
19
20
21
22
23
24
25

Dated: December 11, 2009