

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED²

MAY 01 2000

Missouri Public
Service Commission

MCI WorldCom Communications, Inc.,)
and Brooks Fiber Communications of)
Missouri, Inc., and BroadSpan Communications,)
Inc., d/b/a Primary Network Communications,)
Inc.,)

Complainants,)

vs.)

Southwestern Bell Telephone Company,)

Respondent.)

Case No. TC-2000-225, et al.

MEMORANDUM

COME NOW Complainants and herewith file with the Commission the Deposition of Tim Devine taken on April 19, 2000, in connection with the above-styled proceedings; and offer the following excerpts as part of their direct evidence:

Page 4, line 1 through page 38, line 25

Page 40, line 14 through page 43, line 14

Page 44, line 14 through page 49, line 12

Page 51, line 17 through Page 53, line 11

Page 77, line 5 through Page 93, line 18

Page 100, line 4 through Page 103, line 4

Additionally, Complainants file and offer the following exhibits as part of their direct evidence:

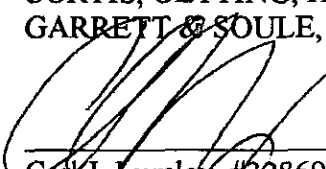
Devine Deposition Exhibit 1

Devine Deposition Exhibit 2

Devine Deposition Exhibit 3

Devine Deposition Exhibit 4

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent to all parties listed on the attached service list by U.S. Mail, postage paid, on the 15th day of May, 2000.



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BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

MCI WorldCom Communications, Inc.,
and Brooks Fiber Communications of
Missouri, Inc., and BroadSpan
Communications, Inc., d/b/a
Primary Network Communications, Inc.,

Complainants,

Court File No.

-VS-

TC-2000-225 et al.

Southwestern Bell Telephone Company,

Respondent.

Deposition of TIMOTHY DEVINE,

taken pursuant to Notice of Taking

Deposition, and taken before Becky Skorpak,

a Notary Public in and for the County of

Dakota, State of Minnesota, on April 19,

2000, at 33 South Sixth Street, Minneapolis,

Minnesota, commencing at approximately

10:55 a.m.

* * *

COPY

AFFILIATED COURT REPORTERS

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14 * * *

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(Exhibits 1 - 8 are attached to the original transcript, which is in the possession of Mr. Lumley.)

P R O C E E D I N G S

TIMOTHY DEVINE

called as a witness, being first duly
sworn, was examined and testified as follows:

* * *

EXAMINATION

* * *

(Devine Exhibits 1 through 8
were marked for identification.)

BY MR. LUMLEY:

Q. Would you state your full name for the
record, please?

A. Timothy Thomas Devine.

Q. And by whom are you currently employed?

A. Dantis, Inc. Dantis, Inc.

Q. Your business address?

A. 601 Carlson Parkway, Suite 1250, Minnetonka,
Minnesota 55305.

Q. What is your position with that company?

A. I'm the chairman and CEO.

Q. How long have you been with the company?

A. I just founded the company in January. So
since January, 2000.

Q. Always in the same position then? Chairman

1 and CEO?

2 A. Yes. Since January.

3 Q. You also reside in the State of Minnesota,
4 is that correct?

5 A. Yes.

6 Q. Mr. Devine, for the record, my name is Carl
7 Lumley, I'm an attorney and I represent MCI
8 WorldCom Communications, Inc., Brooks Fiber
9 Communications of Missouri, Inc. and also
10 BroadSpan Communications, Inc., which does
11 business under the name of Primary Network
12 Communications, Inc. This is Tony Conroy,
13 he represents Southwestern Bell Telephone
14 Company.

15 The three companies that I
16 represent have filed complaints against
17 Southwestern Bell with the Missouri Public
18 Service Commission, and the nature of those
19 complaints briefly is that these three
20 companies allege that Southwestern Bell is
21 breaching its interconnection agreements by
22 failing to pay reciprocal compensation when
23 these companies terminate local calls placed
24 by end users that are served by Southwestern
25 Bell to Internet Service Providers that are

1 served by my clients. And we're taking your
2 deposition today in that case. For
3 reference sometimes today I'll refer to
4 Internet Service Providers as ISPs. Are you
5 familiar with that acronym?

6 A. Yes.

7 Q. And the traffic I just mentioned, I'll
8 sometimes refer to as ISP-bound traffic.
9 Are you comfortable with that reference?

10 A. Yes. Traffic from the end users of
11 Southwestern Bell to the ISPs served by the
12 CLECs.

13 THE REPORTER: Served by
14 the --

15 THE WITNESS: CLECs.
16 Competitive Local Exchange Carrier.

17 MR. CONROY: That's one of
18 many acronyms that you'll probably hear
19 today.

20 THE WITNESS: I haven't worked
21 in the CLEC industry since October, so I
22 won't forget too much.

23 BY MR. LUMLEY:

24 Q. Could you briefly provide us with your
25 educational background?

1 A. I have an undergraduate degree in political
2 science from Arizona State University, and
3 that was conferred in May -- actually
4 December, 1980. And then I have a graduate
5 degree in telecommunications policy from
6 George Washington University in Washington,
7 D.C., and that was conferred in May of 1985.
8 Could have been June, but I think it's May
9 of '85.

10 Q. And could you take us backwards from your
11 current position at Dantis and give us your
12 employment background?

13 A. So go from current?

14 Q. Go from today back.

15 A. Okay. Yes. So Dantis just started January,
16 2000. From October 19th, 1999 until
17 January, 2000, I was operating as an
18 investor, basically just hanging out,
19 investing in start-up companies in the
20 communications and Internet space and just
21 trading stocks and spending a lot of time
22 with my family.

23 From March 31st, 1999 until
24 October 19th, '99 I served as the chief
25 technology and development officer for

1 McLeod USA, which is a publicly-traded CLEC.
2 In that position I ran all of the
3 telecommunications operations, except for
4 retail sales. So that was from March 31st,
5 '99 until October 19th. I resigned on my
6 own doing. Cultural challenges, let's just
7 say.

8 The reason I ended up working
9 for McLeod USA, I founded a Competitive
10 Local Exchange Carrier CLEC January 1st --
11 well, January of 1997, and I was the CEO and
12 president from January of '97 until
13 March 31, '99 when we sold the company to
14 McLeod USA. The company was Ovation
15 Communications. We were a facilities-based
16 CLEC with our own fiber networks, our own
17 telephone switches, our collocations at
18 central offices.

19 When we sold the company, we
20 had networks in Chicago, Milwaukee,
21 Minneapolis, St. Paul, Detroit, Flint,
22 Saginaw, Bay City, Michigan. We had over a
23 thousand miles of fiber and we had about
24 52,000 access lines. Annualized revenue of
25 \$100 million, and we sold the company for

1 over \$400 million. In that role, I managed
2 all the operations.

3 Before that, I worked from
4 January 18th, 1989 until January 3rd, 1997
5 for MFS Communications Company. I believe
6 the WorldCom acquisition with MFS closed the
7 first few days of January, so maybe for a
8 couple days I was employed for MFS WorldCom,
9 which they called, for maybe like a month.
10 But -- so I worked for MFS Communications
11 for about eight years.

12 The last three years, from
13 August of 1994 until January 3rd of 1997, I
14 served in the capacity of external and
15 regulatory affairs. From -- within that
16 period, from like August of '95 until I left
17 in January of '97, I was responsible for
18 external and regulatory affairs for the
19 traditional Southwestern Bell and Bell South
20 regions, original RBOC regions. I left as
21 an assistant vice-president.

22 I managed all of the relations
23 and negotiations for interconnection
24 agreements, and the like, and also acted as
25 regulatory affairs and an expert witness in

1 numerous regulatory cases regarding
2 interconnection, unbundled loops,
3 collocation, interim number portability,
4 reciprocal compensation, all of those kind
5 of things.

6 From August of '94 until I
7 took the position in the southern region, I
8 was doing external and regulatory affairs
9 for the traditional NYNEX region, which
10 included NYNEX, some Massachusetts,
11 Connecticut, New York, I did all the
12 Rochester telephone, SNET. So during that
13 period, from August of '94 until January of
14 '97, I negotiated 11 interconnection
15 agreements, which in most cases was the
16 first Interconnection Agreement with the
17 RBOC or the independent that had ever been
18 negotiated.

19 I did agreements with GTE and
20 Texas Ford in Virginia, agreements with
21 Southwestern Bell in Texas and Missouri,
22 agreements with Bell South in Florida and
23 Georgia, agreements with SNET in
24 Connecticut, which is currently owned by
25 SBC. With Rochester Telephone in Rochester,

1 and NYNEX in New York and Massachusetts.

2 The agreement I executed,
3 negotiated back in -- it was January of 1995
4 was the first ever Interconnection Agreement
5 in the United States that was executed. I
6 also negotiated the second ever
7 Interconnection Agreement in the United
8 States which was in Massachusetts in April
9 of '95. So, if you talk to people that are
10 familiar with interconnection agreements, I
11 mean, I don't know, I've been referred to as
12 the grandfather of collocation and
13 grandfather of interconnection.

14 Q. You don't look it though, for the record.

15 A. I have extensive experience in negotiating
16 interconnection agreements.

17 MR. CONROY: Again, for the
18 record, not the Godfather of Soul.

19 THE WITNESS: That's right.
20 So I did a lot of -- probably more work than
21 anybody. I mean, at least at the time in
22 interconnection in the United States. In
23 terms of -- and then I was an expert witness
24 in probably 25 regulatory cases and
25 represented MFS in pleadings in, you know,

1 states where there wasn't administrative
2 like litigation. So, whether it was in
3 Texas, Florida, New York, Massachusetts. So
4 extensive testimony on interconnection,
5 reciprocal compensation and all those
6 elements, whether they're technical or
7 financial arrangements.

8 I also before that time at
9 MFS, from December of '93 until August of
10 '94, I was a director doing corporate
11 planning at MFS Communications, working on
12 implementation and business planning for
13 local exchange services, traditional local
14 exchange services, so I was key to the input
15 and assumptions for local service since I
16 had experience working in local telephone
17 service, both in a regulated and unregulated
18 basis.

19 Before that time, from
20 January 18th until December -- January 18th,
21 of '89 until December of '93, I was the
22 director of product marketing, product
23 management and development. At MFS I was
24 the tenth corporate employee, we had about
25 fifty employees. And I managed marketing

1 services, public relations, product
2 development, product management, ran
3 engineering for a time, started to negotiate
4 collocation back in early '89 with
5 Southwestern Bell and Bell Atlantic and Pac
6 Bell and RBOCs before the FCC decision ever
7 came out.

8 So, I did regulatory. We
9 didn't have a regulatory department at the
10 time, so pretty much an all-purpose person.
11 Oftentimes, although I didn't work for the
12 regulatory department, indirectly, I was
13 driving all the negotiations. That started
14 with collocation and then started to carry
15 through with interconnection. So, kind of
16 saw just about anything that was going on in
17 the CAP and then the CLEC business.

18 BY MR. LUMLEY:

19 Q. By CAP you mean --

20 A. Competitive Access Provider. Before that
21 time, I worked -- do you want the exact
22 dates? I mean, I have them, but I worked in
23 1988 for Contel, Contel's local telephone
24 operations. I was the marketing manager for
25 the State of Illinois. We had about 125,000

1 access lines, so I was responsible for
2 products and pricing, rolling out ISDN, so I
3 became very familiar with regulated
4 telephone companies and how they operate
5 from a technical and business, economic and
6 financial standpoint.

7 Before that time for a short
8 period of time I worked for seven months for
9 Covia, which was United Airlines computer
10 reservation company in product management,
11 managing Windows-based reservation products
12 on computers. Actually, Bill Gates came by
13 our office a few times and I was working on
14 products that Microsoft was supporting, so
15 it was before Windows became public. That
16 was December of '87 until like July 1st of
17 '88.

18 Before Covia, I worked for
19 Sprint, at the time when I left it was U.S.
20 Sprint, when I started it was GT Sprint. So
21 I was at Sprint from August of 1983 until
22 December of 1987. There I started in
23 business sales in Washington, D.C. and I did
24 that for a year and a half. Then I moved
25 out to California to headquarters in

1 San Francisco and worked there from
2 November -- November, December of '84 until
3 July 1st of '86 when U.S. Sprint was formed.
4 When I worked in San Francisco at
5 headquarters, I was responsible for -- I was
6 a tariff analyst, analyzing competitive
7 tariffs of AT&T and MCI and the RBOCs to a
8 certain extent. Ended up becoming very
9 familiar with how the RBOCs and the
10 competitors structured their pricing and
11 products, and ended up taking a job as a
12 product manager.

13 So for about a year I managed
14 Sprint's private line product, which at the
15 time was doing about 50 million in annual
16 revenue, which was 10 percent of Sprint's
17 revenue at the time, so I think I was about
18 25 or so. So I was the youngest product
19 manager. They only hired MBA's from the top
20 ten schools, but I was the youngest in the
21 group of about 75 people.

22 So I did that, and then I
23 moved -- when U.S. Sprint was formed, I
24 moved to Chicago as the manager of product
25 and market analysis, in July of '86 until I

1 left Sprint, and there I did revenue
2 forecasting, sales forecasting, traffic
3 forecasting, worked on budgets, and those
4 are about 400 million in revenue we were
5 doing at the time, at least in the midwest
6 division. Did a lot of the work on equal
7 access with the RBOCs, particularly
8 Ameritech. Worked on databases. Pretty
9 much -- a lot of things doing with analysis
10 and product analysis. So I was very
11 familiar with products.

12 Before that time, I worked
13 from April 12, 1982, and I only know that
14 because that's my birthday, April 12th, so
15 April 12th, 1982 until August of '83, I
16 worked for Graphnet, which at the time was a
17 wholly-owned subsidiary of Graphics Scanning
18 Corporation. Graphics Scanning owned a lot
19 of paging and cellular licenses. In fact, I
20 think they did some agreements in
21 Indianapolis with GTE for cellular service.
22 And there I sold packet switching service
23 which is X.25. Today you have voice packets
24 and all that. And, you know, it's -- it was
25 data packet switching, I guess the

1 predecessor to the Internet. So I did that.
2 Sales, technical support, customer support
3 for that period of time.

4 And before that, I was --
5 during that time and before that I was going
6 to graduate school in Washington, and then
7 college before that. I started working when
8 I was young. My first job was shining shoes
9 for my father at 25 cents a pair, so I've
10 been working in business since I was 15 in
11 professional offices. Is that enough
12 detail? Too much detail?

13 Q. No. That was good. Just to clarify, when
14 you were referring to RBOCs, you're talking
15 about Regional Bell Operating Companies?

16 A. Regional Bell Operating Companies. I'm also
17 too now on the boards of Dantis, I'm also on
18 the board of directors of a unified
19 messaging company, I'm on the board of
20 directors of a business-to-business,
21 import-export Web site company. I'm also on
22 the board of directors of an Internet
23 appliance and service company, launching
24 service, similar to what Net Appliance does,
25 right now.

1 Q. Okay.

2 A. And some other activities, but those are
3 mostly relevant business activities.

4 Q. I don't think you told us, what is the
5 business of Dantis?

6 A. Dantis is building a business to become a
7 global leader in the complex Web hosting
8 business, a cross between Akamai,
9 A-K-A-M-A-I, and Exodus. So what we're
10 doing is we're building Internet business
11 centers around the world. Our first center
12 is in Chicago, 170,000 square foot building.
13 And we plan to build 15 centers around the
14 world.

15 So far we've raised about
16 \$100 million just in the last month and a
17 half and we're planning to raise
18 \$500 million by the third quarter, and a
19 billion dollars within the next 12 to 18
20 months. So we plan to be a global player
21 and we've already got big support, being
22 funded from Norwest equity partners and
23 Madison Dearborn partners, some of the
24 leaders in the infrastructure space in the
25 world. So, it's exciting. I got bored

1 during the day, I had to do something. I
2 don't think my wife wanted me around the
3 house.

4 Q. Okay. I appreciate that information.

5 A. Some communications. I mean, we have
6 communications connectivity for our Internet
7 customers between our data centers, but most
8 of it is the complex hosting of servers like
9 EMC and HP and Sun, Solaris, you know,
10 complex servers and Internet connectivity
11 and all that.

12 Q. Mr. Devine, I think most of my questions
13 today are going to deal with the period when
14 you were with MFS, specifically the
15 timeframe of roughly 1995 to '97, I think
16 was --

17 A. Yes.

18 Q. You indicated was a specific position. I
19 just want to make sure I understand at that
20 point you were in external and regulatory
21 affairs --

22 A. Yes.

23 Q. -- with MFS?

24 A. I was based in Atlanta. So from August of
25 1994 -- or excuse me. August of 1995 until

1 the first week of January of '97, I was
2 responsible for the relationships with all
3 of the incumbent phone companies in the
4 traditional Southwestern Bell and Bell South
5 regions, so GTE, Sprint and SBC and Bell
6 South. So for interconnection negotiations
7 was my primary responsibility.

8 Q. You were an assistant vice-president --

9 A. Yes.

10 Q. -- during that time?

11 A. When I left. I was the senior director and
12 then I was promoted to assistant
13 vice-president towards the end of that
14 period.

15 Q. Who did you report to at MFS during that
16 time period?

17 A. My direct supervisor was Alex Harris, who
18 was the vice-president of external and
19 regulatory affairs. Oftentimes did get
20 direct direction from Andy Litman, who is
21 our senior vice-president of external and
22 regulatory affairs. Alex managed external
23 and regulatory affairs nationally for MFS at
24 the time.

25 Q. By the traditional Southwestern Bell states,

1 you mean Missouri, Kansas, Oklahoma, Texas
2 and Arkansas?

3 A. Correct. We were focused on Texas and
4 Missouri because we had investments in those
5 two states at the time.

6 Q. Just for your understanding, I'll represent
7 to you that the evidence will show in this
8 case that MCI WorldCom Communications is the
9 successor in interest to MFS, as a result of
10 the 1997 merger of MFS and WorldCom that you
11 actually referred to earlier. The 1998
12 merger of WorldCom and MCI and then in 1999
13 reorganization.

14 A. Yes. I'm aware of that.

15 Q. Okay. I think you indicated this, but just
16 to make certain I understand, your
17 responsibilities for negotiating
18 interconnection agreements, you were in the
19 role of lead negotiator, is that correct?

20 A. Yeah. I was the day-to-day lead negotiator
21 for the agreements. Occasionally we would
22 bring in experts that focused on operator
23 services or collocation. Occasionally Alex,
24 my boss, would come in for meetings, but in
25 terms of day-to-day responsibility for MFS,

1 at the time I was responsible for the
2 relationships and negotiations, whether it
3 was in Texas or Missouri.

4 Q. Okay. That would have included reciprocal
5 compensation issues?

6 A. Yes.

7 Q. And all the other issues of interconnection?

8 A. Yes. All the issues that would have been
9 contained in the Interconnection Agreement
10 that we executed with Southwestern Bell.

11 Q. Okay. Let me show you what's been marked as
12 Devine Deposition Exhibit Number 4,
13 affidavit of Gary Ball that's been filed in
14 the case. Ask you to take a minute and read
15 through that.

16 MR. LUMLEY: Just go off the
17 record.

18 (Off the record.)

19 BY MR. LUMLEY:

20 Q. We're back on the record. You have had a
21 chance to read Exhibit Number 4, is that
22 correct?

23 A. Correct.

24 Q. Does Mr. Ball make any statements in his
25 affidavit that you would disagree with?

1 A. No. It's very consistent with our operating
2 procedures at the time.

3 Q. You are the Tim Devine that he refers to in
4 his affidavit, is that correct?

5 A. Yes.

6 Q. I'd like to show you now what's been marked
7 as Devine Deposition Exhibit Number 1, ask
8 you if you recognize that document?

9 A. I do, but it's been a little while.

10 Q. Can you tell me what it is?

11 A. The MFS-Southwestern Bell Interconnection
12 Agreement, compliance with 251 and 252 of
13 the Telecom Act of '96.

14 Q. It's dated July 16th of '96?

15 A. July 16th, '96, correct.

16 Q. Specifically, it's the agreement for the
17 State of Missouri, is that right?

18 A. Yes. Yeah. The agreement -- Southwestern
19 Bell pretty much in general adopted the
20 general agreement that we supplied in our
21 negotiations. We were actually pretty
22 surprised, especially after all the time I
23 spent in Texas, because Southwestern Bell in
24 Texas operates more radically than Ric
25 Zamora did at Southwestern Bell in Missouri

1 from a national standpoint. I used to type
2 away these agreements for -- I did a few
3 all-nighters working on these things before.

4 Q. This is the product of the negotiations you
5 were talking about earlier?

6 A. Yes.

7 Q. I would like to show you next what's been
8 marked as Devine Deposition Exhibit Number
9 2, and ask if you recognize that document?

10 A. Yes. These were the letters that MFS, we
11 sent out I think it was the day the Telecom
12 Act of '96 was executed, we sent out to all
13 of the executives at all of the RBOCs and
14 independents and incumbents that were
15 required to comply with the Telecom Act of
16 '96, so these were the opening letters to
17 initiate negotiations.

18 Q. Specifically, which state does that one
19 pertain to?

20 A. With Southwestern Bell in Missouri.

21 Q. Are you indicating that a similar letter was
22 sent to the other Southwestern Bell states?

23 A. Yes. We would have sent it to at least
24 Texas, so at least the states we were
25 operating in, but we sent out thirty to

1 fifty of these letters to initiate 251, 252
2 negotiations after the act was approved and
3 signed by Clinton. We were very consistent
4 with our policy and operations and requests
5 across the board.

6 Q. If you would, just read the first paragraph
7 of Section Number 3 out loud for the record.
8 Or I guess read the title of Section 3 and
9 then that first paragraph.

10 A. Section 3. Reciprocal Exchange of Traffic
11 and Compensation. (New Sections 251(b)(5)
12 and 271(c)(2)(b)(8 -- no. X. That's an 8,
13 right? Roman Numeral XIII). And the first
14 paragraph states: MFS and Southwestern
15 Bell - Missouri should reciprocally exchange
16 traffic between their networks as to allow
17 the seamless and transparent completion of
18 all intraLATA (including "local") calls
19 between their respective exchange service
20 users in a given LATA. The termination rate
21 should be imputable into Southwestern
22 Bell - Missouri's end user calling rates,
23 after discounts. Such arrangement is
24 contemplated by new Section -- I'll simplify
25 -- 252(d)(2)(B)(i) of the Communications

1 Act.

2 Q. Okay.

3 A. In fact, I remember the rate was nine tenths
4 of a penny because it was the same rate we
5 did in Texas and in Missouri.

6 Q. You're talking about the rate that is
7 actually in the agreement?

8 A. The rate for reciprocal compensation for
9 local calls between MFS and Southwestern
10 Bell that was in the Texas and Missouri
11 agreements.

12 Q. Okay.

13 A. Which that rate was pretty consistent with
14 most of the rates we signed our agreements
15 with in those years. In fact, a lot of
16 Telecommunications Act started from our
17 negotiations we had with NYNEX in New York.
18 A lot of the earlier negotiations I worked
19 on ended up being in the Telecommunications
20 Act, which ended up showing up in most of
21 all of our agreements and a lot of the state
22 proceedings, too. So it was pretty
23 consistent on our policy position on these
24 issues.

25 Q. Next I'd like to show you what's been marked

1 as Devine Deposition Exhibit Number 3. Ask
2 you if you recognize that document?

3 A. Yes.

4 Q. Would you identify it for us?

5 A. It's dated June 10, 1996, a letter to
6 Stephen Carter, vice-president and general
7 manager of Southwestern Bell at One Bell
8 Center in St. Louis, and sent from Alex
9 Harris, who was my boss at the time,
10 vice-president of regulatory affairs. I am
11 actually carbon copied on this letter with
12 the attorney that worked for me at the time
13 and then two other people in our
14 implementation -- three other people in our
15 implementation group.

16 During the negotiations,
17 Stephen Carter was not at -- he stopped by
18 once or twice, but he really wasn't involved
19 in the day-to-day negotiations, but he was
20 somebody who we knew was in authority, you
21 know, to make decisions on compensation.
22 So, you know, we were always open to
23 negotiation and proposed compromise to bring
24 the thing to a head.

25 Q. Were you involved in the preparation of that

1 letter?

2 A. In terms of Alex drove it, but in support of
3 the letter, correct. Yes.

4 Q. At the time it was prepared, did you believe
5 it to be accurate in terms of its recitation
6 of the history of the negotiations between
7 the parties?

8 A. Yes. At the time, I mean, this was
9 consistent with our negotiations. I'd have
10 to go back and read it to get into the
11 details, but we -- we knew how important it
12 was at the time when we did these
13 negotiations to properly document our
14 communication and our position because it
15 was very tough to get the RBOCs, especially
16 after my experience in Texas with
17 Southwestern Bell, it was very challenging
18 to get the RBOCs to agree in an open
19 negotiation to terms that we thought were
20 fair and reasonable.

21 So, we oftentimes would
22 reiterate our position often and
23 consistently and in writing to have
24 documentation going into a hearing, which
25 unfortunately we had to go into hearings

1 oftentimes, but in this case I was honestly
2 very excited and surprised that when Ric
3 Zamora got involved in the negotiation,
4 Southwestern Bell knew the Federal Telecom
5 Act was there, and if they were going to be
6 doing acquisitions of other RBOCs and
7 things, that they were going to have to
8 conform and, you know, halfway surprised
9 that we negotiated the agreement we did with
10 Southwestern Bell. We were all very
11 surprised it went so smoothly, once Ric
12 Zamora and Steve Carter got involved.

13 Q. Do you recall anything coming up later that
14 caused you to think that there was anything
15 inaccurate in this letter, Exhibit 3?

16 A. No. I mean, as I remember Alex was just
17 reiterating our positions, consistent -- you
18 know, company position, on the terms that
19 would work in an agreement. So the thing
20 that I remember that was most challenging
21 for Southwestern Bell at the time, I mean, a
22 local call is a local call, that was not an
23 issue. The most challenging thing was EAS
24 traffic, which they were mostly concerned
25 with, because they had the arrangements with

1 other independents.

2 So, we were kind of modeling
3 the Missouri agreement after a lot of
4 experience we had in our other agreements
5 with other RBOCs and independents. So this
6 really just in a summary version reiterates
7 what would have been our opening initially
8 proposed arrangements. Usually we have a
9 draft agreement, we would initiate
10 discussions with and try to work off that.
11 So, it looks very consistent with the
12 agreements I worked on and that we
13 negotiated in most of the states.

14 Q. In Exhibit 3, Mr. Harris talks about MFS
15 having concluded a comprehensive interim
16 Interconnection Agreement with Pacific Bell
17 and providing basically a copy of that
18 agreement to Southwestern Bell during the
19 negotiations. Do you recall that that
20 occurred?

21 A. Yes.

22 Q. He also says that after MFS executed a
23 comprehensive five-state Interconnection
24 Agreement with Ameritech, that that
25 agreement was also provided to Southwestern

1 Bell. Is that accurate?

2 A. Yes. We talked extensively about the
3 Ameritech agreement, and that certainly
4 became the benchmark for most of the
5 agreements and compromise negotiations with
6 most of the RBOCs. In fact, it set a
7 benchmark I think for most interconnection
8 agreements in the United States at the time.

9 Q. From your prior testimony, I gather that the
10 Texas negotiations and the Missouri
11 negotiations were going on at the same time?

12 A. Correct. The Texas negotiations initially
13 started as state negotiations based on state
14 proceedings in Texas, but we really didn't
15 make much headway negotiating with the
16 Southwestern Bell representatives in Texas
17 that worked for Southwestern Bell Texas, but
18 once the Telecom Act passed and we started
19 our negotiations with Ric Zamora of the
20 federal group in St. Louis, we ended up
21 negotiating directly with Ric Zamora's
22 group, and that included the Texas and the
23 Missouri negotiations, which were -- the
24 arrangements were very similar, generally
25 identical.

1 Generally things -- some rate
2 issues, sometimes rate issues like EAS and
3 stuff were different, but in terms of policy
4 and consistency, I think you'll find between
5 the two states they're pretty consistent.
6 Pricing may be different, but policy
7 agreement was very similar, if not identical
8 in almost every case.

9 Q. Okay. Could you tell us generally how the
10 negotiations were conducted? And by that I
11 mean, you know, in-person meetings,
12 correspondence, telephone conferences, all
13 of the above, just the nature of the way
14 they were conducted?

15 A. Sure. Yeah. I mean, the negotiations
16 started as you saw with initiating letters
17 back in February after the Telecom Act was
18 executed and then, you know, subsequent
19 communication on the phone and Alex Harris'
20 letter. But really, like a lot of these
21 negotiations, they didn't pick up a lot of
22 speed until you were close to the time when
23 you had to file for arbitration, or if there
24 was a proceeding going on in the state, so
25 unfortunately, a couple times I find myself

1 delaying hearings because we were signing
2 interconnection agreements with the RBOC at
3 the last minute because usually it would
4 take a regulatory event to speed things
5 along.

6 So really just in the last
7 month of negotiations with Southwestern Bell
8 for Texas and Missouri, that's when things
9 accelerated before we got to the point where
10 we would have had to file for arbitration.
11 So, the meetings, most of the meetings were
12 in St. Louis at One Bell Center. Ric Zamora
13 was the prime representative for
14 Southwestern Bell. Generally myself --
15 myself was there, Susan Schultz, who worked
16 for me in regulatory, was there, Alex Harris
17 was generally there, but not at every
18 meeting. Dan Caruso and/or his group,
19 generally Kevin Dundon, Shalon Simmons.
20 Kevin Dundon generally was there.

21 Alex and I ran the regulatory
22 and external affairs and we drove the
23 negotiations, and then Dan Caruso's group,
24 which had Kevin Dundon and Shalon more or
25 less were the business experts in terms of

1 operator services and directory listing and
2 kind of the mechanical stuff that would do
3 the implementation.

4 And then on Southwestern
5 Bell's side, it was primarily Ric Zamora was
6 calling all the shots. It was -- I mean,
7 Ric was great to work with. It was a
8 pleasure working with him and negotiations
9 went well, but we would stay -- there is a
10 little hotel around the corner that we
11 stayed at, I think, which is the
12 Southwestern Bell --

13 Q. The Majestic?

14 A. The Majestic. There you go. So --

15 MR. CONROY: Formerly. They
16 sold it now.

17 THE WITNESS: Okay. Most of
18 the meetings were in St. Louis, because they
19 usually had more people to pull in. It was
20 easier for us to pop in there. So usually
21 there were all day kind of meetings and we
22 had at least a half dozen of those kind of
23 meetings.

24 BY MR. LUMLEY:

25 Q. I want to show you what's been marked as

1 Devine Deposition Exhibit Number 5,
2 Southwestern Bell's Responses to the
3 Complainant's First Set of Discovery. And
4 specifically draw your attention to their
5 Answer to Interrogatory 6, and show you at
6 the bottom of page 5 they're identifying
7 what they say is the key Southwestern Bell
8 employees, agents or representatives that
9 were present during the MFS negotiations.
10 On the next page we actually have the list.
11 And it lists Mr. Zamora, who you have
12 mentioned, Gene Springfield, Amy Hinderer,
13 Gary Fleming, Jeffrey Fields. I want to ask
14 you if you believe that list is accurate?

15 A. Yeah. I remember Amy was the attorney and
16 then Gary was more of a -- he was the
17 technical person, supporting rep. Ric
18 clearly drove the negotiation, was in
19 control of it, had the decision making
20 capability. Occasionally I think he would
21 have to check stuff with Stephen Carter.
22 But Gary was more the technical part of the
23 negotiation. So he would work mostly with
24 Kevin Dundon, Dan Caruso on the more
25 technical stuff. Amy was documenting all

1 the legal kind of aspects of things.

2 Clearly business negotiations, and Ric was

3 driving. Yeah. I remember Jeff's name.

4 Gene I don't remember. But Jeff --

5 Q. You don't remember Mr. Springfield?

6 A. I don't -- I don't remember him in detail,

7 no. I really don't. Mostly the St. Louis

8 people. Occasionally the Texas people would

9 come up, but it was clear once the Federal

10 Telecom Act and Southwestern Bell SBC

11 decided they were going to do these

12 agreements, St. Louis took over, Texas was

13 not running the show anymore.

14 Q. I want to show you what's been marked as

15 Devine Deposition Exhibit Number 6, the

16 affidavit of Eugene Springfield. It's been

17 previously filed in this case. Specifically

18 direct your attention to paragraph Number 2

19 and ask you to read that paragraph to

20 yourself.

21 A. I am currently employed --

22 Q. You can just read it to yourself.

23 A. Okay. Yeah. He is saying he was

24 responsible. I disagree. I mean, I would

25 have clearly recognized and remembered this

1 gentleman if he were responsible for the
2 negotiations.

3 Q. Okay. That was going to be my question was
4 whether you agreed with his statement or
5 not?

6 A. No. I don't agree with that statement. It
7 was clear Ric Zamora pushed the buttons.
8 Any major communication or compromise came
9 from Ric Zamora. Generally the -- most of
10 these people were support people. Gary
11 Fleming, the second most communicated person
12 related to any of the negotiation points,
13 oftentimes people would talk at the
14 meetings, but in terms of negotiation points
15 and what they could actually negotiate,
16 clearly Ric controlled things and Gary did
17 occasionally have some input since he was
18 the technical person. He worked like Peter
19 Schultz on technical stuff. Peter was kind
20 of our technical person.

21 Q. He was on MFS?

22 A. He was on MFS side. Mr. Springfield
23 certainly did not -- he was not responsible
24 for the -- especially the rates and -- the
25 rates and local traffic, reciprocal

1 compensation. He might have been there, but
2 he was not lead in charge, let's put it that
3 way.

4 Q. Okay. In your Missouri Interconnection
5 Agreement negotiations with Southwestern
6 Bell for MFS, did you have a specific goal
7 regarding reciprocal compensation in
8 ISP-bound traffic?

9 A. No. There was no specific discussion.
10 There was no discussion. There were no --
11 it wasn't an issue. We didn't bring it up
12 as an issue, they didn't bring it up as an
13 issue. There was no discussion on it. It's
14 kind of funny. I mean, if there were an
15 issue, it's kind of unique, I mean,
16 rhetorically years later that it is or even
17 I think it was a year or two later when the
18 FCC started to get excited, but it was funny
19 because once it became an issue of light in
20 the regulatory realm, the RBOCs and GTEs of
21 the world started to try to get specific
22 carve-out language in their agreements. In
23 fact, when I started the CLEC here in
24 Minnesota, U.S. West tried to carve out ISP
25 traffic.

1 MR. CONROY: Just a formality.
2 I want to object that this answer is beyond
3 the scope of the question. I'm not sure if
4 that's a form objection or not, but I'm
5 going to make it. I haven't objected to any
6 of the previously leading questions, but I'm
7 getting ready to. So I'm giving you a
8 little warning, but I did want to object to
9 the response of the last question.

10 THE WITNESS: You probably
11 don't want to hear my story I talked to my
12 son about on the way here.

13 MR. CONROY: I guess for the
14 record -- was that part of the record? For
15 the record, I just want to make sure, there
16 are going to be some legal formalities that
17 Mr. Lumley and I should talk about.

18 THE WITNESS: Sure.

19 MR. CONROY: It's not that we
20 necessarily don't want to hear your story.
21 That's why we're here really is to hear your
22 story.

23 THE WITNESS: Sure.

24 MR. CONROY: I'm going to need
25 to do that occasionally probably so you

1 shouldn't read too much into that.

2 THE WITNESS: Sure. Well,
3 with me it's kind of nice because I'm not
4 associated with anybody so I can say and do
5 whatever is the right thing. It doesn't
6 matter, so ...

7 MR. CONROY: And just for the
8 record, I'll have to object to that as being
9 unresponsive to any question.

10 THE WITNESS: Okay. I'll shut
11 up.

12 MR. CONROY: Thanks.

13 BY MR. LUMLEY:

14 Q. Did you personally have any specific
15 discussion with Southwestern Bell
16 representative or representatives prior to
17 the signature of the Missouri agreement,
18 Exhibit Number 1, regarding the
19 applicability of reciprocal compensation to
20 ISP-bound traffic?

21 A. No.

22 Q. Was there any particular reason why it
23 wasn't discussed, that you're aware of?

24 A. No reason. There was no issue, no
25 discussion. No.

1 Q. Okay. Did you observe any such discussion
2 between another MFS representative and
3 Southwestern Bell representatives?

4 A. No.

5 Q. Did you exchange any written communications
6 with Southwestern Bell that specifically
7 mentioned the applicability of reciprocal
8 compensation to ISP-bound traffic prior to
9 the signature of this agreement?

10 A. No. There was no discussion, no
11 communication, no issue in writing verbally,
12 and I was at I would say most every meeting.

13 Q. Prior to the signature of the agreement, did
14 any Southwestern Bell representative inform
15 you orally or in writing that Southwestern
16 Bell did not intend to pay reciprocal
17 compensation to ISP-bound traffic?

18 A. No.

19 Q. Did you observe any such discussion between
20 a Southwestern Bell representative and
21 another MFS representative?

22 A. No.

23 Q. Are you aware of any written communication
24 from Southwestern Bell to that effect prior
25 to the signature of Exhibit Number 1?

1 A. No. There's no discussion of it, whether it
2 was the Texas discussions that I initiated
3 on the state proceedings there or after,
4 before, during. None. Zero. If it were an
5 issue, they would have brought it up, I'll
6 guarantee you that.

7 MR. CONROY: Again, I'm just
8 going to have to object as to the
9 responsiveness to the specific question.

10 THE WITNESS: I think I'm
11 being responsive. There was no discussion.
12 It was never brought up.

13 MR. CONROY: Okay.

14 MR. LUMLEY: Okay.

15 MR. CONROY: I'm going to
16 object for the record to the remainder of
17 that comment also.

18 BY MR. LUMLEY:

19 Q. Prior to the execution of the -- to the
20 signature of Exhibit Number 1, the Missouri
21 Interconnection Agreement, were you aware of
22 any other RBOC in the country that was
23 asserting that they would not pay reciprocal
24 compensation to ISP-bound traffic in their
25 dealings with MFS?

1 A. Generally there were -- it was not an issue.
2 There was not an issue. I remember in
3 Georgia, when MFS announced we were going to
4 purchase UUNet, I had some cross-examination
5 just generally about the Internet, you know,
6 us getting into the Internet business, but
7 there were never any discussions on any of
8 the agreements I executed, and I executed 11
9 agreements with GT, Sprint Centel, NYNEX,
10 SNET, Rochester Telephone, Bell South,
11 Southwestern Bell, there were no discussions
12 on any of those agreements that I negotiated
13 regarding an issue with compensation related
14 to ISP traffic.

15 Q. I want to show you what's been marked as
16 Devine Deposition Exhibit Number 7, and it's
17 a form letter, as you will see in terms of
18 the address block, but it also has a
19 distribution list, and I'll point out to you
20 that it includes Mr. Bill Mullen of MFS
21 WorldCom on that distribution list.

22 A. Sure. And Mary Albert, she actually
23 represented MFS for a lot of legal work.
24 She's an attorney at Swidler and Berlin in
25 Washington, D.C. Mary Albert. Her and I

1 worked on a lot of these cases. In fact,
2 she did some general support for these
3 negotiations.

4 Q. Okay. Do you recall whether MFS received
5 such a letter approximate to June 9th of
6 1997?

7 A. Well, I left in January of '97, so ...

8 Q. Okay.

9 A. I wouldn't know. Certainly it was apparent
10 a year or two later that the RBOCs and
11 everybody got on the band wagon.

12 Q. But you were gone?

13 A. I was gone when that letter -- yes.

14 Q. All right. Prior to your departure from
15 MFS, are you aware of any communications
16 from Southwestern Bell to MFS, written or
17 oral, in which it asserted it was not going
18 to pay reciprocal compensation to MFS on
19 ISP-bound traffic?

20 A. No, I didn't. And I don't remember the
21 company receiving any communication, written
22 or verbal, that that was an issue, up until
23 I left in January, '97.

24 Q. I'm going to refer you to a couple
25 provisions in Exhibit Number 1, because I

1 know it's been a while since you have had to
2 play with this document, if I can use that
3 term.

4 A. Yeah. We had ended up -- Ovation
5 Communications here in '97, we opted into
6 MFS, Minnesota agreed with MFS negotiating
7 with U.S. West, so it's ...

8 Q. Similar structure?

9 A. Yes.

10 Q. Just to point out to you in Section 5.1, it
11 talks about trunk groups for local and
12 intraLATA toll traffic.

13 A. Uh-huh.

14 Q. In Section 6, it talks about trunk groups
15 for exchange access traffic. If we look at
16 Exhibit C, which is trunk group
17 configuration and traffic routing, and in
18 particular what has been Bates stamped as
19 page 70, it talks about having separate
20 trunk groups for local traffic and separate
21 trunk groups for intraLATA toll traffic.

22 A. Correct.

23 Q. You recall those provisions?

24 A. Yes.

25 Q. That's --

1 A. Yes.

2 Q. Okay. During your negotiations with
3 Southwestern Bell regarding this Missouri
4 Interconnection Agreement and prior to the
5 signature of that agreement, did any
6 Southwestern Bell representative inform you,
7 orally or in writing, that notwithstanding
8 these contract provisions requiring separate
9 trunk groups for local traffic, at least in
10 some circumstances, that Southwestern Bell
11 intended to transmit traffic that it did not
12 consider to be local traffic over those
13 separate trunks groups?

14 MR. CONROY: Just for the
15 record before you answer, I'm going to
16 object to the leading form of the question.
17 Go ahead. Answer.

18 THE WITNESS: No. We had
19 separate trunk groups for local, including
20 intraLATA and for exchange. So, local was
21 local. Southwestern Bell wanted to make
22 sure that they could identify -- they wanted
23 to make sure they were getting their
24 switched access versus their local
25 compensation. So that was really the issue.

1 They liked separate trunk groups, so that's
2 what those arrangements addressed there.

3 BY MR. LUMLEY:

4 Q. Did you observe any Southwestern Bell
5 representative make such a statement to any
6 other MFS representative to the effect that
7 there would be circumstances under which
8 traffic that Southwestern Bell considered
9 not to be local would be transmitted over
10 trunk groups designated as local only?

11 A. No. The only issue with routing sometimes
12 with interim number portability calls, and
13 you can't tell what the jurisdiction is
14 because you don't get the original called
15 number in SS7, so the only issue is
16 sometimes that a call could possibly be
17 routed over the wrong trunk group is if it's
18 for an interim number portability call which
19 is a predecessor, long-term number
20 portability with an IMP call, you can't get
21 the original phone number where the call
22 originated from.

23 So, we worked out with
24 Southwestern Bell compensation arrangements
25 to address that, but other than that kind of

1 traffic, there was no discussion about any
2 other kind of traffic that could, you know,
3 potentially not be routed. That was kind of
4 a technical challenge where you just had to
5 work around it.

6 Q. Specifically referring to the formula that's
7 in Section 13.5.7 of Exhibit 1, you may want
8 to look --

9 A. Yes. Exactly. It was a formula, a method
10 to adjust for the technical impediment of
11 IMP calls.

12 Q. In the negotiation of this formula in
13 Section 13.5.7 and the related sections that
14 precede it, was there ever any discussion
15 about any kind of special treatment of
16 ISP-bound traffic?

17 A. No.

18 Q. Are you aware of any written document
19 delivered by Southwestern Bell prior to the
20 execution of the contract, Exhibit 1, in
21 which Southwestern Bell asserted that it
22 would be transmitting nonlocal traffic over
23 trunk groups designated as local only?

24 A. No.

25 Q. Did you or any other MFS representative to

1 your knowledge ever make such a statement to
2 Southwestern Bell that there was an intent
3 on MFS's part to transmit nonlocal traffic
4 over trunks designated as local only?

5 A. No.

6 Q. Were there any discussions or communications
7 during the negotiations up to the date of
8 signature of the contract about developing
9 some kind of a method for estimating the
10 quantity of ISP-bound traffic being sent
11 over local trunks for any purpose?

12 A. No.

13 Q. The agreement has a Schedule 3, which I
14 probably won't be able to find now. I meant
15 to write down the page number and I didn't.
16 That talks about the activation date for
17 interconnection.

18 A. I think we have a pretty specified time
19 to --

20 Q. I'll represent to you that the date was
21 December 15th of '96, but I would still like
22 to find it and show it to you. Here we go.
23 Schedule 3.0. The interconnection
24 activation date of December 15, 1996. So
25 that date is shortly before you left the

1 company?

2 A. Correct.

3 Q. Do you recall whether that date was met or
4 whether it was postponed?

5 A. I know that different pieces of the
6 interconnection, the dates, you know,
7 slipped. I don't remember the actual full
8 turn-up, whether there were pieces of it
9 that I know were slipping, but I don't
10 recall exactly if we did have turn-up that
11 date. I think there were some issues that
12 didn't make that date happen, but I don't
13 remember exactly.

14 Q. Do you recall whether the MFS and
15 Southwestern Bell were exchanging local
16 traffic prior to your departure from MFS in
17 Missouri?

18 A. In Missouri? No. Missouri -- yeah.
19 Missouri we -- we wouldn't have -- I don't
20 think -- yeah. I'm pretty sure we didn't.
21 I don't think our switch -- on our side, I
22 don't think our switch was turned up yet. I
23 don't think our telephone switch in
24 St. Louis was turned up yet. So I'm pretty
25 sure that date didn't happen. I don't know

1 when the actual date was.

2 Q. Okay.

3 A. But it was more or less timing issues.
4 There were no issues about, you know, what
5 we agreed upon. There were just logistic
6 timing issues on both sides, probably.

7 Q. All right. Do you have any documents
8 regarding the negotiations of this
9 agreement?

10 A. Personally now?

11 Q. Yes.

12 A. No. All of my files would have been left in
13 my office in Atlanta or shipped to New York
14 when I left at the time, to Alex Harris. I
15 imagine they're in the possession of MCI
16 WorldCom, but I personally didn't keep any.

17 Q. Do you have any other information that you
18 think is pertinent that I haven't asked you
19 about today?

20 A. I just think it's clear from what I've seen,
21 and I've been in the telecommunications
22 business for 18 years and I went to graduate
23 school in telecommunications policy, it's
24 clear that after the fact, when people
25 started to see the amount of ISP traffic,

1 you know, with the Internet growing and
2 traffic from ISPs generating a lot on the
3 incumbent and the competitive networks, that
4 the incumbents started to want to recut
5 their deals. I know with GTE
6 specifically --

7 MR. CONROY: I'm going to
8 object on the basis of what he knows about
9 GTE. I'm trying to not object as much but,
10 I mean, this case is about SWBT,
11 Southwestern Bell.

12 THE WITNESS: Okay. I guess
13 it's -- it's very apparent that after the
14 fact, after all these deals were negotiated,
15 and after traffic, you know, started to
16 flow, that everybody wants to recut their
17 deals because, you know, let's stick our
18 foot in and, you know, try to change the
19 rules. And a local call has been a local
20 call and there is a local call negotiated in
21 all these agreements.

22 After that time with
23 regulatory issues and the FCC and the
24 justice and all the court cases filed, I
25 know things have changed and I haven't

1 personally been watching it closely, but
2 it's very apparent that everybody wanted to
3 recut their deals after these agreements
4 were negotiated. And it's -- it doesn't
5 surprise me based on all the rhetoric that I
6 saw in the three years I negotiated this
7 agreement. So if there's a way to stick
8 your foot in to open a door, everybody
9 tries. And there is a lot of money at
10 stake. You know. A lot of money at stake,
11 so ...

12 MR. LUMLEY: Okay.

13 THE WITNESS: It's
14 unfortunate. My son this morning when I was
15 driving him to school --

16 MR. CONROY: I'm going to
17 object.

18 THE WITNESS: It's a good
19 story.

20 MR. LUMLEY: You can tell us
21 off the record.

22 THE WITNESS: It's about
23 lying.

24 MR. CONROY: I object. I'm
25 going to object.

1 MR. LUMLEY: We'll do it off
2 the record.

3 THE WITNESS: Okay.

4 MR. LUMLEY: I don't have any
5 further questions for you this morning. I
6 appreciate your time --

7 THE WITNESS: Sure.

8 MR. LUMLEY: -- and
9 cooperation in coming out here today.
10 Mr. Conroy may have questions for you.

11 THE WITNESS: Okay.

12 MR. CONROY: Can we go off the
13 record for a break?

14 MR. LUMLEY: Certainly.

15 (Recess.)

16 * * *

17 EXAMINATION

18 * * *

19 BY MR. CONROY:

20 Q. Good morning, Mr. Devine. My name is Tony
21 Conroy. We've already had some
22 conversations. You know that I represent
23 Southwestern Bell Telephone Company in this
24 case in Missouri, right?

25 A. Yes.

1 Q. Okay. I want to explore a little bit your
2 background and some of the things you talked
3 about on direct, and we may talk about a
4 couple other things, but a lot of what I
5 wanted to ask you was covered in part or
6 maybe in total by Mr. Lumley's direct
7 examination.

8 A. Okay.

9 Q. So I apologize if there's any repetition on
10 my part. You testified that you haven't
11 worked in the CLEC industry since October,
12 1999. And you described the new company you
13 founded called Dantis?

14 A. Dantis.

15 Q. Tell me again what that -- what you're going
16 to do. What you plan to do with Dantis.

17 A. To become a global leader in the complex Web
18 hosting business.

19 Q. What is complex Web hosting?

20 A. It's a layer of three or four hosting for
21 medium and large enterprises in dot-com
22 companies, where actually we're building
23 Internet business centers or data centers in
24 15 markets around the world. The first one
25 is Chicago, and then San Jose and

1 Washington, D.C. area. We'll be connecting
2 all of the sites with fiber that will buy
3 IRUs from companies like Williams and IXC
4 and Level Three. We'll connect our networks
5 to all the NAPs and the MAEs so that they --
6 public and private peering interconnection
7 points in the world. The first center --

8 Q. I just want to make sure for the court
9 reporter. NAP is N-A-P, right?

10 A. Right.

11 Q. What does that acronym stand for?

12 A. Network Access Point.

13 Q. And peering is P-E-E-R-I-N-G?

14 A. Correct. Which is the interconnection
15 between different Internet providers. But
16 so it's --

17 Q. Maybe you could tell us who your customers
18 would be.

19 A. Customers would be Yahoo, you know, people
20 that have Web sites. We would actually do
21 the infrastructure to support Web sites. So
22 we'll do the communications connectivity
23 between our centers and between the other
24 NAPs and Internet companies we would connect
25 to that do infrastructure. Like a UUNet we

1 connect to or an AOL, people like that.

2 Then we -- actually in Chicago, our first
3 center is a 170,000 square foot building so
4 we go in in Chicago alone in the one center
5 we'll put 35 million of infrastructure into
6 the center.

7 Q. Okay.

8 A. Before we put in servers. So, just between
9 Chicago, San Jose and D.C., we'll be
10 investing \$500 million in the business in
11 the next several months. It's basically we
12 host Web sites. So you see Web sites. We
13 host those on our systems, and all of the
14 sites are like central offices, and we
15 connect all the sites with fiber optic
16 cable, so we will sell communications
17 services between the sites.

18 At some point in the future I
19 see us doing IP telephony as the business
20 evolves, since we'll have the infrastructure
21 in to do communications, but right now I
22 have a noncompete, at least within McLeod
23 USA's service territory, for traditional
24 telephone service.

25 Q. Okay. So is it fair to say after your

1 noncompete expires with McLeod, that you
2 will at least consider that as a business
3 opportunity for your new company?

4 A. Consider horizontal and vertical expansions
5 of services. And certainly communications
6 services.

7 Q. Okay. So, it would be fair to say that at
8 some point -- let me ask you this. How much
9 more do you have to wait for your -- you
10 probably know the exact date, but what is
11 your noncompete date with -- what date does
12 your noncompete expire with McLeod?

13 A. An attorney would tell you 12 months from
14 October 19th, '99. So this October 19th is
15 one year. The agreement says two years, but
16 generally noncompetes don't hold up with
17 judges more than 12 months, so ...

18 Q. Okay. So it's either a year or --

19 A. Sometime in the next year or two. Correct.

20 Q. And at that point, your company that you
21 founded certainly would be in a position
22 where it may be considered what we have
23 described earlier as a CLEC?

24 A. No. We wouldn't be doing CLEC service. We
25 would be doing wholesale transport for

1 really long distance kind of calling. So it
2 would be -- we're not going to get into
3 having retail customers because the SGNA,
4 sales, general administrative expenses get
5 really high. So we'll just provide the
6 infrastructure and the transport for people
7 that want to offer like IP telephony
8 services. It will be more of the long haul
9 network stuff. We're not going to be
10 building local networks, we're not putting
11 in traditional telephone switches.

12 Q. Will you have ISPs for customers?

13 A. That for Web hosting we will in this
14 business. So we're not -- at Ovation we had
15 ISP customers and we sold them dial tone.
16 In this instance, we're selling people
17 hosting service, so I don't want ISPs to
18 come into my site that don't want hosting.
19 Hosting is where I generate all my cash
20 flow. Hosting cash flows are a lot better
21 than ISP business.

22 So, I mean, if you look at
23 Exodus and Akamai, who we're targeting,
24 Exodus in the last quarter, in the fourth
25 quarter of '99 had revenues of a hundred

1 million. Their market CAP is still around
2 \$20 billion. So, and Akamai's is about \$20
3 billion on \$2.8 million in revenue in the
4 fourth quarter of '99. The CLEC business is
5 a commodity compared to the hosting
6 business.

7 Q. Sounds like you know where you're going.

8 A. That's where we're going. We'll --

9 MR. LUMLEY: As usual, Tony
10 and I are sitting in the wrong chair.

11 THE WITNESS: We'll buy
12 service from CLECs and incumbent LECs and
13 long distance carriers, and we'll buy a lot
14 of communication services, but we're not --
15 hosting is where the value chain -- we want
16 to move up the value chain. That's where
17 the cash is.

18 BY MR. CONROY:

19 Q. Okay.

20 A. Telephony, I did that for a long time. It's
21 a commodity business now.

22 Q. Okay. Tell me again when you worked for --
23 what was last CLEC that you worked for?
24 Would that be McLeod?

25 A. That would have been McLeod USA, and I

1 resigned October 19, '99.

2 Q. Okay. In your position with McLeod, did you
3 have responsibility for compensation
4 arrangements with incumbent LECs?

5 A. All the business arrangements, I didn't do
6 regulatory work, but my group negotiated the
7 interconnection agreements. So Pam Hawkins,
8 who was vice-president at McLeod USA, who is
9 a vice-president at Ovation Communications,
10 the CLEC I started, she did the negotiations
11 with the RBOCs and the independents for
12 interconnection.

13 Q. Okay. So you didn't have any responsibility
14 for that?

15 A. Well, she worked in my group. I had 2,500
16 people, so Pam worked for my senior
17 vice-president and she was the
18 vice-president.

19 Q. Okay. Did Ovation -- that was the name,
20 right? Of the company?

21 A. Yes.

22 Q. Did they focus on transporting Internet
23 traffic? CLEC?

24 A. Well, we sold dial tone to ISPs.

25 Q. Okay. I mean, was it part of your business

1 plan to focus on ISPs as a result of this
2 terminating compensation issue, that I think
3 you understand pretty clearly?

4 A. No. I mean, our business plan and actually
5 was one thing. MC Venture Partner is the
6 venture firm that invested in us, were very
7 pleased with our plan. Because our plan and
8 our business model showed we were focusing
9 on retail end customers. Our thought was,
10 you know, if we benefit, you know, from ISPs
11 and other providers, you know, that works,
12 it doesn't work. I mean, the plan was to
13 focus on retail subscribers, because if you
14 talk to Wall Street, the focus is on how
15 many subscribers. Focus clearly on the
16 retail customer.

17 Did we have ISP customers?

18 Yes. Most all CLECs had as well. I mean,
19 RBOCs have them, too. In fact, U.S. West in
20 the Twin Cities was ferociously fighting to
21 get ISP customers because they wanted to get
22 their DSL traffic, too. They wanted to get
23 everything, so ...

24 Q. Do you know, for Ovation, if you picked a
25 particular month, what percent of its

1 traffic in minutes would be terminated --
2 I'm going to use that word without any legal
3 significance to it -- to ISPs versus other
4 types of retail, end users customers?

5 MR. LUMLEY: I'm going to
6 object to the form of the question. It's
7 vague and ambiguous and in particular you
8 used the word its traffic and I'm not --

9 MR. CONROY: I can rephrase if
10 you want.

11 BY MR. CONROY:

12 Q. Would you know on a -- what you would
13 consider to be a typical month for Ovation
14 back then, what percentage of the traffic it
15 carried that was originated by end users
16 from the incumbent LEC, it carried to ISPs?
17 "It" being Ovation.

18 A. Yeah. We didn't have any sophisticated
19 reporting systems to know exactly, you know,
20 how much traffic came from different end
21 users. Certainly, I mean, we had some
22 traffic that originated from U.S. West
23 subscribers that terminated to us that were
24 ISP customers. I don't know an exact
25 percentage. I mean, it was not a majority.

1 It was, you know, smaller than larger. It
2 wasn't a majority of the traffic, that's for
3 certain.

4 We had a lot of collocations.
5 We had more collocations, like collocations
6 when you actually collocate your equipment
7 at a central office. We had 20 collocations
8 here in Minnesota, 90 we were installing in
9 Chicago, 75 in Michigan, 20 in Milwaukee.
10 We had more collocations than any other CLEC
11 in the market, including the big carriers
12 like MCI WorldCom, except a couple of the
13 DSL CLECs had more than us.

14 We certainly were focused on a
15 retail business, building fiber, building
16 out. We were not like a Focal
17 Communications, which their business plan
18 largely was based on ISP and reciprocal
19 compensation traffic. That's not what we
20 were like.

21 Q. Just from a curiosity perspective, how would
22 you know that Focal --

23 A. It was all over when they were doing their
24 road show for their IPO, that was one of the
25 issues that Wall Street was asking a lot of

1 questions about.

2 Q. Okay. I suppose as a CLEC, you would be
3 interested in knowing what your potential
4 competitor CLECs are doing in terms of their
5 business plan, right?

6 A. Sure. I mean, that was public information.
7 Public information.

8 Q. Okay. Do you have any equity ownership or
9 any financial interest in any of the
10 complainants in this case, which would be
11 MCI WorldCom, I guess there is no equity
12 anymore in Brooks, but MCI WorldCom or
13 BroadSpan, Primary Network?

14 A. I have a small amount of shares I purchased
15 in the last, I don't know, six months of MCI
16 WorldCom, but my net worth is over a hundred
17 million dollars and I only have about -- I
18 don't know if their stock is going down -- I
19 have about \$500,000 worth of MCI WorldCom
20 stock. So the net worth of over -- well
21 over a hundred million dollars, it's a very
22 small percentage of my portfolio.

23 Q. Okay. So, I don't want to go into this too
24 much, but if there was -- I'll start over.
25 I assume you had an equity interest in MFS

1 when you were there, is that accurate?

2 A. I had stock options which all employees had
3 stock options.

4 Q. Okay. I assume that the stock price of MFS
5 went up and that you exercised those options
6 and cashed them out, is that fair?

7 A. Most of my stock options were executed about
8 the time I resigned because, of course, if
9 you do a buy-hold, you got to pay taxes, but
10 you don't get any financial cash benefit.
11 So, within a short period of me leaving MFS,
12 you know, I had executed all my options.

13 Q. And then not purchased the stock, actually?

14 A. I didn't have any stock for a long time.
15 I'm just -- I'm starting to just try to
16 diversify more. I used to only -- I'm
17 trying to diversify more. I looked at MCI
18 WorldCom more as a value play now. Like an
19 RBOC almost, with a big cash flow. You
20 know. Bernie can't buy anybody else. He is
21 getting too big. He could try, but --

22 MR. LUMLEY: I was going to
23 say never say never.

24 BY MR. CONROY:

25 Q. Couple questions about your directorships.

1 A. Uh-huh.

2 Q. You said something about a unified messaging
3 company. What is that?

4 A. They provide software for integrated voice,
5 e-mail, you know, voice and e-mail and fax
6 mail. So it's a software package.

7 Q. Okay.

8 A. It's a pretty small company. Maybe a
9 million or two in the bank.

10 Q. The other one I had a question about was the
11 Internet application service company that
12 you said was similar to Net Appliance. Tell
13 me what that does.

14 A. Yeah. They're still in the early stage
15 phase. They don't have revenue yet. But
16 the company is called Universal Talkware
17 Corporation. They're based here in the Twin
18 Cities. They have an Internet appliance box
19 which enables user friendly access to the
20 Internet, so if you want to know about
21 weather, you just push the weather button.
22 It's -- you know, they're not working out of
23 their garage but, you know, they're --
24 hopefully they'll raise some money soon.
25 I'm a minority investor, so ...

1 Q. Okay. If you would, let me show you again
2 what was marked as and what you referred to
3 before as Devine Deposition Exhibit 2. Do
4 you remember looking at that document?

5 A. Yes.

6 Q. That was the letter by which MFS requested
7 interconnection negotiations with
8 Southwestern Bell in Missouri under the
9 Telecommunications Act of 1996, is that
10 right?

11 A. Correct.

12 Q. I think you testified that this was sent on
13 the same day that President Clinton signed
14 the Telecommunications Act, or I noticed in
15 the first sentence it says that President
16 Clinton is about to sign into law the
17 Telecommunications Act. Was it on or about
18 the day the act became law?

19 A. On or about. I don't remember exact.

20 Q. So by this letter, you understood that under
21 the new act that there were going to be time
22 limits within which you could --

23 A. Could negotiate for 135 days and between the
24 135th and the 160th day, I think you could
25 actually -- I think you could get mediation,

1 and arbitration, you have to file by the
2 160th day.

3 Q. And some of your testimony on direct was
4 relating to that in the sense that time
5 deadlines in those interconnection
6 negotiations back in '96 and '97 and
7 probably still today, the parties all were
8 critically aware of the time deadlines,
9 right?

10 A. Yes.

11 Q. I mean, time deadlines played an important
12 role?

13 A. It helped facilitate negotiations to
14 movement, at least.

15 Q. So, would it be your testimony that pursuant
16 to this letter, you were starting the clock
17 on those interconnection negotiations under
18 the act?

19 A. That would have been the intent, yes.

20 Q. You talked about paragraph 3 of that letter
21 which appears on page 2 which is entitled
22 Reciprocal Exchange of Traffic and
23 Compensation and in parentheses it
24 references two sections of the
25 Telecommunications Act. Do you remember

1 that testimony?

2 A. Yes.

3 Q. Is it fair to say that under this part of
4 the letter, you were asking for provisions
5 to be in an Interconnection Agreement
6 between Southwestern Bell and MFS in
7 Missouri that would comply with Sections
8 251(b)(5) and 271(c)(2)(B)(XIII) which I
9 think is 13, but I think you might have said
10 it was eight.

11 A. Okay.

12 Q. Is that accurate?

13 A. Just let me clarify because I didn't read
14 this second part of it. Yes.

15 Q. Okay. Let me ask you a question about that
16 first paragraph of paragraph 3 of this
17 letter. Are you aware that the FCC
18 determined in August of 1996 that Section
19 251(b)(5) only applied to local traffic,
20 not -- but not all intraLATA traffic? The
21 reason I ask that is because in this letter,
22 under the heading of Section 251(b)(5), you
23 are asking for interconnection arrangements
24 that satisfy Section 251(b)(5) and you
25 discuss completion of all intraLATA,

1 including local calls, which seems like it
2 would be a larger group than just local
3 calls.

4 A. Well, I don't -- I think the reference
5 you're making to the FCC, that that was not
6 a -- I don't believe that was a final
7 ordered decision.

8 Q. So are you saying that you're not aware of
9 it, or you are and you think it's not a
10 final decision?

11 A. Yeah.

12 MR. LUMLEY: If I could rather
13 than object, ask for clarification. Are you
14 asking him at the time the letter was
15 written?

16 MR. CONROY: No.

17 MR. LUMLEY: Or subsequently
18 became aware?

19 MR. CONROY: Subsequently
20 became aware. Clearly, just so the record
21 is clear --

22 MR. LUMLEY: I just got
23 confused.

24 MR. CONROY: The order was in
25 August of 1996 and this letter was in

1 February of 1996. And, in fact, the order
2 postdates the agreement. So just so that
3 the dates are clear.

4 BY MR. CONROY:

5 Q. I'm asking you if you became aware of that
6 order that appears to limit the
7 applicability of 251(b)(5) to a smaller
8 subset of traffic?

9 A. What is your interpretation of the order,
10 and do you have a copy of the order
11 reference in front of you? I would kind of
12 like to read it before I answer that
13 question.

14 Q. I don't have the order with me. If you are
15 not comfortable answering, that's okay. I
16 just wanted to know if you --

17 A. Yeah. What was the number of that?

18 Q. It's the -- I'll get it for you in a little
19 bit. It's the first report.

20 A. Yeah. What are you trying to say then?
21 Because I remember the order.

22 Q. Okay. I'm going to start over because it
23 would be easier this way. There's no
24 question this letter -- this letter came
25 before August of '96?

1 A. Yes. Yes.

2 Q. Okay. And, in fact, there's no question
3 that the Interconnection Agreement between
4 MFS and Southwestern Bell was signed before
5 the August first report and the order from
6 the FCC?

7 A. Correct.

8 Q. What I'm asking you is, in this letter,
9 which is Devine Deposition Exhibit 2, you
10 describe the type of traffic under this
11 Number 3 -- you define the type of traffic
12 for which you're seeking reciprocal -- what
13 I believe you're seeking reciprocal
14 compensation for under Section 251,
15 Subsection (b), Subsection (5), and you
16 describe the traffic in this letter by
17 stating MFS and Southwestern Bell Missouri
18 should reciprocal exchange traffic -- I'm
19 sorry -- reciprocally exchange traffic
20 between their network so as to allow the
21 seamless and transparent completion of all
22 intraLATA, including local calls, between
23 their respective exchange service users in a
24 given LATA.

25 What I'm asking you is, based

1 on that first report and order, did you
2 understand after the first report and order
3 came out that the reciprocal compensation
4 obligations under Section 251(b)(5) applied
5 to anything other than local traffic, and
6 specifically I'm talking about intraLATA
7 traffic?

8 A. Yeah. I'd like to be able to see the order
9 because it's been a while since I did read
10 it. I remember it was very thick when it
11 came out. It was like August 8th, right?

12 Q. Yes.

13 A. I'd like for the exact section and
14 subsection. I mean, it would help if I
15 could see it to clarify to be able to answer
16 that question, but certainly the FCC in that
17 order, in general, it was consistent with
18 the positions that MFS had negotiated in its
19 earlier agreements. It was clearly our
20 feeling when that agreement came out that
21 was like --

22 MR. LUMLEY: You mean the
23 order.

24 THE WITNESS: When the order
25 came out in August, it was a clear support

1 of our negotiated agreements and our
2 previous policy and testimony we had filed
3 in a lot of the state cases. So we thought
4 it endorsed what we were doing.

5 BY MR. CONROY:

6 Q. Let me ask you this then. Go ahead and
7 finish.

8 A. We just thought it endorsed what we were
9 doing in terms of our policy, and was
10 supportive of it. But I would have to --
11 without seeing the exact section, I don't
12 want to -- it would be hard for me to answer
13 that --

14 Q. Do you believe --

15 A. -- exactly, unless I saw it.

16 Q. Okay. Finished?

17 A. Sure.

18 Q. All right. I'm not trying to interrupt you,
19 but it would be harder for her to take it
20 all down if I don't wait until you finish,
21 and I thought you were finished.

22 A. Sure.

23 Q. Let me ask you this then. At the time this
24 letter was written, do you know if MFS
25 believed -- which is February 7, 1996 --

1 that the reciprocal compensation obligation
2 contained in Section 251(b)(5) of the act
3 applied to intraLATA interexchange traffic?

4 A. I mean, again, I'd like to see the exact
5 section to be able to say yes or no. I
6 mean, I didn't have all the -- you know, I
7 knew 251 and 252 drove the core of most of
8 our negotiations. The exact section
9 reference, I mean, it's -- I don't want to
10 be horse shoes. I don't want be playing
11 horse shoes.

12 Q. I won't even use this section number.
13 Generally in February of 1996, did MFS
14 believe that reciprocal compensation was
15 applicable under the new act to intraLATA,
16 interexchange traffic?

17 A. It was our interpretation that the order
18 supported -- it talked about, you know,
19 local calls.

20 MR. LUMLEY: He isn't asking
21 you about the order now.

22 THE WITNESS: Okay.

23 MR. CONROY: I'm talking about
24 the act.

25 MR. LUMLEY: He was asking

1 when he said the letter was written.

2 MR. CONROY: You understand --
3 let me finish so that we're clear.

4 BY MR. CONROY:

5 Q. You understand the difference between local
6 traffic, local exchange traffic --

7 A. Yes.

8 Q. -- and interexchange traffic, right?

9 A. Yes.

10 Q. There's clearly a difference in that type of
11 traffic?

12 A. Yes.

13 Q. And how before the act, the
14 telecommunications companies were
15 compensated in a different manner, namely,
16 access for interexchange traffic, correct?

17 A. Yes. Interexchange meaning exchange access
18 traffic.

19 Q. Yes.

20 A. Yes.

21 Q. As opposed to and compared with local
22 exchange?

23 A. Local. So two local calls between two, you
24 know, on the same switch within the same
25 rate center between two end users would be a

1 local call. Yeah.

2 Q. Okay. All I'm asking you is, did you know
3 or do you recall what MFS's position was
4 around the time of the act, right after the
5 act, or right before the act, based on the
6 act, whether reciprocal compensation as a
7 compensation scheme applied to intraLATA
8 interexchange traffic?

9 A. It was our position, and I know this is what
10 we did in New York, is that there was
11 compensation for -- I mean, there were no
12 rules at the time so we were trying to
13 create them, but local calls as generally
14 defined, there were local calls, and there
15 were intraLATA calls, and we were suggesting
16 a lot of different mechanisms for
17 compensation when we do negotiations, but
18 generally there was, you know, a
19 compensation mechanism for, you know,
20 specific local end user to end user calls
21 within an exchange, and then intraLATA would
22 be more of the long distance within, you
23 know, a metro area. That's what you're
24 referring to as intraLATA.

25 Q. I'm referring to the letter that you all

1 sent to Southwestern Bell.

2 A. Yes.

3 Q. But I just want to make sure we're on the
4 same wavelength here talking about local
5 versus intraLATA and reciprocal compensation
6 and --

7 A. There would be compensation for all those
8 kind of calls. This was kind of a broad
9 summary letter. So it's not -- I mean, most
10 of our negotiations and there were some --
11 if you check the detailed history of the
12 negotiations, I mean, we oftentimes would
13 propose a thicker agreement that was usually
14 around eighty pages, and it would have a lot
15 more detail. This letter was sent, you
16 know, at the time there was just the act,
17 there weren't orders and all that kind of
18 stuff. So it's -- this is broader and, I
19 mean, it's only a few pages versus an eighty
20 page proposed agreement, so I think --

21 Q. Okay. I'll move on.

22 A. Okay.

23 Q. Do you think -- or you just referenced an
24 eighty page agreement. Is that the same
25 agreement that you are talking about with --

1 in Devine Deposition Exhibit 1?

2 A. Well, this would have -- back in this time,
3 the first few months after -- even before,
4 but usually the first few months after the
5 interconnection, the order Telecom -- the
6 Telecom Act of '96 was signed, we would
7 oftentimes in a negotiation suggest a
8 proposed agreement. Usually those are
9 around eighty pages. So, that was in the
10 earlier stage.

11 If you look at negotiations
12 for interconnection, and the first one we
13 did was the smallest and as we got into it
14 more, there was more state language and
15 federal language and more negotiations and
16 expertise. The first interconnection we
17 turned up at NYNEX in New York, a lot of it
18 was on a shoe string.

19 I mean, we had an agreement,
20 but as we got into it longer and by time we
21 got into '96, well into the summer and fall,
22 the agreements did get much thicker, and a
23 lot of it too was the RBOCs. Some RBOCs had
24 more detailed language on directory
25 services, directory listing, some of them

1 had a lot of separate subsidiaries. Some
2 were thicker than that and some of were not
3 as thick. It really depended.

4 Q. Did you submit this, the document which
5 eventually became your Interconnection
6 Agreement, did that start with MFS or did it
7 start with Southwestern Bell?

8 A. Yeah. With MFS. I mean, in Texas we did,
9 and then we used that as a template and we
10 did it, you know, in Missouri some more. So
11 if you went through every correspondence
12 between the companies, you would have seen
13 at one point, you know, a model agreement
14 which probably would have been around eighty
15 pages.

16 Q. Okay.

17 A. A lot of that language is contained in this
18 agreement.

19 Q. That's what I'm trying to understand. This
20 agreement that we got in Missouri between
21 Southwestern Bell and MFS resulted from that
22 eighty page document that you were talking
23 about?

24 A. That would have been for big pieces of
25 initiating, but this is a negotiated

1 agreement with a lot of people involved in
2 it so it obviously changed a lot during that
3 period, especially because it took a few
4 months.

5 Q. Let me talk a little bit about the
6 negotiations between February, the time
7 period roughly February 8, 1996 through the
8 time the Interconnection Agreement, which is
9 Devine Deposition Exhibit 1 was signed with
10 Southwestern Bell. You talked a little bit
11 about how the negotiations increased as the
12 deadline for filing arbitration petition got
13 nearer, and you talked about the June
14 timeframe. Tell me what negotiations
15 sessions if you can remember happened in the
16 March -- or February or March or April
17 timeframe. Were there weekly meetings with
18 Southwestern Bell or monthly meetings, or
19 how did that work?

20 A. Yeah. Most of the meetings, at that point
21 Southwestern Bell didn't have Ric Zamora
22 involved in the negotiations.

23 Q. What date are you talking about now?

24 A. I don't recall the exact date, but in the
25 early negotiations there was not a lot of

1 feedback from Southwestern Bell on moving
2 forward with negotiations.

3 Q. Are we talking about Missouri or are we back
4 before February in Texas? I just want to
5 make sure I have the right timeframe.

6 A. It would have been -- a lot of it was
7 focused on Texas because Southwestern Bell
8 actually had a lot more energy focused on
9 Texas. So it was just Missouri was not --
10 it was not as much a priority for
11 Southwestern Bell, and it wasn't as high a
12 priority for MFS as Texas was, but we wanted
13 to get agreements in both states.

14 It just so happened Texas,
15 Southwestern Bell in Texas had a lot of
16 resources focused on Texas. We didn't start
17 to get the federal people involved until
18 Stephen Carter ended up, he had some
19 discussions I think, you know, with MFS at
20 some senior levels, and they agreed to start
21 to talk to us and Ric Zamora got put in
22 charge of the negotiations. So until Ric
23 Zamora was put in charge of negotiations out
24 in St. Louis, the Texas negotiations weren't
25 going very well, and Missouri was crawling,

1 at best.

2 Q. Can you tell me approximately when you
3 recall Ric Zamora became the lead
4 negotiator?

5 A. It would have been in the spring sometime.
6 I don't remember the exact date, but it
7 would have been in the spring.

8 Q. By spring --

9 A. That he actively stepped up, you know,
10 became in charge. I don't know in
11 Southwestern Bell's eyes internally, but in
12 terms of active involvement and the
13 negotiations starting to move, it would have
14 been in the spring sometime. I don't
15 remember exactly when.

16 Q. Okay.

17 A. There was some senior discussions but, you
18 know, formally kicking off the negotiations
19 like more officially, you know, it would
20 have been in the spring.

21 Q. Okay. Spring generally to you means what?
22 What month?

23 A. It would have been -- I'd say it would have
24 been more like, you know, April or May or
25 so. I don't recall exactly.

1 Q. Okay.

2 A. I could get -- I have daytimers from when I
3 started at MFS in '89 if you need to get
4 specific. Until Ric got involved and
5 clearly was put in charge of the
6 negotiations, Southwestern Bell was not
7 proactive in the negotiations.

8 Q. Did that change when --

9 A. When Ric got involved things started to
10 move. And when Ric got involved, things
11 moved quickly, smoothly. It was very
12 pleasant negotiation and everything went
13 very well. I was very -- as I mentioned
14 earlier, I was very surprised and happily
15 surprised how well the negotiations went
16 with Ric Zamora in charge.

17 Q. Those negotiations ended up with an
18 Interconnection Agreement, which has been
19 marked as Deposition Exhibit 1, which was
20 filed with the Missouri Commission in July
21 of 1996. Did that Interconnection Agreement
22 resolve all interconnection issues between
23 Southwestern Bell and MFS?

24 A. No. It didn't.

25 Q. Okay. So, what issues -- let me start over.

1 Do you recall that there was at least one
2 issue that had to be arbitrated involving
3 unbundled loops. Prices?

4 A. Yes.

5 Q. Apart from that issue, this Devine
6 Deposition Exhibit 1 resolved all other --
7 and there's probably a myriad of
8 interconnection issues, between the
9 companies, is that right?

10 A. Yes. As I recall. I mean, I recall the
11 unbundled loops. I don't remember any other
12 issues, but unbundled loops, yes.

13 Q. Is it your testimony that you know for a
14 fact that Mr. Springfield was not present at
15 the interconnection negotiations that
16 occurred leading up to the execution of this
17 Interconnection Agreement?

18 A. Yeah. I just -- I don't remember him
19 specifically. He may have been involved in
20 the negotiations but, I mean, he wasn't the
21 one pushing the buttons and making the
22 decisions. I mean, Ric Zamora was making
23 all the business decisions in terms of
24 negotiating points. It mentioned in his
25 letter that he was -- or testimony or

1 deposition that he was, you know, the
2 negotiator.

3 Q. There was no question in your mind he was
4 the lead negotiator?

5 A. Ric Zamora was.

6 Q. Yes. Okay. You wouldn't have any way of
7 knowing or do you know whether
8 Mr. Springfield was the lead compensation
9 policy expert associated with these
10 interconnection negotiations with MFS?

11 A. It wasn't apparent in our meetings. I mean,
12 he may have been at Southwestern Bell on
13 their payroll in his responsibilities, but
14 at the meetings Ric Zamora drove the
15 discussion points regarding compensation,
16 reciprocal compensation, other financial and
17 major business decisions.

18 Q. So it would be at least fair to say that Ric
19 was the one communicating Southwestern's
20 position to MFS during the interconnection
21 negotiations?

22 A. Ric Zamora.

23 Q. Ric Zamora, yes.

24 A. Yes.

25 Q. You testified that prior to the execution of

1 this agreement, which is Exhibit 1 for the
2 deposition, and in fact prior to your
3 departure from MFS, you never had any
4 discussion with anyone from Southwestern
5 Bell regarding the applicability of the
6 reciprocal local compensation to Internet
7 traffic, is that right?

8 A. Correct.

9 Q. You had a brief discussion or there was some
10 discussion in your direct testimony
11 regarding the separate trunk groups for
12 local and intraLATA traffic?

13 A. Uh-huh.

14 Q. And you stated that Southwestern Bell wanted
15 to make sure that they were getting their
16 access and that's why they were insistent
17 upon separate trunk groups; is that a fair
18 summary of your testimony?

19 A. They wanted to be able to define the access
20 traffic, and then the only issue that I --
21 the only issue that was going on in the
22 discussions regarding compensation in terms
23 of different kinds of traffic was the ES
24 traffic. They wanted to make sure that they
25 had EAS addressed, they could measure it

1 and adequately compensate.

2 Q. But you know -- or maybe I should ask you.
3 You are aware, aren't you, that you don't
4 receive based on the FCC's access charge
5 exemption orders dating back to 1983, that
6 you don't receive access, a local exchange
7 carrier generally does not receive access
8 charges on enhanced services? Are you aware
9 of the FCC's line of cases that grants an
10 exemption?

11 A. Special access surcharge and --

12 Q. No. No.

13 A. In our discussions that we didn't -- I'd say
14 that's a separate issue. I mean, we were
15 talking. We never -- I mean, I don't know
16 how that applies to what we were doing. We
17 didn't --

18 Q. It only applies because you were talking
19 about in your direct testimony about
20 Southwestern Bell wanting to make sure they
21 were getting their access revenue.

22 A. Uh-huh.

23 Q. And the connection with trunk groups. And I
24 just wanted to delve into whether you were
25 aware of the FCC's access charge exemption

1 orders for enhanced service provider
2 traffic.

3 A. Yes. Not the details and I don't, you know,
4 remember reading the order, but I've heard
5 about it. But, I mean, really we didn't --
6 that never was a part of any of these
7 discussions. It was, there's access
8 traffic, there's, you know, the EAS traffic,
9 there's local traffic, there's -- it was
10 more or less routing and the compensation.
11 So that was the most detailed discussions we
12 had about kinds of traffic that was
13 exchanged.

14 Q. Okay. But you would understand Southwestern
15 Bell's concern about access charges,
16 particularly with respect to whether they
17 were receiving access, you would understand
18 that that would be an important issue to
19 Southwestern Bell with respect to trunk
20 groups, wouldn't you?

21 A. In what direct -- I mean --

22 Q. You would -- I'll rephrase it. You would
23 understand that Southwestern Bell would be
24 interested in making sure traffic got on the
25 right trunk groups in order so that they

1 could get the access revenues for
2 appropriate traffic?

3 A. Well, I'm not sure. I think we're saying
4 the same thing. We wanted to know what
5 calls were local, which calls were EAS calls
6 and exchange calls or access calls. So
7 that's the level of discussion we had in
8 terms of the different types of calls. So
9 certainly, yes, we wanted to make sure we
10 got our local and EAS and access
11 compensation as well as them. That was a
12 level of discussion.

13 Q. Okay. Let me ask it this way.

14 A. I don't know if that's consistent when you
15 are asking --

16 Q. I think it is consistent, but I want to
17 follow up with it.

18 A. Okay.

19 Q. If there was a particular type of traffic
20 that Southwestern Bell did not receive
21 access charges on, for instance, enhanced
22 service provider traffic, would you believe
23 that they would be not as concerned about
24 what trunk group that would be carried over
25 because they knew they would not be getting

1 access charge revenue on those calls?

2 A. We never discussed end services, so I don't
3 know what they would have been thinking. We
4 didn't discuss end services, so I don't know
5 what they would think. I don't know.

6 Q. Would it make sense to you from your
7 position of negotiating that if the trunk
8 group in general that traffic was carried
9 over helped you to determine what
10 compensation was appropriate, but for a
11 particular kind of traffic it didn't, then
12 you wouldn't from your perspective much care
13 whether that traffic was carried over a
14 particular trunk group that was denominated
15 as any particular type of traffic, would
16 you?

17 A. I think it's hard to answer that question
18 because it's not, you know -- that's -- it's
19 kind of general. I mean, they wanted to
20 make sure they knew what was local. You
21 know. So, I mean, it's kind of hard.
22 It's --

23 Q. Just local --

24 A. It depends what is more important to them.
25 They want to be able to bucket the different

1 traffics and compensate for the traffic,
2 so -- you know.

3 Q. Is the bucketing primarily compensation
4 driven?

5 A. Well, it's routing and compensation. I
6 mean, I believe Southwestern Bell at the
7 time and Gary Fleming would know better, but
8 they had some -- they had some routing
9 challenges I think related to maybe EAS and
10 stuff like that. But I don't remember the
11 details, but it was a lot -- it was a lot
12 more important to them to, you know -- we
13 actually were generally more flexible about
14 the number of trunk groups and which
15 direction, one way and two way. Usually
16 it's the RBOCs were controlling and dictate
17 more what they figured they had to have. We
18 were generally pretty flexible.

19 Q. All right. Let's see if we can't move on
20 from that. You mentioned your daytimers
21 were kept from 1989 onward.

22 A. Uh-huh.

23 Q. I assume that means that you have them for
24 the time period from 1996 -- let's say from
25 February to July of 1996.

1 A. Sure.

2 Q. Would that help you establish when you met
3 with Southwestern Bell for -- and others
4 probably too, but for interconnection
5 negotiations?

6 A. Assuming I can find them, I think I have
7 them. I generally keep them. And if I took
8 good notes on it, then I would have them.
9 But, yeah. I mean, I could -- if it makes
10 sense to see what -- daytimer, usually it's
11 cryptic, usually like names and numbers.
12 Doesn't have a lot of detail.

13 Q. Okay.

14 A. But it would probably have a date if there
15 was a meeting or conference call or
16 something.

17 Q. Maybe a reference, SWBT or Zamora?

18 A. Probably. Something like that, yeah.

19 Q. Other than that, is it your testimony that
20 you didn't keep any other documents from
21 those interconnection negotiations with
22 Southwestern for Missouri?

23 A. Not personally. I left all the documents
24 with the company. So the company I would
25 think has the documents somewhere.

1 Q. Okay.

2 A. I don't know. I left, so ...

3 Q. Okay.

4 A. I mean, I have -- I might have some of my
5 note pads, lab books, too, but that's not
6 going to have nearly the kind of detail that
7 documents would have.

8 Q. What is a -- you mean like that thing that
9 you're writing in today?

10 A. Yes.

11 Q. It's like a bound --

12 A. It's still cryptic notes. It's not like
13 it's a tape recorder of everything I have
14 done for the last ten years.

15 MR. LUMLEY: Let me take a
16 quick break.

17 MR. CONROY: Sure.

18 (Recess.)

19 BY MR. CONROY:

20 Q. Did you prepare any type of minutes from
21 your negotiation sessions with Southwestern
22 Bell that resulted in your February or
23 Mr. Harris's letter that is Devine
24 Deposition Exhibit 2 for internal purposes
25 at MFS?

1 A. Internal minutes? I didn't myself. I mean,
2 I don't know if somebody else. We had
3 e-mail so we would send e-mails about
4 things, but I -- I never myself printed up
5 minutes or typed up minutes. I wasn't much
6 good for that. I think Southwestern Bell
7 may have. I don't know. I mean, I don't --
8 minutes I don't remember, per se. Sometimes
9 things -- so many things happened so fast,
10 if you're meeting a few days in a row, it's
11 kind of like, if you're in a negotiation
12 session, you're focused on negotiating.
13 It's not like we have a recorder there,
14 doing minutes.

15 Q. Right.

16 A. But there might have been. I don't know. I
17 just don't remember.

18 Q. Okay. You didn't do them, is that accurate?

19 A. Yeah. I didn't myself.

20 Q. Did you prepare notes or -- when I say
21 notes, I'll include e-mail in that
22 definition -- regarding ongoing negotiations
23 with Southwestern Bell that you shared
24 internally at MFS, either to your
25 supervisors or other people you worked with

1 regarding the ongoing negotiations?

2 A. I mean, usually we talked on the phone but,
3 I mean, e-mail about -- usually what
4 happens, usually it's mostly verbal
5 discussion and then but once you signed an
6 agreement, what I would have to do is type
7 up a summary and send it to the PR people
8 and to the executives. So usually once an
9 agreement is signed, you know, I wasn't big
10 on -- I wasn't in the office much,
11 generally. Usually I was traveling and
12 negotiating around the witness stand. And
13 my wife will just -- or support that because
14 she is happy I don't travel. I mean, I used
15 to travel from three to five days a week.
16 So I didn't have a lot of time sitting in
17 the office typing, I guess you could say.

18 Q. So it's --

19 A. I would type updates of an agreement
20 negotiation sometime, but the Southwestern
21 Bell one, actually Amy did most of the --
22 Amy Hinderer did most of the -- as we got
23 drafts done or individual sections, Amy was
24 in charge of like the agreements.

25 Q. The agreement itself?