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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

January 17, 2002
Jefferson City, Missouri
Volume 5

In the Matter of the Petition of)
MCImetro Access Transmission)
Services, LLC, Brooks Fiber)
Communications of Missouri, Inc.,)
and MCI WorldCom Communications,) Case No. TO-2002-222
Inc. for Arbitration of an)
Interconnection Agreement with)
Southwestern Bell Telephone Company)
Under the Telecommunications Act of)
1996.)

VICKY RUTH, Presiding,
SENIOR REGULATORY LAW JUDGE.

SHEILA LUMPE,
CONNIE MURRAY,
STEVE GAW,
BRYAN FORBIS,
COMMISSIONERS.

REPORTED BY:

KELLENE K. FEDDERSEN, CSR, RPR
ASSOCIATED COURT REPORTERS

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1 P R O C E E D I N G S

2 JUDGE RUTH: Good morning. Today is
3 January 17th. We're here for the fourth day in the
4 arbitration case between WorldCom and Southwestern Bell,
5 Case No. TO-2002-222.

6 We'll start with Witness Lehmkuhl. Is that
7 the pronunciation?

8 MR. CURTIS: That's Lehmkuhl.

9 JUDGE RUTH: Lehmkuhl. Before we get to him,
10 I did want to ask, were there any housekeeping measures that
11 needed to be addressed right now? Staff, I know you were
12 going to see if you could get some information to answer one
13 of the Commission's questions. Do you have that information
14 now?

15 MR. BATES: Yes, we do, your Honor.

16 JUDGE RUTH: And is it Mr. Cecil that has
17 that? Is he here?

18 MR. BATES: That's correct.

19 JUDGE RUTH: Let's go ahead and recall him
20 first.

21 MR. MORRIS: We do have one announcement, your
22 Honor. Issue 32 is no longer an issue. I believe
23 Southwestern Bell Witness De Bella will actually read into
24 the record the agreed-to language for the interconnection
25 agreement addressing that issue. I don't know if you

1 consider that a housekeeping matter.

2 JUDGE RUTH: I appreciate you telling me now.

3 So that's Issue 32?

4 MR. MORRIS: Yes.

5 JUDGE RUTH: And which Southwestern Bell
6 witness is going to discuss that?

7 MS. MacDONALD: Linda De Bella.

8 JUDGE RUTH: Thank you.

9 JUDGE RUTH: Good morning, Mr. Cecil. I'll
10 remind you that you are still under oath, and where we're at
11 now is Commissioner Lumpe had requested some additional
12 information from Staff regarding, I think it was Issue 20
13 that Staff was unable to take a position on. Were you able
14 to get the information you need? Are you able to inform the
15 Commission of the Staff's position on this?

16 MR. CECIL: Yes.

17 JUDGE RUTH: Would you go ahead and do so?

18 MR. CECIL: Yes. We're supporting WorldCom's
19 position and recommending against the inclusion of
20 Southwestern Bell's language in its entirety. However, we'd
21 like to point out that with regard to Issue 30, if the
22 Commission should support SWBT's position, this language
23 would be appropriate.

24 JUDGE RUTH: Which language would be
25 appropriate in that case?

1 MR. CECIL: SWBT's.

2 JUDGE RUTH: SWBT's language?

3 MR. CECIL: SWBT's language, with one minor
4 exception, and that is that Staff feels that the last cause,
5 Section 9.5.6.3 should be removed in any case.

6 JUDGE RUTH: Mr. Cecil, was there any
7 additional information you needed to give the Staff -- or
8 the Commission regarding the other two issues, which I think
9 were Issue 23 and 39, or does your answer stand as
10 yesterday?

11 MR. CECIL: It stands as yesterday.

12 JUDGE RUTH: Okay. Thank you. Give me just a
13 moment, then.

14 Okay. The witness' response here was in
15 response to a question from the Bench. So I would like to
16 give the parties an opportunity for recross based on this
17 discussion, response from questions from the Bench. Did you
18 have something else?

19 MR. MORRIS: Briefly, if the witness could
20 repeat the section number, 9.5. -- didn't write fast enough.

21 MR. CECIL: The section we're recommending
22 against in any case?

23 MR. MORRIS: In any event.

24 MR. CECIL: In any event, we're recommending
25 against Section 9.5.6.3.

1 MR. MORRIS: Thank you.

2 MS. MacDONALD: Your Honor?

3 JUDGE RUTH: Yes.

4 MS. MacDONALD: I think it might be helpful,
5 just so that the record is clear, what the references were
6 that we provided to Mr. Cecil so that if the Commission
7 wanted to, you know, consider the cross references, they
8 would know where they should have been.

9 And in Section 9.5.6.1, the first phrase which
10 is on page 132, If SWBT provides CLECs with compensation for
11 data access as set forth in Section 7, that should have been
12 deleted. So the language would read, SWBT will provide such
13 data as is reasonably necessary to enable CLEC to
14 substantiate query volumes of CLEC line records residing in
15 SWBT's LIDB.

16 In Section 9.5.6.2, the third line from the
17 bottom, there's a reference to Section 6.2.1. That
18 reference should be to 9.5.6.2.1.

19 Right after that, there's a reference to
20 Section 6.2.2. That reference should be to 9.5.6.2.2.

21 Right under there there's a reference to
22 Section 9.5.3.2.1. That should be 9.5.6.2.1; and 9.5.6.2.1
23 reads, CLEC will bill the appropriate charges to its end
24 users on behalf of SWBT or a third party.

25 And finally, in Section 9.5.6.3, the reference

1 on the fourth line to Section 6.2.2 should be to
2 Section 9.5.6.2.2.

3 JUDGE RUTH: Mr. Cecil, I just want to make
4 sure I understand. The references that Ms. MacDonald read
5 into the record, those are the -- that is the additional
6 information you used in making your decision or is there
7 anything else you need to add?

8 MR. CECIL: No. That was the information I
9 used.

10 JUDGE RUTH: Thank you.

11 As we were noting some of the changes up here
12 on the Bench, Commissioner Lumpe and I discussed the
13 possible need to have the parties file a late-filed exhibit
14 which would note all the changes to the Decision Point List
15 that have been made so far.

16 For instance, there are at least three places
17 where Staff -- well, one place where Staff said they didn't
18 take a position and the other two where Commission requested
19 Staff to clarify Staff's position, the changes Ms. MacDonald
20 just noted, and I believe throughout the hearing there may
21 have been a few other places where the parties said in the
22 Decision Point List this needs to be changed or that needs
23 to be changed.

24 The Commissioners would like to see substitute
25 sheets filed for those pages, but I'm asking the parties, do

1 you see a problem with doing that? Do you think it would --
2 are you able to substitute just those pages that have the
3 corrections? That would save everyone from having to make
4 copies and file the entire document.

5 MR. MORRIS: I think that's possible. There
6 may be an instance where because of pagination change in the
7 existing DPL may result in a spillover to the next page.

8 So as I understand where you're going with
9 this, in order to avoid having to recreate the entire DPL,
10 if a substitute page results in a spillover, I would
11 suggest, like, for example, if there's page -- a change on
12 page 147, and I don't know if there is or not. I'm just
13 picking a number. If that results in a spillover to page
14 148, one alternative may be to have the spillover page be
15 page 147A or something like that.

16 JUDGE RUTH: That would be our preference.
17 That way it doesn't mess up the numbering for every
18 subsequent page, and if you could designate it, for
19 instance, 148A and 148B, then we would be able to substitute
20 our pages and leave the rest as they are, and we'll -- I'm
21 sorry. Go ahead.

22 MR. MORRIS: That raises another thing.
23 Instead of having, say -- say there's a change on 147.
24 Maybe have substitute page 147 as opposed to having the
25 substitute page be numbered.

1 JUDGE RUTH: Yes, please. That would help, if
2 you designate on each of the substitute pages that it is a
3 substitute, and if it's just substitute for 133 it can say
4 substitute 133, but if there's A and B, then you can use the
5 substitute 133A, substitute 133B, and that will make it
6 clear.

7 The Commissioners would like to have this
8 information fairly quickly. I'll let the parties be
9 thinking of how quickly they can provide it, and when we
10 finish the hearing tomorrow we will set a date for this
11 late-filed exhibit and any other late-filed exhibits that
12 might be offered.

13 But for now I will note that this document
14 will be late-filed Exhibit 53 if the parties are going to do
15 this jointly. If you prefer to do it individually, I'll
16 need to assign three numbers. Do the parties -- I realize
17 you worked jointly to do the original document. Are you
18 able to work jointly to do the substitute pages?

19 MR. MORRIS: I would think so.

20 JUDGE RUTH: Then we'll make one document
21 late-filed Exhibit 53, the corrections or substitute pages
22 for the Decision Point List. And again, as for the date
23 when that's due, we'll discuss that at the end of the
24 hearing.

25 MR. LANE: And just for clarity, we're talking

1 about utilizing the Staff's evaluation?

2 JUDGE RUTH: Yes, please. Use the one Staff
3 filed on January 11th, which my understanding is nothing was
4 changed from WorldCom and Southwestern Bell's part. It was
5 simply adding Staff's on the side. Ms. MacDonald?

6 MS. MacDONALD: Actually, if we're going to do
7 this, which I think is a good idea, I think we probably
8 ought to incorporate the pleading that we previously had for
9 Issues 24 and I think 47 where we just put in substitute
10 pages in a pleading.

11 JUDGE RUTH: I think that would be a very good
12 idea to include those substitute pages as then substitute
13 page as we've discussed for this. I don't know what page
14 Issue 24 was on or Issue 47. But that way we will have --
15 the Commission will have one last set of substitutions to
16 make to the document, and that should incorporate all the
17 changes.

18 Mr. Bates, did you have something?

19 MR. BATES: I believe Staff's already done
20 that.

21 JUDGE RUTH: But it was filed in a different
22 format, was it not? Maybe it wasn't.

23 MR. BATES: The parties sent Staff the
24 language ahead of time and it was incorporated by Staff into
25 the document.

1 JUDGE RUTH: Oh, I see. So you filed a
2 pleading but it was also incorporated in your January 11th
3 filing?

4 MR. BATES: Yes.

5 JUDGE RUTH: Ms. MacDonald, is that your
6 understanding? You'll double check?

7 MS. MacDONALD: I can double check. If that's
8 true, then we're fine with that.

9 JUDGE RUTH: Then I will leave it to you-all.
10 If it's already in this document, you don't need to make the
11 changes for Issues 24 and 47. If they're not in Staff's
12 filing, please do so.

13 Okay. Will there be recross based on the
14 discussion from the Bench for Mr. Cecil? I'll ask you,
15 Southwestern Bell.

16 MS. MacDONALD: No questions.

17 JUDGE RUTH: And WorldCom?

18 MR. CURTIS: No questions.

19 JUDGE RUTH: Staff, do you have redirect for
20 this witness based on the questions.

21 MR. BATES: No, thank you, your Honor.

22 JUDGE RUTH: You may step down, Mr. Cecil.

23 Thank you.

24 Okay. WorldCom, you may call your witness
25 now.

1 MR. CURTIS: Thank you. We'll call Michael
2 Lehmkuhl.

3 (Witness sworn.)

4 JUDGE RUTH: Thank you. Please proceed.

5 MICHAEL LEHMKUHL testified as follows:

6 DIRECT EXAMINATION BY MR. CURTIS:

7 Q. Please state your full name for the record.

8 A. Michael Lehmkuhl, and that's spelled
9 L-e-h-m-k-u-h-l.

10 Q. And by whom are you employed?

11 A. MCI WorldCom.

12 Q. In what capacity?

13 A. I'm Regulatory Specialist for Operator
14 Services and Directory Assistance.

15 Q. Are you the same Michael Lehmkuhl who has
16 caused to be prefiled direct testimony which has been
17 numbered Exhibit 29?

18 A. Yes, I am.

19 Q. Do you have a copy of that with you?

20 A. Yes, I do.

21 Q. Do you have any additions or corrections to
22 make to that?

23 A. A few minor corrections. On page 8 of my
24 rebuttal testimony, line 9, strike the word "moreover". And
25 on page 14 of the rebuttal testimony, line 4, the very end

1 of the -- the very end of that line, add the word "to".

2 Q. Okay. That completes it?

3 A. Yes.

4 Q. With regard to your rebuttal testimony,
5 Exhibit 30, do you have any additions or corrections to
6 make?

7 A. No, I don't.

8 Q. If I were to ask you the same questions
9 contained in Exhibits 29 and 30, with the additions and
10 corrections you have made, would your answers be the same
11 today?

12 A. Yes.

13 Q. And would those answers be true and correct to
14 the best of your knowledge and belief?

15 A. Yes, they would.

16 Q. Thank you.

17 MR. CURTIS: At this time I would offer
18 Exhibits 29 and 30 and tender the witness for cross.

19 JUDGE RUTH: Are there any objections to
20 Exhibit 29, the direct, and Exhibit 30, the rebuttal
21 testimony?

22 (No response.)

23 Seeing no objections, these documents are
24 received into the record.

25 (EXHIBIT NOS. 29 AND 30 WERE RECEIVED INTO

1 EVIDENCE.)

2 JUDGE RUTH: Okay. Southwestern Bell.

3 CROSS-EXAMINATION BY MS. MacDONALD:

4 Q. Good morning, Mr. Lehmkuhl.

5 A. Good morning.

6 Q. Would you agree with me that WorldCom does not
7 seek a batch download of SWBT's LIDB?

8 A. I would as long as what you're saying does not
9 include CNAM. I notice various references in the testimony
10 of Ms. De Bella where she confuses the CNAM and the LIDB.
11 So I would say we are not seeking the download of the LIDB
12 as that term is defined by the FCC, but we are seeking
13 download of the calling name database.

14 Q. Okay. And would you agree with me that
15 WorldCom is withdrawing its request for a batch download of
16 SWBT's LIDB?

17 A. I don't think we ever requested a batch
18 download of the LIDB database, but if we did, then yes.

19 Q. Okay. So Issue 15 should be revised to state,
20 Is SWBT required to provide its CNAM database to WorldCom on
21 a bulk basis?

22 A. Yes. And I believe the original language was
23 SWBT's, but yes.

24 Q. You agree with me that in the First Report and
25 Order in CC Docket No. 96-98, in the matter of the local

1 competition provisions of the Telecommunications Act of
2 1996, which was released on August 8th, 1996, the FCC
3 concluded that incumbent LECs upon request must provide
4 nondiscriminatory access on an unbundled basis to their
5 call-related databases for the purpose of switch query and
6 database response through SS7 network?

7 A. Yes.

8 Q. And also in that case, which is commonly
9 referred to as the First Report and Order, the FCC required
10 ILECs to provide this access to the call-related databases
11 by means of physical access at the STP linked to the
12 unbundled database?

13 A. I believe so, yes.

14 Q. And also in the First Report the FCC
15 determined that such access is, and I quote, critical to
16 entry in the local exchange market?

17 A. Yes, that's correct.

18 Q. And also in the First Report and Order, the
19 FCC stated, We emphasize that access to call-related
20 databases must be provided through interconnection at the
21 STP and that we do not require direct access to call-related
22 databases; is that correct?

23 A. Yes. I believe I address that in my direct
24 testimony.

25 Q. Okay. And the issue with respect to Issue

1 No. 15 is whether SWBT is required to provide CNAM databases
2 to WorldCom on a bulk basis?

3 A. Yes, that's correct. And our argument, as I
4 explained in the direct testimony, is that that
5 nondiscriminatory access that SWBT is required to provide us
6 now means batch download basis.

7 One of the bases for the FCC's decision in
8 only requiring per query in the First Report and Order was
9 based on the fact that it was not technically feasible. We
10 now know that it is technically feasible, and that's really
11 our point. Since it's technically feasible, that
12 nondiscriminatory access to that database can also mean
13 batch download.

14 Q. And you'll agree with me that bulk access
15 and/or batch download of the CNAM database is not possible
16 through the signaling transfer point or STP; is that
17 correct?

18 A. There's absolutely no way you can download a
19 database in a per-query basis. That's the whole reason for
20 our request here, because the overriding principle is
21 nondiscriminatory access to the database, not
22 nondiscriminatory access to the access of the database.

23 Q. So the short answer is yes?

24 A. I've forgotten your question.

25 Q. Bulk access and/or batch download of the CNAM

1 database is not possible through the signaling transfer
2 point for STP?

3 A. Yes, that's correct.

4 Q. And you'll agree with me that if this
5 Commission determines that WorldCom can have access to CNAM
6 through interconnection at the STP, that means WorldCom
7 loses Issue No. 15?

8 A. Can you state that again?

9 Q. Sure. Would you agree with me that if this
10 Commission determines that WorldCom can have access to CNAM
11 through interconnection at the STP, that means WorldCom
12 loses Issue No. 15?

13 A. Can you state again what the exact wording of
14 Issue 15 is?

15 Q. Is SWBT required to provide CNAM databases to
16 WorldCom on a bulk basis?

17 A. Yes, I guess that would be true.

18 Q. Okay. And in the Third Report and Order and
19 Fourth Further Notice of Proposed Rulemaking in CC Docket
20 No. 96-98, which is commonly referred to as the UNE Remand
21 Order, is it correct that the FCC affirmed that lack of
22 access to call-related databases on an unbundled basis
23 would, quote, materially impair the ability of a requesting
24 carrier to provide the services it seeks to offer in the
25 local telecommunications market?

1 A. Yes, that's true.

2 Q. And also in the UNE Remand Order, is it
3 correct that the FCC required ILECs to provide
4 nondiscriminatory access to their call-related databases,
5 including the CNAM database?

6 A. Yes, that's correct.

7 Q. And will you agree with me that in the UNE
8 Remand Order, the FCC cited the First Report and Order
9 indicating that ILECs must provide nondiscriminatory access
10 to their call-related databases on an unbundled basis for
11 the purpose of switch query and database response through
12 the SS7 network?

13 A. Yes, absolutely. All these questions that
14 you're asking me go to the direct letter of the law, and I
15 believe if you -- in my direct testimony what I'm saying
16 here is that WorldCom is entitled to batch download of the
17 CNAM database through the over-arching requirement of
18 251(c)(3) that it be provided nondiscriminatory access.
19 Situation -- the situation has changed since the First
20 Report and Order, even since the UNE Remand Order.

21 MS. MacDONALD: Your Honor, I would
22 respectfully request that the last half of the answer be
23 stricken because it was not responsive.

24 JUDGE RUTH: From what point forward? Do you
25 want the court reporter to read it back?

1 MS. MacDONALD: After he said yes.

2 JUDGE RUTH: I was going to see if it was
3 extreme so that I can review it.

4 MR. CURTIS: Your Honor, if I might, I don't
5 believe counsel restricted him to a yes or no answer. I
6 think it was yes and he was elaborating on his answer. I
7 think once the answer came in that form, it was all related.
8 So I think the objection is out of order.

9 MS. MacDONALD: Respectfully, I was trying not
10 to cut him off, but if you'd like me to, I can start cutting
11 him off.

12 JUDGE RUTH: Hold on. I'm reading. Thank
13 you.

14 Objection overruled. You may proceed.

15 BY MS. MacDONALD:

16 Q. Will you agree with me that the STP is part of
17 the SS7?

18 A. Yes, that is correct.

19 Q. And would you agree with me that if this
20 Commission finds that WorldCom can have access to CNAM on an
21 unbundled basis for the purpose of switch query and database
22 response through the SS7 network, that would mean that
23 WorldCom would lose Issue No. 15?

24 A. Not necessarily in those words. I mean,
25 WorldCom has its own SS7 network, and that's how it would

1 provide -- it would self-provision the CNAM if it had access
2 on a download basis.

3 Q. Do you agree with me that the FCC has
4 determined that an ILEC must provide access to its
5 call-related databases, including the CNAM database, by
6 physical access at the signaling transfer point linked to
7 the unbundled database?

8 A. Could you repeat that question, please?

9 Q. Sure. Would you agree with me that the FCC
10 has determined that an ILEC must provide access to its
11 call-related databases, including the CNAM database, by
12 means of physical access at the STP linked to the unbundled
13 database?

14 A. I think that's one requirement, but I don't
15 think that requirement precludes any other types of
16 nondiscriminatory access.

17 Q. But you do agree that bulk access and/or batch
18 download of the CNAM database is not possible through the
19 STP?

20 A. You can't -- you can't get it on a per -- you
21 can't get the full database on a per-query basis, and I
22 don't think that the FCC when it made its determination in
23 the First Report and Order and in the UNE Remand Order
24 simply meant to preclude any other types of
25 nondiscriminatory access to the call-related databases.

1 Q. Would you agree with me that in Case
2 No. TO-99-227, WorldCom proposed that SWBT be required to
3 make the entire contents of its CNAM available to CLECs in
4 bulk rather than on a per-query basis?

5 A. You read the number for the case. I'm not
6 sure which that's referring to.

7 Q. That was Southwestern Bell's 271 relief
8 proceeding here in Missouri.

9 A. Yes, I believe so. Could you restate the
10 question again, please?

11 Q. Sure. Would you agree with me that in Case
12 No. TO-99-227 WorldCom proposed that SWBT be required to
13 make the entire contents of its CNAM available to CLECs in
14 bulk rather than on a per-query basis?

15 A. Yes.

16 Q. And this Commission determined that
17 information is being made available to the CLECs in the same
18 manner as it is available to SWBT's end office switches; is
19 that correct?

20 A. I haven't read it, but sure.

21 Q. You agree with me that this Commission
22 determined that SWBT provides nondiscriminatory access to
23 databases, including CNAM?

24 A. Yes. And, you know, a number of states have
25 issued similar orders, and we've gone back and, for

1 instance, the case of Arizona, the Arizona Commission is
2 reexamining the CNAM download issue.

3 Q. And you will agree with me that in CC
4 Docket 01-94 pending before the FCC, which was the docket
5 for Missouri's 271 application, the FCC determined that SWBT
6 provides nondiscriminatory access to databases, including
7 CNAM?

8 A. I'll take your word for it.

9 Q. And you'll agree with me that the public
10 utilities commissions in Arizona, Colorado, Montana, Iowa,
11 New Mexico, North Dakota, Nebraska and North Carolina and
12 Oregon have all denied requests for bulk download of CNAM?

13 A. As I stated before, Arizona as part of their
14 271 proceeding has remanded that 271 proceeding on the very
15 issue, the sole issue of access to CNAM on a download basis,
16 so --

17 Q. But as it stands now, they have denied access
18 on a download basis?

19 A. Sure.

20 Q. And you wouldn't -- and you would agree with
21 me that in the rest of the states I mentioned, those
22 commissions have denied requests for bulk download of CNAM?

23 A. I don't remember all the states, but I'll take
24 your word for it. I'd also like to add that we have batch
25 download -- batch download in Michigan, in Georgia and in

1 Tennessee.

2 Q. And you'll agree with me that in Michigan that
3 decision is currently on appeal?

4 A. Not that I'm aware of.

5 Q. But that --

6 A. That was part of the --

7 Q. -- doesn't mean it's not true?

8 A. -- the 271. That was part of Michigan's 271
9 decision, and I haven't seen any appeal. I mean, if you can
10 show me evidence that's it's been appealed, I'll gladly
11 answer your question in the affirmative.

12 Q. So in other words, you just don't know?

13 A. I'm not aware that that decision has been
14 appealed.

15 Q. Okay. And in Georgia, another state that you
16 mentioned, the Georgia Public Utilities Commission
17 specifically put restrictions on the bulk download of CNAM
18 such that WorldCom may not use CNAM on a resale -- for
19 resale?

20 A. No, that's not correct from what I understand.
21 The Georgia Commission basically said WorldCom could get
22 access to the CNAM data that BellSouth had for BellSouth's
23 customers in Georgia, and that's really what we're asking
24 for here.

25 Q. I'm going to turn briefly to Issue No. 26.

1 Will you agree with me that WorldCom has agreed to the
2 process by which SWBT would handle emergency calls to its
3 non-pub customers because such calls promote public safety
4 and is standard industry practice?

5 A. Could you repeat that question? That was kind
6 of a long question.

7 Q. Sure. I think it's in your direct, page 25,
8 lines 18 through 20.

9 A. Hold on.

10 Q. WorldCom has agreed to the process by which
11 SWBT --

12 MR. CURTIS: Excuse me. Could counsel allow
13 the witness time to reference the testimony?

14 JUDGE RUTH: Allow me time if nothing else.
15 Sorry. I'm getting there.

16 MS. MacDONALD: Sure.

17 THE WITNESS: Could you tell me where in my
18 testimony you are, please?

19 MS. MacDONALD: Direct, page 25, lines 18
20 through 20.

21 JUDGE RUTH: You may proceed.

22 THE WITNESS: I've got page 26, I think, where
23 this issue is, but --

24 BY MS. MacDONALD:

25 Q. Well, all I can say is your counsel provided

1 me a copy which on page 25 says, line 18 through 20, quote,
2 WorldCom has agreed to the process by which SWBT would
3 handle such calls as such a program promotes public safety
4 and is standard industry practice. I don't know if
5 everybody's got that on their page or not.

6 JUDGE RUTH: That's mine.

7 THE WITNESS: Okay. I may not have a current
8 version.

9 BY MS. MacDONALD:

10 Q. But nevertheless, you agree that that's what
11 you said?

12 A. Could you please restate that? I don't want
13 to --

14 Q. You would agree with me that WorldCom has
15 agreed to the process by which SWBT would handle such calls
16 as such a program promotes public safety and is standard
17 industry practice?

18 A. Yeah, I think so. I mean, you know, we want
19 some type of -- we do want -- what we're asking for really
20 is a process by which our customers can have the same type
21 of service that SWBT customers have for emergency
22 notification of non-published subscribers.

23 Q. Well, that's not WorldCom's proposal, is it?

24 A. You'll have to elaborate. I don't understand
25 what you mean.

1 Q. Well, my understanding is that, under
2 Southwestern Bell's position, we would make an emergency
3 call twice in an attempt to get ahold of a customer, and
4 WorldCom doesn't want that process. It wants us to make
5 multiple attempts over a 12-hour period.

6 A. I haven't seen any language by SWBT in the
7 contract outlining the process by which they would do that,
8 and I really think that that is the crux of the issue here.
9 I mean --

10 Q. Have you checked Southwestern Bell's website
11 for CLECs regarding this issue?

12 A. No, I don't. I don't visit SWBT's website
13 very often.

14 Q. So you don't know whether our website, in
15 fact, has posted a process for emergency message
16 notification which would tell you exactly what the process
17 is?

18 A. Why should I? I'm looking at the four corners
19 of the agreement here, and if that process isn't in the
20 agreement, I've got some concerns.

21 Q. Well, if you actually looked at the website,
22 you'd know what the process was, though, right?

23 A. But the contract isn't requiring WorldCom to
24 look at the website. I mean, all we're asking for, and
25 we've asked this in a number of SBC states, they've been

1 happy to comply, putting the process of emergency non-pub in
2 the agreement. In fact, I believe that the language that we
3 proffered to SWBT is based on SBC language in other states.

4 Q. So would you agree with me that if we
5 incorporate the language that we've posted on our website,
6 that we can settle Issue No. 26?

7 A. I haven't seen what SWBT has posted on their
8 website.

9 Q. Would you agree with me that SWBT offers an
10 amendment to its directory listing information that
11 specifically addresses whether Southwestern Bell will
12 enforce any restrictions on the use of directory assistance
13 listings, which is Issue No. 24?

14 A. Yes.

15 Q. And SWBT has agreed, subject to any subsequent
16 decision or order by the FCC or report, the SBC telephone
17 companies will comply with the FCC's Order and will not
18 enforce any restrictions on the use of directory assistance
19 listing information by any directory assistance provider
20 that provides telephone exchange services or telephone toll
21 services under Section 251(b)(3) or any directory assistance
22 provider that acts as an agent for an independent contractor
23 for a qualifying entity under the same section; is that
24 correct?

25 A. Yes. And the problem that WorldCom has with

1 that language is the fact that SWBT chooses not to enforce
2 it. In the nondiscriminatory environment, it's not for SWBT
3 to make the rules, to choose to enforce or not enforce any
4 use restrictions.

5 Q. So in other words, you don't believe it's
6 appropriate for a party to reserve its rights in an
7 interconnection agreement, that if the FCC or a court
8 overrules that ruling, that --

9 A. I didn't say that. What I said was --

10 Q. You wouldn't take that position, would you?

11 A. What I said was that the FCC has said that we
12 can use -- that any CLECs, that any directory assistance
13 provider can use directory assistance listings for whatever
14 it wants subject to restrictions imposed by the state.

15 And all we're -- all we're looking to do is
16 use it for any telecommunications service, and we don't
17 really want to set a precedent here where an ILEC comes in
18 and tells us whether they're going to choose to enforce
19 something or not. It's really not up to SWBT.

20 Q. Would you agree with me that the FCC is
21 reconsidering that determination right now?

22 A. Yes.

23 Q. And, therefore, it would be appropriate for
24 that to be addressed in the interconnection agreement with
25 regard to what the FCC would do on a subsequent basis?

1 A. No. I disagree.

2 Q. Okay.

3 A. For the same reason, for example, that SWBT
4 has said that the Michigan --

5 Q. I think you answered my question.

6 JUDGE RUTH: I think the question has been
7 answered, but thank you.

8 BY MS. MacDONALD:

9 Q. Would you agree with me that Southwestern Bell
10 doesn't just accept queries from UNEs as WorldCom suggests,
11 it also accepts queries to its LIDB database from all
12 network element capable of querying that database?

13 A. What issue are you referring to?

14 Q. Issue No. 13.

15 A. And is this the definition of LIDB?

16 Q. Yes.

17 A. WorldCom is willing to concede that word
18 unbundled.

19 Q. Okay. And would you agree with me that LIDB
20 contains end user records, not just Southwestern Bell's
21 customers' records?

22 A. As I explained in my direct testimony, again,
23 this really goes to how Southwestern Bell chooses to define
24 LIDB. There is the LIDB that Southwestern Bell generates
25 through its service order process, and then there is LIDB

1 that Southwestern Bell accumulates from other CLECs using
2 Southwestern Bell's LIDB system.

3 Q. So I take it you do agree with me what LIDB
4 contains end user records, not just Southwestern Bell's end
5 user records?

6 A. We would prefer to see a distinction between
7 the two, because -- we would prefer to see a distinction
8 between the two because those are two very different
9 systems.

10 Q. So does LIDB contain WorldCom's records?

11 A. Well, yes. Southwestern Bell's LIDB --
12 Southwestern Bell does provide a way for WorldCom to include
13 the LIDB in its own database, yes.

14 Q. And, in fact, other CLECs store information
15 about their customers in LIDB also?

16 A. Right. Uh-huh.

17 MS. MacDONALD: Your Honor, given the time,
18 I'm going to go ahead and conclude. Thank you.

19 THE WITNESS: Certainly.

20 JUDGE RUTH: You're welcome to stop, but I
21 note you had requested 30 minutes and you have 7 minutes
22 left.

23 MS. MacDONALD: Oh, I thought I had 25. So
24 I'd be happy to use the rest of my time.

25 JUDGE RUTH: You have a few more minutes.

1 MS. MacDONALD: Great.

2 JUDGE RUTH: Seven minutes.

3 MS. MacDONALD: And I think I'll take less
4 than seven.

5 BY MS. MacDONALD:

6 Q. On your direct, page 6, lines 7 to 9, could
7 you turn there.

8 A. Okay.

9 Q. You state, Incumbent local exchange carriers
10 have exclusive control over the generation of information
11 that comprises these databases. Did I get that correct?

12 A. Yes. And what I'm talking about there is the
13 distinction that I made earlier that there is SWBT's LIDB
14 and then there is the LIDB provided by other CLECs. What
15 I'm talking about there is the LIDB that's generated by
16 Southwestern Bell to which no other CLEC has access to
17 except on the basis as SWBT allows them.

18 Q. But you're not contending that there's two
19 different LIDB systems, are you?

20 A. I guess not. I mean, that's really up to how
21 SWBT, you know, configures their LIDB system. This was
22 really in response to, I believe, Ms. De Bella's charge that
23 LIDB and CNAM are competitive services and they're not.
24 SWBT is the only company that has -- that generates its LIDB
25 information. It's part of the service order process, the

1 same way it generates its directory assistance listings in
2 CNAM.

3 Q. But you'd agree with me that through the
4 service order process CLECs also are able to put their
5 information into the LIDB system?

6 A. Can you elaborate on that? I mean, the
7 service order process has to do with SWBT's customers or end
8 users. The information is provided to SWBT when the
9 customer orders service, and then that information flows
10 down into the other databases.

11 Q. Okay. But let's get to the crux of it all.
12 WorldCom provides information to Southwestern Bell that
13 becomes part of the LIDB database, correct?

14 A. Yes, but not all of WorldCom's LIDB, only for
15 the UNE-P customers, because it has to use Southwestern
16 Bell's LIDB to provision its UNE-P customers.

17 Q. So it would be fair to say that ILECs don't
18 have exclusive control over the generation of information
19 that comprises the LIDB database because CLECs and IXC's
20 generate and store information in the LIDB database?

21 A. As I said in my previous answer, my answer
22 here, maybe it wasn't quite as precise, but with respect to
23 the majority of people, subscribers, entities in Missouri,
24 since SWBT has the majority of those, this statement is true
25 as to SWBT's end users.

1 Q. But not true in general?

2 A. Well, I mean, it depends on what you mean by
3 in general.

4 Q. Well, in general I mean that there's also
5 information in the LIDB database that comes from other
6 CLECs.

7 A. Certainly, but it's nowhere near the amount of
8 LIDB data that's generated by Southwestern Bell.

9 MS. MacDONALD: That's all I have. Thank you.

10 JUDGE RUTH: Staff?

11 MR. BATES: Thank you, your Honor.

12 CROSS-EXAMINATION BY MR. BATES:

13 Q. Good morning, Mr. Lehmkuhl.

14 A. Good morning.

15 Q. I wonder, regarding Issue 13, did I understand
16 you to say that WorldCom is now willing to accept
17 Southwestern Bell's definition of LIDB?

18 A. No. All I meant to say was that I believe
19 that there was a word in there of contention, whether it
20 was -- I believe it was the word unbundled, and we would be
21 willing to concede that that word unbundled can be taken
22 out.

23 Q. As far as you're concerned, does that small
24 change in any way WorldCom's position on the remaining SWBT
25 language in dispute on Issue 13?

1 A. No, not really.

2 Q. Okay. Regarding Issue 15, would you please
3 provide me with your understanding of what the FCC meant by
4 requiring an incumbent to provide nondiscriminatory access
5 to LIDB, CNAM and other call-related databases?

6 A. Yes. What the FCC stated was to provide
7 nondiscriminatory access to the databases and not
8 nondiscriminatory access to access to those databases.

9 Q. Okay. Based on your response to
10 Ms. MacDonald, is it correct that Issue 15 should be limited
11 to CNAM only and not include LIDB?

12 A. Yes. And I believe from the start that I
13 limited it to CNAM only. I believe it was only because SWBT
14 chooses to use the terms LIDB and CNAM almost
15 interchangeably that we have a little confusion here. All
16 we've asked for is a download of the CNAM database.

17 Q. Would that be the same, then, for Issue 16?

18 A. Yes.

19 Q. If WorldCom were granted authority to batch
20 download CNAM data and with respect to WorldCom UNE-P end
21 users only, would special arrangements be necessary in your
22 view for SWBT's switch to have access -- have to access CNAM
23 data in a WorldCom server to terminate a call? And if I
24 didn't make that clear, please let me know.

25 A. Could you say that again, please?

1 Q. If WorldCom were granted authority to batch
2 download CNAM data with respect to WorldCom UNE-P end users
3 only, would special arrangements be necessary for SWBT's
4 switch to have access to CNAM data in a WorldCom server in
5 order to terminate a call?

6 A. I suppose, although frankly I don't know. I
7 mean, if WorldCom were allowed to batch download its own
8 LIDB -- I'm sorry -- it's own CNAM database that's contained
9 in SWBT's CNAM database, I don't think it would be much use
10 to us because we already provide that information.

11 Q. Okay.

12 A. But, you know, we would certainly -- you bring
13 up an interesting point, and, you know, if we -- we would
14 certainly make any of our CNAM information available to SWBT
15 in a similar batch basis.

16 Q. With regard to Issue 16, what in your view is
17 the harm to using an expanded LIDB/CNAM definition that
18 would include services that WorldCom would not be obligated
19 to purchase or use in the interconnection agreement?

20 A. I think our main objection to that paragraph
21 and any of the other paragraphs, our main objection is how
22 SWBT has tried to include CNAM in the LIDB database, and
23 that's really our only objection to that.

24 Part of our objection to some of the
25 additional language really goes to the issue of how much of

1 this agreement do we really want to change. As I understand
2 it, WorldCom came in and only wanted a few changes, and then
3 the door was open as far as SWBT was concerned to make quite
4 a few other changes.

5 So I think that that paragraph is an example
6 of that, but like I said, our real issue with that paragraph
7 is the fact that they link CNAM with the LIDB, and we would
8 just as soon keep the language as it is. I mean, it served
9 us well since the language was created.

10 Q. Would you define for me the terms data owner
11 and account owner and how they differ.

12 A. I'm not exactly sure of the definitions per
13 se, but to us data owner would be more descriptive since
14 it's the data that is really at issue here.

15 MR. BATES: Okay. Thank you very much.

16 JUDGE RUTH: At this point there will be no
17 questions from the Bench, but it's possible the
18 Commissioners will recall you later.

19 WorldCom, do you have redirect?

20 MR. CURTIS: Yes.

21 REDIRECT EXAMINATION BY MR. CURTIS:

22 Q. Mr. Lehmkuhl, you were asked regarding sort of
23 the interchangeable use of LIDB and CNAM by Southwestern
24 Bell.

25 A. Yes.

1 Q. Can you state for the record exactly what is
2 CNAM and what does it do?

3 A. CNAM is used to provide caller ID. It
4 generally consists of a 15-digit name identifier, the line
5 number and then a privacy indicator.

6 Q. And what is LIDB?

7 A. LIDB stands for line information database.
8 It's primarily used to verify calling card information,
9 third-party calling and collect calls, things like that.

10 Q. Now, I believe a question was asked with
11 regard to if WorldCom were able to batch download CNAM, that
12 you would -- we would still need, I believe Ms. MacDonald
13 indicated, some sort of a signaling system, an SS7 or an
14 STP, in order to actually provision that?

15 A. Yes, that's correct, and WorldCom currently
16 has an SS7 network within its own network.

17 Q. Okay. One of the features of caller ID is
18 indicating time and date of the call?

19 A. Yes, that's correct. And actually that time
20 and date would be put on in WorldCom's SS7 switch --

21 Q. So --

22 A. -- network.

23 Q. So WorldCom's own SS7 switch would provide
24 that additional data to complete the information for caller
25 ID --

1 A. Yes.

2 Q. -- functionality?

3 A. That's correct.

4 Q. With regard to just the mechanics of getting a
5 CNAM batch download, all we would -- all WorldCom would need
6 would be to be able to download that database from
7 Southwestern Bell?

8 A. Yes, that's correct. And actually, in
9 Michigan, Ameritech Michigan has provided an agreement, it
10 was a tariff filing by which they outlined the procedure,
11 and this procedure includes getting an initial load of the
12 data just like for directory assistance listings and with
13 subsequent updates, and those updates could be anywhere from
14 every hour to once a day like we do for directory assistance
15 listings.

16 The data contained in the CNAM does not change
17 minute by minute necessarily. It's just like it would --
18 you know, it would be very similar to the directory
19 assistance listing in that you get an update every day and
20 you refresh your data.

21 Q. So a daily update for a CNAM database would be
22 more than adequate --

23 A. Yes, I believe so.

24 Q. -- to provide fresh information?

25 A. Yes.

1 Q. You mentioned Tennessee --

2 A. Yes.

3 Q. -- as one of the states that has allowed or
4 given WorldCom the right to batch download CNAM?

5 A. Yes, that's correct.

6 Q. In what context was Tennessee, was that
7 decision made?

8 A. I believe that was in the context of an
9 arbitration, although I'm not certain, and I don't have the
10 decision with me, but I would be more than happy to provide
11 the citation for it for inclusion in the Brief or if the
12 Commission so requested it.

13 Q. With regard to Issue 24 and questions on the
14 LIDB records --

15 A. Yes.

16 Q. -- do I understand Southwestern Bell's LIDB
17 database contains WorldCom customer information?

18 A. Yes.

19 Q. And it includes obviously all of Southwestern
20 Bell customer office?

21 A. Yes, that's correct.

22 Q. And customer information from all other
23 CLECs --

24 A. Yes. Yes, I believe so.

25 Q. -- operating in Southwestern Bell's territory?

1 And all of that customer information from all
2 the CLECs and Southwestern Bell is accessible, is it not, by
3 Southwestern Bell?

4 A. On a per-DIP basis.

5 Q. On a per-DIP basis.

6 A. Or by Southwestern --

7 Q. By Southwestern Bell?

8 A. Yes, absolutely.

9 Q. And, of course, it's available as Southwestern
10 Bell would suggest on a per-DIP basis by the CLECs?

11 A. Yes.

12 Q. Now, there has been a -- let me back up just a
13 minute. It's my understanding that having provided all of
14 the LIDB information to Southwestern Bell through the LSR
15 process --

16 A. Yes.

17 Q. -- that then WorldCom does not have an ability
18 to even access the LIDB records to understand, to look at
19 its own customer base within LIDB?

20 A. As I understand it, that's correct. I base
21 that understanding on what Ms. Kendall was talking about
22 yesterday.

23 Q. And yet Southwestern Bell has the ability to
24 access all CLEC records within the LIDB database?

25 A. Yes, that's correct, including proprietary

1 information on WorldCom's customers.

2 Q. Would you think that nondiscriminatory access
3 to LIDB, which is the UNE remand standard, would not that
4 nondiscriminatory access mean that other CLECs, including
5 WorldCom, should have the same access to LIDB records as
6 does Southwestern Bell?

7 A. Yes.

8 Q. Regarding Issue 26, questions were asked on
9 the emergency calling procedure to the non-published
10 listings.

11 A. Yes.

12 Q. Do you remember that? And there's nothing in
13 the ICA -- when you talked about the four corners of the
14 agreement, there's nothing in the ICA that really sets out
15 the procedures that Southwestern Bell would call for for
16 this notification process?

17 A. Yes, that's correct. I mean, if this is a
18 service that we have to pay for, we'd certainly want to know
19 what we're paying for and have some way to make Southwestern
20 Bell accountable if there was a problem.

21 Q. Has it been your experience in dealing with
22 interconnection agreements with Southwestern Bell if it's
23 not in the interconnection agreement it can be a problem in
24 enforcing later?

25 A. Absolutely.

1 MR. CURTIS: I have nothing further. Your
2 Honor, may this witness be excused?

3 JUDGE RUTH: He may step down. At this point
4 he cannot be excused. There may be questions from the Bench
5 later.

6 Southwestern Bell, are you calling the next
7 witness?

8 MS. MacDONALD: Yes. We call Linda De Bella.
9 (Witness sworn.)

10 JUDGE RUTH: Thank you. Please be seated.

11 LINDA De BELLA testified as follows:

12 DIRECT EXAMINATION BY MS. MacDONALD:

13 Q. Good morning. Can you please state your name
14 for the record.

15 A. Good morning. My name is Linda De Bella.

16 Q. Can you please tell the Commission by whom
17 you're employed?

18 A. Ameritech.

19 Q. And what position do you hold in Ameritech?

20 A. I am Associate Director, Regulatory Support.

21 Q. And can you tell me your responsibilities as
22 Associate Director, Regulatory Support?

23 A. Yeah. I assist in regulatory issues related
24 to interconnection agreements.

25 Q. And that would be beyond just Ameritech

1 territory; is that correct?

2 A. Yes, in 13 states.

3 Q. Okay.

4 A. SBC's 13 states.

5 Q. And did you prepare or cause to be prepared
6 Exhibit No. 33, your direct testimony?

7 A. Yes.

8 Q. And did you prepare or cause to be prepared
9 Exhibit No. 34, which is your rebuttal testimony?

10 A. Yes.

11 Q. And do you have any changes to those exhibits?

12 A. I do; just a couple clerical changes. The
13 first one is page 13 of my direct testimony. I'm sorry.
14 The first correction is on page 10, line 25, where it says
15 Section 27 of the act, it should be 222.

16 The second correction is on page 13, line 4,
17 where it says "thus, rule" and it starts with 319. It
18 should be 51.319. The next correction is on page 15,
19 line 17. I deleted the word "validation" after LIDB.

20 On page 20, line 1, it should be Issue 19
21 instead of Issue 20. On page 22, line 14, there's a period
22 after account owner; that period should be deleted. Those
23 are all the changes to my direct testimony, and I believe I
24 have a couple in my rebuttal.

25 Page 3, line 14, there should be a capital A,

1 paren, capital A, end paren, after the number 2. So it
2 should read 51.319 (e)(2)(A). Page 9, line 1, there's a
3 typo in the word "account." It should be A-C-C-O-U-N-T.
4 And on page 17, line -- the line's missing, but it's under
5 Issue 32 where it says Section 9.4.72, it should be 9.4.7.2.

6 And I believe those are all my changes.

7 Q. If I asked you the same questions today that
8 are contained in Exhibits No. 33 and 34, would your answers
9 be the same?

10 A. Yes, they would.

11 Q. And are those answers true and correct to the
12 best of your knowledge, information and belief?

13 A. Yes, they are. And I do have the language for
14 Issue 32, which was resolved. I don't know if this is a
15 good time to bring that into the record.

16 JUDGE RUTH: That's fine.

17 THE WITNESS: Okay. Issue 32 is resolved, and
18 the agreed-upon language is in Section 9.4.7.2, and the
19 agreed-upon language reads as follows: For LIDB services
20 provided under this agreement, SBC-SWBT agrees to comply
21 with the definitions for standard LIDB data elements as
22 defined in Telcordia Technology's generic requirements
23 document GR-1158-CORE, c-o-r-e, or as Telcordia
24 Technology's generic requirement document GR-1158 is
25 revised.

1 MS. MacDONALD: At this time I would offer
2 Exhibits 33 and 34 and tender this witness for
3 cross-examination.

4 JUDGE RUTH: Are there any objections to
5 Exhibit 33, the direct, and Exhibit 34, the rebuttal, being
6 admitted?

7 (No response.)

8 JUDGE RUTH: Seeing no objections, Exhibits 33
9 and 34 are received into the record.

10 (EXHIBIT NOS. 33 AND 34 WERE RECEIVED INTO
11 EVIDENCE.)

12 JUDGE RUTH: WorldCom, are you ready for
13 cross? And my notes indicate you had estimated 30 minutes
14 for . . .

15 MR. CURTIS: That's fine.

16 CROSS-EXAMINATION BY MR. CURTIS:

17 Q. Good morning, Ms. De Bella.

18 A. Good morning.

19 Q. My name is Lee Curtis; I'm one of the
20 attorneys for WorldCom et al.

21 I'd like to direct you initially to your
22 direct testimony, page 20, line 6.

23 A. I'm there.

24 Q. You're there?

25 A. Uh-huh.

1 Q. Can you read that, please?

2 A. SWBT agreed to create an LSR-based interface
3 in the process of creating the M2A.

4 Q. Now, isn't it true that the Texas Public Ser--
5 PUC, in fact, ordered Southwestern Bell to create that
6 database?

7 A. Yeah. The parties worked -- the CLECs and
8 Southwestern Bell in Texas worked collaboratively to develop
9 the process.

10 Q. Right. So it was pretty much under order from
11 the Texas Commission that that was done; is that right?

12 A. Yes.

13 Q. Southwestern Bell didn't voluntarily agree to
14 do this?

15 A. Well, we worked cooperatively with the CLECs.

16 Q. Right. When the Commission -- when the PUC
17 ordered you to --

18 A. Okay.

19 Q. -- is that right?

20 With regard to the LSR process for LIDB, can
21 you explain why CLECs who utilize the LSR process for the
22 LIDB database updates are not able to view their own LIDB
23 records?

24 A. They originally were able to view using a
25 graphical user interface.

1 Q. That's been referred to as the GUI?

2 A. GUI interface. And it's my understanding that
3 that system and an interactive system such as the LSR are
4 not compatible. So when the LSR process was developed, the
5 CLECs determined that they would rather have this
6 interactive LSR process that feeds directly into the LIDB,
7 rather than this GUI interface.

8 Q. But Southwestern Bell designed the new LSR and
9 the -- for the LIDB database?

10 A. Yes.

11 Q. And you designed it knowing that the CLECs
12 would not be able to view their own records?

13 A. Well, the CLECs determined that that's what
14 they preferred.

15 Q. The CLECs said they would prefer not to see
16 their own records?

17 A. They preferred this interactive interface, and
18 they knew at that time it wasn't compatible with the online
19 view using GUI.

20 Q. Can you -- you indicated the interface was
21 developed by a third party; is that correct? Did I
22 misunderstand that?

23 A. I don't know.

24 Q. You didn't state that, then?

25 A. I don't believe I stated that.

1 Q. Okay.

2 A. I don't actually know who developed it.

3 Q. Now, it is true that Southwestern Bell -- with
4 regard to the LIDB database, Southwestern Bell is able to
5 access all those records, all customer records?

6 A. We access it the same way that CLECs do, on a
7 per-query basis.

8 Q. Are you able to access all the CLEC records in
9 addition to Southwestern Bell customer records contained in
10 the LIDB?

11 A. We use it on a per-query basis; we don't
12 actually go in and view everybody's information or do a
13 download.

14 Q. You have the ability to do that, though, don't
15 you?

16 A. I don't know.

17 Q. Ms. De Bella, refer to page 3 of your direct.
18 In there I think you say that CNAM is a component of LIDB?

19 A. Yes, I do.

20 Q. What do you mean by it's a component?

21 A. In Southwestern Bell, the LIDB is -- the
22 calling name database is not a separate database.

23 Q. Oh, it isn't?

24 A. No. It's a component of the LIDB database.
25 So if you want to think of the LIDB as a train and there's

1 different boxcars behind that train, CNAM is one of those
2 boxcars in the train LIDB.

3 Q. Okay. Well, some states have ordered that
4 CNAM can be downloaded, batch downloaded; is that correct?

5 A. It's my understanding that the two states that
6 were referred to were Michigan and the Georgia.

7 Q. Correct.

8 A. I'm not aware of any others.

9 Q. How about Tennessee?

10 A. I'm not familiar with Tennessee, but . . .

11 Q. And how about Arizona having it under
12 reconsideration?

13 A. I just heard that today, that Arizona is under
14 reconsideration.

15 Q. So apparently these states have been able to
16 determine that CNAM as a boxcar on a train can be uncoupled
17 and downloaded; would you agree to that?

18 A. They -- I know in Michigan, I could -- that's
19 the case I'm more familiar with -- that the Michigan
20 Commission did rule that. However, it's -- we believe it's
21 wrong and that it really -- the decision really shouldn't be
22 given a lot of weight because the Commission made that
23 ruling without really any points or reasons for doing that.

24 The California Commission who ruled against
25 the download by far gave much clearer descriptions --

1 Q. I have not asked you about California.

2 A. -- and quoted FCC rules.

3 Q. The states that have ordered -- allowed
4 WorldCom and other CLECs to batch download CNAM, certainly
5 it is technically feasible, is it not, whether you think it
6 is a good idea or not?

7 A. It is not technically feasible in the way that
8 we are required to provide it under FCC rules, which is at
9 the STP and for the purpose of database query and response.

10 Q. That's not my question.

11 A. However --

12 Q. I don't want to get into STP or SS7.

13 A. If you go outside of what we are required to
14 do and ordered to do in Michigan, for example, there are
15 enhancements that had to be made, but it is technically
16 feasible but not at the STP, as we are preferring to.

17 Q. Well, that's -- that's not my question,
18 because -- were you in the room when Mr. Lehmkuhl testified?

19 A. Yes, I was.

20 Q. Did you hear him say that WorldCom has its own
21 SS7 signaling system?

22 A. Yes. Uh-huh.

23 Q. Okay. And we don't need the STP or the
24 Southwestern Bell signaling system, do we?

25 A. You mean for transmission and routing of

1 information?

2 Q. Correct.

3 A. You use our signaling system, I believe.

4 Q. Did you hear him say that all we need to do,
5 all WorldCom needs to do is be able to batch download --
6 download CNAM, and then with WorldCom's own SS7 signaling
7 system, it can provision the correct data?

8 MS. MacDONALD: Your Honor, I'm going to
9 object at this time because he's asking this witness to
10 verify the truth of another witness' testimony, which I
11 think is completely improper. He should be asking her if at
12 all whether or not those things are true, not whether or not
13 he said it.

14 MR. CURTIS: Your Honor, she's evading the
15 question. My question is very simple, and I think she's
16 trying to retreat to the STP provision that Southwestern
17 Bell does, and that's not my question. My question is
18 whether he (sic) agrees with what Mr. Lehmkuhl testified
19 that WorldCom can provision caller ID through a batch
20 download of CNAM with WorldCom's own SS7 signaling system.

21 JUDGE RUTH: The question is proper, but the
22 response is either yes, no, or I don't know.

23 THE WITNESS: Well, it's not as simple as
24 that. I mean, there are enhancements that would have to be
25 made to make that download available outside of the

1 requirements of the STP and for database query and response.

2 BY MR. CURTIS:

3 Q. Well, the requirements of STP -- assume for me
4 that this Commission would order and allow and order
5 Southwestern Bell to allow WorldCom and other CLECs to
6 download CNAM database, batch download it. Okay? Assume
7 that the Commission so orders.

8 Did you hear and did you understand
9 Mr. Lehmkuhl to say that upon that batch download, WorldCom
10 will be able to provision caller ID through the CNAM
11 database through its own SS7 signaling system?

12 MS. MacDONALD: Your Honor, again, I'm going
13 to object as to whether or not he said it. The question is
14 whether or not it's true.

15 JUDGE RUTH: The question that counsel asked
16 was did the witness hear this testimony, which is proper.
17 You can follow up with whether or not she agrees with that
18 testimony on redirect.

19 THE WITNESS: I did hear him say that, yes.

20 BY MR. CURTIS:

21 Q Okay. Do you think he's incorrect?

22 A. It is technically feasible -- I believe I
23 answered the question. It is technically feasible outside
24 of the requirements at the STP with some enhancements that
25 we would have to do.

1 Q. That Southwestern Bell would have to do?
2 A. Yes.
3 Q. But it can be done if . . .
4 A. It's not just a matter of just turning over
5 the data. There's some work that needs to be done in doing
6 that.
7 Q. Do you know what a call-related database is?
8 A. Yes.
9 Q. Would you agree with me the toll-free database
10 is a call-related database?
11 A. Yes.
12 Q. Would you agree that 911 is a call-related
13 database?
14 A. Yes, I would.
15 Q. And how about LNP?
16 A. I believe local number portability is also
17 used in transmission and routing.
18 Q. Right. And is LIDB a call-related database?
19 A. Yes, it is.
20 Q. And CNAM is too; is that correct?
21 A. CNAM is also a call-related database. In this
22 case, it's not a separate database, but, yes.
23 Q. And LIDB and CNAM do provide different
24 functionalities, serve different purposes?
25 A. LIDB stores customers' line information and

1 calling name provides the calling name.

2 Q. Right. Calling name provides what we would
3 call caller ID?

4 A. It provides the calling name.

5 Q. Calling name, and what else?

6 A. It's my understanding that in the SWBT
7 database, the calling name component provides the calling
8 name.

9 Q. How about the time and date?

10 A. The time and date is provided through the
11 signaling system network.

12 Q. So if the customer has caller ID and a call
13 comes in, it would be displayed on the display on the
14 premises, the equipment, the name of the calling party and
15 the number of the calling party?

16 A. Yes.

17 Q. And would that caller ID subscriber later be
18 able to access the time and date that that call was made?

19 A. The calling name matches up with the parties'
20 number to provide the display on the caller ID unit.

21 Q. Right.

22 A. And the signaling system provides the date and
23 time of that information.

24 Q. Correct.

25 A. Yes.

1 Q. Now, I believe at page 66 your rebuttal at
2 line 19, you state, additionally, the date and time of the
3 call is not obtained from the database. Rather it is
4 obtained from the SS7 because SS7 provides the call setup.
5 A download of the data would not give WorldCom this
6 information.

7 A. That's right.

8 Q. And I think we would agree with that, and I
9 believe Mr. Lehmkuhl testified that the SS7 signaling system
10 that WorldCom has would then provide that additional time
11 and date information?

12 A. Okay.

13 Q. Okay. And you agree that would be technically
14 feasible?

15 A. To get --

16 Q. Time and date?

17 A. -- the time and date with SS7?

18 Q. Right.

19 A. Yes.

20 Q. Do you know whether call-related databases are
21 unbundled network elements?

22 A. No. Access to the call-related databases is
23 the unbundled -- unbundled network element.

24 Q. Are you familiar with the definition of
25 unbundled network elements?

1 A. Yes. Are you pointing to something specific?
2 Q. No. I'm just saying if you're generally
3 familiar. Do you have a copy of it there?
4 A. A copy of what?
5 Q. The definition.
6 A. No.
7 Q. Have you read the definition?
8 A. It depends. I've read a lot of things on
9 them, but it depends on what you're referring to.
10 Q. You use the word "access"?
11 A. Yes.
12 Q. You said access is the provision that is
13 required for unbundled network elements; is that correct?
14 A. I said access to the database, call-related
15 databases, is the unbundled network elements.
16 Q. Does the word "access" appear anywhere in the
17 definition of unbundled network elements?
18 A. I don't know. I don't have it in front of me.
19 Q. Would you accept my saying that it does not
20 appear there?
21 A. That's fine. We can argue all day about what
22 the definition of a UNE is, but the bottom line is the FCC
23 said where we're supposed to provide this service and for
24 what purpose. And that's at the STP and for database query
25 and response.

1 Q. Do you agree that there are several different
2 ways to access a database?

3 A. I'm not sure what you mean by that. When you
4 say several different ways, what are you referring to?

5 Q. Let's talk about CNAM. Okay? WorldCom would
6 be able to access it on a per-query basis or per-DIP basis,
7 I think is the phrase that's used. Would you agree?

8 A. Yes.

9 Q. And that's the way that Southwestern Bell
10 would like WorldCom and any other CLEC to access the CNAM
11 database, correct?

12 A. It's not that we would like it, it's that -- I
13 mean, that's the requirement.

14 Q. Well, that's what you think the requirement
15 is; is that correct?

16 A. Yes, that's absolutely correct.

17 Q. Is another way to access the CNAM database to
18 batch download it?

19 A. Then it's not accessing. It's not --

20 Q. Then it's not accessing. I see. Why is that?

21 A. Because you're getting a snapshot of the
22 database itself. It's not -- you're just getting a picture
23 of it.

24 Q. A picture. So you're saying it's not --
25 you're getting a picture of a CNAM database, say, on

1 December 20, 2001, and here it is today, January 17, 2002,
2 and that December 20, 2001 snapshot of CNAM would not be
3 good on January 17, 2002?

4 A. Well, I think the better way to say it is the
5 December -- you mean, December 2001?

6 Q. Yeah.

7 A. -- would be -- and then you said something
8 about then you get the data again in January? Is that
9 what --

10 Q. Would that be out of date on January 17?

11 A. Oh, yes, it changes constantly.

12 Q. So that's why you're -- and I think one of
13 your points you made in your testimony is that WorldCom
14 could batch download the CNAM database, but it wouldn't --
15 it would only get this snapshot in time of the database; is
16 that correct?

17 And thus it would -- let me stop there. Do
18 you recall that testimony of yours?

19 A. Yes, it would be outdated the second that it
20 was provided.

21 Q. Right. And you, I think, further suggested
22 that that would lead to lack of quality of customer service;
23 is that correct?

24 A. If the information is not current, then sure.

25 Q. All right. Now, did you hear Mr. Lehmkuhl say

1 that if WorldCom were able to batch download CNAM, that it
2 would get daily updates of that database?

3 A. That he said what? Can you repeat that?

4 You said something about daily updates, but I
5 didn't hear the first part of that.

6 Q. If WorldCom were permitted to batch download
7 the CNAM database, that WorldCom would proceed then to get
8 daily updates of that CNAM database to keep it fresh?

9 A. They would request daily updates from --

10 Q. Southwestern Bell.

11 A. Are you referring to Southwestern Bell?

12 Q. Sure.

13 A. Did I hear him say that; is that the question?

14 Q. Yes.

15 A. To be honest with you, I didn't catch that
16 part of his --

17 Q. Well, let me ask you this: If upon batch
18 download of CNAM database, Worldcom then proceeded to do
19 daily updates of that database, would that cure any
20 freshness problem of that database in your mind?

21 A. If that was a requirement that we had to
22 provide?

23 Q. Right.

24 A. Daily is -- could be enough, but it changes
25 constantly; it changes real time. It could change from

1 minute to minute.

2 Q. Sure it could. But would daily be adequate to
3 provide good customer service?

4 A. I don't know. Not to me.

5 Q. Not to you?

6 A. No. I would want it minute to minute, second
7 to second; whenever it changed, I would want it.

8 Q. Getting back to my question, isn't that one
9 way of accessing the database?

10 A. Well, I think I answered that. I don't
11 consider that access. I consider that getting a dump of
12 information.

13 Q. So it's not access, it's a dump; is that your
14 semantical difference?

15 A. It's not -- that's how I think of it when --
16 when somebody says download, it's a snapshot of something,
17 of information.

18 Q. Does Southwestern Bell own the CNAM database?

19 A. Southwestern Bell does own the LIDB, in which
20 CNAM is a component of it, yes.

21 Q. Okay. My question -- and so you would say,
22 yes, Southwestern Bell does own the CNAM database?

23 A. Well, I think I explained earlier that it's
24 not a separate database.

25 MR. CURTIS: Your Honor, can she answer yes or

1 no, please?

2 JUDGE RUTH: Would you read back the question,
3 please? And the witness will try to answer yes or no. If
4 she insists she cannot answer yes or no, give me a brief
5 reason why.

6 THE WITNESS: Okay.

7 (THE REQUESTED TESTIMONY WAS READ BY THE
8 REPORTER.)

9 THE WITNESS: The answer is no.

10 BY MR. CURTIS:

11 Q. You do not own the CNAM database?

12 A. It's not a separate database. I don't know
13 how else to answer it.

14 Q. We have been referring to CNAM database as a
15 separate database.

16 A. Yes, but it is not in Southwestern Bell's
17 territory. It is not a separate database. So I can't
18 answer it. I mean, CNAM is information that's in our LIDB
19 database.

20 Q. Is it not a separate database?

21 A. It is not a separate database.

22 Q. It is not a separate call-related database?

23 A. In Southwestern Bell, it is not.

24 Q. What do you mean by qualifying it by saying
25 "in Southwestern Bell"? I don't understand that.

1 A. Because it may be different in other states,
2 but in Southwestern Bell territory, this is the way the LIDB
3 is designed.

4 Q. So in other states, CNAM is a distinct
5 database?

6 A. Could be a distinct database, but I'm speaking
7 in --

8 Q. But Southwestern Bell in -- in Southwestern
9 Bell states chooses to claim that CNAM merely a component of
10 LIDB and not a separate database?

11 A. It's not a claim. It's the way the system is
12 designed.

13 Q. Let me get back to the question of the
14 feasibility of downloading the CNAM database. Didn't you
15 agree with me before that CNAM as a database can be
16 separately downloaded?

17 A. I didn't say CNAM as the database. I said
18 CNAM, a component of LIDB could, outside of the STP, be
19 downloaded with some enhancements. I believe that's what I
20 said.

21 Q. Is the -- where is the CNAM database located?

22 A. I mean, we're going to go on and on about -- I
23 mean -- semantics here.

24 JUDGE RUTH: Answer the question, please.

25 THE WITNESS: It's -- I believe -- and I'm not

1 sure -- but I believe it's located in Missouri. I think
2 Kansas City and Austin.

3 BY MR. CURTIS:

4 Q. So it's in two parts?

5 A. I believe it's in two parts. Not two parts,
6 but two -- two locations.

7 Q. Two locations. Is it fully -- is a full CNAM
8 database located in Kansas City and a full CNAM database
9 located in Austin, Texas? Are they duplicates?

10 A. It's my understanding that there's LIDB
11 databases in Kansas City, Missouri and Austin, Texas.

12 Q. Full LIDB databases?

13 A. Yes.

14 Q. Including CNAM databases?

15 A. Including the calling name component, yes.

16 Q. Does Southwestern Bell use LIDB for processing
17 interLATA calls outside of Missouri?

18 A. You mean, do carriers that provide long
19 distance service utilize our database?

20 Q. Uh-huh.

21 A. Yes.

22 Q. What percentage of calls does Southwestern
23 Bell use LIDB for, would you estimate?

24 A. I'm sorry, what was the question?

25 Q. What percentage of calls does Southwestern

1 Bell use the LIDB database for?

2 A. Oh, I don't know.

3 Q. Does Southwestern Bell use any information
4 gathered in its service order process in LIDB to market
5 customers in Missouri?

6 A. No, we use it the same way that everybody else
7 uses it, for database, query and response.

8 Q. If Southwestern Bell were using that
9 information to market in Missouri, would you know about it
10 personally?

11 A. Yes, absolutely, I would.

12 Q. How would you know?

13 A. Because I work with the people that are
14 responsible for LIDB on a daily basis.

15 Q. Are you the only one that has access to LIDB
16 data?

17 A. No, but I can tell you Southwestern Bell has
18 never asked for or received a download of the information
19 that we have in our database. We use it on per-query
20 access, per database query and response.

21 Q. If a subscriber has a non-published number but
22 fails to give Southwestern Bell information to block caller
23 I-- the caller ID, will their number be displayed when they
24 make a call?

25 A. If the subscriber doesn't give the information

1 that they want their call blocked?

2 Q. Right.

3 A. Then the service order would not -- would
4 honor whatever they --

5 Q. Would honor it. So it's not an automatic
6 thing for a non-published-listing person to request that as
7 part of that non-published listing, that caller ID would not
8 show the name?

9 A. Your question is a little bit confusing, but I
10 think what you're saying is a subscriber has to order a
11 non-published feature on their line, yes.

12 Q. Correct. In addition to just having a
13 non-published number, right?

14 A. Well, that's how they get a non-published
15 number. When they place an order, they request that they
16 want their number non-published.

17 Q. Non-published?

18 A. Uh-huh.

19 Q. And non-transmitted under caller ID
20 circumstances?

21 A. If they have a non-published number, it's not
22 displayed.

23 Q. Okay. If the privacy code is entered, right?

24 A. Let me think about that for a minute. Yes.

25 Q. Does the Telcordia Technical Guidelines

1 include guidelines for CNAM?

2 A. I'm not that familiar with the publication
3 itself. I know it does have requirements and definitions
4 for -- for LIDB, in which CNAM is a part of that.

5 Q. You did reference the Telcordia Guidelines in
6 your --

7 A. Yes, I did.

8 Q. -- in your rebuttal testimony?

9 A. Yes, I did.

10 Q. So you are familiar with them?

11 A. I'm familiar with that's the document. I
12 don't really utilize the document on a daily basis.

13 Q. Does Telcordia include technical guidelines
14 for LIDB?

15 A. I believe it does.

16 Q. And don't the Telcordia Guidelines use the
17 terms "data owner" and "account owner" interchangeably
18 throughout that document?

19 A. I don't know.

20 MR. CURTIS: I think I'm finished. Thank you.

21 JUDGE RUTH: Mr. Bates, do you have cross for
22 this witness?

23 MR. BATES: I do. Thank you, your Honor.

24 CROSS-EXAMINATION BY MR. BATES:

25 Q. Good morning, Ms. De Bella.

1 A. Good morning.

2 Q. I'd like to go back over some of your
3 testimony. And I hope this will not be repetitive, but if
4 you could explain some things for my benefit.

5 A. Sure.

6 Q. First of all, regarding Issue 13, why do you
7 believe that it is necessary that the definition of LIDB be
8 expanded to include LIDB functions that WorldCom is not
9 purchasing?

10 A. Because when we talk about our LIDB functions,
11 they may not be purchasing them right now, but it may be
12 something that they purchase in the future. And other CLECs
13 that may opt into our agreement, it just makes it more clear
14 on exactly what our LIDB service provides.

15 Q. Now, if you could clear something up for me;
16 in your opinion, are LIDB and CNAM unbundled network
17 elements?

18 A. No. In my opinion, access to LIDB and CNAM is
19 what the FCC said are the unbundled network elements. But
20 as I stated, again -- and I don't want to be repetitive,
21 but, you know, we can argue all day about whether it's an
22 unbundled network element or not, but the FCC said in plain
23 English and made it very clear what the requirements were;
24 where, at the STP, and they clearly stated for what purpose,
25 database query and response.

1 Q. Are LIDB and CNAM distinct databases?

2 A. In Southwestern Bell, they're not distinct
3 databases.

4 Q. I'm sorry. Go ahead.

5 A. I was going to -- and, again, I'm sure I am
6 being repetitive, too, but CNAM is a component of
7 Southwestern Bell's LIDB database.

8 Q. Regarding Issue 15, what changes in
9 Southwestern Bell's network would be necessary to allow WCOM
10 to access Southwestern Bell's LIDB and CNAM as requested?

11 A. I'm sorry. Can you repeat the question?

12 Q. I didn't say that very well.

13 What changes in Southwestern Bell's network
14 would be necessary to allow WorldCom to access SWBT's LIDB
15 and CNAM, if any?

16 A. Well, they do access it today.

17 Q. Is there any difficulty that you perceive --
18 and this is the way I should have asked that question. I'm
19 sorry -- in the way that it's being accessed, either from
20 Southwestern Bell's standpoint or as you understand from
21 WorldCom's standpoint?

22 A. Today, it's being -- they access the database
23 on a per-query basis.

24 Q. Okay.

25 A. I hope that answered your question.

1 Q. It does, and I thank you.

2 A. Okay.

3 Q. Regarding Issue 16, why does Southwestern Bell
4 feel it's necessary to include references to LIDB and CNAM
5 services that WorldCom does not wish to use in the
6 interconnection agreement?

7 A. Again, I think it's just to make it clear what
8 our LIDB service provides, whether they use it today or in
9 the future or whether other CLECs may see that agreement and
10 lease -- and opt into provisions of it, it's very clear to
11 what functionalities our LIDB offers.

12 Q. Could an agreement -- excuse me -- could an
13 amendment to the agreement be negotiated at a later date to
14 cover Southwestern Bell's new LIDB services if WCOM wished
15 to use them at some time in the future?

16 A. Well, I -- I think it might be a legal
17 question on whether they can amend it or not. I'm not quite
18 sure about that --

19 Q. Okay.

20 A. -- about amendments to agreements.

21 Q. Would you please tell me what Southwestern
22 Bell's definition of the terms "data owner" and "account
23 owner" are?

24 A. Account owner is where the carrier that
25 actually has that subscriber goes in and is responsible for

1 that subscriber. That subscriber is an end user of a local
2 service provider.

3 Q. Okay. What is it about a competitive service,
4 in your opinion, that makes Southwestern Bell less
5 responsible for that service, or does it?

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

7 Q. For instance, regarding a competitive LIDB
8 service, is there -- is there anything about that that makes
9 Southwestern Bell less responsible for its maintenance or
10 upkeep or access or anything else?

11 A. I see what you're saying.

12 Q. When it's competitive?

13 A. Absolutely not, because it is competitive. We
14 want to make sure that our database has very high standards
15 so that customers want to store their information in our
16 database, so quality and protection of the data is all very
17 important.

18 Q. What firms provide the LIDB access?

19 A. What firms also offer LIDB services?

20 Q. Uh-huh.

21 A. It's my understanding there's about a dozen
22 LIDB providers. I don't know all of their names. I know
23 Aluminet is one, and I'm not really sure of the other ones.

24 Q. Would you happen to know if they're all ILECs
25 or if they're affiliated with ILECs?

1 A. Some are ILECs and some are third-party
2 vendors that opted into the business.

3 Q. Is your data regionalized in any way?

4 A. When you say it's regionalized, what do you
5 mean?

6 Q. For instance, does Sprint, for instance, only
7 give information for its own incumbent territory or would it
8 have access to all of it?

9 A. Well, the databases, if the information isn't
10 in Sprint's database, for example, then it would go to the
11 next database that does have that information and provide
12 the response back.

13 Q. So it would have access to any data that's
14 contained in there?

15 A. Yes.

16 Q. Okay. If I could turn just a second to your
17 rebuttal on page 21, line 7, beginning at line 7, you're
18 dealing here with Issue 28, I believe?

19 A. Yes.

20 Q. I believe -- and correct me if I'm wrong --
21 that you state that Southwestern Bell does not collect
22 emergency data in transmittable electric form; is that
23 correct?

24 A. That's correct.

25 Q. How does Southwestern Bell collect -- how does

1 it access that data for itself, I guess I should ask?

2 A. Well, we have white page listings and, you
3 know, we give WorldCom -- and probably a better person to
4 ask is the directory assistance person -- but WorldCom also
5 gets downloads of that information, the same as what we
6 have. So they could get most of the information or all of
7 the information that we have from a download of the white
8 pages that we provide.

9 Q. Would it be difficult, do you think, since the
10 data is presently stored electronically, to exchange a copy
11 of that stored data either electronically or by paper?

12 A. I believe that they are getting that today,
13 the directory white page listings --

14 Q. Okay.

15 A. -- electronically.

16 Q. And there's no problem with that as far as you
17 know?

18 A. No. I mean, again, probably a better person
19 would be the directory assistance person, but as far as I
20 know, it's working today and it's happening today.

21 Q. Okay. If I could ask you to go to the next
22 page of your rebuttal, top of page 22, and I believe you
23 start dealing there with Issue 44?

24 A. Oh, yes.

25 Q. Okay. Could you tell us how failure to

1 include Southwestern Bell's non-Missouri language might be
2 confusing?

3 A. Yes, because we have agreements with multiple
4 CLECs on a 13-state basis and we have merger conditions and
5 some of those are unique to SBC states, 13 states, it makes
6 it much clearer for CLECs looking at the agreements to make
7 it very clear what states have certain things and which
8 states don't. So it's really an administrative clarity for
9 ourselves and for CLECs that also need to know the
10 differences between our 13-state operation.

11 MR. BATES: Ms. De Bella, thank you very much.

12 THE WITNESS: Thank you.

13 JUDGE RUTH: Okay. We are going to take a
14 break now. It is about 17 minutes after 10, and we will
15 break until 10:30.

16 We're off the record. Thank you.

17 (A BREAK WAS TAKEN.)

18 JUDGE RUTH: We're back on the record after a
19 short break. It looks like the Commissioners will not be
20 asking questions at this point for Ms. De Bella, but they
21 may recall you, so we'll go ahead and do the redirect, and
22 if there are questions later from the Bench, we'll do some
23 recross at that point.

24 REDIRECT EXAMINATION BY MS. MacDONALD:

25 Q. Good morning.

1 A. Good morning.

2 Q. Ms. De Bella, is it your understanding that
3 some ILECs have CNAM in a database that is separate from
4 their LIDB database?

5 A. Yes.

6 Q. And is it your testimony that that is not true
7 at Southwestern Bell?

8 A. That is correct.

9 Q. Okay. And you mentioned a decision by the
10 California Public Utilities Commission regarding LIDB. Can
11 you explain to this Commission what the California
12 Commission --

13 MR. CURTIS: Your Honor, I'm going to object
14 to this. There were no questions on California directed to
15 Ms. De Bella on cross.

16 JUDGE RUTH: I believe that's true. She
17 attempted to answer something with California and was cut
18 off.

19 Can you show me how it does tie back into what
20 she was asked on cross?

21 MS. MacDONALD: Yeah. I believe she was asked
22 about a variety of states and asked to comment on testimony
23 of another witness about Michigan and Georgia. She
24 attempted to elicit (sic) information about California and
25 was cut off.

1 JUDGE RUTH: True. The question had to do
2 with the other states, not with California. Am I correct?

3 MS. MacDONALD: His questions had to do
4 with -- about Michigan and Georgia, that is correct.

5 JUDGE RUTH: Do you have a response, counsel?

6 MR. CURTIS: No. I'll stand on that answer.

7 JUDGE RUTH: I'm going to sustain the
8 objection.

9 BY MS. MacDONALD:

10 Q. Can you tell this Commission what Southwestern
11 Bell's obligations are regarding providing access to its
12 LIDB database?

13 A. Our obligations under the FCC rules are that
14 we are to provide access to the databases at the STP and for
15 the purpose of database query and response.

16 MS. MacDONALD: Thank you. That's all the
17 questions I have.

18 JUDGE RUTH: Ms. De Bella, you may step down,
19 but at this point you're not excused.

20 THE WITNESS: Thank you.

21 JUDGE RUTH: Southwestern Bell, would you call
22 your next witness, please.

23 MS. MacDONALD: Southwestern Bell calls June
24 Burgess.

25 (Witness sworn.)

1 JUDGE RUTH: Thank you. Proceed.

2 JUNE BURGESS testified as follows:

3 DIRECT EXAMINATION BY MS. MacDONALD:

4 Q. Good morning. Can you please state your name
5 for the record?

6 A. June Burgess.

7 Q. And by whom are you employed?

8 A. I'm employed by Southwestern Bell.

9 Q. And what position do you hold at Southwestern
10 Bell?

11 A. Associate Director in the Corporate Finance
12 Operations.

13 Q. And did you prepare or cause to be prepared
14 Exhibit No. 45, which is your direct testimony?

15 A. Yes.

16 Q. Did you prepare or cause to be prepared
17 Exhibits 36NP and 36HC, your rebuttal testimony?

18 A. Yes.

19 Q. Do you have any changes to those exhibits?

20 A. Yes, I do. In my direct testimony, on page 1,
21 line 3, it should read, I am employed by Southwestern Bell
22 LP -- or excuse me -- Southwestern Bell Telephone LP doing
23 business as Southwestern Bell Telephone.

24 Also on page 1, line 21, it reads "for the
25 last seven years as a SWBT employee"; it should read "as a

1 SWBT and/or Pacific Bell employee." On page 4, also in my
2 direct, line 8, fifth word "a" should be deleted.

3 Q. Are there any other changes that you have to
4 your testimony?

5 A. No, there are not.

6 Q. And if I asked you the same questions today,
7 would your answers in Exhibits 35, 36NP and 36HC be the
8 same?

9 A. Yes, they would.

10 Q. And are those answers true and correct to the
11 best of your knowledge, information and belief?

12 A. Yes.

13 MS. MacDONALD: Your Honor, at this time I
14 would offer Exhibits 35, 36NP and 36HC.

15 JUDGE RUTH: Are there any objections to
16 Exhibit 35, the direct, 36, the NP rebuttal, and 36HC, the
17 HC rebuttal being received?

18 (No response.)

19 JUDGE RUTH: Seeing no objections, these
20 exhibits are received into the record.

21 (EXHIBIT NOS. 35, 36NP AND 36HC WERE RECEIVED
22 INTO EVIDENCE.)

23 MS. MacDONALD: Tender this witness for
24 cross-examination.

25 JUDGE RUTH: Thank you. WorldCom? And my

1 notes indicate you have estimated 25 minutes.

2 CROSS-EXAMINATION BY MR. CURTIS:

3 Q. Good morning, Ms. Burgess. My name is Lee
4 Curtis. I'm one of the attorneys representing WorldCom and
5 the other parties.

6 A. Good morning.

7 Q. Let me refer you to page 9 of your rebuttal
8 testimony, lines 5 through 7.

9 A. All right.

10 Q. And there you indicate that end users accept
11 responsibility for ABT charges when the calls are completed?

12 A. Yes.

13 Q. And, therefore, MCI should see that those end
14 users live up to their responsibilities; is that correct?

15 A. Yes.

16 Q. Can you describe for me why an individual end
17 user's promise to pay when receiving a collect call on a
18 call generated on Southwestern Bell's network for
19 Southwestern Bell's financial gain becomes a financial
20 guarantee on MCIMetro's part?

21 A. It is Southwestern Bell's position that the
22 call, even though it originates perhaps in Southwestern Bell
23 territory terminating to an MCI customer -- UNE-P in this
24 case, I'm referencing -- it is out of Southwestern Bell's
25 control at that point whether or not the end user accepts

1 the call. The end user could say no, I refuse the call.

2 MCIMetro, Worldcom, could have blocked all
3 collect calls to that number. Therefore, the ability to
4 accept or not accept the call is under the control of the
5 end user. That end user is a customer of MCIM. That end
6 user has no -- or rather Southwestern Bell has absolutely no
7 relationship with that end user.

8 Q. Let's put the shoe on the other foot. Should
9 Southwestern Bell be responsible and guarantee payments to
10 IXCs for long-distance calls received by Southwestern Bell
11 local end users?

12 A. I'm going to ask you to repeat that question.
13 There were a lot of --

14 Q. Okay. When a Southwestern Bell end-user
15 customer receives a collect call through an IXC long
16 distance, by -- is Southwestern Bell by that Southwestern
17 Bell end-user customer accepting the collect call, also
18 guaranteeing payment?

19 A. I don't believe guarantee would be the correct
20 term. We would, in fact, make every effort to bill and
21 collect that call on behalf of the carrier --

22 Q. Right.

23 A. -- depending on the carrier and the
24 circumstances.

25 Q. But if you weren't able to collect that, then

1 it simply recourses to the IXC; isn't that correct?

2 A. No, that is not correct.

3 Q. Okay. What happens if you're unable to
4 collect it on behalf of the IXC?

5 A. Southwestern Bell has a multitude of billing
6 and collection agreements --

7 Q. Right.

8 A. -- with both ILECs and IXCs; not all of them
9 involve recourse as uncollectible. Some of them do not.

10 Q. Right. And so, in those cases, the underlying
11 billing and collection agreement would determine how those
12 monies and the recourses would flow?

13 A. In some cases, yes, but it could also mean
14 that we have not collected and we eat the financial loss.

15 Q. Right. Should MCIMetro be in the business of
16 policing every one of our end user's personal obligations
17 and promises to another service provider?

18 A. I'm not sure what you mean by policing.

19 Q. Well, is it MCIMetro's obligation to ensure
20 that that customer lives up to its obligation to pay on a
21 collect call?

22 A. When MCIM decided or when they will decide in
23 Missouri to enter into the UNE-P business, MCIM is putting
24 themselves in a level playing field with the LEC. As such,
25 they're the local service provider to that end user.

1 That end user then has an expectation to
2 receive a multitude of calls unless there was some prior
3 agreement made such as, no, I don't want any collect calls
4 or MCI/WorldCom's offering to that customer was some type of
5 limitation, then yes, we believe that it is, in fact,
6 Worldcom's responsibility to pass any charges through to
7 that end user and to, in all good faith and reasonable
8 efforts, try to bill and collect for any such charges that
9 have been accepted.

10 Q. Sure. Now, on a collect call originated by a
11 Southwestern Bell customer through a Southwestern Bell
12 operator to an MCImetro end user, the only company
13 represented along that call is Southwestern Bell's operator;
14 is that correct?

15 A. Not exactly, no. We -- we don't believe that.
16 The only --

17 Q. Well, who else is on there?

18 A. An MCImetro customer.

19 Q. Okay. No --

20 A. Because they've answered the phone.

21 Q. Right. And I'm asking about a company
22 representative. Southwestern Bell is the only company
23 represented in that calling situation, is it not?

24 A. Again, I -- I would not agree. For the call
25 to be completed an end user must answer and accept. That

1 end user is a customer of MCIM, not a customer of
2 Southwestern Bell, so there are always two parties in a
3 call.

4 Q. Right. But that's not my question. The
5 MCImetro end user customer is not a company representative
6 of MCImetro, is it?

7 A. That is correct.

8 Q. The Southwestern Bell operator is a
9 representative of Southwestern Bell Telephone Company, is it
10 not?

11 A. If there's a live operator involved, yes.

12 Q. And isn't there a live operator involved in
13 this situation?

14 A. In collect calls, there is most often not a
15 live operator involved.

16 Q. Well, then, walk me through. A Southwestern
17 Bell customer wanting to make a collect call to another
18 end-user customer that happens to be -- in our example, to
19 be an MCImetro end user customer.

20 A. In most of our states and end offices in --
21 a collect call would be routed to an automated operator
22 services platform, which would prompt the end user for their
23 name so they could record it in their own voice, dial the
24 number through, and request with the originating party not
25 even hearing the call, say, you have a collect call from

1 June, do you wish to accept?

2 Q. Right. And that is a Southwestern Bell
3 provisioned automated-operator service, is it not?

4 A. In this example, yes.

5 Q. Is there any difference between it being a
6 live Southwestern Bell operator and an automated
7 Southwestern Bell operator?

8 A. The only differences would be in the time and
9 handling of the call, and perhaps even the rate of the call.

10 Q. Is that call branded?

11 A. Yes.

12 Q. It is. So the receiving party knows that this
13 is a Southwestern Bell operator calling?

14 A. The party knows it's either a Southwestern
15 Bell operator or it's a Southwestern Bell call of some
16 nature. There's a variety of recordings, but all of them to
17 the best of my knowledge have Southwestern Bell brand on
18 them.

19 Q. On page 9 of your rebuttal testimony, lines 2
20 and 3, you state that MCImetro benefits from being able to
21 offer its end users a full array of calling features
22 including the ability to accept collect calls and other ABT
23 calls. Do you see that?

24 A. Yes.

25 Q. Can you describe for me what financial benefit

1 Southwestern Bell receives from originating and transporting
2 a collect call or an ABT call?

3 A. Today we don't arise (sic) any financial
4 benefit when the call terminates to a WorldCom customer
5 because no billing and collection has taken place.

6 Q. Well, leaving aside the collectability issue
7 for right now, who is entitled to the revenue from that
8 call?

9 A. The revenue for that call -- it's rated at
10 Southwestern Bell tariffed rates. The revenue is then --
11 the call has a multitude of processes. First the call is
12 made; there has to be an acceptance. Once the call is
13 accepted and completed, there's a record made. That record
14 will then be rated, a rated record will then be sent to the
15 local service provider; in your example it's WorldCom.

16 We then will summarize -- at the end of a
17 month, we'll summarize all the rated records and send
18 WorldCom a bill. At the point that WorldCom makes payment,
19 Southwestern Bell would, in fact, be the beneficiary.

20 Q. Correct. And so, really, Southwestern Bell as
21 the originator of the call rates the calls and gets the
22 revenue from that call; is that correct?

23 A. When the bill is paid, correct.

24 Q. Just cutting it very short, is entitled to the
25 revenue from that call?

1 A. Yes.

2 Q. Okay. What does MCImetro receive for -- if it
3 does, in fact, collect on that call from its end user
4 customer?

5 A. If MCIM receives the full amount for the call,
6 then MCIM is either paid ahead of time for the bill they
7 will get for Southwestern Bell or paid for a bill that they
8 might have already paid and they get -- we -- at today's
9 date, we offer up five cents.

10 Q. It is five cents?

11 A. Yes.

12 Q. So you would agree with Mr. McKanna when he
13 represented it's a five-cents collection service that
14 MCImetro would receive?

15 A. In part.

16 Q. Did you hear him also say the average call
17 they figured about four dollars?

18 A. I did.

19 Q. Would you agree with that as an average?

20 A. In a collect call environment, that's a fair
21 assessment.

22 Q. Thank you. At page 12 of your rebuttal
23 testimony, lines 1 through 4, are you indicating there that
24 Southwestern Bell has no relationship to the MCImetro end
25 user that receives the collect call or call that originates

1 on Southwestern Bell's networks?

2 A. I'm sorry. If you could say that one more
3 time.

4 Q. Are you suggesting that Southwestern Bell has
5 no relationship to the MCImetro end user?

6 A. Yes.

7 Q. You are. Didn't Southwestern Bell establish
8 the contact to the end-user customer?

9 A. Southwestern Bell merely transported the call
10 on behalf of another end user.

11 Q. Okay. And didn't the end user promise to give
12 an assent consent to the collect call to the Southwestern
13 Bell automated operator?

14 A. Yes.

15 Q. Can you tell me again how MCImetro was a party
16 to this three-way transaction?

17 A. They're a party to the transaction the same
18 way Verizon or GTE would be a party to a similar
19 transaction. They're the provider and owner of that end
20 user. They offered local service to that end user, they
21 have the relationship. When a collect call is made to a
22 non-Southwestern Bell customer, all Southwestern Bell can do
23 and does do is pass off enough information for billing to
24 take place.

25 Q. Okay. At page 12 of your rebuttal testimony,

1 lines 5 through 7, you indicate that Southwestern Bell does
2 not affect blocking of ABT, alternately billed traffic, to a
3 competitor's end user unless the competitor orders that
4 blocking to occur; is that correct?

5 A. Yes, with perhaps one exception.

6 Q. What would that be?

7 A. Fraud.

8 Q. Okay. Can you cite any federal or state rules
9 or regulations that would prevent Southwestern Bell from
10 blocking calls that originate on its network where
11 Southwestern Bell has no viable way to bill the calls or has
12 a history of having been unable to bill those calls?

13 A. I do not believe I can cite a particular
14 reference at this time.

15 Q. So there's no prohibition to Southwestern Bell
16 initiating blocking on its own?

17 A. I cannot cite a particular reference. It is
18 my understanding that since it is not our customer, just
19 like I cannot implement blocking on an AT&T customer or a
20 Verizon customer, it's not our customer, we don't own the
21 dial tone. That would be like me adding caller ID to one of
22 WorldCom's customers. I don't have the authority to do
23 that. I also do not have the authority to just arbitrarily
24 order blocking. We have asked for that ability.

25 Q. Have you asked for that ability? You don't

1 use that blocking ability now?

2 A. Under an interim agreement that we have with
3 WorldCom, yes.

4 Q. Do you?

5 A. Under an interim agreement in Texas.

6 Q. In Texas. Okay.

7 A. We have no such agreement in Missouri.

8 Q. You could enter into such an agreement in
9 Missouri, could you not?

10 A. Yes. SBC would not be opposed to entering
11 into a similar agreement.

12 Q. Okay. At page 4, lines 15 and 16 of your
13 rebuttal testimony, you state that for end users to be
14 responsible for ABT charges, WorldCom must first provide
15 them with a bill; is that correct?

16 A. I'm sorry. Did you say page 4?

17 Q. Uh-huh.

18 A. And the lines again?

19 Q. 15 and 16.

20 A. Yes. I'm sorry. Could you repeat the
21 question.

22 Q. You state that for end users to be responsible
23 for ABT charges, WorldCom must first provide them with a
24 bill; is that correct?

25 A. Yes.

1 Q. Okay. Can you explain why Southwestern Bell
2 completes calls that are originating on Southwestern Bell's
3 network with instructions to bill MCImetro local end users
4 when Southwestern Bell knows MCImetro does not bill for
5 those charges and Southwestern Bell knows that there is no
6 negotiated billing and collection agreement in place?

7 A. Southwestern Bell as a local exchange carrier
8 is obligated to complete all calls placed without blocking
9 or some other indicator in LIDB or an absence of fraud.

10 Q. Right. Wouldn't you agree with me,
11 Ms. Burgess, that it would be in the best interest of both
12 companies to enter into a billing and collection agreement
13 in the context of the interconnection agreement to resolve
14 all these issues that we're going around and around about?

15 A. Southwestern Bell is not opposed to entering
16 into an agreement with WorldCom.

17 Q. If this Commission were to order you to do so,
18 would you be willing to do that?

19 A. Southwestern Bell would be happy to enter into
20 agreements with WorldCom; however, the proposed agreement
21 that WorldCom presented in Attachment 27 cannot be
22 implemented as indicated. We would be in immediate breach
23 of contract, as there are terms and conditions that are
24 technically unfeasible.

25 Q. Okay. Turn to page 14 of your rebuttal

1 testimony. And at lines 1 through 3 you indicate that
2 Southwestern Bell does not agree that truth-in-billing laws
3 require MCImetro to place Southwestern Bell's name on end
4 user bills; is that correct?

5 A. Yes.

6 Q. Can you cite the reasons why Southwestern Bell
7 does not believe the truth in billing act does not require
8 the billing agent to indicate the service provider of the
9 call records?

10 A. It is our interpretation of the truth in
11 billing act that the service provider in this case is
12 WorldCom; they are the local service provider. It is the
13 same when Verizon gives us rated records to put on our end
14 user bills. We do not show them Verizon records, we merely
15 show them as alternately billed calls. We feel the same
16 rules would apply in your case.

17 Q. So even though the call is originated from a
18 Southwestern Bell customer, on --

19 A. Yes.

20 Q. -- on Southwestern Bell's network --

21 A. Yes, but we are not a carrier, we are a local
22 exchange provider. Therefore, the local service provider in
23 a UNE-P environment is, in fact, WorldCom.

24 Q. Now is there a charge for provisioning a
25 collect call to your Southwestern Bell customer who would

1 originate that call?

2 A. No, there is not. There's a -- I'm sorry.

3 Ask the question again, please.

4 Q. Do you charge your Southwestern Bell customer
5 who contacts you to make a collect call?

6 A. No, we do not.

7 Q. You do not. That is part of the contract
8 agreement that you have with your local customer; is that
9 correct?

10 A. Not necessarily a contract agreement, but any
11 call that originates from their phone, unless otherwise toll
12 blocked or some other terms and conditions on their line
13 features and functions, then yes, we will make every attempt
14 to possible to complete any call from our SWBT customer's
15 end users.

16 Q. On page 10 of your rebuttal testimony,
17 lines 17 through 19, you indicate that the settlement
18 process that Southwestern Bell proposed for ABT calls would
19 work both ways; is that correct?

20 A. Yes.

21 Q. By both ways, do you APX appendix distribute
22 settle bill and collect for MCImetro ABS traffic that is
23 billable to Southwestern Bell end users?

24 A. Yes.

25 Q. Can you point to the terms and conditions

1 contained in Southwestern Bell's proposed Appendix ABS that
2 provides for the equal and reciprocal treatment of MCImetro
3 APX?

4 A. We did not delineate that particular condition
5 in our appendix. However, we are open to adding such terms
6 and conditions.

7 Q. So it's not -- the reciprocity provision that
8 you reference is not in Southwestern Bell's?

9 A. It is not in written form. It is part of the
10 message exchange process. It is part of the standard
11 guidelines for receiving and sending DUF. So we felt it was
12 a byproduct of how DUF works and how UNE-P works.
13 Therefore, we did not have particular attention paid to it
14 in the APX appendix that we proposed.

15 Q. Okay. Referring you to page 4 of your
16 rebuttal testimony, line 18, you indicate that -- there that
17 MCImetro has improperly defined uncollectibles?

18 A. Yes.

19 Q. My question would be, what is improper about
20 their definition?

21 A. Relative to our proposed language in our APX
22 appendix, when you put call records that are deemed
23 unbillable, rejects, adjustments into uncollectibles, you,
24 in fact, make the 10 percent that we proposed obviously look
25 too low. It was our intent -- and we recognize that our

1 language could have been clearer in our appendix -- but the
2 unbillables, adjustments, rejects all come off the top.

3 Our intent in the appendix was to put a cap on
4 just those that are truly uncollectibles; and in order for a
5 call to be uncollectible, it has to at least be billed.

6 Q. Does Southwestern Bell define uncollectibles
7 any differently when they are acting as the billing agent
8 under the MCI/Southwestern Bell billing and collection
9 agreement?

10 A. In the interexchange billing collection
11 agreement?

12 Q. Yes, in the billing and collection agreement.

13 A. I am not intimately familiar with that
14 particular interexchange billing and collection agreement.

15 Q. If it were -- if Southwestern Bell had a
16 different definition under that billing and collection
17 agreement, would that cause you some concern?

18 A. No.

19 Q. It wouldn't? So different definitions for
20 different agreements?

21 A. I think we all are --

22 Q. Okay.

23 A. Not necessarily. We all agree what a reject
24 is. We all agree what an adjustment is. For the purpose of
25 the APX appendix, that was only pertaining to a UNE-P

1 provider. It is only applicable in a UNE-P provider, which
2 is a unique and new type of service that we all now have.
3 As such, we felt it was even more important that we
4 understand what true-up uncollectibles is, where we might
5 have a more robust definition in another billing and
6 collection agreement.

7 Q. On page 14 of your rebuttal at lines 24
8 through 26, you indicate there that Southwestern Bell cannot
9 implement any changes on-- to its own clearinghouse and CMDS
10 procedures?

11 A. Relative to UNE-P, yes.

12 Q. Right. And doesn't Southwestern Bell control
13 the clearinghouse process?

14 A. We are party to the clearinghouse process
15 along with other parties.

16 Q. But you're saying you don't control the
17 process?

18 A. I -- I do not believe so.

19 Q. Isn't Southwestern Bell the provider of all
20 clearinghouse services in the Southwestern Bell region?

21 A. I am not aware of that.

22 Q. How would a CLEC such as MCImetro obtain
23 settlement of it's ABT-billable traffic to Southwestern Bell
24 or any other LEC or CLEC within the Southwestern Bell
25 region?

1 A. I can answer that question relative to UNE-P
2 traffic only.

3 Q. Okay. That's fine.

4 A. Relative to UNE-P traffic, what we propose is,
5 in fact, a reciprocal agreement. We will send you rated
6 messages for any ABS calls with the expectation that you
7 will bill and collect and we expect that you will do the
8 same.

9 Any call that originates from a WorldCom end
10 user, again, in the UNE-P environment, we would expect that
11 you would rate them at whatever rate you deem appropriate,
12 send it back to us and we will bill and collect for you.
13 It's a clearinghouse-like process, but it doesn't use the
14 official capital-C clearinghouse process. I'm sorry.

15 Q. Are you familiar with the term "CATS and
16 nonCATS"?

17 A. Yes, I am.

18 Q. You've seen that in testimony?

19 A. Yes, I have.

20 Q. Are you saying that Southwestern Bell is
21 unable to enter into an agreement with MCImetro to
22 distribute and settle MCImetro's nonCATS ABT?

23 A. Could you say that again, please? I'm sorry.

24 Q. Let me rephrase it a little bit. Are you
25 saying that are you unable -- Southwestern Bell is unable to

1 enter into an agreement with MCImetro to distribute and
2 settle MCImetro nonCATS ABT traffic that is billable to
3 Southwestern Bell and participating LEC and CLEC end users?

4 A. And let me ask a clarifying question. So an
5 example would be a collect call from one of your end users
6 to a Southwestern Bell end user?

7 Q. Could be one, yes.

8 A. Okay. As a nonCATS call would be a collect
9 call?

10 Q. Right. Right.

11 A. My answer would be -- is, quite frankly, we
12 don't need a billing and collection agreement to do that.
13 We will do that today. The minute we receive a rated
14 message from you, we will post it through to one of our end
15 users. We have yet to see any rated messages back from MCI
16 WorldCom.

17 Q. Okay. At the same time you're requiring
18 MCImetro to pay or settle on ABT traffic received by
19 Southwestern Bell through the CMDS and clearinghouse
20 processes that are billable to MCImetro end users, are you
21 not?

22 A. No.

23 Q. You disagree with that?

24 A. Yes, I do. We're not using -- a CMDS hosting
25 doesn't work in a UNE-P environment. The only thing we use

1 in a UNE-P environment are our rated DUF records. So in
2 that context, then, we expect to send you any rated calls
3 less the nickel on your summary bill. We expect you to bill
4 and collect and remit back payment less a cap on
5 uncollectibles per our proposed language, and that's above
6 and beyond any rejects, adjustments or unbillables that may
7 have occurred.

8 MR. CURTIS: How am I doing on time?

9 JUDGE RUTH: You have two minutes.

10 BY MR. CURTIS:

11 Q. At page 4 of your rebuttal testimony, lines 19
12 through 21, you indicate there that you strongly disagree
13 with MCImetro's full recourse of uncollectibles, and that
14 those should be capped at 10 percent; is that correct?

15 A. That is correct.

16 Q. You state you disagree but did you not provide
17 any reasons. Can you enumerate the reasons why 10 percent
18 is not an appropriate, reasonable number?

19 A. Why it is not appropriate? I'm sorry.

20 Q. Right. Well, you just disagreed. I would
21 have asked you to enumerate your reasons or explain.

22 A. Why I feel that you're wrong and we're right?

23 Q. Yes.

24 A. I'm sorry, I have to get real basic here. I'm
25 sorry. It's been a long week.

1 Because in your testimony, direct testimony of
2 McKanna and others, there was so much attention spent on
3 10 percent including what we call a nonissue such as rejects
4 and unbillables, we really -- I strongly feel -- we -- I,
5 that the 10 percent is more than fair when you take out any
6 and all rejects, adjustments and unbillables.

7 When you take that out first, then you have --
8 now you have a brand new percent of 10 percent that's
9 truly uncollectible. And I would also like to state for
10 the record that SBC is not opposed to revisiting that
11 10 percent. As of today, since there has been no billing of
12 end users, there is no track record, there's no history, MCI
13 WorldCom does -- has not presented any statistics relative
14 to intraLATA collect calls that would show what the
15 percentages might be.

16 Q. So that could be an item to negotiate on the
17 billing and collection agreement?

18 A. We are happy to negotiate.

19 Q. Thank you.

20 JUDGE RUTH: Staff.

21 MR. BATES: Thank you, your Honor.

22 CROSS-EXAMINATION BY MR. BATES:

23 Q. Good morning, Ms. Burgess.

24 A. Good morning. If you'll allow me just a
25 moment?

1 Q. In response to a question or questions,
2 actually, from Mr. Curtis, I believe that you stated that
3 there are portions of WorldCom's Attachment 27 that you are
4 technically -- that are technically infeasible or impossible
5 for Southwestern Bell to execute. Did I understand you
6 correctly?

7 A. Yes, you did.

8 Q. Okay. Could you please give specific
9 references to those sections?

10 A. Yes. Page 4, Section 2.3.10, Section 5.3.1,
11 Section 6.5.2.4.

12 Q. And why are these particular sections
13 technically infeasible or impossible?

14 A. The first section I referenced talks to
15 messages originating from federal, state, county and local
16 correctional facilities. We do not have a way of blocking a
17 call or not sending a rated DUF to MCIM based on what type
18 of business that call might have originated from.

19 The other parts in here that I cite as not
20 technically feasible have to do with the language -- and it
21 may be semantics, but the language as stated in this
22 particular appendix indicate a desire to customize the DUF
23 both in adding unique indicators, which we do not have the
24 technical capability today of doing, and of coming up with
25 perhaps unique timing of the feed.

1 It also references CMDS, which is technically
2 incompatible with UNE-P. That's a summary.

3 Q. Okay. Regarding Issue 30 --

4 A. Yes.

5 Q. -- would you agree that the terminating number
6 has consented to pay for the alternately billed call to the
7 original operator, that when that happens, that a business
8 relationship could have been formed with the originating
9 company?

10 A. No, I do not agree with that.

11 Q. And why not?

12 A. There is no opportunity in that -- there is
13 no opportunity in the course of that call to establish a
14 business relationship. Especially when you have an
15 automated operator, there's no opportunity for that end user
16 to provide billing name and address, credit history,
17 deposits, anything like that. So there's truly no
18 opportunity to establish a business relationship, only to
19 establish an implied willingness to pay by saying, yes, I
20 accept the call.

21 Q. To follow up on that a little bit, if
22 Southwestern Bell is the originating operator either live or
23 electronic here, then would you agree that the terminating
24 number has consented to a business relationship in which it
25 would be appropriate for Southwestern Bell to bill for that

1 call?

2 A. No, I do not agree with that statement.

3 Q. Okay. And why not?

4 A. Because that end user purchased their dial
5 tone from someone other than Southwestern Bell, and in years
6 past, UNE-P has only been around, as we all know, for just a
7 few years, all calls and charges come from the local service
8 provider.

9 In recent years, it is not uncommon for an end
10 user to receive, say, a bill from some interexchange
11 carrier, but it is not common -- in fact, I do not know of
12 any instances where an end user receives another bill from a
13 LEC or ILEC. They receive a bill from their local exchange
14 carrier and perhaps, based on their travel needs or dialing
15 patterns, they might receive bills from interexchange
16 carriers.

17 Q. Now, for my benefit, could you once again
18 explain the difference between uncollectibles, unbillables
19 and rejects?

20 A. The most simple explanation I can make is an
21 unbillable is any call record whatsoever that can't be
22 billed. It's unbillable. Now, that includes rejects, which
23 might be records that have incomplete information, they
24 might be records that are duplicates, they can, in fact, be
25 records that are errored out due to some up-front edits and

1 I real -- well, I won't say common -- a possible reason
2 might be timing with the community, end user community. The
3 way it is today, we have a ton of churn.

4 So I sign up with MCI today and I'm very
5 fickle, so tomorrow I decide to go to AT&T. In the
6 meanwhile, I've never stopped my calls or receiving calls.
7 So because our DUF process is a daily process, we could very
8 well send to MCImetro call records that don't really belong
9 to them, and those are rejects. So we would, in fact,
10 include those as unbillable because we do not expect a CLEC
11 to bill for a call record their end user didn't make when
12 they weren't their end user.

13 An uncollectible is after a call has been
14 billed, and that's -- I've got to keep emphasizing that it
15 must be billed first. Once it is billed, if all normal
16 collection attempts were made and it still cannot be paid or
17 will not be paid for whatever reason, then that is a true
18 uncollectible.

19 Q. And about rejects?

20 A. Rejects are also unbillables. Adjustments
21 could be unbillables.

22 Q. So they're part of unbillables and not a
23 separate item by themselves?

24 A. That is correct.

25 MR. BATES: Thank you for explaining. Thank

1 you very much.

2 JUDGE RUTH: Ms. Burgess, I do anticipate that
3 there will be a few Commissioner questions, but since they
4 are still on agenda, we will move on to redirect and I will
5 have to recall you later for that.

6 THE WITNESS: All right.

7 REDIRECT EXAMINATION BY MS. MacDONALD:

8 Q. I'm going to try to be really brief here. You
9 answered a series of questions with Mr. Lumley -- I mean
10 with Mr. Curtis regarding the financial incentive that MCI
11 has for its end user accepting a collect call; is that
12 correct?

13 A. Yes.

14 Q. And would it be fair to say that WorldCom
15 could assess its end user charges associated with its end
16 user accepting that collect call?

17 A. Yes, CLECs and other providers of service have
18 options. They could either charge some type of monthly line
19 charge for the privilege of passing through these types of
20 calls or they might even want to add a surcharge, which we
21 have several CLECs that do add surcharges on top of the
22 calls to, in fact, help them recover any additional costs or
23 make them a profit.

24 Q. Okay. And when they add the surcharge, would
25 it be fair to say that they have to advise their customer

1 that they're doing that?

2 A. That is correct.

3 MS. MacDONALD: That's all the questions I
4 have.

5 JUDGE RUTH: You may step down, but please
6 remain available. We will move on to the next witness,
7 which I believe is Southwestern Bell's.

8 MS. MacDONALD: We'll call Roman Smith.

9 (Witness sworn.)

10 JUDGE RUTH: Thank you. Please proceed,
11 Ms. MacDonald.

12 ROMAN SMITH testified as follows:

13 DIRECT EXAMINATION BY MS. MacDONALD:

14 Q. Good morning. Can you please state your name
15 for the record?

16 A. Yes, Roman A. Smith.

17 Q. Mr. Smith, can you tell the Commission by whom
18 you're employed?

19 A. I am employed with Southwestern Bell Telephone
20 LP doing business as Southwestern Bell Telephone.

21 Q. And what position do you hold at Southwestern
22 Bell?

23 A. I am an Associate Director of Regulatory
24 Support.

25 Q. And did you prepare or cause to be prepared

1 Exhibit No. 37, which is your direct testimony?

2 A. Yes, I did.

3 Q. Did you prepare or cause to be prepared

4 Exhibit No. 38, which is your rebuttal testimony?

5 A. Yes, I did.

6 Q. Do you have any changes to those exhibits?

7 A. Yes, I do have a couple of minor changes;

8 actually one substantive change. In my direct testimony on

9 page 1, line 4, I would like to -- where it says I am

10 employed by Southwestern Bell Telephone Company, I would

11 like to change that to "I am employed by Southwestern Bell

12 Telephone LP, doing business as Southwestern Bell

13 Telephone."

14 The two substantive changes I have, one's in

15 my direct and one's in my rebuttal. In my direct on page 3,

16 the footnote at the bottom, the reference, the North

17 Carolina decision, the page numbers that indicates 79

18 through 81, that should be 96 through 98. That same

19 footnote is in my rebuttal testimony on page 5 at the

20 bottom, and it should also indicate 96-98 as opposed to 79

21 through 81.

22 Q. And if I asked you the questions that are

23 contained in Exhibits 37 and 38 today, would your answers be

24 the same with those corrections?

25 A. Yes, they would.

1 Q. And are those answers true to the best of your
2 knowledge, information and belief?

3 A. Yes, they are.

4 MS. MacDONALD: I would offer Exhibits 37 and
5 38 and tender this witness for cross-examination.

6 JUDGE RUTH: Do the parties have any
7 objections to Exhibits 37 and 38, Mr. Smith's direct and
8 rebuttal testimony being received?

9 (No response.)

10 JUDGE RUTH: Seeing no objections, the
11 documents are received into the record.

12 (EXHIBIT NOS. 37 AND 38 WERE RECEIVED INTO
13 EVIDENCE.)

14 JUDGE RUTH: WorldCom, you have allotted
15 30 minutes for cross.

16 CROSS-EXAMINATION BY MR. CURTIS:

17 Q. Good morning, Mr. Smith.

18 A. Good morning.

19 Q. My name is Lee Curtis. I'm one of the
20 attorneys representing WorldCom parties.

21 Tell me, in your relationship with
22 Ms. Burgess, do you report to her or does she report to you
23 or neither?

24 A. Neither.

25 Q. Neither?

1 A. I am a -- I work in the regulatory division.
2 Ms. Burgess is actually more the technical witness involved
3 with the ABT.

4 Q. Great. Let me start -- some of these
5 questions may sound familiar if you were in the room and
6 heard Ms. Burgess. Let me refer you to page 8, lines 11 and
7 12 of your rebuttal testimony, and there you state that you
8 disagree with MCImetro's assertion that MCImetro is not
9 providing telephone service. Do you see that?

10 A. Yes, sir.

11 Q. Can you explain to me how MCImetro would be
12 providing the ABT service for a collect call, for instance,
13 if it originates from Southwestern Bell's PIC'd line?

14 A. Yes, as Mrs. Burgess has explained and it is
15 my -- also my position, WorldCom is providing the local
16 service to that customer, and, therefore, it is enabling
17 that customer to accept, to have the ability to accept
18 alternately billed calls.

19 Q. So that's the only reason? That's the only
20 basis for it?

21 A. Well, yes. I mean, WorldCom is the local
22 service provider. I mean, going to further clarify that,
23 the end user has picked up the phone to establish that
24 business relationship with WorldCom. They have asked
25 WorldCom to be their local certificate service provider.

1 The end user never picked up the phone to ask Southwestern
2 Bell to provide them any service.

3 Q. Well, Southwestern Bell did contact MCImetro's
4 end user regarding the collect call in the situation we're
5 using of a Southwestern Bell customer originated a collect
6 call to an MCImetro end user? MCImetro's end-user customer
7 did not contact Southwestern Bell's operator; it was the
8 other way around, wasn't it?

9 A. That is correct. However, it's
10 Southwestern -- I mean, it -- excuse me, it's WorldCom's end
11 user that authorized and accepted those charges.

12 Q. Can you point me to something in MCImetro's
13 customer service agreement with its end-user customer that
14 states that MCImetro will be liable and obligated to collect
15 revenues on all billed calls to that number?

16 A. I am not familiar with the relationship that
17 MCI has with their end users.

18 Q. So there's nothing external to this situation,
19 either a tariff or contract, that would cause you to think
20 that MCImetro's obligated to collect the revenue on that?

21 A. Well, I believe as Ms. Burgess says, it's been
22 our position this whole time that, again, it is -- WorldCom
23 has provided that local service.

24 I'm kind of baffled to understand why MCI
25 would even want Southwestern Bell to have a relationship

1 with that end user, you know, when Southwestern -- when
2 WorldCom wanted to be in the local service market, the end
3 user accepted WorldCom as their local service provider.

4 Q. Sure.

5 A. If WorldCom would like Southwestern Bell to
6 establish a business relationship with that end user, I'm
7 sure we would be happy to.

8 Q. Isn't Southwestern Bell the service provider
9 in a typical collect call situation where it's a
10 Southwestern Bell customer who's originating the collect
11 call through a Southwestern Bell operator, automated or
12 otherwise?

13 A. That is correct.

14 Q. Okay. And Southwestern Bell rates the call?

15 A. That is correct.

16 Q. And doesn't Southwestern Bell get the
17 overwhelming majority of the revenue from that call?

18 A. Well, I think that -- a couple of -- a couple
19 of answers here.

20 Q. I think that's an easy enough answer for a yes
21 or no.

22 A. Well, I think that -- I think that kind of
23 goes further than that because I think it depends on MCI's
24 business decisions and their own company. You know, if MCI
25 would like to charge an additive --

1 MR. CURTIS: Your Honor, I think he can answer
2 that question yes or no.

3 JUDGE RUTH: You have a comment?

4 MS. MacDONALD: I respectfully disagree that
5 he can answer that question with yes or no, and I think we
6 should allow our witness to be able to answer that question.

7 MR. CURTIS: Maybe I can break up the question
8 again.

9 JUDGE RUTH: Let's break it up in pieces and
10 we'll see if you still have the same objection.

11 BY MR. CURTIS:

12 Q. Doesn't Southwestern Bell rate the call in a
13 collect call situation originated by it?

14 A. That is correct.

15 Q. Okay. And doesn't -- isn't Southwestern Bell
16 entitled to the overwhelming majority of the revenue derived
17 from that collect call?

18 A. Again, the word "overwhelming," that would
19 depend on how MCI would rate that call.

20 Q. How about over 95 percent of the revenue?

21 A. I can't give a percentage because I don't know
22 MCI's business plan and how they may rate that call to
23 recover their costs to their end user.

24 Q. Assuming MCImetro does not put a surcharge as
25 Ms. Burgess suggested on its end-user customer for collect

1 calls, MCImetro would be entitled to accept -- to receive
2 five cents, would it not, on collection of that bill?

3 A. In your assumption, if MCI decided in their
4 own business plan not to put an additive to their end user,
5 yes, MCI would only receive a nickel.

6 Q. And did you hear Ms. Burgess agree with me
7 that Mr. McKanna's four dollars for an average collect call
8 was a reasonable number?

9 A. Yes, I would agree with that.

10 Q. So under that situation, Southwestern Bell
11 would be receiving \$3.95 on a \$4 call and MCImetro, again
12 assuming no additive would be surcharged by MCImetro, would
13 be receiving a nickel; is that correct?

14 A. Again, yes. Under your assumption, yes, that
15 is correct.

16 Q. Would you not agree that that is an
17 overwhelming majority of the revenue flowing to Southwestern
18 Bell on that call?

19 A. Again, under your assumption with MCI and
20 their business plan not to add an additive to their end
21 user, yes, we would be receiving the overwhelming majority.

22 Q. And that actually translates to about
23 98 percent of the revenue for the call?

24 A. I would agree with you on that.

25 Q. Thank you.

1 At page 8, lines 24 and 25 of your rebuttal
2 testimony, you state that MCImetro is responsible for
3 billing such calls to its end users.

4 A. Yes.

5 Q. Why is it responsible for that billing, absent
6 a billing and collection agreement?

7 A. Well, I think it just gets back to the
8 fundamental -- fundamental differences that we have with
9 WorldCom is that we believe that WorldCom is the local
10 service provider; they have the responsibility to bill that
11 end user for that call.

12 Q. Sure, but anything specific that obligates
13 WorldCom to collect that bill absent a billing and
14 collection agreement, absent a tariff to that effect?

15 A. I mean, I guess I go back to my same
16 answers, that it's -- you know, we don't have that billing
17 relationship with that end user. We don't have a
18 relationship, period. So we do -- we would not bill them.

19 Q. You did establish some sort of a relationship,
20 wouldn't you agree with me, when your operator called?

21 A. Again, as Ms. Burgess clearly indicated, you
22 know, especially in an automated situation, we did not
23 establish a business relationship with that end user. And
24 again I'm baffled --

25 Q. Is that because it was an automated call and

1 not a live call?

2 A. I believe either way. I -- I don't believe
3 even if it was a live call we would be establishing a
4 business relationship with the end user, we would just
5 merely transport the call and ask them if they would accept
6 the charges.

7 Q. At page 17, lines 3 through 5 of your rebuttal
8 testimony, you state that -- you indicate that it should be
9 MCImetro's responsibility to develop a pricing plan to
10 recover the cost of ABT calls from which MCImetro end users
11 allegedly accept billings; is that correct?

12 A. That is correct.

13 Q. Now, is this kind of getting back to what
14 Ms. Burgess was suggesting, that MCImetro has the right to
15 put a surcharge on its end user customers for whenever they
16 accept a collect call?

17 A. I believe that is entirely in MCI's
18 capabilities to do that, if that's part of their business

19 Q. Does Southwestern Bell do that?

20 A. I am not aware of that.

21 Q. So you're saying you don't think they do?

22 A. I am not aware of that.

23 Q. One way or another?

24 A. I am not sure what we do on that side of the
25 business, as far as we add -- if we add --

1 Q. This is your area of expertise? We're talking
2 about ABT collect calls and you can't tell me what
3 Southwestern Bell does?

4 A. My understanding in our business practice, we
5 basically charge the tariffed rate. But again, that's our
6 own business decision to do that, and that would be up to
7 MCI to do whatever they would like.

8 Q. And my question is: Does Southwestern Bell
9 have a tariffed surcharge on its end user customers when
10 they accept a collect call?

11 A. As far as I know, I do not think so.

12 Q. Do you know if it is a common practice in the
13 telecommunications industry?

14 A. Sir, I do not know that.

15 Q. At page 8 of your rebuttal testimony, lines 15
16 through 19, you claim generally that WorldCom could very
17 well earn profits on ABT calls that are originated on the
18 Southwestern Bell network and billed to MCImetro end users?

19 A. Yes.

20 Q. How would that work? Are we back to the issue
21 of our -- we can surcharge them or can we earn more than a
22 nickel?

23 A. Again, as I'm not familiar with WorldCom's
24 business plan or how they bill their end users, but again,
25 that is entirely up to them. They -- you know, it is their

1 responsibility; they got into the local service market.

2 It's their responsibility to bill their users. If they need
3 to recover the costs for those calls, then they should do
4 so.

5 Q. Let's move to the blocking issue. At page 9
6 of your rebuttal testimony, beginning at line 4, you
7 indicate that even though MCImetro will allow Southwestern
8 Bell to block all of MCImetro end users from receiving ABT
9 that originates on Southwestern Bell's network, this is not
10 sufficient to protect Southwestern Bell?

11 A. I'm sorry. I was trying to get that at the
12 same time. Could you repeat the question?

13 Q. Sure. You indicate that even though MCImetro
14 will allow Southwestern Bell to block all of MCImetro end
15 users from receiving ABT traffic that originates on
16 Southwestern Bell's network, this is not sufficient to
17 protect Southwestern Bell.

18 Is that what you're claiming there?

19 A. Well, I believe since that's not our end user,
20 I don't believe it would be Southwestern Bell's --

21 Q. That's not my question. Are you saying that
22 that is not sufficient to protect Southwestern Bell?

23 A. Well, in Mr. McKanna's statements, he says
24 that we can block with caveats, and the caveat was that we
25 cannot do an entire blocking for IXC-type calls.

1 Q. I'm talking about your testimony at page 9 at
2 line 4.

3 A. Right. And it goes on to say, as long as we
4 are not able to block WorldCom end users to receive IXC
5 collect calls.

6 Q. Right. But why wouldn't that be sufficient to
7 protect Southwestern Bell on uncollectibles?

8 A. Well, No. 1, the options for blocking. We
9 only have the toll bill exception blocking available, and
10 that blocks all collect calls, period. And we do not have
11 the ability to separate out between IXC-type calls and local
12 collect calls.

13 And in addition to that, I don't believe it
14 would resolve the problem at hand.

15 Q. Well, why would Southwestern Bell block ABT
16 traffic that does not originate on its network?

17 A. Could you rephrase the question? I'm sorry.

18 Q. Why should Southwestern Bell block ABT traffic
19 that does not originate on its own network?

20 A. Well, from my understanding -- and June may be
21 better to answer this question from a technical aspect --
22 the toll bill exception blocking option that we provide to
23 the CLECs and to end users is just -- it's just not
24 available. I mean, in other words, it only -- it blocks all
25 collect calls. And I don't know the technical aspects of

1 why it does that, but there's not a way to differentiate
2 that.

3 Q. On page 9 of your rebuttal, lines 14 through
4 15, you state that it's WorldCom's responsibility to follow
5 the process of submitting orders to Southwestern Bell to
6 block MCI metro end users upon receiving the billing
7 associated with ABT calls. Do you see that?

8 A. Lines 14 to 15?

9 Q. Correct.

10 A. Yes.

11 Q. Is there some rule that states Southwestern
12 Bell or any other local or LD carrier cannot protect its
13 network by disallowing calls they have no way of billing or
14 collecting?

15 A. I guess I don't understand your question.

16 Q. Are there any rules or regulations prohibiting
17 you from blocking?

18 A. Well, as I stated before, I don't believe so.
19 As far as our own end users, we could place a blocking
20 because we have that relationship with them. However, we
21 cannot block an MCI end user. That's not our business
22 relationship. I don't believe MCI would want us to block
23 their end user.

24 Q. That's not my question. Are there any rules
25 or regulations prohibiting you from blocking?

1 A. Not that I'm -- not that I'm aware of.

2 Q. That's all I need to know. Page 10 of your
3 rebuttal, lines 10 through 12, you state that it's
4 unreasonable to require Southwestern Bell to develop a
5 blocking option so that an MCImetro end user could continue
6 to receive IXC collect and third-party calls; is that
7 correct?

8 A. That is correct.

9 Q. Why should protecting Southwestern Bell's
10 network disallow any other IXC and LECs and CLECs with whom
11 MCImetro might have negotiated a billing and collection
12 agreement from completing their calls?

13 A. Well, I believe my statement here is clear in
14 the fact that we have one type of blocking option available,
15 and we do not believe that it is our responsibility to
16 develop another type of blocking to meet MCI's needs. We --

17 Q. So that's your problem, isn't it? I mean, if
18 you wanted to have a discrete blocking procedure in place,
19 you could develop one?

20 A. Well, I would not characterize it as our
21 problem, because the whole fundamental question here is who
22 is the provider of that call and responsible for that
23 payment, and that is MCI's local service customer.

24 Q. And we disagree on that, don't we?

25 A. Right.

1 Q. Page 17 of your rebuttal, lines 5 through 8,
2 you indicate that Southwestern Bell is exposed to
3 unwarranted financial risk and that financial -- and that
4 Southwestern Bell is losing substantial revenues on calls
5 transported and originated by Southwestern Bell; is that
6 correct?

7 A. That is correct.

8 Q. Did Southwestern Bell establish billing and
9 collection arrangements before allowing Southwestern Bell
10 end users to originate calls on Southwestern Bell's network
11 and allow them to bill calls to MCImetro end users?

12 A. That was a long question.

13 Q. Okay.

14 A. Could you please repeat?

15 Q. Sure.

16 Did Southwestern Bell establish billing and
17 collection arrangements before allowing Southwestern Bell
18 end users to originate calls on Southwestern Bell's network
19 and allowing them to bill calls to MCImetro end users?

20 A. No, not that I'm aware of.

21 Q. Okay. If Southwestern Bell knew that it did
22 not have billing and collection arrangements in place with
23 MCImetro, why not allow the completion of these calls
24 originating from Southwestern Bell's network?

25 A. Are you suggesting that -- I'm sorry. Please

1 repeat.

2 Q. If you knew you didn't have a billing and
3 collection agreement with MCImetro in advance, and we know
4 in this situation in this interconnection agreement, why
5 couldn't you simply disallow the calls from being made to
6 MCImetro end users in the first place?

7 A. And that's what I thought you were asking.

8 As Ms. Burgess has explained, that wouldn't --
9 that's not a normal practice in the telecommunications
10 world. I mean, when you are that service provider to that
11 customer, you know, our service provider to our customers,
12 we're going to allow them to make the calls they need to
13 make.

14 It is not our customer that has accepted any
15 charges or authorized any calls. It is the one on -- it is
16 the terminating person that has authorized and accepted that
17 call. They consciously authorized and accepted those
18 charges, and they fully expect those charges to be on their
19 local service provider bill.

20 Q. But you indicated earlier that Southwestern
21 Bell is exposed to unwarranted financial risk and is losing
22 substantial revenues?

23 A. That is correct.

24 Q. And you have an ability, do you not, to
25 protect against those losses by taking the action we're

1 talking about?

2 A. I'm not aware of the technical aspects of
3 doing that.

4 Q. By failing to take those blocking measures,
5 isn't Southwestern Bell going ahead and willingly subjecting
6 itself to those financial risks?

7 A. I believe we get into the situation where -- I
8 mean, we're talking about collect calls. Let me -- let me
9 just kind of back up here. We're talking about collect
10 calls from any place, whether it's a payphone, whether it's
11 a phone in the home. I mean, I don't believe it would be in
12 the best interests of the public to block all calls from
13 being -- block all telephones in Missouri from being able to
14 make collect calls anywhere. That would not be in the
15 public interest.

16 Q. I agree with you.

17 A. So I don't think -- I think the answer to your
18 question is, no, Southwestern Bell would not be interested
19 in doing that on their phones.

20 Q. Didn't Southwestern Bell have the option of
21 developing a discrete blocking procedure? If you're having
22 particular problems with customers from a particular company
23 in which you maybe don't have a billing and collection
24 agreement or have a history of having difficulty, cannot you
25 discretely block as opposed to blocking the universe?

1 A. We have -- well, we have two -- we had two
2 blocking options available. First of all, our block -- let
3 me just kind of clarify. The toll bill exception blocking
4 is our blocking option that we are trying to get on the
5 terminating side of the call. We also -- to try to
6 alleviate the problem that we have right now, we attempted
7 to do a blocking option that only blocked calls from certain
8 payphone -- prison facility payphones.

9 We attempted to do that to try to alleviate
10 the risk, we offered the CLECs the ability to have this
11 blocking option at free of charge; however, we do have some
12 technical limitations with that, and we still are having
13 calls go through and from what I understand from June is we
14 have a situation where we can no longer do that option
15 because of some technical limitations.

16 Q. Let me refer you to page 11 of your rebuttal
17 testimony, lines 19 to 23. You state there that
18 Southwestern Bell's proposed ABS appendix does not address
19 ABT traffic originated on MCImetro's leased local network
20 and billable to Southwestern Bell end users, but that
21 Southwestern Bell is amenable to including such language; is
22 that correct?

23 A. That is correct. As Ms. Burgess has
24 explained, we would be amenable to including that language
25 in our agreement.

1 Q. Is this a change in Southwestern Bell's
2 position?

3 A. No, it really isn't a change. We've always
4 seen our agreement as a reciprocal agreement, and to be
5 quite honest with you, it was just -- it was an agreement
6 that was put together and that language just was not placed
7 in there; however, we are working on placing that language
8 in there.

9 Q. Has Southwestern Bell proposed any language to
10 MCImetro for dealing with distribution and settlement of
11 MCIM's ABT traffic?

12 A. Don't know as far as what the negotiations
13 have been with WorldCom in particular. I do know there was
14 an accessible letter that was recently sent out to all CLECs
15 that stated that MC-- that Southwestern Bell is ready and
16 willing at this time to accept rated messages from CLECs to
17 bill its own end users.

18 Q. When did that letter go out?

19 A. Let me just look at it real fast. That
20 accessible letter was dated October 5th. It was a CLEC
21 accessible letter, CLEC 01-297.

22 Q. Did you reference that in your testimony
23 anywhere?

24 A. Yes, sir, I sure did.

25 Q. Okay. Thank you. Didn't MCImetro propose --

1 proposed ABT Attachment 27 already include equal, reciprocal
2 and appropriate language and settlement procedures for both
3 parties' ABTs, fully reciprocal?

4 A. Yes, that is correct. However, there are many
5 more fallacies to Attachment 27. MCI has gone out of their
6 way to exclude many types of calls.

7 Q. Can you itemize any deficiencies in MCI's
8 proposed Attachment 27?

9 A. Well, yes. The fundamental problems that we
10 have with Attachment 27, No. 1, the fundamental problems we
11 have is that MCI's proposed this attachment to be used for
12 facilities-based, UNE-P and resale. To clarify that --
13 well, to answer that, that's, No. 1, that's technically
14 infeasible because it can't work for all three. And also
15 as we have stated on and on throughout this entire process,
16 MCI has accepted -- has adopted the M2A portions of
17 Attachments 1 through 5, which handles the resale portion of
18 ABT.

19 They've adopted Attachment 20, which handles
20 their facilities-based portions of attachments of ABT calls,
21 and so this attachment, No. 1, is -- it should only be for
22 UNE-P providers. In addition to that, of course, we come to
23 the situation where uncollectibles -- in Attachment 27 MCI
24 just says they can recourse any and all uncollectibles, and
25 then they go out of their way to exclude the prison payphone

1 facilities; you know, they go out of their way to -- they go
2 out of their way to make their appendix more exclusionary
3 than inclusive because, I mean, basically -- basically they
4 avail themselves to -- they have no responsibility to
5 anything.

6 Q. Have you ever -- have you had any direct
7 communication back to MCImetro regarding these issues you're
8 raising now?

9 A. I was on a few conference calls with MCImetro
10 before this hearing, yes.

11 Q. And who would that have been?

12 A. To be quite honest, I do not know the exact
13 people that were involved from the MCImetro side, but I know
14 we were getting prepared for the Texas and this proceeding.
15 We did try to negotiate these -- these appendices.

16 Q. Would it be any of the persons who are in this
17 room who have testified on these issues, you know, in this
18 proceeding?

19 A. You know, to be quite honest, I got in on the
20 negotiation kind of at the last minute, and I really -- I
21 just kind of got on the phone and I didn't know who was on
22 there, to be quite honest with you.

23 Q. Page 12 of your rebuttal, lines 3 through 5,
24 you indicate that Southwestern Bell will address MCImetro's
25 ABT billable traffic, billable to Southwestern Bell end

1 users, with the same terms Southwestern Bell offered their
2 ABT traffic; is that correct?

3 A. That is correct.

4 Q. And has Southwestern Bell ever communicated
5 this or provided MCImetro with proposed reciprocal ABS
6 appendix language?

7 A. No, we have not actually proposed any new
8 language at this time.

9 Q. So in the telephone conversation, the
10 conference call you had sometime prior to this proceeding,
11 that language was not exchanged from Southwestern Bell?

12 A. To be quite honest, I thought it was
13 understood that our agreement would be reciprocal. However,
14 I don't know due to timing -- I'm not part of the
15 negotiations, but there was no language actually admitted,
16 but -- but we are agreeable to that.

17 Q. Okay. At page 13 of your rebuttal testimony,
18 lines 8 through 9, you indicate that Southwestern Bell
19 believes that Section 8.3 of Attachment 10 is clear
20 regarding MCIM's responsibilities regarding billing and
21 settlement of ABT calls; is that correct?

22 A. That is correct.

23 Q. If it is clear, can you tell me again why
24 Southwestern Bell proposes the ABS appendix?

25 A. Well, the ABS appendix was in response to

1 basically the entire petition because, if you recall, you
2 know, this whole thing with adopting Section 6 through 10,
3 since we are not adopting -- since MCI is not adopting
4 those as a whole, as part of the Attachment 26 to
5 legitimately related terms and conditions, MCI proposed
6 their Attachment 27 and we proposed our ABS appendix.

7 Now, we did that -- we understand that
8 Attachment 10, Section 8.3, it does require -- we believe it
9 could use some beefing up in language to discuss this issue
10 more fully. So that's why we did propose a new attachment,
11 but it was in response to Attachment 27.

12 Q. And at page 14, lines 1 through 5 of your
13 rebuttal testimony, you state that MCImetro's proposed ABT
14 Attachment 27 does not clearly define the settlement process
15 between the parties; is that correct?

16 A. Yes, as I stated earlier, I believe that's
17 correct for the same responses I'd already addressed.

18 Q. Tell me again, if you haven't already, what
19 aspects are not clearly defined in MCImetro's Attachment 27.

20 A. As I already addressed, some of the main --
21 probably the main issue that's really confusing is we don't
22 understand if this attachment by MCI is supposed to be
23 facility based, UNE-P based, resale based. I mean, we've
24 heard different things. We've heard that it's only for
25 resale and UNE-P. We've heard it's for all three. The

1 document states nonCATS and CATS messages, so that indicates
2 that it would be for all three. So it's very, very
3 confusing on what the limitations are of that document.

4 I know from a technical aspect, as June has
5 pointed out and she can point out, is the fact that this
6 document is unworkable. It -- we would be falling into
7 breach of contract because it just -- it's not workable.
8 It's not possible.

9 Q. Does Southwestern Bell's Appendix ABS lay out
10 favor-- excuse me. Let me rephrase that.

11 Does Southwestern Bell Appendix ABS lay out a
12 settlement formula for both parties?

13 A. Well, I think as we stated, the settlement
14 process is stated there, and --

15 Q. My question is, does it lay out a settlement
16 process for both parties?

17 A. It is not reciprocal. However, we understand
18 that we do -- we are amenable to the language that would add
19 reciprocal language. So, yes, it is for both parties.

20 Q. Well, no, you submitted it, but it's a one-way
21 agreement, is it not?

22 A. I agree with you, at this time, as it is
23 submitted, yes, it is one way.

24 Q. At page 14, line 17 through 18 of your
25 rebuttal testimony, you state that MCImetro is trying to

1 paint a picture to the Commission that Southwestern Bell's
2 proposal is one-sided; is that correct?

3 A. Yes, that is correct.

4 Q. And you've just admitted that in fact it is
5 one-sided?

6 A. Well --

7 Q. Thank you.

8 MS. MacDONALD: I think he should be allowed
9 to answer that question. The "Well" I don't think was his
10 full answer.

11 BY MR. CURTIS:

12 Q. Go ahead.

13 A. I would just like to clarify, I think as the
14 document stands today, yes, it is one-sided. However, I
15 guess our understanding is not in printed form. However, we
16 have made it quite clear in both our direct and rebuttal
17 testimonies to this Commission that that document is
18 reciprocal.

19 Q. But you didn't make it reciprocal when you
20 filed it?

21 A. As I stated earlier, we have always been under
22 the impression that it is reciprocal. However, I guess --
23 the impression does not have black ink on the paper;
24 however, we are in the process of adding language that would
25 make it reciprocal. That's no problem on Southwestern

1 Bell's part.

2 Q. On page 20, line 7 through 8 of your rebuttal
3 testimony, you indicate that Southwestern Bell is not asking
4 WorldCom to agree to any terms and provisions in the
5 Southwestern Bell proposed ABS appendix, that Southwestern
6 Bell would also be willing to abide by itself; is that
7 correct?

8 A. That is correct.

9 Q. Can you point to the Southwestern Bell
10 proposed contractual language in the ABS appendix that
11 provides for equal and reciprocal terms and conditions?

12 A. As I've stated over and over --

13 Q. They do not exist?

14 A. -- it's not there at this time. However, we
15 have filed in rebuttal testimony and direct testimony that
16 it is reciprocal and we will add that language.

17 Q. On page -- just a --

18 MR. CURTIS: I know I'm running out of time.
19 Do I have a few minutes?

20 JUDGE RUTH: You're slightly over, if you can
21 finish up with another question or two.

22 MR. CURTIS: One more question if I may.

23 Thank you.

24 BY MR. CURTIS:

25 Q. On page 7, lines 14 through 15 of your

1 rebuttal testimony, you state the most important point in
2 this scenario is that Southwestern Bell did not transport
3 the call and that is why Southwestern Bell should have full
4 recourse rights under the IXC billing arrangement; is that
5 correct?

6 A. Yes, in the situation with the IXCs, that's
7 app-- that's comparing apples to oranges, is what we're
8 talking about.

9 Q. Well, who transports the call in the ABT
10 scenario? Doesn't Southwestern Bell originate and transport
11 the call?

12 A. I believe we originate and transport the call;
13 however, it's MCI's end user that has accepted that
14 transported call.

15 MR. CURTIS: I think that's all. Thank you.

16 JUDGE RUTH: Since it is almost noon, we will
17 break here for lunch. We will start back with Staff's cross
18 at one o'clock. We're off the record. Thank you.

19 (A LUNCH BREAK WAS TAKEN.)

20 JUDGE RUTH: We've returned from a break for
21 lunch, and before we get to Mr. Bates, I had a couple of
22 things I wanted to mention.

23 The Commission had indicated that witnesses
24 Linda De Bella and June Burgess were not excused, but they
25 may now be excused. There will not be any questions from

1 the Bench for those two witnesses after all. And,
2 Mr. Lehmkuhl -- did I get it right this time? He may also
3 be excused.

4 Were there any other pending requests for a
5 witness to be excused? Looks like that addresses all of
6 them, then. Mr. Bates, you may proceed.

7 MR. BATES: Thank you, your Honor.

8 CROSS-EXAMINATION BY MR. BATES:

9 Q. Good afternoon, Mr. Smith.

10 A. Good afternoon.

11 Q. I believe you stated in response to a question
12 from Mr. Curtis that Southwestern Bell was willing to agree
13 that its Attachment 27 is reciprocal; is that correct?

14 A. That is correct.

15 Q. Do you have any language to incorporate on the
16 record today to make that language reciprocal, that
17 attachment reciprocal?

18 A. No, at this time I really don't.

19 Q. Would you have any idea when you might be able
20 to provide that?

21 A. I think we could provide something before this
22 hearing is over. I mean, something basic, I'm sure we could
23 provide.

24 Q. Okay. Thank you.

25 Let me take you to Issue 30. When the

1 terminating telecommunications carrier of a company bills
2 the paying end user for an alternatively billed call, who
3 determines the rate that is charged to the agreeing end
4 user?

5 A. The rate that is set to the terminating local
6 service provider is determined by Southwestern Bell's
7 tariffed rates.

8 Q. Under your proposed attachment, what
9 percentage of the revenue mentioned in the previous question
10 is paid by the terminating company to the originating
11 company and then how much is kept by the terminating
12 company?

13 A. Are you referring to the -- to the scenario
14 that WorldCom's attorney gave to me?

15 Q. Yes.

16 A. Okay. In that scenario, assuming that
17 WorldCom was not adding an additive to the tariffed rate to
18 recover their cost, WorldCom would receive a nickel and SWBT
19 would receive -- assuming that WorldCom is actually billing
20 its end user to receive revenue, because as of today, SWBT
21 is not receiving any revenue on collect calls, so -- but
22 assuming they were billing their end users and the end users
23 were paying, then we would receive -- I don't know what the
24 percentage is, because I don't know exactly the calls, but I
25 know MCI would receive a nickel.

1 Q. How many other scenarios might there be that
2 you can think of?

3 A. I can think of several scenarios of how MCI
4 may charge their end user. Is that what you're referring
5 to?

6 Q. Yes.

7 A. MCI can very well -- depending on their
8 business plan, they could, you know, add an additive to that
9 charge, the tariffed rate that we sent them to bill their
10 end user, or they could -- I mean, I'm just throwing this
11 out -- they could say that their end users can receive
12 unlimited collect calls for, say, \$50 a month. I mean, that
13 would be entirely up to their marketing department and how
14 their business plan would market to that end user.

15 Q. In an alternatively billed call, who's
16 considered to be the revenue generator?

17 A. I believe the pers-- I believe that the party
18 that would generate the revenue would be the originating
19 party.

20 Q. Okay.

21 A. If, of course, we were receiving revenue. But
22 as I stated, we are not.

23 Q. Under the Commission's rules, a residential
24 basic local customer may not be disconnected for nonpayment
25 of nonbasic charges. You accept that, don't you?

1 A. I do agree with that.

2 Q. How would Southwestern Bell expect WCOM to
3 collect owed charges from such a non-paying customer?

4 A. We kind of hint at this throughout this
5 proceeding. It would -- you know, WorldCom, of course,
6 cannot cut them off, but our belief is and our position
7 would be that WorldCom could -- you know, they could
8 negatively -- put a negative rating on their credit bureau,
9 they could place blocking, the main thing is, of course,
10 place blocking on that end user where they could not accept
11 collect calls any further and those sorts of things.

12 Q. Let me draw your attention to your rebuttal
13 testimony, page 7, line 8, and I believe you suggest there
14 that the ABT relationship to the end user is different for
15 the IXC/LEC than it is for the ILEC/CLEC relationship; is
16 that correct?

17 A. That is correct.

18 Q. Would you expand on that and explain how?

19 A. Well, a couple scenarios here, a couple things
20 to point out. As Ms. Burgess has explained, there are
21 situations where in the IXC/LEC world we do have other
22 billing and collection arrangements that we may have
23 negotiated with those parties. However, for the most part,
24 from a policy standpoint, I take the position that the IXC,
25 they do -- let me kind of go back here.

1 If there was a situation where -- because I
2 know this was a claim that Mr. McKanna made in his
3 testimony. He says that in the IXC world SWBT can basically
4 recourse all uncollectibles back to the IXC. Well, part of
5 my policy argument for that is that the IXC has a direct
6 business relationship with that end user. That end user has
7 called the IXC and has asked the end user to -- to have a
8 long -- to provide their long-distance services.

9 In the MCI/SWBT case, in the LEC/CLEC world,
10 that end user has not called Southwestern Bell and asked
11 them to provide their local service; they've asked MCI to
12 provide their local service. So in that case we do not have
13 the direct business relationship; whereas, in an IXC world,
14 the IXC does have the direct business relationship with the
15 end user.

16 Q. Would you define for me what you mean by
17 "recoursing"?

18 A. Basically, it's -- I would say, to kind of a
19 put it in different terms, charge back. In other words, the
20 calls that, say, for instance, MCI is not able to collect
21 from their end users, they're not able to collect that
22 revenue, basically they send that back. In other words,
23 they don't ba-- they basically do not pay it and we -- it's
24 not really even a charge back, it's just they don't pay it.
25 It's recoured in those uncollectibles.

1 Q. Why do you believe that a cap of 10 percent of
2 the previous year's ABT is fair?

3 A. Well, first of all, our position is that all
4 the alternate-billed traffic as far as all the charges,
5 those are rightfully MCI's charges, those are -- their end
6 users have accepted and authorized those calls. They
7 belong -- you know, MCI needs to take that responsibility.

8 However, in order to alleviate -- in order to
9 try to alleviate this issue and try to have some kind of
10 good faith negotiations with MCI, we thought -- we thought
11 10 percent would be a fair percentage for MCI to be able to
12 recourse back to us as far as uncollectibles, and what we
13 mean by uncollectibles is basically bad debt.

14 Q. Let me go back to our conversation on revenue
15 for a moment. Did I understand you to say that Southwestern
16 Bell does not receive revenue from an ABT call?

17 A. In a UNE-P environment today, we have interim
18 agreements right now with MCI and Sage in Texas for them to
19 start -- for those companies to start billing their end
20 users to receive that revenue, but before that and in the
21 course -- and I'm not sure because June has the percentages
22 of these -- but as of -- as far as I know, we are not
23 receiving that revenue. We had not been until these interim
24 agreements have been in place.

25 Q. Assume for me that a call costs the end user

1 \$4. I believe you said the WCOM receives 5 cents of that;
2 is that correct?

3 A. That is correct.

4 Q. Okay. Who would get the remaining 3.95?

5 A. That would be Southwestern Bell Telephone,
6 assuming that MCI WorldCom did not place an additive on that
7 call.

8 Q. Well, would you consider that to be, then,
9 revenue for Southwestern Bell?

10 A. Yes, I would.

11 Q. Lastly, I'd like to ask you about Issue 39,
12 and refer you to page 21 of your direct testimony.

13 A. Sure.

14 I'm sorry. What page was that again.

15 Q. Page 21.

16 A. Okay.

17 Q. And I believe there you provide a discussion
18 about sectional adoptions of the M2A?

19 A. Now, you are referring to my direct, page 21,
20 right?

21 Q. I'm sorry. I may have written that down
22 wrong. Maybe it was rebuttal. You may not have to refer
23 necessarily for the question that I'm going to ask you.

24 A. Okay. I think we're okay.

25 Q. Thank you. Could you just define for me what

1 you mean by sectional and explain that?

2 A. Sure. What I had referred to in sectional
3 adoptions for the M2A, as I meant sectional -- sectional in
4 the way of sectional from the actual M2A agreement; in other
5 words, sections as far as subjects. In other words, the UNE
6 section you would need to take Attachments 6 through 10.
7 The resell sections of the M2A you would take Attachments 1
8 through 5, clearly as defined in Attachment 26 of the M2A.

9 MR. BATES: Thank you, Mr. Smith.

10 THE WITNESS: Thank you.

11 JUDGE RUTH: Are there any questions from the
12 Bench? Commissioner Lumpe?

13 QUESTIONS BY COMMISSIONER LUMPE:

14 Q. Just a couple, Mr. Smith.

15 A. Yes, ma'am.

16 Q. The 10 percent that you were talking about, do
17 you have some evidence for that? Do you calculate that? Is
18 that an estimate or just a number from somewhere?

19 A. That was just a number thrown out that -- you
20 know, as far as the negotiations, that was a number
21 basically made up.

22 Q. So you haven't tracked to see that collect
23 callers don't pay, 10 percent of the revenue is from nonpay
24 or whatever, you don't have something like that?

25 A. No, ma'am. The 10 percent was just a -- just

1 to try to talk to -- try to get MCI to negotiate with us,
2 and, you know, we were saying, you know, even though our
3 position, MCI, is that you are responsible for 100 percent
4 of these charges, in order to try to alleviate this problem,
5 we would allow you to -- to basically take a 10 percent
6 discount.

7 And I would like to state for the record that
8 Southwestern Bell is very interested in trying to alleviate
9 this problem, because it is a growing problem with UNE-P
10 CLECs, and we are amenable to even increase -- possibly
11 increasing that percentage.

12 Q. And when -- I think in some of the discussion
13 yesterday on this issue where Southwestern Bell said it was
14 sort of the carrier in between, it's acting like an IXC in
15 that case?

16 A. Our position is that it is true that a SWBT
17 customer, a SWBT phone originated that call; however, it's
18 going to a CLEC end user. And our position is that MCI is
19 the local service provider in that case.

20 They are the ones that have that relationship
21 with that end user, and they feel that they do not have the
22 responsibility to pay for that call if their end user
23 decides not to pay for it, because they feel that
24 Southwestern Bell has that relationship with the end user,
25 where we feel that is incorrect. It is the -- it is their

1 company that has that direct business relationship with that
2 end user and they should be responsible for their end users'
3 calls as far as the charges.

4 Q. Let me try to understand. The originating
5 party is a Southwestern Bell party; is that what you --

6 A. Yes, ma'am.

7 Q. And the person refusing to pay for the collect
8 call is a WorldCom party?

9 A. Yes, that is correct. Whenever South-- say,
10 for instance, a Southwestern Bell customer -- and we'll just
11 say from any phone, whether it was a payphone or just a
12 phone from their house -- they call and -- they call the end
13 user at MCI and the call says, these are your charges, will
14 you accept this phone call, that end user that's in -- that
15 belongs to MCI, they authorize, they accept that call.

16 And what has been happening is that, since we
17 do not have that business relationship with the end user and
18 we are not able to bill that end user, then MCI is also not
19 billing the end user, so what's been happening is that these
20 end user are receiving collect calls for free. And so we
21 are trying to get our the CLEC customers that have these end
22 users to bill and collect for these end-user calls because
23 it is their responsibility.

24 Q. Was that ever a problem in the monopoly era or
25 was it simply because you only had one company, that company

1 then would collect from the person who accepted the collect
2 call? Is this an issue that's arisen because of
3 competition?

4 A. What's happened, Ms. Lumpe, is that in the
5 UNE-P environment, this is where it's become a problem,
6 because in the resell environment it is not a problem. For
7 instance, when CLECs have a -- resell end users, this is not
8 a problem, because this is handled through a whole different
9 system.

10 And as far as the -- when they are
11 facility-based CLECs, it's handled through the CMDS, the
12 central message system system. The -- basically it's a
13 system, it's a technical system where DUFs are exchanged, as
14 far as daily usage fee records are exchanged, and there's --
15 the billing settlement process handle -- handles through
16 that.

17 But in a UNE-P environment, the only way we're
18 able to give MCI that -- that -- I guess the information to
19 bill their end users is through a DUF. So it's only become
20 a problem with the UNE-P CLECs.

21 Q. And that's -- how would you make that
22 information available to the UNE-P party, the company?

23 A. What we do is we send the daily usage fee
24 records, which is basically called a DUF record, and we send
25 that record to MCI. And it basically has, you know, the

1 call -- the number that was -- that accepted the call, the
2 rate and it's a rated record, and we send that information
3 to MCI on a daily basis for them to be able to bill their
4 end user in a UNE-P environment.

5 Q. And is there something that one can verify
6 that these have the actual numbers or -- I mean, if one
7 company is sending records to another saying, this is what
8 you owe me, is there a way of verifying that?

9 A. I guess you're asking a question if that call
10 was actually placed?

11 Q. Yeah.

12 A. From what I understand is that --

13 Q. For if that person actually didn't pay
14 or . . .

15 A. Now, as far as the actual tracking systems of
16 those calls, as far as the billing is responsible for that,
17 our position is that it would be MCI that would be
18 responsible, I guess, for tracking to see if that actual
19 customer has actually paid or not paid.

20 All we're doing is just basically sending them
21 a record that -- that we know this call originated on our
22 network, but it terminated and was authorized by their end
23 user. That's all we can -- all we're doing is sending them
24 the actual rated information that their customer accepted.

25 Q. Accepted the collect charges?

1 A. Yes, ma'am.

2 Q. All right. But then there's no -- then

3 conceivably they would have some way of verifying that or

4 not?

5 A. I believe that the way of verifying that would

6 be through the DUFs, because the DUFs are actually created

7 for -- and I'm not the technical person to go through that.

8 Q. Would you say DUF, what it means?

9 A. Yes, ma'am. It's called a daily usage fee.

10 Q. Daily usage fee. Okay.

11 A. And my understanding is -- and I'm not the

12 technical guru to tell you everything about it, but from

13 what I understand, it's -- it's from the moment that that --

14 say, for instance, that that CLEC end user picks up the

15 call, it's created through the -- through a system that --

16 in other words, that system knows that that call was placed,

17 and that's the record that's sent to the CLEC.

18 Q. Okay. And let me follow up a little bit on --

19 on Staff's question to you on page 21 of your rebuttal, and

20 I think he was asking sort of maybe the same question I was

21 interested in, when you said desired sections. In other

22 words, if one wants to adopt parts of the M2A, they have to

23 adopt an entire section?

24 A. What I -- yes. What I meant by that is it's

25 the sections that are listed in Attachment 26, and some of

1 this -- and, I guess, like, for instance, UNE is considered
2 a section; it's considered a package. And that's
3 Attachments 6 through 10.

4 Q. All the UNES together is one section and you
5 couldn't take certain UNES?

6 A. That is correct. As far as how it is adopted
7 by the M2A, that is how Attachment 26 was set out. In other
8 words -- and if you notice, in Attachment 26, say, for
9 instance, performance measurements, performance measurements
10 can stand alone. In other words, a CLEC can take that, take
11 the applicable related items that go along with that, but
12 they could just take that.

13 However, when it comes to UNES, UNES are
14 packaged, the resale is a package, and just how Commissioner
15 Walsh, in the -- whey they were developing it in Texas, when
16 they were developing the Texas T2A Attachment 26,
17 Commissioner Walsh basically made a statement, saying that
18 it is true that UNES are a package and they must go
19 together. And that was one of the things -- because this
20 was a hotly debated topic when they were developing the T2A,
21 and, of course, the M2A is -- was -- Attachment 26 is
22 basically the same thing from the T2A.

23 Q. So you couldn't just take a loop or a switch,
24 you have to take the whole shebang?

25 A. Our position is that as far as the M2A is

1 concerned, if you want the M2A pricings, if you want the M2A
2 prices, if you want the M2A terms and conditions as they are
3 defined exactly in the M2A, you take them as a package.

4 Now, however, as in MCI's case today, you know, we have --
5 you know, we have agreed that Section 7 through 9, that we
6 are agreeable to those as far as negotiated provisions.

7 Now, in Attachments 6 and 10, they have
8 basically said those are going to be negotiated. They've
9 agreed with us, and they have, I guess, basically submitted
10 those as their baseline agreement. However, we have come
11 back and we're negotiating that; in other words, we -- I
12 guess we have to reserve the right to be able to negotiate
13 those provisions outside the M2A environment.

14 Q. So if I had asked the question whether someone
15 could adopt, what you call the MFN into any part of the M2A
16 and the answer was yes, what I was being told was you have
17 to take a full section?

18 A. Yes, ma'am. If you were going to adopt the
19 M2A, you can know -- let me kind of give you another
20 example. A CLEC is -- we're more than happy to let a CLEC
21 adopt certain sections of the M2A and negotiate other
22 sections of the M2A. However, when they do adopt certain
23 sections of M2A, they must follow what Attachment 26
24 expressly states, that certain -- these sections come into a
25 package. So, for instance, if they --

1 COMMISSIONER LUMPE: Well, yeah. I'm just not
2 sure that I was aware that you had to adopt a whole section,
3 that you couldn't adopt or choose various UNES out of a
4 section. So that's not an understanding I had. Thank you,
5 Mr. Smith.

6 THE WITNESS: Thank you.

7 JUDGE RUTH: Recross based on the Bench
8 questions.

9 Any from WorldCom?

10 MR. CURTIS: Yes.

11 RECROSS-EXAMINATION BY MR. CURTIS:

12 Q. Mr. Smith, Commissioner Lumpe asked you if
13 there was any evidence in the record regarding to support
14 the 10 percent ABT cap, do you recall that?

15 A. Yes, sir.

16 Q. My question is to -- is going to be pretty
17 narrow.

18 With regard to WorldCom/MCI metro on a UNE-P
19 basis today in Missouri, have any -- has Southwestern Bell
20 suffered any loss regarding ABT traffic?

21 A. No, from my understanding, MCI does not have
22 UNE-P in Missouri.

23 Q. Right. So any losses you're talking about are
24 outside of Missouri?

25 A. That is correct, at this time.

1 Q. With regard to that.

2 MR. CURTIS: Thank you.

3 JUDGE RUTH: Staff?

4 MR. BATES: Thank you, your Honor.

5 RECROSS-EXAMINATION BY MR. BATES:

6 Q. Mr. Smith, just a couple of things. In
7 response to questions from Commissioner Lumpe, I believe you
8 said that ABT collectibles has only become a problem in the
9 UNE-P because in resale and facilities-based environments
10 different systems are used. Are these all Southwestern Bell
11 systems?

12 A. You know, I don't know the answer to that
13 question. I don't know if the CMDS is just Southwestern
14 Bell's system. I'm not sure of that. I believe Ms. Burgess
15 answered that earlier, and I'm not sure of that. I don't
16 think they -- I don't think it's just Southwestern Bell's
17 system.

18 Q. Regarding Attachment 26, you said that, for
19 instance, UNEs is a section on page 2 of 2 is defined as an
20 item. I didn't say that well.

21 You said --excuse me -- that UNEs is a
22 section, but on page 2 of 2 it's defined as an item; is that
23 correct?

24 A. I believe that is correct. I believe on the
25 heading it shows an item.

1 Q. Okay. Is there somewhere in the M2A that
2 you're aware of that the term section and item are defined?

3 A. Yes, sir.

4 Q. And do you know where that is?

5 A. Well, on page -- on page 1 -- and, you know, I
6 may not be answering your question. I think you asked if there
7 is someplace that's defined?

8 I know where it's listed. On page 1 of 2
9 of Attachment 26, legitimately related provisions, the
10 second sentence there says, the agreement is expressly
11 limited to the items or sections into which CLECs MFN under
12 Section 252(i).

13 Q. Is there somewhere in the M2A that you're
14 aware of that specifically says that if you take one UNE-P,
15 you have to take more of them or all of them?

16 A. UNE-P?

17 Q. Yes.

18 A. Are -- or just UNEs?

19 Q. UNEs. I'm sorry.

20 A. Okay. I just want to make sure.

21 The position that we take and that has been
22 placed in the record, especially in Texas, when they
23 developed the T2A which the M2A is developed after,
24 Attachment 26 on page 2 of 2, these are the -- these are the
25 packages, and I believe it's clear that MCI has even agreed

1 to us on that.

2 MR. BATES: Thank you.

3 THE WITNESS: Thank you.

4 JUDGE RUTH: Redirect?

5 REDIRECT EXAMINATION BY MS. MacDONALD:

6 Q. Good afternoon. Excuse me.

7 Good afternoon. I just have a few follow-up
8 questions. Mr. Curtis asked you a few questions about what
9 Southwestern Bell's retail tariffs -- the charges that are
10 contained in Southwestern Bell's retail tariffs. Do you
11 remember those questions?

12 A. Yes, I do.

13 Q. Do Southwestern Bell retail tariffs govern
14 what SWBT charges its end users?

15 A. Yes, that's correct.

16 Q. Do you work on Southwestern Bell's retail
17 tariffs?

18 A. No, I do not.

19 Q. Are your responsibilities for alternatively
20 billed traffic on a wholesale side of the house?

21 A. That is correct.

22 Q. Okay. And you were asked a few questions from
23 Commissioner Lumpe and then follow up by Mr. Curtis
24 regarding UNE-P losses. Do you remember those questions?

25 A. That is correct.

1 Q. And you said that we currently have no loss in
2 Missouri because WorldCom is not operating in the UNE-P
3 environment in Missouri; is that correct?

4 A. That is correct.

5 Q. Can you tell me the reason why we are having
6 negotiations regarding the ABT appendix with regard to the
7 UNE-P environment?

8 A. Sure. Well, the main thing is it was -- this
9 was a -- these were documents that were filed in this
10 petition, of course, but we -- from our understanding, it
11 appears that MCI will be operating as a UNE-P provider
12 Missouri in the very near future. And in order to alleviate
13 the problems that we have seen so much, especially in the
14 other states and especially in Texas, we would like to, I
15 guess, kind of nip it in the bud before it -- before it sets
16 off here in Missouri.

17 Q. So in other words, it's sort of to prevent
18 future financial losses?

19 A. Exactly.

20 MS. MacDONALD: Thank you. That's all the
21 questions I have.

22 JUDGE RUTH: Mr. Smith, you may step down and
23 you are excused.

24 THE WITNESS: Thank you.

25 JUDGE RUTH: It's my understanding we're now

1 ready to move on to the witnesses that were actually
2 scheduled for Friday. However, it's also my understanding
3 that the parties believe most or all of those witness are
4 available; is that true?

5 MR. CURTIS: That is correct.

6 JUDGE RUTH: Okay. WorldCom, call your first
7 witness.

8 MR. MORRIS: We call Michael A. Beach.

9 (Witness sworn.)

10 JUDGE RUTH: Please be seated. Proceed.

11 MR. MORRIS: Thank you, your Honor.

12 MICHAEL A. BEACH testified as follows:

13 DIRECT EXAMINATION BY MR. MORRIS:

14 Q. Sir, will you please state your name for the
15 record?

16 A. My name is Michael A. Beach, B-E-A-C-H.

17 Q. Mr. Beach, by whom are you employed and in
18 what capacity?

19 A. I'm employed by WorldCom. I'm the Vice
20 President for our West Region Telco and Line Cost Management
21 Organization.

22 Q. Mr. Beach, you have before you what has been
23 marked as Exhibits 39 and 40. Exhibit 39 is your direct
24 testimony. Do you see that?

25 A. Yes, I do.

1 Q. At this time, do you have any corrections or
2 changes that you need to make to that testimony?

3 A. I have one correction to make. It's on
4 page 14 of my direct testimony in line 11. It references in
5 the middle of that line two sections, 2.17.1. And the
6 second reference should be 2.17.2.

7 Q. Do you have any other changes to your direct
8 testimony?

9 A. No. I would just note for the record that one
10 of the issues I testify about is Issue 32, and -- which has
11 now been resolved. So the reference in direct and rebuttal
12 testimony to those issues is probably moot.

13 Q. Thank you. You also have before you what's
14 been marked as Exhibit 40, which is your rebuttal testimony?

15 A. Yes.

16 Q. And do you have any corrections or changes to
17 that, to your rebuttal testimony at this time?

18 A. No.

19 Q. Okay. With the changes to your direct and
20 your rebuttal, if I were to ask you the questions, would
21 your answers be the same as are contained therein?

22 A. Yes, they would.

23 MR. MORRIS: At this time, your Honor, we
24 offer Exhibits 39 and 40 into evidence.

25 JUDGE RUTH: Okay. Are there any objections

1 to Mr. Beach's direct testimony, Exhibit 39, and his
2 rebuttal, Exhibit 40, being admitted?

3 (No response.)

4 JUDGE RUTH: Seeing no objections, they are
5 received into the record.

6 (EXHIBIT NOS. 39 AND 40 WERE RECEIVED INTO
7 EVIDENCE.)

8 JUDGE RUTH: Thank you.

9 MR. MORRIS: Thank you, your Honor. At this
10 time we would tender the witness for cross-examination.

11 JUDGE RUTH: Okay. Southwestern Bell, I note
12 that you have 25 minutes for your cross.

13 MR. LANE: No questions, your Honor.

14 JUDGE RUTH: Staff?

15 MR. BATES: Thank you, your Honor.

16 CROSS-EXAMINATION BY MR. BATES:

17 Q. Good afternoon, Mr. Beach.

18 A. Good afternoon.

19 Q. If I could refer you to your direct testimony,
20 pages 4 and 5?

21 A. Yes, sir.

22 Q. I believe, if I understand you, that you talk
23 about Southwestern Bell muddying the interconnection process
24 with non-Missouri language?

25 A. Yes, I do.

1 Q. Could you please explain WCOM's concern with
2 this, including non-Missouri language in this?

3 A. I have several concerns with non-Missouri
4 language in this final agreement. The first is that when
5 you include a lot of language in an agreement that doesn't
6 apply in the state of Missouri, yet you're trying to operate
7 under that agreement, it can become confusing to the
8 WorldCom personnel or even Southwestern Bell personnel who
9 are trying to operate pursuant to that agreement.

10 The second concern is that this Commission
11 will approve the terms of this agreement, and I don't think
12 they want to be in a position of trying to approve what
13 applies in Connecticut or California or Texas. And finally,
14 even if that language were included in the agreements and
15 were correct at the time as to what other provisions were
16 available in some agreements, let's say in California,
17 there's no provision that assures that all agreements in
18 California have those terms, nor to keep this contract
19 changing as things change in other states.

20 So our position would be that the Missouri
21 contract should contain the terms and conditions that apply
22 between the parties in Missouri.

23 MR. BATES: Thank you, Mr. Beach. That's all
24 I have.

25 THE WITNESS: You're welcome.

1 JUDGE RUTH: Commissioner Lumpe?
2 Redirect?
3 MR. MORRIS: Your Honor, I have no redirect
4 and would ask your Honor if this witness may be excused.
5 JUDGE RUTH: Yes, the witness is excused.
6 THE WITNESS: Thank you, your Honor.
7 MR. MORRIS: Thank you.
8 JUDGE RUTH: WorldCom, you may call your next
9 witness.
10 MR. CURTIS: Michael Schneider, please.
11 (Witness sworn.)
12 JUDGE RUTH: Thank you. Please be seated.
13 Proceed.
14 MICHAEL SCHNEIDER testified as follows:
15 DIRECT EXAMINATION BY MR. CURTIS:
16 Q Please state your full name for the record.
17 A. Michael W. Schneider.
18 Q. By whom are you employed?
19 A. WorldCom, Inc.
20 Q. And what is your title?
21 A. I am a commercial attorney and I work for
22 carrier transactions. I negotiate and draft interconnection
23 agreements with various ILECs for our local services.
24 Q. Okay. And how many states is that?
25 A. I work with another attorney, and we have the

1 SBC states and the Qwest states split up. I do the MOKAT
2 states, which are Texas, Arkansas, Kansas, Missouri,
3 Oklahoma, do several of the Qwest states -- well, a few of
4 the Qwest states; Washington, Colorado, Arizona.

5 Q. That's good for an illustration. Are you the
6 same Michael Schneider who has caused to be prefiled in this
7 case direct testimony which has been marked as Exhibit
8 No. 41?

9 A. Yes, I am.

10 Q. Do you have a copy of that in front of you?

11 A. Yes, I do.

12 Q. Do you have any additions or corrections to
13 make on the record here?

14 A. Yes, I do. On page 3 -- excuse me -- 2 of my
15 direct testimony, at line 21 and 22, it says, language in
16 Section 9.4.3.9 and 9.5.4; that should be 9.5.5.

17 MR. LANE: I'm sorry. Where is that? Is this
18 the direct?

19 MR. CURTIS: Direct, yes.

20 MS. MacDONALD: Direct page what?

21 THE WITNESS: Two.

22 JUDGE RUTH: I'm sorry. Go ahead. I didn't
23 follow it either.

24 THE WITNESS: Well, maybe our pagination is
25 different, then.

1 JUDGE RUTH: Just repeat it for me.

2 THE WITNESS: Yes, page 2 under UNE, DPL
3 Issue 18, line 21 and 22, does that follow with your copy?

4 MR. LANE: I'm wondering, your Honor, if on
5 the file copy, if it's page 4, line 23.

6 JUDGE RUTH: Yes. Thank you.

7 THE WITNESS: Okay. This page is misnumbered.
8 I'm sorry. It would be if you take it from the cover page.

9 JUDGE RUTH: So on mine it's page 4. Now I
10 have it. Could you repeat the section changes, please?

11 THE WITNESS: Yes. Page 4, line 21 and 22, it
12 should say the language in Section 9.4.3.9 and 9.5.5.

13 JUDGE RUTH: Thank you.

14 THE WITNESS: And then on page -- I guess it
15 would be 5, lines 17 and 18, line 17 starts out with
16 attachment UNE. Is that --

17 BY MR. CURTIS:

18 Q. Not on the ones we're looking at here. Read
19 the sentence and we'll see if we can find it.

20 A. For the same reasons, the Commission should
21 reject SBC/SWBT's proposed change to attachment UNE.

22 JUDGE RUTH: I found that.

23 THE WITNESS: Do you see that one?
24 Section 9.5 should be .5 of the agreement.

25 BY MR. CURTIS:

1 Q. So eliminate the .4?

2 A. And substitute .5.

3 Q. Should that read, then, Section 9.5.5?

4 A. Right. And then the next sentence says,
5 Further, the indemnification language in section that has
6 9.4.5.10, that should be changed to 9.4.9 (all).

7 Q. Repeat that again.

8 A. Further, the indemnification language in
9 Section 9.4.5.10 should be changed to 9.4.9, and in
10 parenthesis, all, is also unnecessary and improper.

11 Q. Continue.

12 A. Okay. Then going to the bottom of that page,
13 sentence starts out, Further, the indemnification language,
14 do you see that one?

15 Q. I've got to say, I have not found that.

16 A. It's after, Similarly, the Commission should
17 also reject SBC/SWBT's proposal regarding limitation of
18 liability to amend Section 9.4.9 with respect to --

19 Q. Okay. I think that may be at page 6, line 6
20 of other versions of this testimony; is that right?

21 JUDGE RUTH: Yes.

22 THE WITNESS: Okay.

23 BY MR. CURTIS:

24 Q Okay. Go ahead.

25 A. It says, Further, the limitation -- it

1 should say, Further, the limitation of liability and
2 indemnification language in Sections 9.4.3.9 (all), and
3 9.5.5 (all) is also unnecessary and improper. And the next
4 sentence should be changed to read. The general terms and
5 conditions contained a very broad limitation of liability,
6 indemnification, and disclaimer of warranty language that
7 would apply the provision of LIDB and CNAM.

8 Q. Okay. Are there any other changes you have to
9 your direct testimony?

10 A. Just a couple. Just a couple. On -- I guess
11 on my copy this would now be page 13. It's right under the
12 DLI Section, Issue 43, the second sentence in my answer.

13 Q. Beginning, If WCOM?

14 A. Right. Strike that sentence.

15 That's all the direct.

16 Q. Okay. Do you have any changes to make to your
17 rebuttal testimony?

18 A. Yes, I just have a couple. They'd be kind of
19 corresponding changes. It would be on page 16, if these are
20 numbered correctly,

21 Q. We'll soon find out. Go ahead.

22 A. On lines 16 and 17, the sentence starts,
23 Further, the indemnification language. Got it?

24 Q. Yeah, I think we're matched up on this one.

25 A. The indemnification language in section should

1 read 9.4.9. That's also nec-- unnecessary and improper.

2 Q. Okay.

3 A. And then on page 21, line 6, 7 and 8, the
4 sentence starts, If WorldCom breaches the agreement. Strike
5 that sentence.

6 That is all.

7 Q. Let me just clarify, then, with regard to your
8 direct testimony, which has been marked as Exhibit 41, even
9 though it appears we have had a pagination issue, do you
10 believe that the copies that are -- maybe do not correspond
11 with proper pagination, nonetheless will match up word for
12 word with the other ones?

13 A. I believe so.

14 Q. Let me then ask with regard to your direct and
15 rebuttal testimony, Exhibits 41 and 42, if you were asked
16 the same questions as are contained in those exhibits today
17 as when you'd filed the testimony, would your answers be the
18 same today?

19 A. These exhibits as revised?

20 Q. Yes.

21 A. Yes.

22 Q. Would they be true and correct to the best of
23 your knowledge and belief?

24 A. Yes.

25 MR. CURTIS: Thank you. At this time I would

1 offer Exhibits 41 and 42.

2 JUDGE RUTH: I'd like to note that my copy of
3 Exhibit 41 on the front says "amended direct testimony." Is
4 that correct?

5 But my Exhibit 42, the rebuttal, is not an
6 amended version.

7 MR. CURTIS: That is correct.

8 MR. MORRIS: That is correct. I believe
9 there -- it had to do with putting line numbers on the
10 left-hand column.

11 JUDGE RUTH: On the side. Okay.

12 MR. CURTIS: And I believe the amended was the
13 correct one that was filed and distributed to everybody. So
14 I think we're working off an original here.

15 JUDGE RUTH: So Exhibit 41 is the amended
16 direct testimony; Exhibit 42 is Mr. Schneider's rebuttal
17 testimony. Are there any objections to these documents
18 being received?

19 (No response.)

20 JUDGE RUTH: Seeing no objections, they are
21 received into the record.

22 (EXHIBIT NOS. 41 AND 42 WERE RECEIVED INTO
23 EVIDENCE.)

24 JUDGE RUTH: Thank you.

25 MR. CURTIS: We will now tender the witness

1 for cross.

2 JUDGE RUTH: I'm just noting that you are
3 scheduled for 30 minutes on this cross.

4 CROSS-EXAMINATION BY MR. LANE:

5 Q. Good afternoon, Mr. Schneider.

6 A. Good afternoon.

7 Q. Let me start first with Issue 39, which
8 pertains to adopting sections of the M2A.

9 A. All right. Give me a second. Let me turn to
10 that issue and see if I can find it in my -- okay. I found
11 it.

12 Q. Okay. Mr. Schneider, have you been present
13 throughout the hearing for the -- at least for the oral
14 argument portions and that concern adoption of portions of
15 the M2A and applicability of Attachment 26?

16 A. Yes.

17 Q. And have you read the filing which WorldCom
18 made on Tuesday of this week on the same subject?

19 A. What was the title of that filing?

20 Q. WorldCom's reply to Staff's January 11, 2002
21 filing.

22 A. Yes.

23 Q. And is your testimony designed to be
24 consistent with the position that WorldCom expressed in the
25 reply to the Staff's January 11, 2002 filing?

1 A. Can you state that again, please?

2 Q. Is your testimony designed to be consistent
3 with the WorldCom position expressed in the reply to Staff's
4 January 11, 2002 filing?

5 A. I would assume so.

6 Q. The filing that was made on January 11th, 2002
7 was not intended to change your testimony, I take it; you
8 believe that your testimony is consistent with that, right?

9 A. Yes.

10 Q. To summarize the position, WorldCom agrees
11 that it has not opted into Attachment 6 through 10 of the
12 M2A and that all of those provisions must be negotiated and
13 if agreement's not reached, arbitrated?

14 A. I stated that we opted into attachments of the
15 M2A. We have not opted into Attachments 6 through 10. We
16 have agreed on Attachment 7, 8 and 9, which we are
17 accepting. And Attachments 6 and 10 and the related
18 provisions in Attachment 26 that are legitimately related to
19 6 and 10 are open for negotiation and arbitration.

20 Q. Okay. Let me break that down just a little
21 bit, make sure we're in agreement. You're in agreement that
22 WorldCom has not opted into the portions of the M2A that are
23 the UNE provisions of Attachments 6 through 10, right?

24 A. Right.

25 Q. And WorldCom also did not opt into

1 Attachment 18 of the M2A, right?

2 A. What is the title of that attachment?

3 Q. DLI.

4 A. That's correct.

5 Q. And that with regard to Attachment 6 through
6 10, all of those items had to be negotiated, and if not
7 agreed, then arbitrated, right?

8 A. Those sections would be open for arbitration.

9 Q. But, in fact, the parties reached agreement
10 with regard to Attachment 7 through 9 for purposes of this
11 interconnection agreement to utilize the same terms and
12 conditions as are contained in Attachments 7 through 9 of
13 the M2A, right?

14 A. I believe that is correct.

15 Q. And with regard to Attachment 6, all of that
16 was treated as being open for purposes of negotiation and
17 ultimately arbitration, right?

18 A. That is correct.

19 Q. And the parties reached agreement with regard
20 to many of the provisions that are in Attachment 6, but
21 those that were not the subject of an agreement are now
22 being presented to the Commission in this arbitration,
23 right?

24 A. Yes, there -- our issues are listed in the
25 DPL.

1 Q. And I've placed before you a copy of
2 Attachment 26 from the M2A, which is an attachment to
3 Mr. Roman Smith's testimony. I've given you a copy of it
4 just for ease of reference and one for the Commission as
5 well.

6 Are you familiar with Attachment 26, two pages
7 from the M2A?

8 A. Yes.

9 Q. If we look on page 2 of Attachment 26, would
10 it be fair to say that WorldCom has opted into all of the
11 subjects listed under item requested except for UNEs and
12 mutual exchange of directory listing information?

13 Q. I believe that's correct. I think you list
14 all of those in your motion to dismiss, and I read that and
15 agreed with it.

16 Q. Okay. With regard to Issue 40 in this case,
17 it's my understanding your position is that Attachment 6
18 through 10 and Attachment 18, those areas where WorldCom did
19 not opt into the M2A, that whatever comes out of this from
20 the Commission, you're in agreement those provisions don't
21 become part of the M2A, right?

22 A. That is correct.

23 Q. It's just a part of the interconnection
24 agreement between Southwestern Bell and WorldCom, right?

25 A. Yes, the interconnection agreement that we are

1 here arbitrating.

2 Q. And I want to turn to Issues 41 and 42. Would
3 you agree that those issues are similar and that they
4 involve the applicability of Attachment 26?

5 A. Yes.

6 Q. And referring you, again, to page 2 of
7 Attachment 26, it appears that WorldCom has opted into 19 of
8 the attachments that are listed there. Is that a fair
9 statement?

10 A. Let me count them. I believe that's correct.

11 Q. Would you also agree that as listed on page 2
12 of Attachment 26, that with regard to each of those items
13 where WorldCom has chosen to opt into the M2A, that the
14 legitimately related provisions include the general terms
15 and conditions that are specified on page 1 of that
16 attachment?

17 A. That is correct.

18 Q. And with regard to Issue No. 41, that involves
19 Section 4.2.1, which is listed on the first page of
20 Attachment 26 as one of the items that has to be taken in
21 conjunction with taking any of the items requested as listed
22 on page 2 of Attachment 26, right?

23 A. That would have to be taken in conjunction
24 with an opt in of, yes, those sections that we've been
25 talking about on page 2.

1 Q. So for example, with regard to resale, where
2 WorldCom has opted into Attachment 1 through 5 in the
3 appendices, then the general terms and conditions that are
4 listed on page 1, including Section 4.2.1, has to being
5 taken as well, right?

6 A. Yes, for the resale appendices.

7 Q. And if we go down each of the other 14 items
8 with associated attachments that you've opted into, the
9 general terms and conditions including Section 4.2.1 must be
10 taken with each of those attachments that you've opted into,
11 right?

12 A. It is listed as being legitimately related to
13 each and every item and section in the Missouri 271
14 agreement.

15 Q. And you understand that Southwestern Bell's
16 position in this arbitration with regard to Issue 41 is that
17 the language that's in Section 4.2.1 needs to be included in
18 the agreement with regard to the specific items requested
19 and associated attachments to which WorldCom has opted into
20 under the M2A, right?

21 A. Would you repeat the question, please?

22 Q. Sure. Do you know that it's Southwestern
23 Bell's position in this case that Section 4.2.1 from the M2A
24 should be included this in the interconnection agreement
25 between our two companies here as it pertains to the

1 specific items and attachments, the M2A to which WorldCom
2 has opted into?

3 A. I believe that's your position.

4 Q. And is WorldCom in agreement that
5 Section 4.2.1 from the M2A should be part of the agreement,
6 insofar as it applies specifically to those items and
7 attachments to which WorldCom has opted into under the M2A?

8 A. Well, I don't think so, because we have put
9 open Section 6 and Section 10 for arbitration because we're
10 not opting into those sections, and since 4.2.1 is
11 legitimately related to Section 6 and Section 10 pursuant to
12 the first page of Attachment 26, that's open for arbitration
13 and negotiation.

14 Q. Okay. I need to explore that a little bit
15 with you. I thought we agreed earlier that WorldCom had
16 opted into some 19 attachments from the M2A and that each of
17 those attachments required WorldCom to take the general
18 terms and conditions that are listed on page 1 of
19 Attachment 26, and that includes Section 4.2.1, right?

20 A. Yeah, it does, but I'm not so sure that if you
21 are negotiating certain provisions in the agreement, that
22 that doesn't negate that portion because 4.2.1 is now open
23 for arbitration.

24 Q. Isn't it fair to say, Mr. Schneider, that
25 4.2.1 is not open for arbitration as to its applicability to

1 each of the 19 attachments which WorldCom has elected to
2 take the M2A, but it is open to negotiation with regard to
3 those attachments from the M2A that are being arbitrated in
4 this case?

5 A. Sorry. Are you saying that you would have
6 possibly a different 4.2.1 for part of that agreement and
7 then a different 4.2.1 for Section 6 and Section 10?

8 Q. Yes. And isn't that exactly what Southwestern
9 Bell's language proposes to do, if you'll look on page 208
10 of the Staff's joint Decision Point List?

11 A. Yeah, I guess that's possible.

12 Q. And would you agree with me that not only is
13 it possible, but it's the appropriate resolution to make
14 Section 4.2.1 apply, but only with respect to those terms
15 and conditions where WorldCom has elected to opt into the
16 M2A?

17 A. It may be the appropriate resolution.

18 Q. And would you agree with me, then, as you're
19 now testifying that Issue 41 ought to be removed and
20 WorldCom's in agreement with the position that Southwestern
21 Bell is expressing there?

22 A. I'd agree with you to remove it.

23 Q. And with regard to Issue 42, the process by
24 which we got there is a little bit different and so we'll
25 probably have to go through that, but would you agree with

1 me that if we added the same language that's bolded on page
2 208 of Staff's DPL to the end of Section 18.3, that that
3 should be included in the agreement, again making it
4 applicable only to those attachments where WorldCom has
5 opted into the M2A?

6 A. Could you repeat that again? I didn't follow
7 you.

8 Q. Sure. I was just trying to short-circuit it
9 instead of going through the whole thing. But if we put in
10 the same language that we added at the end of Section 41,
11 the bold language that's on page 208 of Staff's DPL, we
12 added that to Section 18.3, with regard to Issue 42, would
13 WorldCom agree that that resolves that particular issue and
14 that Section 18.3 with that addition should be added to the
15 agreement?

16 A. I would think you'd need to add it to 18.2 as
17 well.

18 Q. Okay. We'll cover that, but it should be
19 added with regard to 18.3; is that a fair statement? And if
20 we did, you'd be in agreement with 18.3 being part of the
21 agreement?

22 A. If you agreed to 18.2 as well.

23 Q. Okay. With regard to 18.2, the issue there is
24 the scope of the applicability of that particular section,
25 right?

1 Let me ask a different way. Section 18.2
2 contains Southwestern Bell's agreement not to challenge
3 certain portions of the M2A, right?

4 A. Just a moment.

5 Yes, Section 18.2, SWBT expressly waives its
6 right to assert that it need not provide pursuant to the
7 necessary and impaired standard of FTA, Sections 251(d)(2)
8 network element set forth in Attachment 6, unbundled network
9 elements, Section 3 through 11 and/or its rights with a
10 combination of such network elements that are not already
11 assembled pursuant to the provision as Attachment 6, Section
12 14.

13 Q. Right. And so Attachment 18.2 or Section 18.2
14 of the M2A is referring specifically to the Attachment 6 UNE
15 to which WorldCom has not elected to opt into, right?

16 A. That is correct.

17 Q. And so since WorldCom chose not to elect into
18 the Attachment UNE, then a waiver of rights by Southwestern
19 Bell related to Attachment 6 wouldn't be appropriate for the
20 interconnection agreement between our two companies, right?

21 A. Yeah. I said in my direct testimony that I
22 didn't think that this waiver of rights was appropriate,
23 in addition to the waiver of rights that we make in
24 Section 18.3 being inappropriate.

25 Q. Okay. So let's set aside 18.3 for a minute,

1 because we need to come back to it. But you'd agree with me
2 that Section 18.2 isn't appropriate for inclusion in this
3 interconnection agreement because it involves a waiver of
4 rights for sections of the M2A to which WorldCom has not
5 agreed to opt into, right?

6 A. That's correct.

7 Q. But if we flip over to Section 18.3, that
8 section is worded differently and is not directed to
9 Attachment 6 UNE, right? It's a broader provision, isn't
10 it?

11 A. It is a broader provision.

12 Q. And Section 18.3 should be part of the
13 agreement between our two companies with regard to those
14 19 attachments from the M2A to which WorldCom has elected to
15 opt into, right?

16 A. As should 18.2.

17 Q. I'm asking you just about 18.3, just to make
18 sure we're clear on that. That section, because it
19 specifically relates to 19 of the attachments which WorldCom
20 has elected to opt into under the M2A, should be included in
21 the interconnection agreement between our two companies,
22 right?

23 A. With regard to the sections that we opted
24 into.

25 Q. And so if we add to the end of Section 18.3

1 the same language that we just talked about with regard to
2 Issue 41, that makes it clear that it applies only to those
3 portions of M2A in which WorldCom's adopted that would be
4 appropriate resolution of Section 18.3, right?

5 A. And 18.2, I believe. Yes.

6 Q. Okay. I'm not asking about 18.2. I'm asking
7 about 18.3. You would agree with me that if we added the
8 language that we just discussed that makes it clear it
9 applies only to the section of M2A where WorldCom's opting
10 into the M2A, that's appropriate resolution of wording of
11 18.3 for the interconnection agreement between our two
12 companies right?

13 A. I think that would be appropriate.

14 Q. If we flip back to 18.2 one more time, I
15 thought you agreed before that that section was ordered to
16 be applicable to Attachment 6 where WorldCom was not
17 electing to opt into the M2A, and so appropriately, it would
18 be included in the interconnection agreement between our two
19 companies; is that right?

20 A. Well, the way I see it, it would not be
21 appropriate for Attachment 6. It is listed in Attachment 26
22 with regard to the other opt-in sections, so it would be
23 appropriate for those, just as we just discussed on 18.3,
24 which would be appropriate for the opt-in sections as well.

25 Q. Okay. So we should add language in your view

1 to 18.2 to say that it only applies to those sections where
2 WorldCom has opted into the M2A?

3 A. Yeah. I believe so.

4 MR. LANE: Okay. That's all I have.

5 Thank you, Mr. Schneider.

6 JUDGE RUTH: Staff, will you have
7 cross-examination?

8 MR. BATES: Yes, your Honor.

9 CROSS-EXAMINATION BY MR. BATES:

10 Q. Good afternoon, Mr. Schneider.

11 A. Good morning, Mr. Bates, or afternoon.

12 Q. Real quickly, regarding DL Issue 42, did Staff
13 understand that you just changed your position on that issue
14 from what was filed in the DPL, or more specifically the
15 first WCOM agrees to delete Section 18.2 of the GT and Cs?

16 A. Somewhat. I don't think that -- that it
17 should be deleted with regard to the sections of
18 Attachment 26 that we're opting into that list Section 18.2
19 as being a legitimately related term and condition.

20 Q. But in all other ways?

21 A. With regard to Attachments 6 and 10, yes.

22 Q. Okay. Regarding Issues 18, 27 and 41, do I
23 understand you to say that these include liability and
24 limitation of liability information?

25 A. Yes.

1 Q. Okay. What is WorldCom's concern with the
2 liabilities and limitations of liability in these issues?

3 A. WorldCom thinks that they're unnecessary and
4 improper. Section 7 of the general terms and conditions
5 contains broad liabilities and indemnification language that
6 applies to all attachments of the interconnection
7 agreements.

8 Section 7.2.1 is a consequential damages
9 clause that applies to all portions of the
10 interconnection agreements. 7.3 is an obligation to
11 indemnify which applies to all portions of the
12 interconnection agreement, and 7.3.1.1 also applies to all
13 portions of the interconnection agreement, and you also have
14 disclaimer of warranty section in Section 51 that applies to
15 all portions of the interconnection agreement.

16 And it's WorldCom's opinion that these
17 sections provide adequate limitation of liabilities,
18 disclaimer of warranty and indemnification language for all
19 sections of the interconnection agreements. Therefore, the
20 additional limitation of liability, disclaimer of warranty
21 indemnification language that is being attempted to be
22 inserted in the UNE attachment and in the general terms and
23 conditions are unnecessary and improper.

24 Q. Okay. What do you mean? I understand what
25 you mean by unnecessary; then what about improper?

1 A. Well, with regard to 7.1.3, that language is
2 improper because it is not a section that could basically be
3 grandfathered in to the indemnity language. It's not listed
4 as a legitimately related term or condition to Attachment 6
5 or 10, and so I agree with Staff's decision on that, that it
6 is improper and should not be grandfathered in.

7 Q. Does your testimony completely address all of
8 WCOM's concerns on liabilities or limitation of liability
9 language or have other WorldCom witnesses addressed areas
10 that you have not?

11 A. I don't recall other witnesses addressing
12 limitation of liabilities language. There is -- I have
13 addressed additional limitation or additional liability
14 language in the UNE attachment that is at Section 9.4.9.
15 When I was looking at all the additional limitation of
16 liability language, in Sections 9.4.3.9, and the .5.5, I
17 discovered this language that was put in there, and I didn't
18 see any -- see it listed in any of SWBT's issues at all in
19 the 220-page DPL.

20 So I stated in my direct and rebuttal that
21 that is improper and should also come out, and basically
22 also stated that the limitation on liability and
23 indemnification language set forth in 9.4.3.9 or 9.5.5 (all)
24 was unnecessary and should come out, and actually much of
25 the language -- almost all of it, as a matter of fact -- in

1 9.5.5 is identical to the language in 9.4.3.9 and should
2 come out.

3 Q. Does that cover all your concerns then?

4 A. Yes, I believe it does.

5 MR. BATES: Okay. Thank you.

6 JUDGE RUTH: Commissioner Lumpe, do you have
7 questions?

8 QUESTIONS BY COMMISSIONER LUMPE:

9 Q. Just one, Mr. Schneider.

10 I think it's on page 5 of your rebuttal, at
11 the very bottom of the page you have a quote, talking about
12 contemplated use of the same process in Texas. Do you see
13 that? And this says, quote, the Commission -- I'm assuming
14 that's the Missouri Commission, bottom of page 5 of your
15 rebuttal.

16 A. Yeah. Give me a minute, please. I'm hoping
17 that everything's the same on the rebuttal.

18 Q. I think it was. I think it was direct where
19 we were off.

20 A. I apologize. My pages are mismarked.

21 Q. On page 5, the sentence it's on -- line 27
22 starts, When it approved the M2A, the Commission -- and I'm
23 assuming you mean the Missouri Commission -- indicated it
24 contemplated use of the same process as in Texas, stating,
25 and then there's a quote, the Commission notes that

1 consistent with the T2A the M2A allows CLECs in Missouri to
2 elect under 47 U.S.C, Section 51 I to pick and choose
3 portions of the M2A.

4 A. I apologize.

5 Q. Don't find that statement?

6 A. No, I don't. I'm sorry. My -- my page
7 numbers are off.

8 MR. CURTIS: May I assist?

9 THE WITNESS: Just a moment, please. Yes, I
10 believe I was referring to the Missouri Commission.

11 BY COMMISSIONER LUMPE:

12 Q. And should there be a close quotes at the end
13 of that sentence to pick and choose portions of M2A, period?
14 Should there be a close quote there?

15 A. I believe so.

16 Q. Okay. Because I was looking for that. And
17 then the use of the word "pick and choose portions," are you
18 in agreement that that means sections and items, et cetera?

19 A. Yes.

20 COMMISSIONER LUMPE: Thank you. That's all.

21 THE WITNESS: Thank you.

22 JUDGE RUTH: Recross based on questions from
23 the Bench. Southwestern Bell?

24 RECROSS-EXAMINATION BY MR. LANE:

25 Q. Just one or two, Mr. Schneider.

1 Commissioner Lumpe asked you about that same
2 quote, and as I understand it, the following sentence was
3 also intended to be part of the quote, Attachment 26 of the
4 M2A explains what sections in the M2A are legitimately
5 related to others for purpose of allowing a CLEC to obtain
6 access to individual interconnection service or network
7 element arrangement under the M2A. Is that correct?

8 A. I'm not aware that that should be in quotes as
9 well.

10 Q. Following the sentence I just read is where
11 you cite to the Order, right?

12 A. You are correct. I apologize. You're right.

13 Q. Is that second sentence also intended to be
14 part of the quote, right?

15 A. I believe so.

16 Q. And I'm not sure if you have the page number
17 correct or not. It says N18; is that supposed to be -- I
18 believe that's note 18.

19 Q. Footnote 18.

20 MR. LANE: If I could approach, your Honor.

21 JUDGE RUTH: Yes.

22 BY MR. LANE:

23 Q. Showing you the Commission's order regarding
24 recommendation on 271 application in Case No. TO-99-227 of
25 March of 2001 and looking at page 19, footnote 18, are both

1 the sentences that are in your testimony that starts on page
2 5 and goes over to page 6 part of the quote?

3 A. Yes, they are.

4 Q. And our companies are in agreement with how
5 Attachment 26 is to be applied for purposes of this case?

6 A. I don't think we're in full agreement with
7 that. I believe that SWBT has an issue with the Commission
8 being able to bring in the rates of the M2A and award those
9 to us as interim rates, and then for us to get the, I
10 believe, 483 rates when those are completed.

11 Q. Okay. My question probably wasn't precise
12 enough. We're in agreement in terms of identifying how and
13 what sections a CLEC like WorldCom has to take if it wants
14 to take portions of the M2A, and specifically with regard to
15 unbundled network elements, we're in agreement that you have
16 to take all of Attachment 6 through 10, and if you don't
17 take all of them, then the parties have to negotiate and
18 arbitrate if they're not able to reach agreement?

19 A. WorldCom's position is if you want to make
20 changes to Attachment 6 and 10, then you're not opting into
21 Attachment 6 and 10, that those attachments and the
22 legitimately related provisions thereto are up for
23 negotiation/arbitration.

24 Q. Okay. In this case, Attachment 6 through 10
25 were all open for negotiation and subsequently arbitration

1 if agreement wasn't reached?

2 A. That's correct.

3 Q. But we did reach an agreement on 7 through 9,
4 so it was only 6 and 10 that were actually brought to the
5 Commission for arbitration, right?

6 A. We did reach agreement on 7, 8 and 9, and with
7 regard to 6 and 10, yes, the issues that are listed on the
8 DPL are the issues in those attachments.

9 MR. LANE: Thank you, Mr. Schneider.

10 JUDGE RUTH: I want to clarify something, real
11 quick. In answer to one of the questions from Mr. Lane, you
12 referenced to 483 rates when those are completed. Is that
13 what you meant to say, or do you need more?

14 MR. CURTIS: 438.

15 JUDGE RUTH: That's what I thought.

16 THE WITNESS: Thank you.

17 JUDGE RUTH: Mr. Lane, did you need to clarify
18 anything after my question?

19 MR. LANE: No, thanks.

20 JUDGE RUTH: Okay. Mr. Schneider, you may
21 step down and you are excused.

22 MR. CURTIS: Your Honor, I will waive
23 redirect.

24 JUDGE RUTH: I'm jumping ahead. I'm sorry.

25 MR. CURTIS: We're getting close.

1 JUDGE RUTH: Actually, I was thinking it's
2 time to go off the record and have a quick break. It's
3 2:30; we'll come back at 2:45. Thank you.

4 (A BREAK WAS TAKEN.)

5 JUDGE RUTH: We took a short break. We are
6 now back on. Before we move on to the next witness, I want
7 to clarify something from the Bench's perspective. It seems
8 like the last witness or two did make some mention of
9 possible changes in position from what the Decision Point
10 List says, so as noted before, it's expected that those
11 changes will be explained in the substitute pages. Okay.
12 Thank you.

13 WorldCom, you may call your next witness.

14 MR. CURTIS: Edward Caputo.

15 (Witness sworn.)

16 JUDGE RUTH: Thank you, please be seated.
17 Proceed, Mr. Curtis.

18 EDWARD CAPUTO testified as follows:

19 DIRECT EXAMINATION BY MR. CURTIS:

20 Q. State your full name for record.

21 A. My name is Edward Caputo.

22 Q. And by whom are you employed?

23 A. I'm employed by WorldCom.

24 Q. In what capacity?

25 A. I'm the Director of Operator Services and

1 Directory Assistance.

2 Q. Very good. Are you the same Edward Caputo who
3 caused to be prefiled direct and rebuttal testimony in this
4 case marked Exhibit 43 for direct and 44 for rebuttal?

5 A. Yes, I am.

6 Q. Okay. Do you have copies of that testimony
7 there with you?

8 A. Yes, I do.

9 Q. Directing your attention first to your direct
10 testimony, Exhibit 43, do you have any additions or
11 corrections to make there?

12 A. Yes, I do. I have two changes to make. The
13 first is page 3 of my testimony. The footnote at the bottom
14 of the page, the second sentence references Section 5.3 --
15 I'm sorry -- 5.2.3.1 and 5.2.3.4. The second reference
16 should be 5.2.4.3.

17 Q. 4.3?

18 A. Correct. The second changes are on page 7 of
19 my testimony. The first is at line 7. The first word in
20 that line is "based." That word should be stricken and
21 replaced with the word "and."

22 And the second change is with regard to lines
23 10 through 16. That quotation from the UNE Remand Order is
24 incorrect. I had a cut and paste error, as I found, and so
25 what I'd like to do is just give a replacement for that

1 entire quote that contains the appropriate quotation, and I
2 think you have copies of that too.

3 Q. I do. And why don't you note for the record,
4 there's some part of that quote that is still good and
5 there's some part that's wrong?

6 A. Right. Should I -- maybe I'll just read the
7 entire quotation --

8 Q. That would be fine.

9 A. -- and that would include the corrected
10 language.

11 Q. Okay.

12 A. The corrected quotation there is, Customized
13 routing permits requesting carriers to designate the
14 particular outgoing trunks associated with unbundled
15 switching provided by the incumbent, which will carry
16 certain classes of traffic originating from the requesting
17 providers' customers. This feature would allow the
18 requesting carrier to specify that OS/DA traffic from its
19 customers be routed over designated trunks which terminate
20 at the requesting carrier's OS/DA platform or a third
21 party's OS/DA platform.

22 Q. Okay. So if I can go back and look at the
23 quote from page 7 of your testimony, you would at line 14,
24 the sentence beginning "This feature would," strike the
25 remaining portion of that sentence?

1 A. That's correct.

2 Q. And then the additional language would
3 continue as you have read in?

4 A. That is correct.

5 MR. CURTIS: Your Honor, I've got a full copy
6 of the quote, just so you wouldn't have to write it in.

7 JUDGE RUTH: Let me just ask, are you
8 proposing that everyone switch out this page or just for our
9 benefit?

10 MR. CURTIS: For your benefit of having the
11 full quote.

12 JUDGE RUTH: Okay.

13 BY MR. CURTIS:

14 Q. Mr. Caputo, do you have any further changes to
15 your direct testimony?

16 A. No, I don't.

17 Q. Referring you now to your rebuttal testimony,
18 Exhibit 44, do you have any changes or additions there?

19 A. No, no changes.

20 Q. Okay. If you were asked the same questions as
21 contained in your direct and rebuttal testimony as corrected
22 here today, would your answers be the same today?

23 A. Yes, they would.

24 Q. And would those answers be true and correct to
25 the best of your knowledge and belief?

1 A. Yes, they would.

2 MR. CURTIS: Thank you.

3 At this time, your Honor, I would move the
4 admission of Exhibits 43 and 44.

5 JUDGE RUTH: Exhibit 43, Mr. Caputo's direct
6 and Exhibit 44, his rebuttal, have been offered. Are there
7 any objections?

8 (No response.)

9 JUDGE RUTH: They will be received into the
10 record. Thank you.

11 (EXHIBIT NOS. 43 AND 44 WERE RECEIVED INTO
12 EVIDENCE.)

13 MR. CURTIS: Thank you, your Honor. Tender
14 the witness for cross.

15 JUDGE RUTH: Southwestern Bell, you're up
16 first for cross, and you have 20 minutes.

17 MS. MacDONALD: Hopefully I don't need
18 20 minutes.

19 CROSS-EXAMINATION BY MS. MacDONALD:

20 Q. Good afternoon, Mr. Caputo.

21 A. Good afternoon.

22 Q. I have just a few questions for you. In the
23 FCC UNE Remand Order, did the FCC state that
24 nondiscriminatory access to the incumbent's underlying
25 databases used in the provision of OS and DA is required

1 under Section 251 (b)(3) of the 1996 act?

2 A. Well, I'm not sure I understand your question.
3 I didn't testify to anything having to do with underlying
4 access to the databases in my testimony.

5 Q. Okay. You may not have put that in your
6 testimony, but nevertheless, can you tell me whether or not
7 that's what the UNE Remand Order states?

8 A. I wouldn't be able to answer that question
9 without a specific reference to the UNE Remand Order.

10 Q. Okay.

11 MS. MacDONALD: Can I approach the witness,
12 please?

13 JUDGE RUTH: Yes. Show counsel the document,
14 first.

15 BY MS. MacDONALD:

16 Q. I'll restart my question and give you a little
17 time to read that paragraph so you can see whether you agree
18 with me.

19 My question is, in the paragraph 441 of the
20 FCC's UNE Remand Order, did the FCC state, and I quote, We
21 note that nondiscriminatory access to the incumbent's
22 underlying databases used in the provision of OS and DA,
23 OS/DA is required under Section 251(b)(3) of the 1996
24 act, additional nondiscrimination requirements of
25 Section 251(b)(3), coupled with evidence of multiple

1 alternative providers of OS/DA service in the marketplace
2 provide strong evidence that competitors are not impaired
3 without access to an incumbent's OS/DA service as an
4 unbundled network element.

5 A. Okay. Could you ask your question one more
6 time, please?

7 Q. Sure. In paragraph 441 of the FCC's UNE
8 Remand Order, did the FCC state, and I quote, We note that
9 nondiscriminatory access to the incumbent's underlying
10 databases used in the provision of OS/DA is required under
11 Section 251(b)(3) of the 1996 act, the additional
12 nondiscrimination requirements of Section 251(b)(3), coupled
13 with evidence of multiple alternative providers of
14 OS/DA service in the marketplace provide strong evidence
15 that competitors are not impaired without access to the
16 incumbent's OS/DA service as an unbundled network element?

17 A. If the question is, does it say that, yes,
18 that paragraph does say that. But I think it says that with
19 respect to the discussion of the fact that OS and DA are not
20 UNEs as long as the incumbent LEC provides customized
21 routing, and that without customized routing, lack of access
22 to the incumbent's OS/DA services on an unbundled basis
23 doesn't diminish the carriers' ability to provide service.

24 So assuming that the incumbent provides
25 customized routing, there are, in fact, other alternatives

1 available to CLECs. In fact, that's -- that's fine with MCI
2 because --

3 MS. MacDONALD: Your Honor, I want to just
4 object to this narrative when all I asked him is, did I get
5 what paragraph 441 states correct?

6 JUDGE RUTH: I think his answer was
7 appropriate to put it in context. I'm not sure you need to
8 go any further than what you've said. So I'm not striking
9 the answer, but you may move on.

10 MS. MacDONALD: Okay.

11 BY MS. MacDONALD:

12 Q. In paragraph 442 of the FCC's UNE Remand
13 Order, did the FCC state incumbent LECs need not provide
14 access to its OS/DA as an unbundled network element?

15 A. Yes. And, again, to put that into context, it
16 has to do with the fact that if the LEC provides customized
17 routing that would allow the competitive LEC to either self
18 provision OS and DA service or, at its choosing, route those
19 calls to an alternate provider, then, in fact, the CLEC
20 would not be impaired and, therefore, the LEC would not be
21 required to provide OS and DA services as an unbundled
22 network element.

23 Q. And Southwestern Bell, in other words, must
24 provide nondiscriminatory access to its OS and DA databases
25 under Section 251(b)(3); is that correct?

1 A. Well, again, I'm not understanding your
2 question, because I've not testified at all to
3 discriminatory or nondiscriminatory access to underlying
4 databases. My testimony focuses on customized routing and
5 the LEC's requirement to provide OS and DA services as a
6 UNE, unless and until customized routing is provided by the
7 incumbent.

8 Q. Well, Mr. Caputo, do I understand that you are
9 WorldCom's expert witness on, quote, what are SWBT's
10 obligations with respect to OS and DA?

11 A. Yes, absolutely.

12 Q. Okay. Is it true that there are a substantial
13 number of OS and DA providers in the United States?

14 A. Oh, I would say that's absolutely true. In
15 fact, MCI/WorldCom is probably one of the largest providers
16 of OS and DA services and that's why we prefer to self
17 provision and that's why we've asked SBC to provide us with
18 customized routing so that we can do that.

19 Q. And the FCC recognized that there are a lot of
20 OS and DA providers in the UNE Remand Order, correct?

21 A. That's correct.

22 Q. And WorldCom is not dependent on Southwestern
23 Bell OS and DA services in order to provide local exchange
24 services; isn't that correct?

25 A. Well, I don't think it's really a question of

1 dependency. It's really a question of the CLEC's right to
2 self provision or to have a third party provide DA service.
3 In our case, we have elected to self provision, and so by
4 asking or by requesting that Southwestern Bell route our
5 traffic to our Feature Group D trunks, we've exercised our
6 right under the UNE Remand Order to designate the
7 appropriate outgoing trunks over which our traffic must be
8 sent.

9 So to the extent that Southwest Bell (sic) or
10 any other incumbent meets our requirement and provides
11 customized routing, as we've requested it and as required
12 under the UNE Remand Order, then the ILEC would have met its
13 obligation to do so and would not have to provide OS and DA
14 services as a UNE.

15 Q. WorldCom provides local service in Missouri
16 today; is that correct?

17 A. Yes, we provide facilities-based local service
18 in Kansas City, Springfield and St. Louis.

19 Q. And in the provision of that local service,
20 WorldCom provides OS and DA services, correct?

21 A. That is correct.

22 Q. And WorldCom provides its customers with DA
23 service either through its own OS and DA databases or
24 through a third party; is that correct?

25 A. Yes. In the case of directory assistance,

1 local directory assistance, in Kansas City and in
2 Springfield and in St. Louis, we began to self provision
3 directory assistance calls in Sept-- I'm sorry -- in July of
4 2001, and in another switch in St. Louis in August of 2001.
5 And we provide that service to our customers by sending
6 those calls from our local switch across a Feature Group D
7 shared access trunk through our operator services platform.

8 Q. And would you agree that Southwestern Bell
9 provides access to its OS and DA databases in bulk in
10 Attachment DLI/DAL for those CLECs who want to provide
11 DA services on their own?

12 A. Well --

13 Q. Of their own?

14 A. -- again, I'm not understanding your question
15 as it -- as it relates to my testimony with respect to
16 customized routing.

17 Q. Well, do you not have an answer for that
18 question?

19 A. I'm not sure that the question has any bearing
20 on my testimony.

21 Q. Well, whether you believe it has any bearing
22 on your testimony or not isn't really relevant to me. I
23 want to know whether you can tell me whether SWBT provides
24 access to its OS and DA databases in bulk?

25 A. I'm sorry. Ask the question again.

1 Q. Does SWBT provide access to OS and
2 DA databases in bulk in Attachment DLI/DAL for those CLECs
3 that wish to provide DA services?

4 A. I believe that SBC or SWBT or Southwestern
5 Bell provides access to the directory assistance listing
6 database in bulk. I can't -- I don't believe that I'm aware
7 of a specific operator service database. The only operator
8 services databases that I can think of would be LIDB and
9 CNAM. And, in fact, Southwestern Bell does not provide
10 those databases in bulk.

11 Q. Okay. But they do provide access -- strike
12 that.

13 WorldCom has not requested direct access to
14 SWBT's OS and DA databases; is that correct?

15 A. Sorry. Could you clarify your question?

16 Q. Which part of my question don't you
17 understand?

18 A. I don't understand it at all.

19 Q. Okay. We'll move on. WorldCom purchases
20 SWBT's DAL in bulk with daily updates through SWBT's DAL
21 tariff; isn't that correct?

22 A. I do not believe that we do purchase your
23 database through tariff. I believe that we purchase your
24 database through a contract.

25 Q. Okay. You purchase it nevertheless; is that

1 correct?

2 A. That is correct.

3 Q. And WorldCom can purchase SWBT's DAL separate
4 and apart from this interconnection agreement; isn't that
5 correct?

6 A. It certainly can. However, we're able to
7 avail ourselves of the ability to purchase that database
8 under the interconnection agreement since the directory
9 assistance listing database is a UNE.

10 Q. In your opinion?

11 A. Yes, in our opinion.

12 Q. And clearly we're not in agreement on that?

13 A. I don't believe we are, no.

14 Q. And would you be -- would it be fair to say
15 that this Commission has already determined in Southwestern
16 Bell's Missouri 271 proceeding that Southwestern Bell does
17 provide nondiscriminatory access to its DA and OS databases?

18 A. I wasn't part of the proceeding in the 271
19 process, so I'm not -- I'm not sure.

20 Q. You don't know?

21 A. I'm not sure. I wasn't part of that process.

22 Q. Do you know one way or the other whether the
23 FCC also determined that Southwestern Bell provides
24 nondiscriminatory access to its OS and DA databases?

25 A. I'm not -- like I said, I wasn't part of the

1 271 process, so I'm not sure what the FCC's ruled in that
2 regard.

3 JUDGE RUTH: Ms. MacDonald, I'll have to ask
4 you to wrap it up fairly quickly.

5 MS. MacDONALD: Okay.

6 JUDGE RUTH: You've gone over several minutes.

7 BY MS. MacDONALD:

8 Q. Okay. I just have one further question.

9 Would you agree with me that Southwestern Bell
10 offers customized routing of all OS/DA to all CLECs in the
11 same manner that SWBT routes such traffic for itself?

12 A. I would agree that the language that SBC has
13 provided states exactly that; however, that is not what
14 MCI/WorldCom requires. It is not in any way customized to
15 meet our requirements. We -- as the CLEC, we get to
16 designate the outgoing trunks over which the traffic is sent
17 or we get to designate the protocol, the signaling protocol.
18 So whether SBC says they're offering customized routing, to
19 the extent that it doesn't meet the CLEC's requirement, it
20 does not provide customized routing in any way, shape or
21 form.

22 Q. In your opinion?

23 A. Yes, in my opinion.

24 Q. And clearly we disagree on that?

25 A. Clearly we do.

1 JUDGE RUTH: Just a moment. You're right. As
2 you were looking at your watch, I was only giving you ten
3 minutes --

4 MS. MacDONALD: That's okay.

5 JUDGE RUTH: -- which means you have -- you
6 started at 2:53. So you have another five or six minutes.

7 MS. MacDONALD: I just have a couple of more
8 questions now that I know I have a little bit more time.

9 BY MS. MacDONALD:

10 Q. In preparing for today, did you have the
11 opportunity to read Southwestern Bell's testimony with
12 respect to OS and DA?

13 A. Testimony of?

14 Q. Say, Jan Rogers.

15 A. Yes, I did.

16 Q. Okay. And in there, did you learn that this
17 Commission determined that in Southwestern Bell's Missouri
18 271 proceeding, that Southwestern Bell provides
19 nondiscriminatory access to DA and OS?

20 A. I don't remember exactly what Ms. Rogers said.

21 MS. MacDONALD: Okay. That's all I have.

22 JUDGE RUTH: Are you sure?

23 MS. MacDONALD: I'm positive. Thank you,
24 though.

25 JUDGE RUTH: Staff, do you have cross?

1 MR. BATES: No, thank you.

2 JUDGE RUTH: Commissioner Gaw, do you have any
3 questions for this witness?

4 COMMISSIONER GAW: No, thank you.

5 JUDGE RUTH: Redirect?

6 REDIRECT EXAMINATION BY MR. CURTIS:

7 Q. Mr. Caputo, you were asked that since the FCC
8 UNE Remand Order ruled that OS/DA is not a UNE, that
9 Southwestern Bell does not have to provide OS/DA as a UNE.
10 Do you agree?

11 A. No, sir, I do not. I believe that what the
12 FCC did was do a fairly thorough analysis of the necessary
13 and impair standards of the -- of the UNE -- of the
14 obligation to provide OS/DA as a UNE.

15 And what the FCC concluded is that if an
16 incumbent LEC provides customized routing to a competitive
17 LEC, that is, they allow the competitive LEC to route their
18 operator and directory traffic to a platform of their
19 choosing so that that CLEC may either take advantage of self
20 provisioning, which is what MCI/WorldCom would prefer to do,
21 we obviously would prefer to have all of the interaction
22 with our own customer, with our own employees rather than
23 have the employees of the incumbent do that, that unless the
24 CLEC has the opportunity to self provision or to choose a
25 platform of its own choosing and route that appropriately,

1 again, of course, MCI/WorldCom, since we have the ability to
2 provide our own operator service and directory assistance,
3 we choose to do that.

4 But unless they meet that obligation of
5 customized routing, they must provide OS and DA services --
6 and when I say services, there's a whole -- there's a whole
7 slew of requirements in terms of providing collect call,
8 third-party calling, general assistance, directory
9 assistance, that whole set of services that are normally
10 associated with local operator, local directory, that those
11 services must be provided to the CLEC, and if they're not
12 provided to the CLEC, then the CLEC's customers would be
13 disadvantaged or would be -- or would get inferior service
14 from the CLEC.

15 So to the extent that the -- that the CLEC is
16 able to self provision those services and chooses to do so,
17 which is what we would like to do, or that the CLEC is able
18 through some other method to send those calls to a third
19 party to have that service provided, that the ILEC is not
20 relieved of their obligation to provide OS and DA as a UNE.

21 And our position is that we are anxious to
22 self provision our own calls. We have had a fairly lengthy
23 discussion with SBC in terms of how to do that. We've
24 provided them with all of the documentation that has been
25 used to try to do that, and Southwestern Bell has failed to

1 provide us with customized routing and has really not even
2 been interested in trying to help us do it.

3 So, you know, our desire is to self provision
4 and we still want to do that and we're anxious to do that.
5 And however we're able to convince Southwestern Bell that we
6 want to do that according to the requirements that we have
7 to meet our platform needs and to meet our signaling needs,
8 we're anxious and willing to do that.

9 Q. Today, in Missouri, does Southwestern Bell
10 provide customized routing to any CLEC for OS/DA?

11 A. I heard earlier in the week a Southwest Bell
12 witness say that they do provide customized routing to a
13 CLEC. It's -- they didn't mention who that CLEC is. It
14 would not surprise me that that CLEC would probably be AT&T,
15 and the reason that they're probably able to do it for AT&T
16 is because AT&T uses the same signaling protocol that
17 Southwestern Bell does, since for decades they were
18 affiliated companies and have the same type of network
19 architecture.

20 However, WorldCom does not have the same
21 signaling architecture, signaling network that SBC has. The
22 protocol that -- or the trunks we have designated are
23 Feature Group D; the trunks that Southwestern Bell uses are
24 Feature Group C. Their protocol is not compatible with our
25 protocol, and we don't have to change our protocol to meet

1 their protocol. They need to change their protocol to meet
2 our protocol or they have to provide us customized routing.

3 Q. Have you had any discussions or negotiations
4 with Southwestern Bell regarding customized routing?

5 A. We have had extensive negotiations and
6 discussions with Southwestern Bell regarding customized
7 routing. We actually began the negotiations and discussions
8 in September of 2000, and at that time we indicated -- well,
9 actually, our negotiations and discussions --

10 MS. MacDONALD: Your Honor, I'm going to
11 object. I did not ask about negotiations at all in my
12 cross-examination, and this redirect is way beyond the scope
13 of what was brought up.

14 JUDGE RUTH: You have an opportunity to
15 clarify for me how it is related to the cross.

16 MR. CURTIS: Ms. MacDonald brought up the
17 issue of customized routing on her cross-examination here,
18 and it is clear that provisioning and offering customized
19 routing is relevant as a factor in determining whether OS
20 and DA as a UNE needs to be opened up as a UNE.

21 And the FCC has ruled unless an incumbent LEC
22 can provide customized routing, and if they don't, then it
23 is opened as a UNE. So I think it is very relevant, and I
24 think what we're trying to explore here is the good faith
25 efforts on behalf of WorldCom to negotiate something.

1 We've been going at it since 2000, and I think
2 that's good to have in the record and I think it's very
3 relevant.

4 JUDGE RUTH: One response?

5 MS. MacDONALD: Yes. I only asked one
6 question about customized routing, and my question was
7 whether we offered it in the same manner that we route our
8 traffic for ourselves, and he said yes. I didn't ask about
9 Feature Group D at all. I didn't ask about negotiations at
10 all, and this is clearly beyond the scope of my
11 cross-examination.

12 MR. CURTIS: I think she's opened up the whole
13 subject. Even though it's one question, it doesn't matter.

14 JUDGE RUTH: I'm going to overrule the
15 objection and allow you to continue, but keep in mind
16 redirect is limited timewise also.

17 MR. CURTIS: Thank you.

18 THE WITNESS: Actually, we actually began to
19 discuss customized routing with South-- with Pacific Bell in
20 1997. I'm not sure exactly when the merger occurred between
21 SBC and Pacific Bell, but suffice it to say that in 2000,
22 September of 2000 we began to have additional conversations.
23 We had tried since 1997 through various avenues to get
24 customized routing.

25 In 1997 we made a concerted effort to attack

1 that again. We had some discussions with Bell. We quickly
2 determined from those discussions that we weren't going
3 to -- that we weren't going to be successful in -- in asking
4 them to do it unless we provided them -- even though we
5 weren't required to do so -- unless we provided them with
6 how it could be done technically.

7 Q. And have we done that?

8 A. Yes, we have. We've provided -- in my
9 testimony in California we provided Pacific with a stack of
10 documentation about that thick (indicating) that includes
11 specifications from Nortell, Lucent and the Seimen switch
12 manufacturers that specify exactly how customized routing
13 can be done. Specifically the Feature Group D trunks we
14 helped them -- we helped them understand how switch routing
15 tables would need to be populated so that both OS and DA
16 calls would be able to flow across Feature Group D trunks,
17 with the exception of the Nortell DMS switch for zero calls,
18 and that was brought up in testimony earlier this week.

19 We specifically told SBC that those type of
20 calls would not correctly route today without development on
21 the part of Nortell, and we told SBC that they could work
22 with Nortell and have Nortell do that development because we
23 talked to Nortell before we presented the materials to SBC
24 in testimony.

25 Not only did we demonstrate that customized

1 routing can be done over Feature Group D trunks, we also
2 demonstrated that the appropriate billing records would be
3 cut. We proceeded to a lab test with SBC, and SBC, even
4 though they have not provided us with the results of those
5 lab tests, they have indicated that those calls do route in
6 the lab.

7 So we're convinced that we're correct that
8 Feature Group D routing will work, and in fact, we know it's
9 going to work because we've been doing so in our own switch
10 network since 1997 on both Lucent and Nortell switches. So
11 we take a customer-411-dialed call, we translate that into a
12 call that looks like a long distance call and we route that
13 to our shared-access Feature Group D trunks, and through --
14 through parameters in our switch network, we're able to send
15 those calls to our own local operator and directory
16 assistance platforms.

17 Q. Is this being field tested in California?

18 A. It is not at the current time; however, we did
19 send a response to SBC indicating that we are ready to
20 initiate those field tests. We sent a letter to them
21 yesterday.

22 Q. And you're confident that this customized
23 routing that has been developed by WorldCom will work?

24 A. I am.

25 Q. Can work in Missouri and Southwestern Bell?

1 A. Yes, I am. One other piece of comment about
2 the letter that we sent to SBC yesterday, the reason that
3 we -- that we did not send an immediate response to SBC
4 whether they originally sent us their letter in August of
5 last year, there were a number of factors associated with
6 that.

7 No. 1, the case in California had not yet been
8 decided. It has subsequently been decided in California,
9 and the California Commission ruled that SBC must provide
10 with customized routing over the Feature Group D methodology
11 that we requested.

12 We also have a number of business factors that
13 determine whether or not or when we were going to actually
14 respond to that letter, one of which being our pending
15 decision to enter the California market. We are now in the
16 California market in a limited test basis and are ready to
17 proceed with our test with SBC.

18 And the third really has to do with other
19 commercial business factors, including the ability to
20 provision the appropriate number of seats to handle those
21 calls, to hire and train operators and be prepared to
22 provide a quality service to customers when we are able to
23 take those calls.

24 MR. CURTIS: Thank you, Mr. Caputo.

25 Thank you, your Honor, for indulging a little

1 extra time.

2 JUDGE RUTH: Okay. Mr. Caputo, you may step
3 down and you are excused.

4 THE WITNESS: Thank you.

5 JUDGE RUTH: I believe the last witness is
6 perhaps Staff's.

7 MR. BATES: Yes, your Honor. We would call
8 Bill Peters to the stand.

9 (Witness sworn.)

10 JUDGE RUTH: Thank you. Mr. Bates?

11 BILL PETERS testified as follows:

12 DIRECT EXAMINATION BY MR. BATES:

13 Q. Would you state your name for the record.

14 A. Bill Peters.

15 Q. And what is your business address?

16 A. 200 Madison Street, Jefferson City, Missouri.

17 Q. And by whom and in what manner are you
18 employed?

19 A. I'm employed by the Public Service Commission
20 as a regulatory economist.

21 Q. Mr. Peters, did you cause to be filed in this
22 case what has been marked as Exhibit -- for identification
23 as Exhibit No. 47?

24 A. My direct testimony -- or rebuttal testimony,
25 yes.

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1 Q. Yes. Okay. Do you have any additions or
2 corrections you wish to make in that testimony at this time?

3 A. Yeah, actually, I do.

4 On page 3, line 14, it says, Services to the
5 cost of those services, and I want to strike "cost of" and
6 replace that with "revenue received from," so the entire
7 sentence starting on line 13 would read, "Additional
8 language as proposed by SWBT limits its liability with
9 respect to LIDB services to the revenue received from those
10 services."

11 And on page 6, line 9, where it says
12 "Pacific," I'd just like to add "Bell" to that, so it
13 says -- the whole sentence starting on line 8 would be "The
14 proposed language explicitly includes non-Missouri SBC
15 Ameritech entities in the agreements and gives Pacific Bell,
16 SBC/Ameritech," and so on.

17 I have one more change on page 8, line 3,
18 where it says, "Terms and conditions." I want to replace
19 that -- replace that with the word "rates," so the whole
20 sentence starting on line 3 would read, "Because of time
21 constraints, Staff recommends these M2A rates for terms and
22 conditions that SWBT wishes to arbitrate," and so on.

23 Q. If I were to ask you the same questions now,
24 would your answers be substantively the same?

25 A. Yes.

1 Q. And are they true and correct to your
2 knowledge and belief?

3 A. Yes.

4 MR. BATES: Your Honor, at this point I would
5 move into evidence what has been marked for identification
6 as Exhibit No. 47, Mr. Peters' rebuttal testimony.

7 JUDGE RUTH: Are there any objections to
8 Exhibit 47, Mr. Peters' rebuttal, being received into the
9 record?

10 (No response.)

11 JUDGE RUTH: Seeing no objections, the
12 document is received.

13 (EXHIBIT NO. 47 WAS RECEIVED INTO EVIDENCE.)

14 MR. BATES: And, your Honor, I tender the
15 witness for cross-examination.

16 JUDGE RUTH: Southwestern Bell.

17 MR. LANE: Thank you, your Honor.

18 CROSS-EXAMINATION BY MR. LANE:

19 Q. Good afternoon, Mr. Peters.

20 A. Good afternoon.

21 Q. I wanted to address Issue No. 18 with you, and
22 that involves whether specific liability language should be
23 included in the agreement for call-related databases.

24 A. Uh-huh.

25 Q. You agree we're talking about the LIDB

1 database and the CNAM information that's a part of that
2 database in this question, aren't we?

3 A. Correct. Let me look at the DPL. Just says
4 call-related databases, and those are call-related
5 databases, yeah.

6 Q. And you are fairly new to the Commission, are
7 you not?

8 A. Yeah.

9 Q. And in conjunction with preparing your
10 testimony, did you have an opportunity to familiarize
11 yourself with the position that Staff had taken with regard
12 to this same issue in the AT&T arbitration?

13 A. In 455?

14 Q. Yes, sir.

15 A. Let me think about that for a second. I don't
16 think I addressed that directly. Could you point me? I did
17 look through the 455 order, though.

18 Q. Okay. Would you agree with me that in that
19 TO-2001-455 case, that this same issue was raised and that
20 Staff took the position that it was appropriate to include
21 database-specific limitation of liability clauses in the UNE
22 attachment?

23 A. Can you point me to that in the Order?

24 MR. LANE: May I approach the witness, your
25 Honor?

1 JUDGE RUTH: Yes.

2 THE WITNESS: I have the Order here.

3 BY MR. LANE:

4 Q. It's not in the Order.

5 A. Oh, it's not in the Order?

6 JUDGE RUTH: For the record, can you state
7 again what it is you're showing him?

8 MR. LANE: I will, yes, your Honor.

9 BY MR. LANE:

10 Q. Mr. Peters, I want to show you from Case
11 No. TO-2001-455, it's the Staff evaluation of the final
12 offers in that arbitration. And with specific reference to
13 Exhibit 2C, UNE terms and conditions, page 54 of 66 from
14 that filing with regard to Issue No. 54, which involved
15 should SWBT LIDB limitation of liability language be
16 included in the interconnection agreement, and ask if you
17 agree that Staff stated for its position in that case that,
18 quote, Staff believes it is appropriate to include
19 database-specific limitation of liability clauses. Further,
20 since the clauses are specific and not generic in nature, it
21 is appropriate for the clauses to appear in the
22 corresponding topical section of the agreement.

23 A. I'll agree that was the resolution there.

24 Q. Okay. And I take it you didn't have the
25 opportunity to review that when you were preparing your

1 position in this case?

2 A. I had the opportunity to review many, many
3 things, and I reviewed what I found most appropriate, and
4 that might have been something that I missed.

5 Q. Okay. And are you aware of anything in the
6 industry or with regard to call-related databases between
7 May of last year and today that would cause Staff to take a
8 different position now than it took back in the AT&T
9 arbitration?

10 A. Like the FCC ordering something, you mean, or
11 some change in rules?

12 Q. Yes. I'm asking if you're aware of whether
13 there was any specific FCC ruling or change of law or
14 anything else that would cause Staff to have a different
15 position now than the one that it took back in the AT&T
16 arbitration.

17 A. No, I'm not aware that anything changed of
18 that nature. I had addressed this issue the way
19 Southwestern Bell argued it, and I'm not sure if both of
20 those are the same issue either. I mean, it could very well
21 be both of them addressed limited liability -- limitation of
22 liability language with LIDB.

23 Q. Okay. Do you have any reason to doubt that
24 they do?

25 A. No, I don't have any reason to doubt it.

1 Q. The issue that you looked at involved from the
2 AT&T arbitration whether SWBT's LIDB limitation of liability
3 language should be included in the interconnection
4 agreement, right?

5 A. Okay. I don't understand. You're asking me
6 about the AT&T arbitration.

7 Q. I was trying to.

8 A. I prefer if we talked about this arbitration,
9 but I understood from what you just showed me that it
10 involved language that Southwestern Bell proposed in that --
11 that case or that arbitration.

12 Q. The issues appear to be the same, right?
13 Should any --

14 A. They appear to be similar.

15 Q. -- limitation of liability provisions directly
16 related to call-related databases in the section of the
17 agreement that deals with those call-related databases,
18 right?

19 A. Yeah, they do seem to be similar.

20 Q. Now, in this arbitration, Staff's of the view
21 that Section 7.1.2 of the general terms and conditions ought
22 to be enough to take care of these limitation of liability
23 issues with regard to databases, right?

24 A. Correct.

25 Q. Okay. And then I wanted to explore that a

1 little bit with you and see if you still stick with that
2 view. The section that you cite from the general terms and
3 conditions is Section 7.1.2, right?

4 A. Correct.

5 Q. Is that the only section that you think is
6 relevant for purposes of analyzing this limitation of
7 liability question?

8 A. No, it's not the only section I find relevant,
9 but I thought it was sufficient to answer my question.

10 Q. Okay. And in the Staff DPL in this case,
11 would you agree that Section 7.1.2 of the general terms and
12 conditions is the only item that you cite?

13 A. Correct.

14 Q. Would you agree with me that Section 7.1.2 of
15 the general terms and conditions doesn't address end user
16 liability issues at all; it specifically excludes that,
17 right?

18 A. Give me a second. I'll just reread it. It
19 does address the end user.

20 Q. Okay. So that's one item that is addressed
21 specifically in Southwestern Bell's language with regard to
22 call-related databases that isn't specifically covered by
23 Section 7.1.2, right?

24 A. That's correct. But I took this as an
25 agreement between the companies.

1 Q. But there's a lack of agreement on this issue,
2 isn't there?

3 A. In that -- in that turn of words, yeah, the
4 interconnection agreement would be the agreement between the
5 companies that I was speaking of, and I guess to clarify
6 that, I would hold it upon the company actually conducting
7 business, like the CLEC, to have that contract language with
8 their -- with their customer, the end user.

9 Q. Okay. Would you agree with me that
10 Southwestern Bell's proposed limitation of liability
11 language with regard to the call-related databases is more
12 specific with regard to identifying and resolving the
13 specific issues that could arise?

14 A. Yeah, I would agree with that.

15 Q. It would tend to reduce future disputes that
16 might arise if we just utilize Section 7.1.2, right?

17 A. Possibly if those -- if those things came up,
18 that those sections dealt with, then you could just go to
19 that law -- or not the law, just that part of the
20 interconnection agreement to resolve it.

21 Q. It's also fair to say, isn't it, that
22 Southwestern Bell's limitation of liability language makes
23 clear that with regard to these call-related databases, that
24 its liability would be limited to the amount that WorldCom,
25 in this case, pays for utilization of those call-related

1 databases, right?

2 A. Can you just state it again? I got lost right
3 at the end.

4 Q. Sorry. You would agree that Southwestern
5 Bell's proposed language makes it clear that its liability
6 would be limited to the amount paid for the LIDB and other
7 database services provided under the agreement, right?

8 A. Yeah, that's what it says.

9 Q. And there's not a similar provision in
10 Section 7.1.2, is there?

11 A. Not in that section that I stated -- that I
12 cited, no.

13 Q. And Southwestern Bell's proposed language
14 also makes it clear that it's the exclusive remedy for
15 issues involving call-related database liability whereas
16 Section 7.1.2 doesn't, right?

17 A. Right. 7.1.2 would cover the entire
18 agreement.

19 Q. Southwestern Bell's proposed language also
20 handles the issue of what happens if there's a system
21 outage, right?

22 A. Yeah.

23 Q. And if there is a system outage, then the LIDB
24 database and the CNAM information that's a part of that
25 database would be equally unavailable to Southwestern Bell

1 as well as to any CLECs that wanted to use it, right?

2 A. Correct. If something was out, you couldn't
3 use it.

4 Q. So the limitation of liability provisions that
5 we find with regard to system outages isn't contained
6 anywhere in Section 7, right, of the general terms and
7 conditions?

8 A. Right. It's not -- that's not contained in
9 Section 7.

10 Q. And it would be appropriate, wouldn't it, to
11 have some specific provisions that took into account the
12 possibilities of outages and allocated liability
13 appropriately?

14 A. Well, I feel if -- I guess if both parties
15 agree that it was appropriate, then it would be appropriate.
16 The way I was approaching this is I look at what
17 Southwestern Bell proposes and what WorldCom proposes and
18 try to find a fair resolution, and the reason why I didn't
19 propose that language is because it had previously been
20 sufficient in the M2A without that language.

21 Q. Okay. But we're not dealing with the M2A
22 here, are we?

23 A. I understand that. It seemed like the fair
24 resolution.

25 Q. Now, would you agree that the CNAM information

1 that's contained in the LIDB database has a limitation on
2 the number of characters that can be sent out with the -- in
3 response to the query?

4 A. Limitation on -- right. How many shows up on
5 caller ID, for example?

6 Q. Right.

7 A. Yeah. Only, what did it say, 15 characters?

8 Q. Right. And would you agree that the inf-- the
9 liability -- limitation of liability provisions that
10 Southwestern Bell proposes makes specific reference to the
11 limited number of characters and provides that Southwestern
12 Bell wouldn't be liable if there's an issue that arises
13 because only 15 characters can be provided?

14 A. Right. They specifically address that.

15 Q. And that's not specifically addressed in the
16 Section 7 provisions, is it?

17 A. Correct.

18 Q. It's also fair to say that the CNAM
19 information that's in the LIDB database contains
20 instructions from the end-user customer about whether their
21 specific name and number information can and should be
22 passed on with the call, right?

23 A. Oh, you mean the blocking?

24 Q. Yes.

25 A. Yeah.

1 Q. And that's an important provision, would you
2 agree, that it's important that we try to implement what the
3 end user directs with regard to whether the name and number
4 of the calling party gets sent out to the called party?

5 A. Can you ask it a different way?

6 Q. Sure. It's important that both Southwestern
7 Bell and the CLEC that makes an inquiry into the database
8 appropriately follows the instructions of the customer with
9 regard to whether the call information should or should not
10 be blocked, right?

11 A. Yeah, correct. That seems like -- it would
12 seem appropriate that the company should follow their
13 customer's instructions.

14 Q. And Southwestern Bell's limitation of
15 liability provisions tries to make clear how the liability
16 will be assessed if the CLEC, for example, fails for
17 whatever reason to comply with the end user's directive
18 that's contained within the LIDB database, right?

19 A. Yes, Southwestern Bell addresses that in that
20 proposed language.

21 Q. Okay. And there's no specific addressing of
22 that particular issue in Section 7, general terms and
23 conditions, right?

24 A. Are we going to point out every difference?
25 I'm just wondering.

1 No. I'm sorry.

2 Q. Well, if you're willing to change and agree
3 with our position, we can stop.

4 A. All right. Keep going.

5 Q. It's fair to say, isn't it, that the
6 information that is contained in the LIDB database and in
7 the CNAM portion of that database is not only information
8 that Southwestern Bell inputs into it, but also information
9 that's submitted by CLECs, including WorldCom, AT&T, NuVox
10 and others?

11 A. Yeah, multiple parties submit that
12 information.

13 Q. And Southwestern Bell's proposed limitation of
14 liability language makes it clear that it's not responsible
15 for any errors that are included in the database, to the
16 extent that the information is submitted by any of these
17 third parties, right?

18 A. Yes. In fact, it completely exonerates Bell
19 from those errors.

20 Q. And there's no similar provision, is there, in
21 the Section 7 that makes it at least abundantly clear that
22 Southwestern Bell isn't liable with regard to errors or
23 inaccuracies in the database to the extent that those are
24 caused by a third party?

25 A. Not caused by a third party. It only

1 addresses negligence and misconduct.

2 Q. Would you agree with me that it's appropriate
3 that we have some specific language that addresses
4 Southwestern Bell's non-liability for information that
5 resides in the database that was put into it by others to
6 the extent that that is inaccurate in any respect?

7 A. I wouldn't agree, and I would -- I would
8 answer, I don't agree, because I wouldn't think that
9 Southwestern Bell could be held liable for information
10 entered by another party.

11 Q. Okay.

12 A. If Southwestern Bell can prove that.

13 Q. And you're not a lawyer, right?

14 A. (Witness shook head.) I'm sorry. I should
15 say no. I can't shrug.

16 JUDGE RUTH: I just wanted the record to
17 reflect that he nodded. As in no, you're not an attorney.

18 THE WITNESS: Yes, I should have said no.
19 sorry.

20 BY MR. LANE:

21 Q. And when you say that Southwestern Bell
22 couldn't be held liable in those circumstances, it's not an
23 opinion that's informed by having studied or researched the
24 law, right?

25 A. It's not a legal opinion, no.

1 Q. And to the extent there might be an issue that
2 arises as a result of it, as between Southwestern Bell and
3 the CLEC, do you think it would be appropriate to include in
4 the interconnection agreement some provisions that make
5 clear that Southwestern Bell isn't liable, as between it and
6 WorldCom, if there are inaccuracies for information
7 submitted by others in the database?

8 Q. Well, it would seem -- it would seem like it
9 would be appropriate for Southwestern Bell to want to
10 include that, but as in agreement between -- the
11 interconnection agreement is between two parties. So I
12 couldn't say whether it would be appropriate for both
13 parties.

14 Q. It sounds like if WorldCom doesn't agree to
15 it, then you don't think it's appropriate for inclusion. Is
16 that right?

17 A. Not necessarily, no. It wouldn't change my
18 opinion on the issue.

19 Q. Isn't it Staff's role in this case to look at
20 what Southwestern Bell proposes, look at what WorldCom
21 proposes, and decide what the agreement should be?

22 A. Exactly.

23 Q. And the fact that there isn't agreement is the
24 only reason that Staff's involved in the issue at all,
25 right?

1 A. Correct.

2 Q. And so if you evaluate whether a provision
3 like that should be in the agreement, wouldn't you say that
4 it's appropriate that there be some provisions addressing
5 whether Southwestern Bell should be liable for inaccuracies
6 in information that is submitted by third parties and that
7 Southwestern Bell shouldn't be liable in those
8 circumstances?

9 A. I guess I need to refer to my previous
10 statement that I -- I would think that in my non-legal
11 opinion that Southwestern Bell would not be liable for
12 inaccuracies supplied by third parties.

13 Q. Okay. And to the extent there's a possibility
14 that somebody could disagree with that view, would you think
15 in that case that it would be appropriate to try to address
16 the issue in the interconnection agreement?

17 A. It's appropriate to address it for
18 disagreements. That's why you would include it.

19 Q. And to the extent that the information that is
20 resident in the LIDB database and the CNAM information
21 included with that is provided by Southwestern Bell, to the
22 extent there's any inaccuracies in it, those would apply
23 equally to Southwestern Bell utilizing the database, as well
24 as to CLECs, right?

25 A. Okay. What do you mean by equally to

1 Southwestern Bell utilizing the database? Southwestern Bell
2 utilizing the database as an ILEC and a CLEC utilizing it as
3 a CLEC; is that -- is that your --

4 Q. They both use the same database in the same
5 bay by making a per-query DIP, right?

6 A. Right.

7 Q. And so if there's an inaccuracy even from
8 Southwestern Bell-supplied information, it's inaccurate for
9 Southwestern Bell as well as for the CLEC, right?

10 A. Right. Inaccurate information would be
11 inaccurate for every party.

12 Q. There's no competitive disadvantage if
13 Southwestern Bell has made an error in some respect and has
14 put that information into the database, right?

15 A. No.

16 Q. Let me switch over to Issue 28 if we can. On
17 page 5 of your testimony you state that with regard to paper
18 copies, WorldCom can go to the public agencies and get that
19 information just like Southwestern Bell, right?

20 A. Yep.

21 Q. Would you agree that the same is true for
22 electronic information, that they're equally able to go to
23 the public agency and get that information in electronic
24 form, if that's how the public agency provides it?

25 A. Yeah, if that's how the public agency provides

1 it, they can get it that way.

2 Q. And that ought to be sufficient as opposed to
3 trying to make Southwestern Bell provide it to the CLEC,
4 right?

5 A. It might be sufficient and if that -- actually
6 from hearing, I think it was, Linda De Bella's testimony --
7 if I remember it correctly, she said that -- that the white
8 pages listings were available for electronic transfer, and
9 that those white pages listings also contained the emergency
10 information. I don't know if -- if that's true, then --
11 then I don't see why they couldn't get the emergency
12 information from the white pages listing, based on the
13 testimony I heard today.

14 Q. And if what you say Ms. De Bella said is
15 correct, then it would be Staff's recommendation that that
16 ought to be the method that WorldCom goes to get the
17 information about public agencies?

18 A. It would be Staff's recommendation that they
19 would need an additional method, if it was that readily
20 available.

21 Q. You're not aware of any direct information
22 that's limited to -- in electronic or paper form that
23 Southwestern Bell has with regard to all of the numbers of
24 all of the public agencies throughout the Missouri area, are
25 you?

1 A. Aware of any direct information? Can you
2 explain that?

3 Q. It appears to be that Staff's recommendation
4 would require Southwestern Bell to somehow put together the
5 information for WorldCom. I'm asking if you're aware, does
6 Southwestern Bell already have it separated in some form?

7 A. I'm not aware if it's separated actually at --
8 I assumed that it was probably concentrated.

9 Q. And if it's not, then it wouldn't be
10 appropriate to require Southwestern Bell to do that, would
11 it?

12 A. I don't know if that would affect its
13 appropriateness.

14 MR. LANE: That's all I have. Thank you,
15 Mr. Peters.

16 THE WITNESS: Thanks.

17 JUDGE RUTH: WorldCom, do you have cross?

18 MR. CURTIS: Just a minute, your Honor.

19 CROSS-EXAMINATION BY MR. CURTIS:

20 Q. Good afternoon, Mr. Peters.

21 A. Good afternoon.

22 Q. My name is Lee Curtis. I'm one of the
23 attorneys for WorldCom.

24 Under general terms and conditions, isn't it
25 true that 7.1.1, while it does not cover third-party

1 liability, there is indemnity language in 7.3.1.1 which does
2 cover end users with respect to third-party liability?

3 A. Okay. What was the beginning of the question?

4 Q. 7.1.1.

5 A. Oh. 7.1.1.?

6 Q. Right.

7 A. Okay. You're just going to have to restate is
8 it again, please.

9 Q. I will.

10 A. Too many numbers.

11 Q. Okay. That does -- while that does not cover
12 third-party liability, there is indemnity language in
13 7.3.1.1 which would cover end users with respect to
14 third-party liability. Would you agree with that?

15 A. Give me a second to read it.

16 Q. Sure.

17 A. What I see in there is it covers indemnity
18 language -- it covered -- it indemnifies the companies
19 against third parties' claims, and if the third parties are
20 end users, then I would -- I would say that that's covered
21 in that section, but then again, I'm not a lawyer.

22 Q. There is indemnity language there?

23 A. And I just read it.

24 Q. Okay. Would you agree with me that 7.1.1,
25 again, of the general terms and conditions does limit

1 liability of each party to performance measures, plus the
2 amount charged to CLECs under the agreement during the
3 contract year?

4 A. That's correct. That's what that says.

5 Q. Further, is there a disclaimer of warranty at
6 paragraph 50.1 which disclaims all warranties for fitness
7 and merchantability for service providers?

8 A. I'm sorry. I don't have the lines. What
9 section? Is that in 7.1.1.?

10 Q. I've got 50.1.

11 A. Oh, in Section 50.1. Sorry.

12 Can you say that again while I'm looking for
13 it?

14 Q. Doesn't that contain a disclaimer of warranty
15 language with respect to warranties for fitness and
16 merchantability for service providers?

17 A. Yeah, that's what that language says also.

18 MR. CURTIS: Thank you. I have nothing
19 further.

20 JUDGE RUTH: Commissioner Gaw, do you have any
21 questions for this witness?

22 COMMISSIONER GAW: No, I don't.

23 JUDGE RUTH: Then we'll move to redirect.

24 REDIRECT EXAMINATION BY MR. BATES:

25 Q. Mr. Peters, I believe that Mr. Lane referred

1 you to Staff's recommendation in Case TO-2001-455?

2 A. Correct.

3 Q. According to the language that Mr. Lane showed
4 you, would you agree that it appears that Staff may have
5 changed its mind in an issue similar to Issue 18 in this
6 arbitration?

7 A. Do you mean did Staff change its opinion from
8 the last arbitration?

9 Q. Yes.

10 A. Yes, those opinions are different.

11 Q. And in what ways are they different?

12 A. Give me a second to think about that. Well,
13 it's different because Staff recommended the additional
14 limited liability language in the previous arbitration and
15 not in this one.

16 Q. Okay.

17 A. If those issues are similar.

18 Q. Now, you did say that you reviewed the
19 Commission Order in 455 in addressing this issue; is that
20 correct?

21 A. Correct.

22 Q. Would you agree, then, that this Commission
23 did not take Staff's recommendation to include the specific
24 liability language?

25 A. That's correct.

1 MR. BATES: Thank you.

2 JUDGE RUTH: Mr. Peters, you may step down and
3 are you excused.

4 It's my understanding we have finished with
5 all the witnesses; is that correct?

6 (No response.)

7 JUDGE RUTH: Then we just have a few
8 housekeeping matters to take up.

9 First of all, late-filed Exhibit 53 was what
10 the Bench requested regarding the substitute pages for the
11 changes to the Decision Point List. We had discussed that
12 being filed as a joint document. Do the parties have an
13 estimate of how much time they will need to do this?

14 MS. MacDONALD: Can we get that transcript
15 electrically?

16 JUDGE RUTH: Let's ask the court reporter.
17 And let me note that the procedural schedule had originally
18 said that it would be on the 21st, but because of that being
19 a state holiday, the transcript will not be available until
20 the 22nd, and the way that I understand it, it comes here on
21 the 22nd, and it is one copy or is sent away to have copies
22 made, and doesn't come back and get filed for another day or
23 two.

24 So the answer to that question is important.
25 Can you tell us, Kellene?

1 THE COURT REPORTER: Yes, we can do emails.

2 MS. MacDONALD: Okay. Well, if it can be done
3 in a week -- I mean, do you think we can get it all done by
4 the 30th?

5 JUDGE RUTH: Do you want me to call for a
6 short break or do you have this about wrapped up?

7 MS. MacDONALD: Short break.

8 JUDGE RUTH: Okay. Five minutes. We're going
9 to go on break, and then we'll come back in.

10 (A BREAK WAS TAKEN.)

11 JUDGE RUTH: Before we broke, I asked the
12 parties to look at their schedules and calendars and
13 anticipate when they could file late-filed Exhibit 53. Do
14 the parties have a recommendation?

15 MS. MacDONALD: We're going to recommend that
16 it be filed at the same time, simultaneously, with the
17 Initial Briefs on the 31st.

18 JUDGE RUTH: Okay. That's fine. We will make
19 the late-filed Exhibit 53 due January 31st. I will note
20 that although the Commission anticipates that it will be a
21 joint document, if for some reason you're unable to file a
22 joint document and you file separately, then I will give you
23 an opportunity to file objections to that, to those
24 exhibits, but the objections would need a quick turn around,
25 and we will make that Monday, February 4th. That's only

1 assuming that you don't file jointly.

2 Okay. Procedural schedule noted that Initial
3 Briefs are due January 31st, and that proposed Findings of
4 Facts and Conclusions of Law are due February 4th. The
5 Commission will direct WorldCom and Southwestern Bell to
6 file actual proposed orders which will then incorporate
7 those Findings of Facts and Conclusions of Law.

8 With that in mind, I would be willing to give
9 the parties an extra day or two, if you want to extend the
10 February 4th deadline, but keep in mind that the Reply
11 Briefs are due February 11th, and the way it's set up now is
12 to give you a little bit of time in between the initial
13 brief and the Proposed Findings of Fact and Conclusions of
14 Law, and then the reply.

15 MR. LANE: Could I ask a question?

16 JUDGE RUTH: Yes.

17 MR. LANE: Is it -- do we need a separate
18 Findings of Fact and separate Order or can the Order reflect
19 the Findings of Fact?

20 JUDGE RUTH: It should be one document, but
21 instead of just being a document of Findings of Facts and
22 Conclusions of Law, the Commission would prefer it be set up
23 as a sample Order, which would include a brief procedural
24 history and moving on through to the Findings of Fact,
25 Conclusions of Law in ordered paragraphs. So it's not that

1 much extra; it is a little bit different format.

2 MR. MORRIS: But the current schedule calls
3 for --

4 JUDGE RUTH: It calls for that on February 4th
5 with the Reply Briefs due February 11th, the following
6 Monday. If the parties feel that they need to extend the
7 deadline for the proposed order, I have some flexibility on
8 that, but I thought that you would rather not have the Reply
9 Briefs due too soon after the proposed order.

10 If you're happy with it the way it is, we'll
11 leave it. If you want to propose a change, I'm listening.

12 MR. LANE: If the proposed order -- could it
13 be due the same time as the Reply Brief or not?

14 I wasn't clear on what you were suggesting.

15 JUDGE RUTH: No, we want those before. I
16 could give you an extra day or two, but I can't wait until
17 February 11th.

18 MR. LANE: An extra day or two I think would
19 be helpful.

20 MR. BATES: Excuse me, Judge.

21 JUDGE RUTH: Mr. Bates?

22 MR. BATES: I may have missed something,
23 because according to the procedural order that I have the
24 Reply Briefs are due on the 8th.

25 JUDGE RUTH: Well, I may have written that

1 down wrong. You're right. It is February 8th, which is a
2 Friday. I'd be willing to extend -- I had written in my
3 notes that I was willing to extend that to Monday; didn't
4 tell you that. So the way it is now is the Findings of
5 Facts, Conclusions of Law which are actually going to be in
6 a proposed order are due Monday, February 4th. And I will
7 extend the Reply Briefs to the following Monday, which is
8 the 11th.

9 MR. BATES: Is that a state holiday, Judge?

10 JUDGE RUTH: No, I thought the 12th was the
11 state holiday in February.

12 MR. BATES: I thought they always made it
13 Monday. I'm sorry.

14 JUDGE RUTH: Usually they are a Monday. It's
15 my understanding that that holiday is on Tuesday.

16 MR. LANE: We don't get that one.

17 JUDGE RUTH: Yeah, I know. The only reason I
18 think it's the 12th is because I issued an Order in another
19 case that had to be corrected for that. So I think I
20 learned from my mistake on that date and it is the 12th.

21 MR. MORRIS: We suggest February 7th for the
22 proposed.

23 JUDGE RUTH: Okay. So you're asking for three
24 extra days instead of the one or two that I offered?

25 MR. LANE: That's how they are in

1 negotiations, too, Judge.

2 JUDGE RUTH: But I think that they conferred
3 with you, first, did they not?

4 MR. LANE: Yeah, they did.

5 JUDGE RUTH: Yeah, they did.

6 MR. MORRIS: If that's pushing it on your
7 end --

8 JUDGE RUTH: I need it by the 6th so the
9 Commissioners can discuss it on that Thursday in agenda if
10 they choose to, and with that in mind, I'm going to ask
11 that it be filed by three o'clock instead of the normal
12 four o'clock deadline so that I -- so that the copies can
13 get distributed. If we wait 'til four o'clock, all the
14 Commissioners may not have it before they leave.

15 MR. BATES: Judge, does the February 6th
16 three o'clock deadline for Findings of Fact also apply to
17 Staff or since we're not doing an Order, are we still on
18 February 4th?

19 JUDGE RUTH: No, you will be allowed to file
20 your Findings of Fact and Conclusions of Law with everyone
21 else, which we have now agreed will be February 6th by
22 three o'clock, which I realize is a different time than
23 normal, but in this case, since I'm giving you-all the extra
24 days, I need to make sure I get it in in time to get it all
25 distributed to the Commissioners.

1 And, Staff, what was required of Staff before
2 was that you file the Findings of Facts and Conclusions of
3 Law on the areas where you take a different position than
4 the other parties.

5 MR. BATES: Yes.

6 JUDGE RUTH: That is still all you are
7 required to do. However, if you feel in any of the matters
8 it would be helpful to the Commission that you file
9 additional Findings of Facts or Conclusions of Law, you are
10 welcome to; the same with the proposed Order. You're just
11 not required to do those portions.

12 MR. BATES: Thank you. And Reply Briefs for
13 everyone are now the 11th?

14 JUDGE RUTH: Yes.

15 MR. BATES: All right.

16 JUDGE RUTH: All right. Everyone straight on
17 the dates for that?

18 MR. LANE: When's the Initial Brief due?

19 JUDGE RUTH: The Initial Brief, January 31st,
20 which means I did not change it from the procedural
21 schedule.

22 MR. LANE: Okay.

23 JUDGE RUTH: I would appreciate an electronic
24 copy to me when you file the documents. In fact, I would
25 greatly appreciate that. I would hope that the parties

1 would agree to electronically file among yourselves, but I'm
2 not going to order that at this point.

3 Are there any other matters we need to discuss
4 before we adjourn?

5 (No response.)

6 JUDGE RUTH: Okay. Seeing none, this hearing
7 is concluded. We're off the record.

8 Thank you very much.

9 WHEREUPON, the hearing of this case was
10 concluded.

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