

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

HEARING

January 14, 2002
Jefferson City, Missouri
Volume 2

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

BEFORE:

VICKY RUTH, Presiding,
REGULATORY LAW JUDGE.
CONNIE MURRAY,
STEVE GAW,
BRYAN FORBIS,
COMMISSIONERS.

REPORTED BY:

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25

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

2 (Written Entries of Appearance filed.)

3 (EXHIBIT NOS. 1 THROUGH 47 WERE MARKED FOR
4 IDENTIFICATION.)

5 JUDGE RUTH: Good morning. My name is Vicky
6 Ruth, and I'm the Regulatory Law Judge assigned to
7 this case. Today is Monday, January 14, 2002. We are
8 here for a hearing in TO-2002-222 in the matter of the
9 petition of MCImetro Access Transmission Services,
10 L.L.C., Brooks Fiber Communications of Missouri, Inc.,
11 and MCI WorldCom Communications, Inc. for arbitration
12 of an interconnection agreement with Southwestern Bell
13 Telephone Company under the Telecommunications Act of
14 1996.

15 I want to start with entries of appearance,
16 please. And for the MCI parties, I'm going to refer
17 to you as WCOM, since most of your pleadings do. Is
18 that acceptable?

19 MR. LUMLEY: That's fine.

20 JUDGE RUTH: Or do you prefer WorldCom?

21 MR. LUMLEY: Whatever you're comfortable
22 with.

23 JUDGE RUTH: We'll probably do WCOM then.
24 Okay?

25 And you may start.

1 MR. LUMLEY: Good morning, your Honor. I'm
2 Carl Lumley. I'm joined today by my partner Lee
3 Curtis, with the Curtis, Oetting law firm, 130 South
4 Bemiston, Suite 200, Clayton, Missouri, 63105.

5 And also Steve Morris with WorldCom, and
6 we've got a pending entry of appearance for him. He's
7 a member of the Texas Bar.

8 JUDGE RUTH: All right. Before we move on,
9 the pending entry of appearance for Mr. Morris -- you
10 said he's a member of the Texas Bar. I assume there
11 will be no objections to his appearance in this case?

12 MR. LANE: No.

13 MR. BATES: No.

14 JUDGE RUTH: That motion is granted and his
15 appearance is noted for the record.

16 Southwestern Bell?

17 MR. LANE: Thanks, your Honor.

18 Paul Lane, representing Southwestern Bell
19 Telephone LP, doing business as Southwestern Bell
20 Telephone Company. My address is One SBC Center,
21 Room 3520, St. Louis, Missouri, 63101.

22 Also appearing with me is Mimi MacDonald of
23 my office, and we have filed an entry of appearance
24 for Mr. Kridner who is a member of the Texas Bar. And
25 I spoke with the parties this morning, and I

1 understand they don't have an objection to
2 Mr. Kridner's appearance in this case.

3 JUDGE RUTH: Thank you.

4 And I received a copy this morning, then, of
5 Southwestern Bell's entry of appearance for
6 Mr. Kridner from Texas. And, again, I assume there
7 are no objections, then, to his entry?

8 MR. LUMLEY: No objection.

9 MR. BATES: No objection.

10 JUDGE RUTH: Okay. That motion is granted,
11 and his entry of appearance is also noted in the
12 record.

13 Staff?

14 MR. BATES: Thank you, your Honor.

15 Bruce Harrison Bates appearing for Staff of
16 the Missouri Public Service Commission. My address is
17 Post Office Box 360, Jefferson City, Missouri,
18 65102-0360.

19 JUDGE RUTH: Thank you.

20 I wanted to spend just a few minutes talking
21 about procedure and some pending motions.

22 We will have brief opening statements. They
23 will be limited to 20 minutes per party. WorldCom
24 will start, followed by Southwestern Bell and then
25 Staff.

1 As the parties know, there was an order
2 issued January 11th dealing with time limitations on
3 cross-examination. The parties had filed a request to
4 amend the procedural schedule. The procedural
5 scheduled had provided cross was limited to ten
6 minutes per party per witness, and the motion filed by
7 Southwestern Bell, WorldCom, and Staff had indicated
8 more time was desirable.

9 The parties followed up -- at least WorldCom
10 and Southwestern Bell followed up with actual
11 estimates of the amount of time they wanted per party.
12 However the parties wanted to bank whatever minutes
13 they did not use on one witness and use those for
14 another witness.

15 The Commission issued an order on
16 January 11th denying that portion of the request.
17 There will be no banking, but allowing the parties to
18 have additional time, and the additional time is to be
19 equal to the amount filed in those estimates.

20 This brings me to WorldCom's time estimates
21 indicated that WorldCom wanted to use zero minutes for
22 cross-examination of witnesses Avera (sic) -- is that
23 the correct pronunciation?

24 MR. LUMLEY: Avera.

25 JUDGE RUTH: Avera (sic)?

1 MR. LUMLEY: Avera.

2 JUDGE RUTH: -- Avera and Naughton. And
3 instead want to submit the cross-examination portion
4 of the transcript from Case No. TO-2001-438. Is that
5 correct?

6 MR. LUMLEY: Yes, your Honor.

7 JUDGE RUTH: Okay. As the notice -- or the
8 order that went out on Friday did not approve that
9 request. It just made note of it and said it would be
10 taken up at today's hearing. That's what I want to do
11 now.

12 WorldCom, I would like you to explain in a
13 little more detail then your proposal, and one of the
14 things I'm concerned about is whether every portion of
15 that transcript you are intending to offer deals
16 specifically with the issues here or if portions of it
17 will need to be stricken for relevancy.

18 MR. LUMLEY: Your Honor, it's our
19 understanding that Southwestern Bell has submitted in
20 this case the same cost studies that are at issue in
21 the 438 case, and this is described in a little more
22 detail in Mr. Turner's testimony as he responds to
23 them. And because of that duplication, rather than go
24 over the same questions again that were just done, you
25 know, roughly a month ago in front of the Commission

1 and took a full week to accomplish, we just propose to
2 submit those transcripts. And each time I will note
3 for the record the specific portions of the
4 transcripts that I'm offering -- that I'm offering.

5 What I've done is copy for each witness
6 their full appearance. I included Southwestern Bell's
7 redirect if there was any. I'm not going to offer
8 that, but on the assumption they might, I went ahead
9 and copied that so it would all be in one place.

10 So there really should not be any relevancy
11 issue because we're talking about the same cost
12 studies that are at issue in both proceedings.

13 JUDGE RUTH: How lengthy are the portions
14 that you are intending to offer for each of the two?

15 MR. LUMLEY: For those two, Dr. Avera's runs
16 about 50 pages. Mr. Naughton's is about 12 or 13.
17 And, additionally, beyond those witnesses, I intend to
18 offer the transcripts for the other costs witnesses as
19 well from that case; although, I also have questions
20 with regard to their specific testimony in this
21 proceeding as well because they do go beyond -- this
22 case goes beyond those cost studies as well.

23 JUDGE RUTH: Okay. Thank you.

24 Southwestern Bell, would you like to
25 respond?

1 MR. LANE: Thank you, your Honor.

2 Excuse me. I think probably the appropriate
3 use of the transcripts from another case is to impeach
4 the witness if the answer elicited on
5 cross-examination in this case is different. I think
6 it is not proper to introduce the transcripts from the
7 other case because the issues don't line up as
8 identical, contrary to Mr. Curtis -- I'm sorry --
9 Mr. Lumley's position.

10 In the 438 case with regard to Dr. Avera, he
11 testified on cost of capital, and in that case there
12 was competing proposals on cost of capital that had
13 been advanced by Staff through the testimony of
14 Dr. Johnson and by the joint sponsors in that case, a
15 group of CLECs, that was proposed by Mr. Hirshleifer,
16 so the cross-examination in that case and the
17 questions from the bench in that case to Dr. Avera
18 related not only to his testimony of cost of capital
19 in that case but also to questions about the Staff's
20 recommendation on cost of capital and the joint
21 sponsors' recommendation on cost of capital.

22 There are no competing cost of capital
23 proposals in this case, and it's inappropriate to try
24 to bootstrap to get into the record in this case
25 without presenting a witness in this case through

1 those cross-examination questions.

2 The same thing is true for Mr. Naughton.
3 His testimony goes to the propriety of the
4 depreciation rates that are inherent in Southwestern
5 Bell's cost studies that have been submitted in this
6 case. And, again, in that case there were competing
7 positions advanced by the parties concerning what are
8 the appropriate depreciation rates to be utilized.

9 No testimony is present in this case from
10 any of the parties about what are the appropriate
11 depreciation rates, so we have a mismatch of the
12 issues in this case that, in my view, make it improper
13 to use the transcript and submit those as evidence in
14 this case.

15 If those were affirmative pieces of evidence
16 that WorldCom wanted to introduce, it was incumbent
17 upon them under the procedures that the Commission
18 adopted to include those in their testimony in this
19 case. It is not appropriate at this time -- it is
20 appropriate, I think, to use them for purposes of
21 impeachment. If they ask questions of the witness
22 here and get a different answer than the 438 case,
23 obviously, they can use those for impeachment
24 purposes.

25 JUDGE RUTH: Let me ask you, you mentioned

1 that the transcript for both of the witnesses, those
2 two witnesses, includes issues that are not part of
3 this case. Is it possible to strike the portions of
4 the transcript that deal with the other issues and
5 admit the portions?

6 MR. LANE: I don't believe so, your Honor,
7 because we had in that case competing proposals for
8 depreciation rates and competing proposals for cost of
9 capital, and the questions involved comparing the two
10 and analyzing the two. And I don't think it's
11 possible to separate out those portions in that case
12 because that was the thrust of the case was which one
13 of these should we adopt. There is no proposal here
14 to adopt anything other than Southwestern Bell's cost
15 of capital, for example.

16 JUDGE RUTH: Would you like to respond?

17 MR. LUMLEY: Yes, your Honor.

18 First of all, I disagree with the
19 characterization that the issues are different.
20 Certainly, there were different witnesses because
21 WorldCom was not the only CLEC party to that case and
22 there were other witnesses in that case, but the
23 issues are identical. The cost studies submitted are
24 identical.

25 And, in fact, both Staff and WorldCom's

1 testimony suggests that the Commission simply wait for
2 the decision in the 438 case on those cost studies and
3 apply the same results here, but not knowing whether
4 the Commission will be comfortable doing that or
5 whether it feels it must make some kind of independent
6 decision on the studies in the two cases at the same
7 time, we wanted to offer that testimony.

8 I also disagree with the representation that
9 prior testimony of an opposing party can only be used
10 for impeachment purposes. While that's certainly a
11 valid purpose this testimony is independently
12 admissible as the prior testimony of Southwestern Bell
13 and its specific sponsored witnesses.

14 MR. LANE: Let me make one brief response,
15 if I could.

16 There was no contention in what Mr. Lumley
17 said about what I said earlier; that is, there is no
18 competing proposal on cost of capital in this case.
19 There is no competing proposal on depreciation rates
20 in this case. There is no -- no disagreement as to
21 that. That is what the cost examination in that case
22 was focused on.

23 And to the extent that Mr. Lumley says you
24 can introduce something independently of that, to the
25 extent that's true -- and I don't believe it is true

1 in Missouri. It may be true in federal court, but not
2 in Missouri -- that is proper under the Commission's
3 rules only if it's introduced as part of the direct
4 case of WorldCom, and they did not attach it to any of
5 their testimony in this case, and so it can't properly
6 come in now even under that theory.

7 JUDGE RUTH: Please respond.

8 MR. LUMLEY: Very briefly, your Honor, this
9 is not part of our direct case. This is not part of
10 our witnesses' rebuttal case. This is additional
11 cross-examination of Southwestern Bell's witnesses,
12 and the hearing is the opportunity to offer
13 cross-examination.

14 Further, I think the Commission will find
15 when they look at these transcripts that it contains
16 appropriate testing and probing of Southwestern Bell's
17 witnesses' positions on these cost studies. And the
18 matters that Mr. Lane is referring to with regard to
19 other witnesses I think simply goes to the weight that
20 the Commission might attribute to a particular
21 question and answer.

22 In particular, with regard to cost of
23 capital, you would find that the questions, you know,
24 challenge the witness as to whether his position is
25 correct as compared to other people's thoughts.

1 Whether those thoughts are in the record or not, he is
2 an expert witness. He's allowed to rely on evidence
3 that's not in the record in reaching his opinions, and
4 we're allowed to test those opinions with regard to
5 information that's not within the record.

6 So I don't think there is anything
7 inappropriate in these transcripts. I think the
8 Commission is certainly experienced enough in dealing
9 with cost study matters to be able to attribute
10 whatever weight it deems appropriate to this
11 cross-examination. And I just -- it seems to me more
12 efficient to just submit this so the Commission has it
13 so they have the flexibility to do what it is they
14 want to do with these cost studies that are at issue
15 in two cases simultaneously. The briefs are going to
16 be submitted simultaneously, and these cases are going
17 to be under submission simultaneously.

18 JUDGE RUTH: Can you explain to me again,
19 then, why you cannot cross-examine the witness here
20 today, why you need to use the testimony from the
21 other case? What is it in that other case that you
22 don't have here to do the cross-examination here?

23 MR. LUMLEY: A couple observations, your
24 Honor. First of all, there was a specific set of cost
25 studies at issue in this case. It involved setting

1 permanent rates for rates that were interim in the
2 Missouri 271 agreement. Southwestern Bell has made
3 many more cost studies and rates that are at issue in
4 this case in its response to our petition.

5 That case took a full week to try, and we're
6 talking about a case with a larger scope of issues.
7 In the case of Dr. Avera, I conducted -- just my
8 cross-examination, I believe, it took well over an
9 hour. There were not the kind of time limits that
10 we're talking about in this case with regard to
11 cross-examination.

12 This seemed to me to be the most efficient
13 way to get this information before the Commission
14 without using up a lot of time during this hearing.
15 The Commission has already spent a week listening to
16 cross-examination of these witnesses. I think it is
17 really just a matter that if the Commission wants to
18 be able to refer to something from that other case,
19 you know, it will be in front of them and in the
20 record.

21 As I indicated, both WorldCom and Staff have
22 suggested that the Commission make its decision in the
23 other case and simply use it here, but, obviously, we
24 can't control which way the Commission decides to
25 approach this matter.

1 JUDGE RUTH: And when is a decision expected
2 in the other case?

3 MR. LUMLEY: As I said, the briefing
4 schedules in these two cases are very close. I mean,
5 I think the reply brief in this case actually gets
6 submitted shortly before the reply brief in the other
7 one. But both cases will be submitted to the
8 Commission at almost exactly the same time.

9 JUDGE RUTH: You have not forgotten, though,
10 the Commission is committed to issuing --

11 MR. LUMLEY: No.

12 JUDGE RUTH: -- a decision in this case
13 prior to March 1st.

14 MR. LUMLEY: I understand that. And that's
15 part of -- of our concern, is that the Commission is
16 in that time bind where it doesn't have the time limit
17 in the 438 case, because that's a generic proceeding.

18 JUDGE RUTH: We can't necessarily wait on
19 that case.

20 MR. LUMLEY: Which is why I want you to have
21 the information in this case as well.

22 JUDGE RUTH: I want to make sure understand.
23 There is really two issues then. One is you think
24 there is additional information in the transcript from
25 the other case that you want to put into this case,

1 and then number two is an efficiency argument.

2 If you had no time restraints on your
3 cross-examination of these two witnesses, would you be
4 able to get the material in that you need?

5 MR. LUMLEY: I could certainly read the
6 questions and expect to get the same answers back,
7 give or take a word or two, but, I mean, those
8 transcripts alone would consume the week.

9 JUDGE RUTH: Well, I thought you said there
10 were only 50 pages --

11 MR. LUMLEY: That was just for those two
12 witnesses.

13 JUDGE RUTH: Right. We're on those two
14 witnesses now.

15 MR. LUMLEY: Sorry.

16 JUDGE RUTH: Let me make sure I understand.
17 You're referring to not just these two witnesses, but
18 all of the witnesses you intend to cross-examine. You
19 want to cross-examine them and also offer --

20 MR. LUMLEY: The transcripts.

21 JUDGE RUTH: -- the transcripts from that
22 other --

23 MR. LUMLEY: And we're just speaking about
24 the cost witnesses where we have this overlap of
25 these -- some -- I forget the number. I think it's

1 like 35 cost studies that are going to be submitted in
2 both proceedings at the same time.

3 JUDGE RUTH: And so if you were to
4 cross-examine on all of those cost witnesses, you
5 think it would take up to a week?

6 MR. LUMLEY: If there weren't time limits.

7 JUDGE RUTH: If there weren't time limits.

8 MR. LUMLEY: We tried that case in a very
9 efficient manner, you know, with typically only one
10 CLEC attorney asking questions of a witness. There
11 was a few exceptions to that, but it was a fairly
12 efficiently tried case despite there being many more
13 parties than in this case, but it took a full week.

14 JUDGE RUTH: Mr. Lane?

15 MR. LANE: Your Honor, I'm going respond in
16 a couple of ways.

17 That case involved, again, not -- you go
18 beyond the cost of capital and the depreciation
19 witnesses, and we're talking about cost witnesses in
20 that case. The same issue that I raised before
21 applies as well. In that case there were competing
22 cost studies that were advanced by WorldCom and the
23 other CLEC witnesses that aren't involved in this
24 case, aren't presented in this case. So we have the
25 same mismatch of issues here.

1 The second point I would like to make is
2 that we're both under -- all parties are under time
3 limits that the Commission has imposed, and while we
4 are happy that the Commission granted some additional
5 time to conduct cross-examination, permitting WorldCom
6 to have additional time for cross-examination through
7 the introduction of transcripts from the other case
8 places us at a disadvantage because we don't have the
9 equal opportunity, then, to have the same week of
10 cross-examination that Mr. Lumley indicates that he
11 would like to have.

12 So it's not appropriate if we're going to
13 have limitations on that -- on cross-examination for
14 us to be under that burden and be treated in an
15 unequal manner. So I think that's inappropriate for
16 this case.

17 Again, if these things were something that
18 they wanted to introduce as part of their direct case,
19 the arbitration rules that the Commission adopted said
20 they need to put them in their Direct Testimony,
21 attach them to it, and we could have saved ourselves
22 this argument. We would argue about the relevancy of
23 it, but not whether it would be treating the parties
24 unequally from a cross-examination perspective.

25 JUDGE RUTH: Mr. Lumley, why is it your

1 parties did not submit this as part of your Direct
2 Testimony? You mentioned it's additional information
3 that's not been prefiled. Why was it not prefiled as
4 part of your case?

5 MR. LUMLEY: Your Honor, this is not our
6 testimony. This is cross-examination of Southwestern
7 Bell's witnesses, and I'm submitting it as
8 cross-examination. I'm not submitting it as our
9 direct case. I'm not submitting it as our rebuttal.
10 It's simply the testing of Southwestern Bell's
11 testimony.

12 And I would point out that Mr. Turner is our
13 cost study witness. He was the cost study witness in
14 the 438 case, and Southwestern Bell has the same
15 opportunity to use that transcript. I don't have any
16 problem with them doing it. I don't have any problem
17 with them doing it later in the hearing if they are
18 not prepared to do it today. But he is the same
19 witness, and, in fact, attached his Rebuttal Testimony
20 from that case as a schedule to his testimony in this
21 case.

22 Further, just so the record is clear, I put
23 Southwestern Bell on notice of this plan well before
24 the filing of the time schedules where I notified the
25 Commission of this plan.

1 MR. LANE: Just to be clear, there is still
2 a mismatch of the issues. Mr. Turner was a witness in
3 that case, but he was certainly not the only witness
4 in that case. His testimony in that case said he
5 relied upon the cost of capital that was submitted by
6 Mr. Hirshleifer who is not a party to this case and
7 there is no cost of capital in this case proposed by
8 other parties.

9 He relied upon the depreciation rates, labor
10 rates, and support and other factors that were
11 introduced by Mr. Rhinehart in that prior case. He's
12 not a witness in this case. There is not a -- there
13 is not a matching of the issues. And I would also
14 point out that to the extent that Mr. Turner made some
15 proposals in that 438 case, the specific adjustments
16 that he proposed to the Southwestern Bell cost studies
17 aren't even a part of this case. That's not attached
18 to his testimony in this case as an exhibit. He
19 attached just a nonproprietary version without all of
20 the adjustments. So, again, there is not a matching
21 of the issues between that case and this one.

22 JUDGE RUTH: Okay. Thank you.

23 Mr. Bates, I'm actually going to put you on
24 the spot here for a minute, and if you need to think
25 about my question, we can take a break.

1 Have you had a chance to review the
2 transcripts for at least these two witnesses, Avera
3 and Naughton? Are you familiar with their content?

4 MR. BATES: No, your Honor, we have not.

5 It's been the -- it is Staff's position on
6 this issue, however, that we do not object to the
7 transcript coming in, but we would prefer that it be
8 the entire transcript and not simply selected parts.

9 JUDGE RUTH: The entire transcript for that
10 witness or for the entire hearing?

11 MR. BATES: For those witnesses.

12 JUDGE RUTH: Okay. My question is, I want
13 to know from Staff's perspective, is there a matching
14 of the issues or is there not a matching of the
15 issues? Is it bringing in additional elements that
16 were not brought out in the prefiled testimony? And I
17 don't know if that's something that you can look at on
18 a break and give me an idea of what you think or not.
19 I will --

20 MR. BATES: We'd like to have the
21 opportunity to look at it once again after a break.
22 Thank you.

23 JUDGE RUTH: Okay. What I'm going to do is
24 table this discussion for now. I want to move on to a
25 few more issues. Then we will take a break off the

1 record, and that will also give you an opportunity to
2 look at it.

3 I want to have a copy, and I can mark it for
4 identification purposes only at this point of the two
5 transcripts that we're taking -- or that we're talking
6 about. But we will move on.

7 I believe there is an older pending motion
8 from December 19, 2001, where Southwestern Bell filed
9 a Motion to File Direct Testimony after December 18,
10 and also Southwestern Bell filed a Motion to File
11 Schedule 2 attached to the Direct Testimony of
12 Thomas F. Hughes after December 18th. Those pending
13 motions are both granted.

14 On January 8, 2002, Southwestern Bell filed
15 a Motion to File the Rebuttal Testimony of June
16 Burgess out of time. This motion is also granted.

17 I wanted to ask the parties to explain to me
18 what changes they propose in the witness schedule as
19 far as it's been suggested that one of the witnesses
20 at least is not available on the time they were
21 scheduled to come. I wanted you-all to explain that
22 to me so I can make a note now.

23 I'll start with -- Mr. Lane, did you have a
24 witness that is not available as scheduled?

25 MR. LANE: I think all of our witnesses are

1 here now for the case except for Miss Rogers, Jan
2 Rogers, who is scheduled, I believe, for Thursday.
3 And what she has -- I'm sorry. She's scheduled for
4 Friday.

5 She has a commitment on Thursday, and what
6 we'd asked is to have her moved up to Wednesday, and
7 the parties didn't have an objection to that, to take
8 her out of turn. My thought was -- is that we may
9 well, I hope, finish by Thursday, and we don't want to
10 stay around for her to show up on Friday, and that was
11 the purpose of that motion.

12 With regard to generally, I guess we would
13 like, your Honor, to have the understanding that after
14 each witness testifies we would ask to have them
15 excused. We have some witnesses who after they
16 testify have other commitments. I think that goes for
17 WorldCom as well.

18 JUDGE RUTH: And that's a fair request, but
19 what I'll need to do is address each witness
20 separately, because there are some that the
21 Commissioners have indicated they may want to recall.
22 Okay? So at the conclusion of each witness you can
23 ask, and I'll verify with the Commissioners if they
24 are finished with that particular witness.

25 MR. LANE: Okay. Do you know now, your

1 Honor, which ones those might be so that we can try to
2 see what we can do in terms of scheduling.

3 JUDGE RUTH: I don't believe I'm at liberty
4 to say without checking with the particular
5 Commissioner, so I'll see if I can find more
6 information before the day is out. Perhaps after
7 lunch we can address that again.

8 MR. LANE: Okay. Thanks.

9 JUDGE RUTH: Is Ms. Rogers the only witness
10 that needs to be taken out of order as far as you know
11 at this point?

12 MR. LANE: Yes.

13 JUDGE RUTH: Okay. We will plan on taking
14 her on Wednesday. If there are other changes that
15 come up, please let me know as soon as you find out.

16 I also want to ask the parties, the witness
17 schedule notes that some witnesses will testify on
18 more than one issue or one area. When a party is
19 doing the cross-examination, the Commissioners have
20 requested that, if you can, point out that you are
21 moving to a new line of cross-examination, a new area.
22 That would aid them as they are viewing the
23 transcript. Does that make sense?

24 I mean, you may not always be able to. Some
25 issues overlap. But when you can point out that we

1 are now moving to a different issue, please do so.

2 Southwestern Bell filed a Motion to Strike
3 Issues 49 and 50 on January 3rd. WorldCom's Response
4 was filed on January 9th.

5 Do the parties have anything in addition to
6 what they have filed on this issue?

7 MR. LANE: No, your Honor.

8 JUDGE RUTH: No. Okay. World-- I'm sorry.

9 Southwestern Bell's Motion to Strike Issues
10 49 and 50 is denied. Those issues will remain as part
11 of the case.

12 On January 9, WorldCom and Southwestern Bell
13 filed a Joint Motion to Correct the Decision Point
14 List. WorldCom requests changes regarding its
15 position on issues 24 and 47. Southwestern Bell
16 requests corrections with respect to its witness
17 information for issues 12 and 30 and also requests
18 changes to its Position Statement on issues 24 and 47.

19 That motion to correct the decision point
20 list is granted, and the record will so note.

21 I assume the parties did not plan on filing
22 a substitute document; is that true?

23 MR. LANE: That's correct.

24 MR. LUMLEY: Correct.

25 JUDGE RUTH: Then that will just be filed

1 with that decision point list.

2 Okay. On January 9th the Commission issued
3 an order directing Staff to make a filing on some
4 questions that it had regarding attachment 26 to the
5 M2A. Staff complied with that request very quickly,
6 filed their response on January 11th, 2002. I asked
7 that the parties, if you have any response to that
8 document, file it as quickly as possible, preferably
9 tomorrow morning. If you cannot file it by tomorrow
10 morning, then I want you to tell me tomorrow when you
11 will be filing it.

12 Okay. And when you -- since I will be in
13 the hearing room when you file that document, I would
14 appreciate it if you either e-mail me before the
15 hearing starts with my own copy or bring me a copy
16 here.

17 Are there any other preliminary matters that
18 need to be addressed?

19 MR. LANE: I just had one, your Honor.

20 I'm assuming that the time for redirect and
21 recross-examination based on questions from the Bench
22 remains as it was in the original order?

23 JUDGE RUTH: Yes. The original order was
24 the five minutes for recross based on questions from
25 the Bench and ten minutes for redirect. I don't think

1 I got that backwards. I think that's --

2 MR. LANE: That's correct.

3 JUDGE RUTH: Okay. And that will remain the
4 same.

5 Any other questions?

6 MR. LUMLEY: Your Honor, getting back to the
7 question of the witnesses, just to make sure we
8 understand, is it -- is it necessary for witnesses to
9 actually be present in the hearing room, in particular
10 when their subject area is not at issue on the stand,
11 or are they free to be able to tend to some of their
12 other duties outside the hearing room so they are not
13 distracting the Commission?

14 JUDGE RUTH: Are they available in this
15 building but not inside the hearing room?

16 MR. LUMLEY: That's one option, or --

17 JUDGE RUTH: They are certainly able to be
18 elsewhere in the building, and if -- if we need them,
19 go get them. Unless they are excused on the record,
20 they are expected to be here all week. And the
21 Commission is willing to address those issues if other
22 parties have a conflict and need to be elsewhere, but
23 the Commissioners wanted the general rule to be that
24 the witnesses be available unless there is a reason
25 for them not to be here.

1 Now, after they testify, if you want to ask
2 for that witness to be excused, the Commissioners will
3 allow them to be excused unless one of the
4 Commissioners think they have some questions that
5 might come up still on that one.

6 MR. LUMLEY: All right. And with regard to
7 that, I actually did not double check this this
8 morning, but earlier on my understanding was that
9 Mr. Beach who is scheduled to testify on Friday may
10 have some commitments. I mean, he's here this
11 morning, but may have some commitments in between now
12 and Friday that may require him to be outside the
13 building. I'm not exactly sure of the details on
14 that.

15 And, also, just to alert you, all of our
16 witnesses are here except for Mr. Price who had some
17 travel issues. In theory, we might be able to get to
18 him today because he is the first witness in the
19 second subject area, and there might be a problem with
20 that if we get there very fast. But I'm expecting him
21 to be here sometime this afternoon, so, hopefully, it
22 won't be an issue, but just to alert you to it.

23 JUDGE RUTH: Okay. Thank you.

24 Any others?

25 (No response.)

1 JUDGE RUTH: Then we are going to go off the
2 record for a fifteen-minute break.

3 Staff, is that sufficient, or do you mean
4 20 minutes?

5 MR. BATES: Fifteen will be fine. Thank
6 you.

7 JUDGE RUTH: We are off the record.

8 (A discussion was held off the record.)

9 JUDGE RUTH: I want to mark just for
10 identification purposes only, since we are talking
11 about the transcript of the proceeding from
12 TO-2001-438, the portion dealing with Mr. Naughton is
13 going to be marked for identification purposes as
14 Exhibit 48, and then the portion for Mr. Naughton --
15 Avera, I'm sorry, is 48, and Naughton is 49. And
16 those are for identification purposes only. Back off
17 the record.

18 (A recess was taken.)

19 JUDGE RUTH: We're back from our break and
20 we're back on the record.

21 Staff, can you address my questions?

22 MR. BATES: Yes, your Honor. Thank you very
23 much for allowing us to review the documentation.
24 Staff has reviewed the transcripts provided by
25 Mr. Lumley in this matter.

1 As a general starting point, Staff still
2 does not have a problem with submitting the transcript
3 in this case because we do believe -- we agree with
4 WCOM that the issues are basically the same. However,
5 we do have a problem as far as how much of it should
6 be included in the record if the Commission agrees to
7 receive it, because during the cross-examination of
8 both of the witnesses in question, they reference
9 testimony in prefiled testimony from other witnesses,
10 Staff witnesses and other witnesses, and we feel in
11 order for the Commission to have a complete record,
12 the Commission would also have to receive into
13 evidence in this matter their testimony, both the
14 questions that they answer from the attorneys and the
15 Bench and also their prefiled testimony, or,
16 otherwise, the Commission is just not going to be able
17 to have the perspective that they need on -- from the
18 answers that the witnesses give. In effect, it would
19 practically mean admitting the entire record of 438.

20 JUDGE RUTH: Mr. Bates, is it your
21 understanding that this information is necessary in
22 order for the Commission to decide these issues
23 appropriately?

24 MR. BATES: Excuse me.

25 Your Honor, Staff believes that the

1 information that's contained in it is necessary, but
2 the Commission may be able to elicit that information
3 with questions both on cross-examination and from the
4 Bench in this case.

5 JUDGE RUTH: When you say "may," do you have
6 particular concerns that it might not all come out?

7 MR. BATES: No, just depending on which
8 questions are asked.

9 JUDGE RUTH: Thank you.

10 MR. BATES: Thank you.

11 JUDGE RUTH: Okay. Staff has had an
12 opportunity to respond and, therefore, I will let both
13 of the parties respond if you have any comments on
14 what Staff has said.

15 Mr. Lumley?

16 MR. LUMLEY: Your Honor, we're still left
17 with the basic problem that Southwestern Bell has
18 elected to put the same cost studies at issue in this
19 case that are already before the Commission in the 438
20 docket. And I certainly don't have a problem with the
21 Commission just taking judicial notice of the entire
22 record in the 438 case so that it has that information
23 in front of it here, because, again, the one
24 distinction we've got is that this case -- you know,
25 the Commission has interpreted the statute as imposing

1 a fairly strict time line on it; whereas, the other
2 case does not have that.

3 Although in theory the cases could be
4 decided at the same time, there is a lot of work
5 involved in that, too, and I have no idea how the
6 Commission is going to approach -- you know, in what
7 order the Commission is going to take these cases in
8 terms of making its final decisions.

9 But I would submit that it really is not
10 going to be possible to retry all of those issues in
11 full that took a complete week of hearing time and the
12 other issues that are involved in this case because
13 there is substantially more rates and cost studies at
14 issue in Southwestern Bell's testimony in this case
15 than in the other one. This is just the overlapping
16 portion. This case has a broader range of issues,
17 so --

18 JUDGE RUTH: So let me ask you what the
19 result would be if the Commission does not allow you
20 to bring in the transcript or the record from 438?

21 MR. LUMLEY: If the Commission were to
22 decide the overlapping issues in the 438 case and
23 import that decision into this case, I don't think it
24 has any effect, but --

25 JUDGE RUTH: Okay. I don't think that that

1 case will be decided before this one.

2 MR. LUMLEY: Okay. Then that poses the
3 problem. And for the Commission to be able -- I would
4 assume that there is a substantial likelihood that the
5 Commission would like its decisions to match up
6 because it's considering the same cost studies and the
7 same rates. For the Commission to be able to do that,
8 it's going to have to have the full record in this
9 case to be able to reach the same decision.

10 JUDGE RUTH: So a concern of yours would be
11 that without the additional cross-examination on these
12 same issues from 438 that a different result will be
13 reached in this case than what Morris Woodruff and the
14 Commission come up with in the other case?

15 MR. LUMLEY: Correct.

16 JUDGE RUTH: And although not ideal, explain
17 to me what the harm would be in that.

18 MR. LUMLEY: Well, it will probably depend
19 on whose ox is being gored. I mean, we could come out
20 with a better result than the CLEC industry as a whole
21 or it could be the reverse situation. I don't know.

22 JUDGE RUTH: And if it were the reverse,
23 what would happen? If decisions were made in this
24 case that were not as favorable to your party, for
25 instance, as in Morris's 438, what would happen?

1 MR. LUMLEY: I think in that situation then
2 WorldCom could be placed at a competitive disadvantage
3 relative to other CLECs in the state simply because of
4 a matter of a few weeks' timing in the submission of
5 these cases.

6 JUDGE RUTH: And would there be no way out
7 of that?

8 MR. LUMLEY: It's going to depend on the
9 scenario. Based on Southwestern Bell's position about
10 how discreet we can be in selecting rates, there may
11 not be a way out of it. Based on our position and
12 Staff's position, we may still be able to get around
13 it through the MFN process, but I would anticipate --

14 JUDGE RUTH: Where you would MFN into some
15 of Morris Woodruff's --

16 MR. LUMLEY: Into a particular rate, your
17 Honor, correct. But I would anticipate substantial
18 opposition by Southwestern Bell on that point. So
19 it's hard to speculate how we would end up.

20 JUDGE RUTH: Do you think it's necessary to
21 let the entire record in as Staff has indicated might
22 be necessary? For instance, Mr. Bates noted that
23 some testimony of other witnesses as referenced in
24 Exhibits 48 and 49 and that that testimony would need
25 to come in. Is it absolutely necessary that that come

1 in in order to understand the testimony of
2 Mr. Naughton and Mr. Avera?

3 MR. LUMLEY: I don't believe so. I think
4 you can understand the testimony and take it at its
5 face value. But I also don't have a problem with the
6 Commission having access to the full record.

7 The parties -- you know, it's dir-- it's not
8 as if it's a Verizon case that Southwestern Bell
9 didn't have full opportunity to ask every question it
10 wanted to ask. It's the same parties involved. The
11 issues were fully elucidated during a week of hearing,
12 and I would indicate also many months of discovery,
13 many months of time to prepare testimony. We had much
14 more opportunity to be very thoughtful about the
15 studies at issue than we've had in the compressed time
16 frame in this case.

17 So I think it's a very valuable resource for
18 the Commission to have access to, and the parties can
19 do whatever it is they think is appropriate in the
20 briefs in terms of highlighting specific things to
21 help the Commission in this case.

22 JUDGE RUTH: One of my concerns is,
23 basically, if -- if the Commission were to allow these
24 transcripts in and then perhaps allow additional ones
25 in as suggested by Mr. Bates, you are more than

1 doubling the amount of information that's in the
2 record at the last minute, and I will have to allow
3 Southwestern Bell some time to respond, and I'm not
4 quite sure how is appropriate. And then the
5 Commissioners will have to synthesize all of that at
6 the last minute when the -- the decision in this case
7 has to be issued in six weeks or less.

8 How -- how would you recommend that
9 Southwestern Bell be allowed to respond to all of
10 these additional exhibits that you plan on offering?

11 MR. LUMLEY: Well, first of all, as I've
12 indicated I've already copied, excuse me, the redirect
13 sections in case they wanted to do that.

14 If the Commission were to just say they are
15 going to take judicial notice of the record in that
16 case, I don't think there is any further response
17 required. It's a fully tried case. You know, it's
18 going to be fully briefed. I think Southwestern Bell
19 had already a full opportunity to respond to any
20 particular points in that case that it wanted to. And
21 the reverse would be true for me with regard to the
22 points that they made in the record.

23 JUDGE RUTH: So is your --

24 MR. LUMLEY: And in --sorry.

25 In terms of synthesizing the record, I think

1 it's incumbent on the parties to do that in the briefs
2 and in the proposed decision.

3 JUDGE RUTH: So is your proposal to offer
4 specific testimony for each witness, or is your
5 proposal for the Commission to take judicial notice of
6 438?

7 MR. LUMLEY: I guess at this point I would
8 make the proposals in the alternative. Whichever the
9 Commission would prefer, it's okay with me.

10 JUDGE RUTH: I will get to you, Mr. Lane.

11 But, Mr. Bates, do you have any comment on
12 anything that Mr. Lumley has said?

13 MR. BATES: No. Thank you, your Honor.

14 JUDGE RUTH: Okay. Mr. Lane, would you like
15 to respond, please?

16 MR. LANE: Yes, your Honor.

17 We're still left with the same position that
18 we were before, that the record in the other case
19 contains a lot of testimony from witnesses that aren't
20 present here, both the cross of our witnesses focused
21 on testimony of other witnesses that aren't present
22 here and proposals that aren't being made here.

23 JUDGE RUTH: Could you speak up just a
24 little or turn your mike, please? I'm sorry.

25 MR. LANE: Okay. We're still left, your

1 Honor, with the same position that we were before;
2 that is, that the 438 case, the other case we've been
3 referencing, is based upon testimony from witnesses
4 that aren't present here, cost of capital,
5 depreciation, labor rates, support asset factors, et
6 cetera. None of that is introduced as a proposal in
7 this case, and it's inappropriate to bootstrap this
8 case by introducing those cross-examination portions
9 that deal with issues that aren't being raised in this
10 case because WorldCom has chosen not to pursue and
11 propose cost of capital in this case, set up
12 depreciation rates in this case, support asset factors
13 in this case, labor rates in this case, et cetera.

14 And so from that perspective, it would be
15 prejudicial to Southwestern Bell to permit them to
16 introduce this type of evidence and have the
17 Commission consider it when those witnesses aren't
18 available for cross-examination in this case.

19 JUDGE RUTH: Can -- okay. Go ahead.

20 MR. LANE: Well, with regard to judicial
21 notice, you can take judicial notice of an order or a
22 decision of the Commission, but you can't take
23 judicial notice of evidence or testimony in another
24 case. That's not the proper scope of this case or
25 properly permissible under the law, and so that kind

1 proposal made at the last minute doesn't make sense
2 and isn't appropriate.

3 The issue is whether they can introduce
4 these particular cross-examination pieces, and I don't
5 believe it's appropriate because those issues don't
6 match up because they haven't made an affirmative
7 proposal in this case for those things that were
8 addressed in the 438 case.

9 JUDGE RUTH: So when should they have made
10 the affirmative proposals on these particular
11 elements?

12 MR. LANE: I would say in their Direct
13 Testimony, at the very least in their Rebuttal
14 Testimony. We introduced all of the cost studies in
15 this case in our Direct Testimony.

16 JUDGE RUTH: So when you-all introduced
17 these same cost studies in your Direct Testimony, then
18 they should have at least responded in the Rebuttal,
19 is what you're saying?

20 MR. LANE: Absolutely.

21 JUDGE RUTH: And you're saying they did not?

22 MR. LANE: Absolutely.

23 JUDGE RUTH: We'll come back to you, but
24 would you please respond, Mr. Lumley?

25 MR. LUMLEY: Yes. I would disagree.

1 Mr. Turner has put his testimony from that other case
2 in as a piece of his prepared testimony. I would also
3 disagree about the cost of capital and the various
4 factors, because as an expert witness, he's relied on
5 that information in the proposed rates that are
6 attached. He's entitled to do that under Missouri
7 law. We don't have to have the information he's
8 relying on in reaching his conclusions as part of the
9 record.

10 I still think by having that information
11 from the other case available the Commission can look
12 at it more precisely, but he specifically states that
13 he's relying on those witnesses that Mr. Lane has
14 mentioned in reaching his rate conclusions that are
15 part of the record -- or of his prepared testimony.

16 JUDGE RUTH: So are you, in effect, saying
17 that it's possible to reach the same result that
18 WorldCom wants without the additional information
19 being brought in?

20 MR. LUMLEY: Is it possible? Yes.

21 JUDGE RUTH: Why is it unlikely?

22 MR. LUMLEY: Well, I'm not -- I don't think
23 I'm in a position to guess whether it's likely or not.
24 But what I wanted to accomplish was to allow the
25 Commission to have -- you know, if they are engaged in

1 a debate in the 438 case and they think, Well, what
2 about this that leads me to this conclusion over here,
3 I wanted them to have the opportunity to have the same
4 information from cross-examination of the witnesses so
5 that they could cite to the same information and reach
6 the same conclusion here, if their goal was to try and
7 reach harmonious decisions in the two cases.

8 JUDGE RUTH: I want to see if I follow you.

9 So that argument is more an issue perhaps of
10 time and in-depth? In other words, since this case
11 has to be done more quickly, on a compressed time
12 frame, if we had more time, you could do the exact
13 same cross-examination as was done in the other case,
14 make this case last two weeks, and then it all would
15 have come in?

16 MR. LUMLEY: Correct.

17 JUDGE RUTH: Okay. I also want to ask, do
18 you have any authority that would allow the Commission
19 to take judicial notice of an entire case, including
20 the testimony, the exhibits, as opposed to just taking
21 judicial notice of an order?

22 And, Staff, if you could be thinking if you
23 know of any case that allows that too.

24 MR. LUMLEY: I believe that the
25 administrative law principles allow you to do that. I

1 can't present a specific statute or case to you at the
2 moment.

3 JUDGE RUTH: Okay.

4 MR. LUMLEY: But in my experience, I believe
5 we've done it before.

6 JUDGE RUTH: Well, I thought if you knew of
7 a case where it had been done before, even that would
8 help.

9 MR. LUMLEY: I'm not recalling it at this
10 instant, but I'm certain today or tomorrow I can give
11 you a specific citation.

12 JUDGE RUTH: Okay. Staff, are you aware of
13 any case where the Commission has taken judicial
14 notice of the entire record of another case?

15 MR. BATES: No, your Honor, but I would
16 believe that it would be inherent in the Commission's
17 power to do so.

18 JUDGE RUTH: Okay. Mr. Lane, if you have
19 any authority opposing that assertion, please give it
20 to me, and you can also respond to Mr. Lumley.

21 MR. LANE: Okay. And to respond to
22 Mr. Lumley, it's real clear that Mr. Turner has not
23 provided all of the information in the 438 case in his
24 testimony in this case. What he attached was a
25 nonproprietary version of his Rebuttal Testimony in

1 that 438 case that did not include some 36 or seven
2 attachments that were the results of revised cost
3 studies that the joint sponsors in that prior case
4 were proposing be utilized in that case to set rates.
5 None of those are part of the record in this case.

6 With regard to Mr. Lumley's assertion that
7 as an expert witness Mr. Turner can rely upon cost of
8 capital, labor rates, depreciation, et cetera, that
9 were proffered by other witnesses in that other case,
10 that is decidedly not correct. An expert who is
11 offering testimony in an area in which he is an expert
12 is permitted to rely upon information that is commonly
13 used by experts in that field to make their
14 determination, and it's not hearsay then in that
15 respect.

16 But that's not the situation we have here.
17 Mr. Turner does not purport to be an expert on cost of
18 capital. He does not purport to be an expert on
19 depreciation rates. He does not purport to be an
20 expert on labor rates. That's precisely the reason
21 that the joint sponsors in the other case utilized
22 other witnesses, Mr. Hirshleifer, Mr. Rhinehart, and
23 others to present that information that then became
24 the input into the cost studies that Mr. Turner
25 proposed in that case.

1 And, again, those cost studies' inputs --
2 the ability to put that into evidence in this case
3 isn't present because they are not making those
4 proposals here. And in any event, those aren't even
5 attached to his Rebuttal Testimony which is the
6 nonproprietary version.

7 The problem overall with this is that we
8 have a case that's supposed to be dealing with
9 specific issues that were raised in the context of
10 this arbitration, and to go and pull out information
11 from another case that the witnesses aren't here and
12 aren't available for cross-examination really is
13 clearly improper. Mr. Rhinehart isn't here.
14 Mr. Hirshleifer isn't here. All of the other
15 witnesses in the case aren't here. Only Mr. Turner is
16 here, not all of the other witnesses.

17 And it's not proper, and it causes
18 Southwestern Bell prejudice and harm if it's required
19 to respond in some unidentified way to evidence that
20 was proffered in another case by witnesses that aren't
21 present for cross-examination in this case.

22 JUDGE RUTH: I have a question then.

23 So you're suggesting that there is some
24 evidence in the other case that was not brought out in
25 any form in this case. So with that in mind, are you

1 saying that it would not be -- that some results or
2 some elements in this case cannot be decided in a
3 manner that would be consistent with the other case?
4 You're saying there's different factors going into
5 each, and depending on how the Commission decides,
6 it's quite likely the two cases will not come up with
7 consistent results on particular elements?

8 MR. LANE: I'm not precisely sure if I
9 understand the question. Let me answer it, and, if I
10 don't, I'll come back.

11 The issues in this case are broader than the
12 issues that were involved in the 438 case. That case
13 involved only issues that were under the M2A for some
14 unidentified or interim rates, I'll say, that were in
15 the M2A, and Southwestern Bell agreed in that case
16 that we would have a subsequent docket that would set
17 permanent rates for those.

18 There is another whole series of rates that
19 are at issue in this case that weren't even present in
20 the other case. So there is not an identity of issues
21 between the two cases. The number of cost studies and
22 rates that are at issue here is way broader than what
23 was at issue in that other case.

24 Now, can the -- I'm sorry.

25 JUDGE RUTH: So everything that is in the

1 other case, 438, though, is it also in this?

2 MR. LANE: Those -- the issues from the cost
3 studies in that other case are at issue here, yes.
4 That is true.

5 JUDGE RUTH: Okay.

6 MR. LANE: What's not the same in this case
7 as in the other case is the evidence that's proposed
8 by the parties. WorldCom in this case proposes no
9 cost studies of their own, unlike what was proposed by
10 the joint sponsors in the 438 case. WorldCom in this
11 case proposes no evidence of its own on the factors
12 that go into the inputs to those cost studies,
13 specifically, as I've said, the cost of capital,
14 depreciation rates, factors, et cetera.

15 JUDGE RUTH: I want to interrupt you for a
16 minute.

17 And, Mr. Lumley, can you respond to that
18 statement? Mr. Lane has said that WorldCom did not
19 propose its own cost studies on some of these. Is
20 that true? And if so, why? Why did you not propose
21 it here in this case and instead are trying to bring
22 in the record from the other case?

23 MR. LUMLEY: Well, first of all, Mr. Turner
24 does propose the rates, the decision point, what's
25 going to be charged for these specific elements, and

1 he explains in his nonproprietary testimony how he
2 gets to those recommendations. The problem is that
3 he's not allowed to use the highly confidential
4 information from that other case in this proceeding.
5 That's why it's only the nonproprietary version.
6 However, his testimony sets out how he gets there,
7 what he relies on, and it does have the proposed
8 charges for these items.

9 I would add that, you know, it remains the
10 primary recommendation of WorldCom, and, as I
11 understand it, Staff as well that these matters be
12 decided in the 438 case or in -- or for the other
13 costing issues and pricing issues in a generic
14 proceeding and not in the compressed time frame we've
15 got here, and that's basically what the Commission did
16 in the last AT&T arbitration.

17 Nonetheless, Southwestern Bell has injected
18 all of these cost studies here in this compressed time
19 frame. The witnesses have had very limited time with
20 them, and we've presented the best response we can.

21 JUDGE RUTH: Back up a minute to the
22 statement you just said.

23 Were you referring to WorldCom's proposal
24 for a two-phase arbitration where interim rates were
25 decided in the first and then more -- a more detailed

1 second phase would find the final prices?

2 MR. LUMLEY: I was referring to the other
3 perspective on that and the Commission saying, you
4 know, we're not going to resolve these rates in this
5 case? We'll resolve them in a generic proceeding and
6 then WorldCom and other CLECs will be able to take
7 advantage of that decision if and when it's made.

8 JUDGE RUTH: Okay.

9 MR. LUMLEY: And so I'm looking at it more
10 in terms of what our rights will be when that case is
11 resolved, not that our prices will be designated as
12 interim.

13 JUDGE RUTH: Okay. I think I understand
14 your point. The problem -- and the Commission dealt
15 with this before -- is the Commission believes that
16 under the Federal Arbitration Act it is required to
17 make a decision on all unresolved issues by that
18 federal statutory deadline, which is March 1st. And
19 you're again suggesting that we postpone deciding some
20 issues until after March 1st.

21 MR. LUMLEY: No.

22 JUDGE RUTH: You're suggesting we just say
23 we decide them however they come out in 438?

24 MR. LUMLEY: Well, I think that could be one
25 decision, but I'm submitting that what you can say is,

1 for example, as Staff proposes on a particular issue,
2 it's the M2A rate. That's your rate. However, when
3 and if we change that rate in the generic proceeding,
4 you'll have the opportunity to take advantage of that
5 rate. It may be higher. It may be lower. But all
6 CLECs will have equal opportunity once that generic
7 proceeding is resolved. And based on the track
8 record, that's probably going to be sometime a year or
9 so from now in terms of the length of these generic
10 cost proceedings.

11 I would also suggest, though, that -- I
12 mean, the 438 case really is the completion of the
13 first AT&T/WorldCom arbitration. There were rates
14 that were never quite resolved, and it's many years
15 later, and I still feel the Commission is probably
16 tying its hands more than it needs to. And I
17 certainly feel like it's to our detriment that
18 other -- in other cases the Commission has decided to
19 take more time.

20 JUDGE RUTH: Not in any recent cases.

21 MR. LUMLEY: I understand. I agree. But,
22 nonetheless, overall, the Commission has recognized it
23 takes much more time than the arbitration allows to
24 deal with these cost studies and all of the
25 information and to really allow the parties to

1 investigate the cost studies and have, you know, fair
2 discovery opportunities and things like that.

3 The Commission reached the conclusion in the
4 AT&T arbitration in the 455 case that it just wasn't
5 feasible to make those kinds of decisions.

6 JUDGE RUTH: Right. And the Commission was
7 following that line of reasoning in this case.

8 MR. LUMLEY: Right. I understand. And I
9 don't really have a problem with the concept that our
10 rates wouldn't be interim. What I do think would be
11 unfair is that if a decision is made in twelve or
12 eighteen months on a generic basis that we not have
13 some opportunity to opt into those rates. And I'm not
14 suggesting we would only be able to pick the ones that
15 go down. I mean, it would have to be a wholesale
16 transition.

17 JUDGE RUTH: And you're talking about the
18 438 case --

19 MR. LUMLEY: Correct.

20 JUDGE RUTH: -- if the Commission makes a
21 decision on that. But, hopefully, it wouldn't be
22 twelve to fifteen months?

23 MR. LUMLEY: No. In that respect, I'm
24 talking about a generic proceeding to address --

25 JUDGE RUTH: Okay. From this case.

1 MR. LUMLEY: -- the other issues that aren't
2 in the 438 case.

3 JUDGE RUTH: Okay.

4 MR. LUMLEY: Basically, a new consideration
5 of things like loop costs, switching costs, things
6 like that that --

7 JUDGE RUTH: Right. That was the generic
8 consideration of the issues in this case. The
9 Commission earlier said it would defer ruling on
10 whether or not a new generic case would be open.

11 MR. LUMLEY: Right. And just to make sure
12 I'm clear, we are not in any respect proposing any
13 kind of true-up process or anything like that. We're
14 just talking about --

15 JUDGE RUTH: You want an opt-in provision,
16 though.

17 MR. LUMLEY: -- an opportunity in the
18 future. Correct.

19 JUDGE RUTH: Mr. Lane?

20 MR. LANE: The issue of a generic
21 interconnection proceeding is one that is separate
22 from what I understand is pending before you now --

23 JUDGE RUTH: Yes.

24 MR. LANE: -- and that is whether they can
25 introduce portions of or all of the record from

1 another case. And in that respect, WorldCom had the
2 ability and the right and the duty if they wanted to,
3 I assume, to present that information to the
4 Commission via their own witnesses in this case. They
5 could have presented their own version of the cost
6 studies. They could have presented witnesses that
7 testified to cost of capital, labor rates,
8 depreciation rates, et cetera, and they did not. And
9 it would be prejudicial and inconsistent with
10 Southwestern Bell's rights to reach out and grab the
11 record from another case, or portions of it, and then
12 use that as a substantive basis to establish the rates
13 in this proceeding with this arbitration.

14 JUDGE RUTH: Okay. I want to question you a
15 little bit more on that.

16 We all know arbitration cases are not the
17 same as contested cases. They are really quite
18 different, and the Commission is handling this case in
19 a somewhat different manner in that it's limiting
20 cross-examination in a way that it has not done on a
21 standard basis in contested cases.

22 So with that in mind that they are
23 different, an arbitration case is different than the
24 standard contested case that the Commission deals
25 with, I want you to explain how it's prejudicial to

1 Southwestern Bell for this record to be brought in
2 from 438. You keep saying that it's prejudicial, that
3 it's inconsistent with your rights. I need you to
4 explain how. Just saying it's prejudicial is not
5 convincing me.

6 And, further, the Commission -- you may not
7 agree, but the Commission believes that we could
8 handle this case by saying, WorldCom, tell us your
9 side. Southwestern Bell, tell us your side. Staff,
10 do you have any comments? No cross-examination and
11 move forward. So we are opening it up a bit more to
12 allow the parties to give us a full record.

13 With that in mind, WorldCom would, it seems
14 perhaps, argue that they are just trying to make sure
15 that the record is full, and you're wanting to keep
16 out information that could be seen as relevant.

17 MR. LANE: Okay. I guess to start from a
18 general perspective, whether this is a contested case
19 under Missouri Public Service Commission procedures
20 and under the Missouri statutes that identify what a
21 contested case is is certainly up in the air. It's
22 also up in the air whether Federal Arbitration Act
23 requirements or the State Arbitration Act requirements
24 apply in this case.

25 In any event, all three of those, whichever

1 one applies in terms of setting procedural rules and
2 the like do require the Commission to grant the basic
3 due process rights of the parties. That's a
4 constitutional requirement in any kind of state-
5 imposed -- in this case federally-imposed --
6 obligation that would be resulting in an
7 interconnection agreement. When you have basic due
8 process rights, those include the right to present
9 witnesses, the right to cross-examine witnesses.

10 In this case what they have failed to do is
11 to bring forward the evidence in this case. They
12 haven't presented anything to you on the cost studies.
13 They have not made any affirmative proposal on the
14 cost studies, and, yet, they want you to go out and
15 reach at this stage and say, Well, let's take what
16 happens in the 438 case and apply it here even though
17 the issues here are clearly much broader than they
18 were and are in the 438 case.

19 That's what we see as the prejudice to us,
20 is that we're not permitted and don't have the right
21 to cross-examine the witnesses and the cost study
22 analysis that isn't -- that isn't even being presented
23 in this case because those witnesses aren't here in
24 this case. There is no Mr. Hirshleifer. There is no
25 Mr. Rhinehart.

1 JUDGE RUTH: And so it's not adequate to
2 protect Southwestern Bell's rights to admit those
3 additional portions of the testimony as I think was
4 somewhat suggested by Staff.

5 MR. LANE: No.

6 JUDGE RUTH: There was cross-examination of
7 those witnesses, so incorporating that into the record
8 is not sufficient? How come?

9 MR. LANE: Because we're dealing with
10 different issues here because the issues are broader.
11 We're dealing with cost studies --

12 JUDGE RUTH: They are broader, but they are
13 not different, are they? They are not inconsistent?

14 MR. LANE: There is a group --

15 JUDGE RUTH: All of those are part of this.

16 MR. LANE: -- of cost studies in that case
17 that is a part of this study here. There is also a
18 whole slew of additional cost studies that we've
19 presented information on here that were not at issue
20 in the 438 case and that involve issues including cost
21 of capital, et cetera, that there was no --

22 JUDGE RUTH: But having more in this one
23 doesn't make that one any less true or relevant as to
24 what happened there?

25 MR. LANE: No. Each case, Judge, has to

1 stand on its own. For example, we went through cost
2 studies for conditioning loops, for example,
3 arbitration cases under the Act, and each time a party
4 came to us and said, I want to arbitrate that again,
5 it wasn't our ability to say, Well, you know, the
6 Commission has already decided this in another case.
7 You've got to take that rate. No. It was our
8 obligation to come forward and say, Here are our cost
9 studies, and you have the right to cross-examine and
10 you have the right to put on your own. That's the
11 pattern that the Commission has set and that's
12 appropriate in my opinion.

13 JUDGE RUTH: Okay. I want to ask a
14 question.

15 And, I think, Mr. Lumley, I might have asked
16 this before, but I want to get it clear.

17 Why did WorldCom not present as part of its
18 affirmative case these elements, these additional --
19 this additional record that you're now wanting to
20 brick in now? Bell has suggested that you should have
21 done that as part of your Direct or at least Rebuttal
22 Testimony. Explain to me why that wasn't done or why
23 you could not do it, because he seems to have a point.

24 MR. LUMLEY: Well, first of all, I would
25 submit that we did put forth our affirmative evidence

1 in the form of Mr. Turner, not only creating his
2 testimony here, but also incorporating his prior
3 testimony from that case, and put it directly at
4 issue.

5 You know, my specific request has to do with
6 the cross-examination of Southwestern Bell witnesses.
7 That's not my direct evidence. That's not my rebuttal
8 evidence. The alternative position of bringing in the
9 whole record, I'm just agreeing to that because I
10 think -- you know, first of all, Staff proposed it. I
11 don't have a problem with the proposal, but, secondly,
12 it puts other information in. If Southwestern Bell
13 wants to use it, they have their cross-examination of
14 Mr. Turner, and things like that.

15 But my specific request and all I'm trying
16 to specifically accomplish is to put in this
17 cross-examination in lieu of redoing it, because I
18 can't possibly redo it in the time frame allowed.

19 JUDGE RUTH: So then that really comes down
20 to just the time issue.

21 It seems to me, then, if we had no time
22 constraints on this case that --

23 MR. LUMLEY: I would just read the
24 questions. It's the same witnesses talking about the
25 exact same cost studies, and I could just read the

1 questions, and they would recite back the answers, you
2 know, and all we would have accomplished is consume a
3 week of hearing time that's already been done.

4 JUDGE RUTH: What's your response on just
5 that, Mr. Lane?

6 MR. LANE: That wouldn't be -- for things
7 that are at issue in this case, he could do that.
8 That's fine. And he can ask those questions to the
9 witness. But that case dealt with cross-examination
10 that dealt with alternative and competing cost of
11 capital proposals, depreciation proposals, et cetera.
12 That assumes facts that are not in evidence. He
13 couldn't ask those questions here and ask them to
14 comment on Mr. Hirshleifer's cost of capital and his
15 capital structure, et cetera. There isn't any
16 evidence in this case of that, so that type wouldn't
17 be proper.

18 JUDGE RUTH: So would it be proper to
19 allow -- if he were, as time goes on, able to identify
20 specific portions of the transcript that dealt with
21 only the same issues that are in this case, he could
22 offer that portion of the cross-examination from the
23 record to save time, if he wished? Is that true?

24 MR. LANE: Could he do that, I mean --

25 JUDGE RUTH: Your objection, then, would no

1 longer be valid if he -- if the cross-examination
2 didn't deal with those additional portions.

3 MR. LANE: If his questions that he asked
4 today of the witnesses were based on the evidence that
5 were in this case, then that would certainly be
6 proper. And if he has some -- the same questions that
7 would be proper, I --

8 JUDGE RUTH: Okay. But if he tried to then
9 ask the exact same questions, you're saying those
10 might be improper because they deal with evidence
11 that's not --

12 MR. LANE: They assume facts not in
13 evidence, right.

14 JUDGE RUTH: So the witness could answer,
15 but their answer would be different because they are
16 basing it on the facts of case, or they just wouldn't
17 be able to answer?

18 MR. LANE: I would object if those questions
19 were asked on the basis that the question assumes
20 facts that are not in evidence. That objection, I
21 would expect it would be sustained, because these
22 questions would be based on comparing Mr. Avera's cost
23 of capital to that of Staff Witness Johnson to that of
24 the other witnesses, and so you can't ask questions
25 like, Isn't it true the Commission should adopt

1 Mr. Hirshleifer's cost of capital in capital
2 structure? I would object to that as assuming facts
3 that aren't in evidence in the case.

4 JUDGE RUTH: Quickly, now.

5 MR. LUMLEY: Yes, your Honor.

6 I would disagree that it's objectionable.
7 We're talking about in each case expert witnesses, and
8 you are allowed to cross-examine an expert witness and
9 test their opinions beyond the scope of record
10 evidence. These witnesses are actually aware of
11 what's been testified in the other case, and it would
12 be legitimate to test whether they still adhere to
13 their positions knowing that other people have
14 proffered contrary opinions.

15 JUDGE RUTH: Okay. I think I'm finished if
16 you want to sit down.

17 First, let me say I'm going to make my
18 ruling and we're going to move on. If a party is
19 going to file a Motion for Reconsideration, because of
20 the time restraints, you're going to have to get it in
21 by tomorrow. And responses -- and if you're going to
22 do that, it might be helpful if you at least give the
23 other side a heads up so that they can file their
24 response at the latest on Wednesday morning when we
25 start.

1 Preferably, if they know you're going to do
2 that, then they can maybe file it the same day.
3 Because if I make a ruling, you file a motion for
4 reconsideration, and the Commission reverses itself,
5 we will need to backtrack, and I don't want to get any
6 farther along -- and I'm just saying that's an "if,"
7 but I'm shortening the time on that just in case.

8 Where we're at is we're discussing whether
9 or not to allow this additional evidence in as
10 exhibits from 438, and I'm going to sustain
11 Southwestern Bell's motion (sic). It is not going to
12 be allowed in.

13 That means we will also have to give
14 WorldCom an opportunity to revise your estimated time
15 for cross-examination of the two witnesses that you
16 had planned on just offering testimony for. And we
17 can do that one of a couple of ways. We can
18 either, if you're prepared, go ahead and you can
19 submit your revised estimates now, or we can move on
20 to the next witnesses after that.

21 MR. LUMLEY: What I would like to do, your
22 Honor, is allocate 15 minutes to Dr. Avera and take
23 five minutes away from Mr. Cass, Mr. Makarewicz and
24 Mr. Barch.

25 JUDGE RUTH: What about Mr. Naughton?

1 MR. LUMLEY: I will not ask any questions of
2 him.

3 With regard to tendering the exhibits, how
4 do you want to go about that?

5 JUDGE RUTH: Tendering the exhibits, then,
6 for each of the other witnesses that you had planned
7 to offer --

8 MR. LUMLEY: Right.

9 JUDGE RUTH: I assume, then, you're still
10 wanting to offer them for the record?

11 MR. LUMLEY: I think I need to do that, but
12 I'm comfortable doing it at your convenience as
13 opposed to trying to cram it in at any particular
14 time.

15 JUDGE RUTH: Okay. I'm not sure I follow.

16 MR. LUMLEY: Whenever you want to do it. I
17 don't necessarily need to do it with each witness, you
18 know, if there is a particular break, or maybe we can
19 get it all premarked or something.

20 JUDGE RUTH: Why don't we do that with
21 today's lunch break, at least start working on that.
22 You will have to tell me if more time is needed also.

23 Okay. I'm going to go off the record for
24 about two minutes. I suggest you might want to hang
25 around. I'm just going to let the Commissioners know

1 that we are ready for opening statements.

2 If you want to take a quick five-minute
3 break, that's fine. Stay close.

4 We're off the record.

5 (A recess was taken.)

6 JUDGE RUTH: We are back on the record in
7 TO-2002-222, and we're ready for opening statements.

8 I'll remind you to please come up to the
9 lectern and use the microphone.

10 We will begin with WorldCom.

11 MR. MORRIS: Good morning, Commissioners.

12 I'm Steve Morris. I'm a senior attorney
13 with WorldCom.

14 JUDGE RUTH: You'll need to adjust the
15 microphone. I can't hear you very well.

16 MR. MORRIS: Okay. I'll start over.

17 I'm Steve Morris. I'm a senior attorney
18 with WorldCom. I handle their regulatory matters in a
19 four-state area including Missouri, Kansas, Oklahoma,
20 and Arkansas.

21 What I'm going to do in opening statement
22 this morning is go through and identify our witnesses
23 and highlight the subjects or issues that they will be
24 addressing and what we feel their testimony will
25 demonstrate in this hearing.

1 Dan Aronson is WorldCom's Director of
2 Carrier Access Billing Services, and his testimony
3 will demonstrate that as an intraLATA toll provider,
4 Southwestern Bell should bear the responsibility for
5 billing its customers; that is, its intraLATA
6 customers for intraLATA toll calls.

7 Mr. Aronson's testimony will also
8 demonstrate or address the related operational issue
9 of handling a PIC'd intraLATA toll call in a UNE-P
10 environment.

11 Michael Beach is WorldCom vice-president of
12 the West Region Telco and Line Cost Management. His
13 division covers 27 states and has responsibility for
14 implementation of interconnection agreements, OSS
15 support, and implementation of billing audits and
16 payments. Mr. Beach has been with the company 27
17 years.

18 His testimony addresses Southwestern Bell's
19 BFR process, whether it should change, the
20 availability of technical publications, and whether
21 it's appropriate to include language from Southwestern
22 Bell -- SBC's 13-state agreement in this Missouri
23 interconnection agreement that we're asking for.

24 Ed Caputo is WorldCom's Director of Operator
25 and Directory Services. He's been with the company

1 eleven years in the OS and DA areas. The issues he
2 addresses and what his testimony will demonstrate is
3 that Southwestern Bell is required to provide CLECs
4 with customized routing via feature group D trunks
5 designated by the CLEC.

6 His testimony will also address whether Bell
7 is required to provide OS/DA as a UNE until it
8 provides such customized routing. We believe that his
9 testimony will so demonstrate.

10 Roseann Kendall is a Senior Project Manager
11 in WorldCom's West Region Carrier Management Group,
12 Mike Beach's group that I just referred to earlier.

13 Her responsibilities include resolving OSS
14 issues with Southwestern Bell. She is also WorldCom's
15 primary point of contact for Southwestern Bell's
16 change management forums.

17 Her testimony covers various LIDB issues,
18 and her testimony will show that WorldCom should have
19 access to the LIDB database during the local service
20 request process, that Southwestern Bell should bear
21 responsibility for populating the LIDB with erroneous
22 default information, and that WorldCom should not be
23 held responsible for the accuracy of its data; that is
24 WorldCom's data, in Southwestern Bell's LIDB -- that's
25 line information database -- if WorldCom has no direct

1 access to the LIDB.

2 Mike Lehmkuhl is a regulatory specialist in
3 the operator services area for WorldCom. He's been in
4 the telecommunications industry for ten years, both as
5 an attorney, a consultant, and recently as an employee
6 of WorldCom.

7 His testimony focuses on call-related
8 database issues and, secondly, directly assistance
9 listing information. His testimony with regard to
10 call-related databases will demonstrate that LIDB
11 isn't an unbundled network element, or UNE, that the
12 calling name database, sometimes called CNAM, is a UNE
13 and should be available on a bulk basis. There should
14 be no local use restrictions for the use of the LIDB,
15 and, as to directory assistance listing issues, that
16 the directory assistance database should be TELRIC
17 priced as it is a UNE.

18 Mike McKanna is a Senior Manager of Local
19 Exchange Carrier Billing and Collection and Business
20 Analysis for WorldCom. He's been with WorldCom for
21 six years in that area and also addressing collection,
22 fraud, high toll, and credit and collection practices.

23 Prior to that, he was employed by May
24 Department Stores in the comptroller's organization
25 and addressed the issue of billing and collection

1 while he was at May.

2 His testimony addresses the issue of what is
3 called alternately billed traffic, or ABT. That's
4 traffic such as collect calls, third-party billing,
5 credit card calls, things like that.

6 His testimony will demonstrate that the
7 originating carrier ultimately bears the burden of
8 such a call being uncollectible, not the terminating
9 carrier who is simply acting as a billing agent for
10 the originating carrier. His testimony will also show
11 that the terminating carrier should be able to collect
12 many of these uncollectible charges from the
13 originating carrier.

14 Don Price is a Senior Manager in the
15 Competition Policy Group in the Western Region Public
16 Policy Group of WorldCom. He's been with MCI WorldCom
17 for 15 years, and prior to that spent five years at
18 GTE and three years at the Texas Public Utilities
19 Commission addressing a variety of public policy
20 issues involving telecom.

21 His testimony will demonstrate that Bell
22 should be required to maintain its systems. If it
23 were to maintain certain features and functionalities,
24 if it chooses to change out equipment, at least
25 through the term of the agreement, the interconnection

1 agreement, that Bell should be required to combine
2 elements that are ordinarily combined, that Bell
3 should provide enhanced extended loops, ELS, or E-L-S,
4 without use restrictions, that stand alone
5 multiplexing should be provided, that Bell should
6 offer unbundled dedicated transport between itself and
7 third parties, that CLECs are impaired without access
8 to local switching, and, finally, that Bell should
9 provide via electronic feed emergency public agency
10 numbers to WorldCom.

11 Mike Schneider -- Schneider is a commercial
12 attorney with WorldCom. He's been with the company
13 about six years working in network facilities and
14 carrier transactions, most recently dealing with
15 interconnection agreements.

16 His testimony addresses various G, Ts and
17 Cs, general terms and conditions issues, including the
18 unnecessary limitation of liability of language
19 proposed by Southwestern Bell, whether Bell should
20 waive its rights to the "necessary and impair test,"
21 and sort of a related issue, whether WorldCom should
22 waive its right to challenge the agreement, and,
23 finally, if the directory listing information
24 attachment should contain a specific breach of
25 contract language from the G, Ts, and Cs contained in

1 the agreement.

2 Finally, Steve Turner is the principal with
3 Kaleo Consulting. The Commission is well aware of
4 Mr. Turner. He's testified extensively, not only at
5 this Commission, but in, you know, various commissions
6 around the country.

7 He previously worked as a research engineer
8 for General Electric and worked for AT&T for over ten
9 years and was extensively involved in AT&T's local
10 operations.

11 Mr. Turner will testify on various costing
12 issues. We feel his testimony will demonstrate that
13 the Commission should re-examine UNE loop rates given
14 21st century technology in light of the \$6 billion
15 that Southwestern Bell has publicly stated it is
16 committing to Project Pronto, that unbundled switching
17 should be flat rated, that the daily use fee should be
18 eliminated, and the signaling point code rate should
19 also be eliminated.

20 Thank you for your time and consideration.

21 JUDGE RUTH: Just a moment.

22 By my notes, you have, let's see, at least
23 ten minutes left for your opening statement. I won't
24 require you to state anything further, but you might
25 want to give the Commissioners a brief overview of

1 your theory of the case. And one of the things that
2 was mentioned in this discussion previously about
3 WorldCom, Mr. Lumley indicated that if the Commission
4 makes a decision on certain elements or portions here,
5 you want an opt-in provision for 438. You might
6 explain that in a little bit more detail for the
7 benefit of Commissioners.

8 MR. MORRIS: Okay. This all goes back to
9 what I will -- what I will characterize as the
10 Commission's unduly restrictive reading of the time
11 line set out in Section 252(C)(4) of the Telecom Act
12 regarding time lines for arbitrations.

13 As an add-on to that, let me just say that
14 in the states that I'm responsible for, I'm not aware
15 of any Commission taking such a confining view and
16 limiting its -- giving it -- limiting the opportunity
17 of the Commission to fully address certain issues,
18 one, or either that -- or as in the case in Texas, I
19 believe the Texas Commission has set up a generic
20 Project Pronto proceeding to address the UNE loop
21 rates in light of the new network architecture and
22 21st century technology.

23 I say that for backdrop because what -- to
24 answer your question, Judge Ruth, what we're now faced
25 with is an arbitration with a time line imposed where,

1 as a practical matter, neither we nor the Commission,
2 which I believe the Staff has suggested, has any
3 meaningful opportunity to examine the banker boxes
4 full of cost studies in this proceeding. It simply
5 can't be done.

6 And what we were addressing in the -- with
7 respect to the 438 case was the timing, and that is
8 this -- under the procedural schedule imposed in this
9 case, this case has to be wrapped up prior to any
10 likely decision being issued in 438. As the
11 Commissioners are well aware, you spent the entire
12 week addressing those 35 or 36 cost issues in the 438
13 docket, and I will submit to you that if you remember
14 your Vin diagrams in mathematics, the 438 case is
15 essentially a subset, a small circle of the issues
16 that we have that you have to address in this case.

17 And the -- excuse me -- the one concern that
18 I have is that in the desire to wrap up this case in
19 the time you've imposed on yourselves and everybody
20 else, that the decision may not be as thoroughly
21 fleshed out and reasoned as the decision that we hope
22 and expect you-all to issue in the 438 case given the
23 time differences, and address -- and hearing the
24 evidence, having a reasonable opportunity to conduct
25 discovery, and, you know, whatever.

1 What Judge Ruth was talking about is if --
2 we would like -- we, WorldCom, would like the
3 opportunity to opt into the 438 rates once the
4 Commission issues a decision in that case. Of course,
5 you know, whether we do or not is going to be a
6 function of what we do -- or what order results in
7 this case as to those issues, as to, I'll call it, the
8 438 issues, some 35 or 36 UNE rates in issue in here
9 and in 438.

10 Does that answer your question?

11 JUDGE RUTH: Yes. Thank you. Thank you
12 very much.

13 MR. MORRIS: Thank you.

14 Mr. Lane?

15 MR. LANE: Thank you, your Honor.

16 My name is Paul Lane, and I represent
17 Southwestern Bell in this case, along with Mimi
18 MacDonald and Kirk Kridner, each of whom will also be
19 participating.

20 First, let me say I appreciate that the
21 Commission has given some additional time to the
22 parties for cross-examination in this case. I think
23 the amount of time that originally had been set wasn't
24 adequate, and we appreciate that. I know there is
25 some concern about our ability to get done by Friday,

1 and I will assure you we will do our best and commit
2 to do whatever we need to do to get done in a timely
3 fashion.

4 Let me give an overview of this case. It's
5 a negotiation leading to an arbitration under the
6 Telecommunications Act of 1996. There were several
7 avenues that were available to WorldCom in connection
8 with those negotiations, one of which was to opt into
9 the Missouri 271 agreement, or M2A, and they could
10 have opted into that in whole, but they chose not to
11 do that.

12 They could have opted into that agreement in
13 relevant part, meaning in compliance with the
14 attachment 26 of the M2A, and they did that in part,
15 but not in part. Where they did is they took resale
16 attachments, 1 through 5, which are all grouped
17 together, and they followed attachment 26 for those
18 purposes.

19 They took the performance plan of
20 measurements and remedies that are in attachment 17
21 and their associated appendices, and they took various
22 other parts in the M2A, and they did that in
23 compliance with attachment 26.

24 But they didn't follow the requirements of
25 attachment 26 of the M2A for purposes of unbundled

1 network elements, or UNEs, either for terms and
2 conditions or for prices.

3 Mr. Smith, a Southwestern Bell witness,
4 attached attachment 26 to his testimony in this case,
5 and if you refer to that or refer to the M2A, you will
6 see that under the section designated "UNEs," that the
7 legitimately related provisions are specified there,
8 and it indicates that attachments 6 through 10 and
9 appendices are legitimately related, meaning that if a
10 CLECs wants to take something concerning UNEs out of
11 the M2A that they need to take all of attachments 6
12 through 10.

13 WorldCom didn't want to do that here. And
14 that's their right. They are not required to. But
15 when they choose not to, then all of the terms and
16 conditions that are in attachments 6 through 10 are at
17 issue in this case, and the parties then need to
18 negotiate, and if they are not able to reach
19 agreement, then they arbitrate.

20 We did reach agreement with regard to the
21 wording of attachments 7, 8, and 9 in this case which
22 are part of the UNEs, and we agreed that each side
23 would follow the terms and conditions of the M2A for
24 that.

25 But it's important to note that they didn't

1 opt into attachments 7 through 9 of the M2A. The
2 parties negotiated the same language there to come to
3 what works out to be the same result. But they
4 couldn't opt into that because you would have to
5 take, and they had to take, attachments 6 and 10 as
6 well, and they preferred not to do that.

7 With regard to attachment 6, it appears to
8 be WorldCom's proposal in this case that they would
9 like to take most of the non-price terms and
10 conditions and most of the pricing terms from the M2A
11 but not others. Is that legitimate? It's clearly not
12 legitimate under the M2A itself.

13 As I indicated, page 2 of attachment 26
14 identifies that you have to take attachments 6 through
15 10 and their associated appendices under the M2A. You
16 can't take just those portions that you find favorable
17 and try to modify those that you would like a better
18 deal on.

19 Can they come to the Commission and say,
20 Well, I understand that I have to negotiate and
21 arbitrate all of attachments 6 and 10, but for my
22 position in the case my proposal is I want what's in
23 the M2A except for some of the non-price terms, and
24 I'll take most of the price terms from the M2A, but
25 not loops and switching.

1 Is that a legitimate position for them to
2 take in this case? The answer to that is in part yes,
3 but in part no. I'm going to separate the non-price
4 terms and conditions from the price terms and
5 conditions.

6 With regard to the price -- excuse me -- the
7 non-price terms and conditions of attachment 6, they
8 generally can, if they want, propose that that's their
9 position in the case. But they can't propose
10 legitimately under the Act certain parts of the
11 non-price terms and conditions of the M2A because
12 parts of it are voluntary proposals on Southwestern
13 Bell's part that go beyond the Act and can't be
14 imposed in an arbitration.

15 Chief among those is the issue of combining
16 unbundled network elements that aren't combined in our
17 network today. That was a voluntary offering that we
18 made under the M2A that the Eighth Circuit has made
19 clear in two separate occasions. It's not something
20 that is required by the Act or can be imposed in an
21 arbitration under the Act. So they can't propose --
22 even though they purport to in this case, they can't
23 propose those and the Commission can't adopt those
24 non-priced terms and conditions that aren't -- that
25 can't be lawfully imposed.

1 With regard to the other non-price terms and
2 conditions, they certainly can propose them if they
3 are lawful, but Southwestern Bell has an equal right
4 to propose different terms on those particular items.

5 With regard to pricing terms from the M2A,
6 that's really a different matter. That's because the
7 Act imposes some specific requirements on what parties
8 are to do with regard to prices and what the
9 Commission is to do. And under the Act under
10 Section 252(D)(1) there is an obligation to set prices
11 that are based on cost. And the FCC has said that
12 costs must be done pursuant to a total element long
13 run incremental cost, or TELRIC, standard.

14 Has MCI -- excuse me. Has WorldCom shown
15 that the rates in the M2A meet the TELRIC
16 requirements? No, they haven't proposed any testimony
17 in this case to that effect.

18 Can the Commission go outside the record of
19 this case to take terms and conditions of prices from
20 the M2A? I think not. The evidence needs to be in
21 the record here. But even if the Commission could go
22 to the source of those M2A rates, would they be cost-
23 based for purposes of this case? I think the answer
24 to that is clearly no. And there is two reasons for
25 that.

1 The first is that many of the rates in the
2 M2A were derived from the first AT&T arbitration which
3 was Case No. TO-97-40. While the Commission followed
4 the TELRIC method in that case and utilized the cost
5 studies that Southwestern Bell had proposed, the
6 Commission made a number of adjustments to TELRIC
7 costs that in our view drove those rates below that
8 which a proper application of the TELRIC methodology
9 would yield.

10 And I would point out as the Commission --
11 some of you are new and some were there, but
12 Southwestern Bell didn't have the opportunity back in
13 that 97-40 case to contest the proposed adjustments.
14 The Commission never did have a hearing because they
15 simply accepted a Staff proposal, and while they had
16 said they were going to have a hearing, for whatever
17 reason didn't, and that was something that obviously
18 caused us some problems and we appealed that case.

19 But we feel that those rates, while we're
20 voluntarily willing to offer them for purposes of the
21 M2A, they are not appropriate in our view outside of
22 the M2A because they yield rates lower than that which
23 proper TELRIC application would yield.

24 But whether you agree with our position on
25 the 97-40 rates or not, I think it's undeniable that

1 the M2A reflects additional price reductions that
2 Southwestern Bell made specifically for purposes of
3 resolving questions and issues raised in connection
4 with our getting into the long distance market. And
5 we made voluntary reductions that aren't cost-based,
6 and there's certainly no evidence that those were
7 necessary to comply with TELRIC.

8 Specifically, for purposes of the M2A, we
9 made voluntary reductions of 18 1/2 percent for the
10 per-minute-of-use switching charges, we made an
11 18 1/2 percent reduction on most of the transport
12 charges. We made a 10 percent reduction on average
13 for loops, none in the urban area, but much greater
14 than 10 percent in the rural areas, for an overall
15 average of 10 percent. And we reduced nonrecurring
16 charges under the M2A by an additional 25 percent.

17 It's real clear that there is no evidence in
18 this case that those rates from the M2A are cost-based
19 pursuant to TELRIC. In fact, they are lower in our
20 view than what TELRIC would require.

21 At the end of the day, the Commission
22 can't -- and WorldCom can't adopt the M2A rates while
23 varying switching and loop rates as they seek to do
24 here, nor is there any cost basis to support setting
25 lower switching or loop rates as WorldCom would like.

1 WorldCom has offered no cost studies on these UNEs and
2 has not proposed any specific adjustments to
3 Southwestern Bell's cost studies. All WorldCom has
4 done is point to rates from another state, but rates
5 from another state is not proof of cost in Missouri.

6 The Commission already rejected the same
7 claim in the AT&T arbitration case, the most recent
8 one, TO-2001-455, where the Commission found that
9 rates below M2A obviously weren't appropriate for
10 Missouri. The Commission said that on page 20 of that
11 order.

12 Southwestern Bell has pointed out in its
13 testimony in this case that other states have higher
14 rates for loops and higher rates for switching than
15 are contained in the M2A, but those don't provide a
16 basis to set rates in this case any more than
17 WorldCom's pointing to rates from Illinois, Michigan,
18 and New York which they say are lower.

19 I think the purpose of what WorldCom has
20 done by pointing to Illinois and to Michigan is to
21 create the impression to the Commission that these
22 rates in the M2A in Missouri are inappropriately low.
23 And I would ask the Commission to look closely to
24 Mr. Hampton, Southwestern Bell's witness in this case,
25 who has attached two studies from independent sources

1 that do a survey of rates in all of the states.

2 One of the sources was the Director of
3 Consumer Advocate in West Virginia, which looked in
4 the spring of 2001 at all of the rates in the
5 50 states plus the District of Columbia and found that
6 the rates that are set -- that were set in 97-40, and,
7 again, before we made those reductions, that even at
8 that point that Southwestern Bell's rates in Missouri
9 as set by the Commission were in the middle to lower
10 middle of rates around the country.

11 The second study that Mr. Hampton attached
12 is a -- is from the Commerce Capital Markets, which is
13 an investment banking advisory service that goes to
14 the investment community, and it looked at the rates
15 again. These now were the M2A rates. And, again, the
16 same result is attached. Southwestern Bell's rates in
17 Missouri in the M2A are in the middle to lower middle
18 of other states.

19 So the Commission should not come away with
20 the impression that the rates in the M2A as they exist
21 today are out of line with the rates in other states.
22 They are not.

23 I think WorldCom has backed away from its
24 claims in its Petition that it can't be profitable
25 under the M2A rates. I think they recognize that

1 that's not a proper source of inquiry, but
2 Southwestern Bell has presented evidence through
3 Mr. Hughes that there is clear evidence and ability of
4 CLECs under the rates with which we have in the M2A
5 for them to be profitable. And those rates are
6 substantially below that which Southwestern Bell
7 recovers on a retail basis from its customers when you
8 consider the full gamut of revenue that are available
9 to CLECs, meaning they get basic local, they get
10 access services, they get vertical services, they get
11 toll. All of those things help make them profitable
12 if they want to provide the service.

13 The only other evidence that WorldCom
14 presents in this case is unsupported claims that rates
15 must be too high because Southwestern Bell has merged
16 with Ameritech and rates must be too high because
17 Southwestern Bell has started to implement its Project
18 Pronto architecture.

19 Mr. Smallwood addresses those in his
20 testimony. He makes one point I think very clear, and
21 that is, when you look at the merger savings or when
22 you look at Project Pronto implementation, what
23 Southwestern Bell is discussing in its investment
24 community there is the relationship of those items to
25 its embedded existing network. That is different than

1 the network that you have to look at for purposes of
2 TELRIC which requires you to look at forward-looking,
3 completely efficient, most modern network available.

4 And our cost studies reflect that already.
5 There doesn't need to be adjustments because of
6 Project Pronto or adjustments because of the
7 SBC/Ameritech merger because saving from that are
8 already implicit in our cost studies because they are
9 based on the most efficient, forward-looking network.

10 What about the alternative requests that
11 WorldCom has? Let's have some future generic docket
12 to look at rates if we're not going to do it here.
13 That's the same proposal that was advanced by AT&T in
14 the 455 case that I referenced earlier. It was
15 rejected by the Commission as inconsistent with the
16 statute, and we think that result still holds.

17 The statute contemplates that you will have
18 bilateral negotiations between a CLEC and an ILEC and
19 that if they are not able to reach agreement, those
20 issues with which they can't agree are brought to
21 arbitration. We can't have a generic docket, because
22 that's not consistent, we think, with the
23 contemplation of the Act.

24 We think it's also a fruitless exercise even
25 if it's lawful. If the costs as determined by the

1 Commission are greater now than they were then, the
2 M2A rates still remain available to any CLEC that
3 wants them. So no higher rates would result, and the
4 CLECs would remain free to take the M2A rates.

5 If some costs were lower, that still
6 wouldn't be something that we think of as appropriate
7 to explore because you need to take the entirety of
8 the rates, and, in addition, there is provisions in
9 the M2A, as I mentioned earlier, that go beyond the
10 law such as combinations that CLECs would nevertheless
11 want.

12 From our perspective, there is no way that
13 any future proceeding would result in higher rates,
14 and, in our view, it's not a reasonable approach since
15 it would be a one-way binding on Southwestern Bell but
16 not on CLECs who could continue to arbitrate or who
17 could continue to take the M2A rates.

18 The final reason we don't think it's
19 appropriate to have a generic docket at this time
20 relates to the TELRIC standard itself. As the
21 Commission may be aware, the FCC's TELRIC standard is
22 on review now at the Supreme Court. At this point the
23 Eighth Circuit has said that it's acceptable to look
24 on a forward-looking basis, but they have thrown out
25 that portion of the FCC's TELRIC rules that say you

1 have to price costs based on the most efficient
2 network possible and the most modern network possible.
3 That's pending in front of the Supreme Court.

4 We don't know what they'll do, but whatever
5 they do, it's going to have some significant impact on
6 any "generic docket" that the Commission might be
7 interested in having. We will be spending a lot time
8 and effort to do something that -- under a standard
9 that may no longer be the standard.

10 If it were appropriate, which we don't think
11 it is, to have some sort of generic docket, it should
12 be conducted after we know what the Supreme Court does
13 with the TELRIC standard and after we know what the
14 FCC does in response to that Supreme Court decision.

15 And I would note that the M2A rates remain
16 available to carriers through March -- until March of
17 2005, so those rates stay good and are in effect
18 during that period of time.

19 I think probably the appropriate resolution
20 for this case is either one of two. Either you should
21 find that the cost studies that Southwestern Bell has
22 submitted are appropriate and adopt the rates and tell
23 WorldCom that that's what they should take in this
24 case, or if the Commission doesn't want to do that,
25 what will happen in any event is that WorldCom will

1 take the M2A, will take attachment 6 through 10.

2 I think it's appropriate for you to direct
3 them to do that, much as you did in the AT&T case with
4 one caveat: In the AT&T case, the Commission didn't
5 make it clear that AT&T had to take all of
6 attachments 6 and 10 and couldn't vary some of the
7 provisions in there. And we filed an application for
8 rehearing in that case that eventually became moot
9 because I think AT&T recognized that and they agreed
10 that they would take the M2A attachments 6 through 10,
11 and they wouldn't then need to have the Commission set
12 different non-price terms and conditions.

13 Given the time restraints, I won't go into
14 all of the other issues, but I would note that most
15 of these issues that we have here involve
16 attachment 6 or 10, and if the Commission directs
17 WorldCom to take attachments 6 and 10 of the M2A, this
18 would resolve almost all of the issues. It would
19 resolve issues 1 through 23, 25 through 28, 30 through
20 39, 45 and 46, and 48 through 50. The only issues
21 which would still be remaining for the Commission to
22 determine would be those that relate to general terms
23 and conditions under the M2A and those that relate to
24 attachment 18, directory listing information.
25 Everything else is resolved under the M2A if you take

1 all of attachments 6 through 10.

2 Now, if the Commission goes a different
3 route and looks on an individual basis at each term
4 and condition under attachment 6 and 10, I think three
5 points need to be made.

6 First is that some of those things, as I
7 indicated earlier, were voluntarily given by
8 Southwestern Bell in the M2A and can't be imposed by
9 the Commission. There are several of those. We
10 identify those in our testimony. Staff agrees with us
11 on some. I'm not sure of their position on others,
12 and we'll explore that on cross-examination.

13 The second point is that it should be a
14 two-way street. If WorldCom is not bound to take all
15 of the terms and conditions of the M2A, simply
16 pointing to a term or condition from attachment 6
17 should be binding on Southwestern Bell. We ought to
18 have the same opportunity to explain why it's
19 appropriate to vary that in some respect and we would
20 ask the Commission to consider those.

21 The third reason is that there are some
22 provisions that have no counterpart in the M2A but are
23 proposals that we think are inappropriate for various
24 reasons, and our testimony goes into that. One
25 example is intraLATA toll where WorldCom appears to

1 try to force Southwestern Bell to be a provider of
2 toll to its customers, and we don't undertake to do
3 that, and the Commission considered a similar proposal
4 in the AT&T arbitration and rejected that as beyond
5 the Commission's authority.

6 In summary, I would say that WorldCom has
7 failed to present any evidence to support its adoption
8 of certain M2A prices and not others and certain terms
9 and conditions non-price from attachment 6 and 10 and
10 not others. The Commission should either adopt
11 Southwestern Bell's proposals in this regard and
12 utilize Southwestern Bell's cost studies in this case
13 in that regard, or direct WorldCom to take those
14 attachments 6 through 10 of the M2A in its entirety
15 and consistent with attachment 26.

16 And with regard to the remaining issues, we
17 believe the Commission should adopt those that we
18 propose with regard to the general terms and
19 conditions and with regard to attachment 18 which is
20 the DLI attachment.

21 Thank you.

22 JUDGE RUTH: Thank you.

23 Mr. Bates?

24 MR. BATES: Thank you, your Honor.

25 And good morning, Commissioners.

1 I will be fairly brief this morning.

2 I would like to state that the Staff has
3 worked very hard on this case and from, I think, the
4 perspective that the Commission wanted it to take,
5 that of a neutral third party. Staff has evaluated
6 the proposals of the parties from the perspectives
7 basically of technical feasibility and also of
8 consumer interest.

9 As the testimony is elicited from the stand
10 in this case, Staff may have some clarifications as
11 far as recommendations that will add to what it has
12 placed in its Staff evaluation, and we would be
13 interested in having the opportunity to put that into
14 our briefs.

15 Staff would like to state and thank
16 Southwestern Bell and WorldCom for their cooperation
17 in this matter. They've been very forthcoming with
18 information that has enabled Staff to put the Staff
19 evaluation together with the most possible information
20 we had available, and I think the parties have worked
21 conscientiously as the Commission has envisioned to
22 put this information before it.

23 Briefly, Section 252(I) of the
24 Telecommunication Act of 1996 states that a local
25 exchange carrier shall make available any

1 interconnection service or network element provided
2 under an agreement approved under this section to
3 which it is a party to any other requesting
4 telecommunications carrier upon the same terms and
5 conditions as those provided in the agreement.

6 In this matter, WorldCom has exercised that
7 right and chosen to exercise the Most Favored Nation
8 option for certain provisions of the M2A while
9 choosing to negotiate and arbitrate other provisions.

10 Attachment 26 which has been discussed here
11 already extensively this morning states in the
12 relevant part that the agreement is expressly limited
13 to the item or items or section or sections into
14 which the CLEC MFNs under section 252(I). This
15 attachment 26 is legitimately related to each and
16 every item or items and section or sections of the
17 Missouri 271 agreement. The prices as set forth in
18 the appendix pricing UNE schedule of prices are
19 legitimately related to each and every item or items
20 in section or sections of the Missouri 271 agreement
21 to which they apply.

22 Now, in this matter, WorldCom has elected to
23 MFN into the M2A with the exception of four
24 attachments and one appendix, those being
25 attachment 6, UNE; attachment 10, provision of

1 customer usage data, UNE; attachment 18, mutual
2 exchange of directory listing information;
3 attachment 27, alternately billed traffic, new; and
4 appendix pricing UNE, schedule of prices.

5 According to attachment 26, WorldCom must
6 accept all legitimately related provisions into which
7 a CLEC MFNs under section 252(I); however, as
8 previously noted, attachment 26 specifically states
9 that the agreement is expressly limited to the item or
10 items or section or sections into which the CLEC MFNs.
11 WorldCom has agreed to these conditions.

12 As WorldCom has specifically chosen to
13 negotiate and/or to arbitrate the aforementioned
14 attachments and appendix, Staff is of the opinion and
15 belief that the legitimately related provision of
16 attachment 26 does not apply to them. Of course, any
17 section within those attachments or appendix to which
18 WorldCom has MFNed are subject to the conditions of
19 attachment 26. However, WorldCom has agreed to abide
20 by the provisions of attachment 26 in these instances
21 as well.

22 Finally, Staff would respectfully suggest to
23 the Commission that it order the parties to file a
24 final draft of the language after the Commission makes
25 its determination in this case in order to allow Staff

1 to review it for conformance to the Commission's
2 order. Staff believes that this will produce the best
3 possible product at the end in conformance with the
4 Commission's wishes and intentions.

5 Thank you very much.

6 JUDGE RUTH: Thank you, Mr. Bates.

7 We will move on to calling the first
8 witness. I believe that is WorldCom.

9 Proceed.

10 MR. LUMLEY: Thank you, your Honor.

11 We call Steve Turner to the stand.

12 (Witness sworn.)

13 JUDGE RUTH: Thank you.

14 Please be seated.

15 STEVEN E. TURNER testified as follows:

16 DIRECT EXAMINATION BY MR. LUMLEY:

17 Q. Would you state your name, please?

18 A. Steven E. Turner.

19 Q. And on whose behalf are you testifying in
20 this case?

21 A. MCImetro Access Transmission Services, LLC,
22 Brooks Fiber Communications of Missouri, Inc., and MCI
23 WorldCom Communications, Inc.

24 Q. And did you cause to be prepared and
25 submitted in this case Direct Testimony that's been

1 marked as Exhibit 1?

2 A. Yes, I did.

3 Q. And, likewise, did you prepare and cause to
4 be submitted in this case Rebuttal Testimony that's
5 been marked as Exhibit 2?

6 A. Yes, I did.

7 Q. Considering first your Direct Testimony, do
8 you have any corrections to make?

9 A. Yes, I do. On page 30, there's two
10 corrections I need to make.

11 There is a footnote 19 which needs to be
12 deleted. It was not supposed to be there, and so I
13 would just propose deleting footnote 19 and the text
14 that's down below for it.

15 And then, secondly -- footnote 19, by the
16 way, is in line 15 of my testimony.

17 And then on line 19, there's a number there
18 that has a "begin confidential" and "end confidential"
19 around the number \$1.30, and that number is not
20 confidential. And so the "****begin confidential"
21 needs to be deleted, and the "end confidential****"
22 needs to also be deleted.

23 Q. Any other corrections to your Direct
24 Testimony?

25 A. No.

1 Q. Turning now to your Rebuttal Testimony, do
2 you have any corrections to that document?

3 A. Yes, I do.

4 Q. Would you state those?

5 A. On page 2 at line 4, the reference there
6 says DPL item No. 12. It should say DPL item Nos. 12
7 and 50.

8 And then just prior the question mark at the
9 end of line 5, the following text should be inserted:
10 "And should the Commission delete the 8 cent per
11 transaction charge for local account maintenance."

12 And then the only other correction is if you
13 go to line 12 in the question, the number six needs to
14 be changed to seven.

15 Q. Any other corrections to your Rebuttal
16 Testimony?

17 A. No.

18 Q. With the corrections that you've stated
19 today in mind, if I asked you the questions that are
20 set forth in your Direct and Rebuttal Testimony today,
21 would your answers be the same?

22 A. Yes, they would.

23 MR. LUMLEY: With that, your Honor, I offer
24 Exhibits 1 and 2 into the record, and tender the
25 witness for cross-examination.

1 JUDGE RUTH: Thank you.

2 First, Exhibit No. 1 is Mr. Turner's Direct

3 Testimony. Are there any objections to this document?

4 MR. BATES: No objection.

5 JUDGE RUTH: Southwestern Bell?

6 MR. LANE: No, your Honor.

7 JUDGE RUTH: It is received into the record.

8 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

9 JUDGE RUTH: Exhibit 2 is Mr. Turner's

10 Rebuttal Testimony. Are there any objections to this

11 document?

12 MR. BATES: No objection.

13 JUDGE RUTH: Okay. It is also received into

14 the record.

15 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)

16 JUDGE RUTH: Thank you.

17 It's my understanding the parties propose

18 that Southwestern Bell do the cross-examination first;

19 is that correct?

20 MR. LANE: Yes, your Honor.

21 JUDGE RUTH: And your witness schedule

22 indicates you will take no more than 45 minutes for

23 this witness.

24 MR. LANE: Yes, your Honor.

25 JUDGE RUTH: We will -- I propose then we go

1 ahead and go until about a quarter after and take a
2 break at that time for lunch.

3 MR. LANE: Okay. That's fine.

4 CROSS-EXAMINATION BY MR. LANE:

5 Q. Good morning, Mr. Turner.

6 A. Good morning.

7 Q. You're aware this is an arbitration under
8 the 1996 Telecom Act. Right?

9 A. Yes, I am.

10 Q. Okay. And you're also aware, are you not,
11 that the Act imposes specific requirements on how
12 unbundled network elements, or UNEs, are to be priced.
13 Right?

14 A. Yes, I am.

15 Q. Okay. And it's fair to say that
16 section 252(D)(1) of the Act provides that UNEs are to
17 be priced based on cost. Correct?

18 A. That is one of the requirements that I
19 recall in that section. I believe there's a few
20 others, but that's correct.

21 Q. And it's also fair to say that the FCC has
22 defined "cost" to be applied under what they've
23 designated as the total element long run incremental
24 cost, or TELRIC standard. Right?

25 A. That's correct.

1 Q. It's also fair to say that WorldCom hasn't
2 presented any cost studies of its own in this case.
3 Correct?

4 A. That would be correct.

5 Q. The only cost studies that were submitted in
6 this case are from Southwestern Bell. Right?

7 A. That's correct.

8 Q. Have you or any other WorldCom witness
9 presented evidence on Southwestern Bell's cost of
10 capital that is an input to various numbers of
11 Southwestern Bell's cost studies in this case?

12 A. In this proceeding?

13 Q. Right.

14 A. No.

15 Q. Have you or any other WorldCom witness
16 presented evidence on depreciation rates that are used
17 in the various Southwestern Bell cost studies that
18 have been submitted in this proceeding?

19 A. No.

20 Q. It's also fair to say that with regard to
21 all cost studies that are not at issue in the 438 case
22 that neither you nor any other WorldCom witness has
23 presented any evidence of specific adjustments that
24 you propose to be made to the Southwestern Bell cost
25 studies on those elements?

1 A. You're talking about the ones other than the
2 35 cost studies that are referenced at the end of my
3 Rebuttal Testimony?

4 Q. Yes.

5 A. I would say that that is not correct.

6 Q. Okay. Have you proposed specific
7 adjustments to -- let's take Southwestern Bell's loop
8 cost study?

9 A. The testimony that I provided indicates that
10 the investments associated with the Project Pronto
11 initiative should be reflected in the cost study. The
12 testimony I provided in this proceeding identifies
13 that there would be common cost changes because of the
14 mergers that SBC has participated in since the first
15 round of loop studies have been done and that those
16 common cost changes should be reflected in your cost
17 studies.

18 Q. All right. Let me be more precise in my
19 question, then, if I wasn't.

20 Neither you nor any other WorldCom witness
21 has presented specific numerical adjustments to
22 Southwestern Bell's cost studies with regard to loops
23 in this case. Correct?

24 A. No. I was unable to do that.

25 Q. The same is true for switching and transport

1 studies, that neither you nor any other WorldCom
2 witness has presented specific numerical adjustments
3 to Southwestern Bell's cost studies on those issues.
4 Correct?

5 A. Switching would be correct. Transport would
6 be incorrect.

7 Q. Okay. And transport, is that because
8 there's some reference to that in your Rebuttal
9 Testimony in the schedule that you attach from the 438
10 case?

11 A. That's correct. And my testimony, the text
12 contained within that has very specific issues related
13 to transport that I identify there.

14 Q. Okay. And to get to that, then, you attach
15 a copy of your testimony in the 438 case -- your
16 Rebuttal Testimony is attached as an exhibit to your
17 Rebuttal Testimony in this case. Correct?

18 A. Yes, sir, that's correct.

19 Q. But what you've attached is the
20 nonproprietary version which excludes all of the
21 thirty-something attachments that you had proposed in
22 your proprietary version in the 438 case. Correct?

23 A. It does not exclude all of them, but what I
24 did to be cautious was I excluded confidential
25 exhibits in an effort to be careful not to disclose

1 numbers or information that I had received through
2 discovery in Case No. 438 but did not necessarily
3 have -- given the limited amount of time, was unable
4 to confirm that I had those same numbers in 222.

5 Q. Okay. The attachments that you did not
6 include in your testimony here that were in the
7 proprietary version of the 438 case were all of the
8 specific numerical adjustments that you were proposing
9 to the Commission to Southwestern Bell's cost studies
10 in that 438 case. Right?

11 A. No. I was precluded in 438 from putting in
12 the specific changes from a cost study standpoint.
13 But what I excluded is in Southwestern Bell's cost
14 studies there is a summary schedule that identifies
15 the costs that come out of your models. And so for
16 approximately 35 of the cost studies that you filed in
17 this case, you filed the same cost study, and I would
18 propose the same changes as are documented in my
19 testimony, but I did not insert those price schedules
20 here because they relied on information that was
21 confidential in Case No. 438.

22 Q. The specific adjustments that you were
23 proposing in 438 aren't attached to your testimony
24 here?

25 A. No, nor are they to Southwestern Bell's, but

1 that's -- we've discussed that at great length in 438.

2 The content of what I changed --

3 Q. I don't have a question.

4 A. -- is contained within my testimony.

5 Q. It's also true that your proposed
6 adjustments that are discussed in general terms in
7 your 438 testimony that you've attached in this case
8 rely upon testimony of other CLEC witnesses in that
9 438 case. Correct?

10 A. Could you ask the question again?

11 Q. Yes. It's also true that your proposed
12 adjustments in the 438 case that are -- the substance
13 of which are reflected in your Rebuttal Testimony in
14 that case rely upon testimony of other CLEC witnesses
15 from the 438 case. Right?

16 A. Yes, a small percentage of the adjustments
17 that I made in the 438 case relied on testimony from
18 two other witnesses in the -- that the CLECs put up in
19 438.

20 Q. And, specifically, the other witnesses that
21 you relied upon were Mr. Hirshleifer with regard to
22 the proposed cost of capital. Correct? That's one of
23 them?

24 A. That's one of them.

25 Q. And the other one was Mr. Rhinehart who

1 testified concerning various matters including support
2 asset factors, maintenance factors, building factors,
3 depreciation rates, labor rates, among other things.
4 Right?

5 A. That's correct.

6 Q. And neither you nor any other WorldCom
7 witness in this case have proposed either cost of
8 capital or the specific factors that Mr. Rhinehart
9 proposed in the 438 case. Correct?

10 A. I have incorporated those specific factors
11 into the proposed rates that are contained in
12 schedules for my Rebuttal Testimony.

13 Q. Neither you nor any other WorldCom witness
14 has presented evidence in this case to support the
15 cost of capital or to support the factors that
16 Mr. Hirshleifer and Mr. Rhinehart utilized in the 438
17 case. Correct?

18 A. That's correct.

19 Q. With regard to loops and switching, the --
20 you have reflected in your testimony rates from
21 Illinois and Michigan and New York. Correct?

22 A. I don't believe so.

23 Q. Your position that you put in your testimony
24 does not include any reference to rates for loops or
25 switching from --

1 A. Those three states?

2 Q. Yes.

3 A. No. My testimony makes comparison to
4 Illinois in my Rebuttal Testimony, to address some
5 statements made by Southwestern Bell witnesses, but in
6 my Direct Testimony, my arguments for reevaluating the
7 cost for the loops do not rely on the rates in those
8 other states, and my argument for reevaluating
9 switching does not rely on rates in those other
10 states.

11 And so it's only in my Rebuttal Testimony
12 that I draw a comparison, and it is to draw a
13 comparison between suburban rates in Illinois to urban
14 rates in Missouri to show how significantly higher
15 they are here. But it's because of Southwestern
16 Bell's witnesses saying that we were making an
17 inappropriate comparison of urban to urban, which I
18 actually agree. You can't do that with Illinois
19 because the nature of their urban zone is it's very
20 restrictive there, so I did a comparison to the
21 suburban zone.

22 Q. WorldCom's Petition in this case argued that
23 loop and switching rates should be adjusted because
24 similar rates were lower in Michigan, Illinois, and
25 New York. Right?

1 A. I believe that was a small portion of what
2 the Petition argued.

3 Q. And you would agree with me that rates from
4 other jurisdictions aren't the equivalent of costs in
5 the Missouri jurisdiction. Correct?

6 A. Well, that's kind of a two-fold question.
7 Cost and rates are distinct from one another in that
8 cost has a common cost factor that's multiplied on top
9 of the cost to develop a rate. So there is a
10 proportional relationship between cost and rates that
11 would be easy enough to adjust or compare between
12 various states.

13 The second aspect of your question is, can
14 you compare between states? And I believe that you
15 can in that many of the cost drivers that you would
16 identify, for instance, between a Missouri and an
17 Illinois, would be, in fact, very comparable, and,
18 therefore, it would be instructive, and I believe
19 that's probably why WorldCom incorporated that into
20 their Petition, but it would be instructive to see
21 what loop rates are in another state where many of the
22 inputs are the same in Illinois as for Missouri in
23 seeing how different those rates are that are being
24 developed by those commissions when you compare the
25 ultimate results.

1 Q. It's fair to say that it might be of
2 interest to compare rates but that the rates from
3 another jurisdiction do not determine what the costs
4 are for any particular UNE in Missouri. Correct?

5 A. Well, you're asking some very open
6 questions, and it would --

7 Q. Which is unusual.

8 A. -- depend on the element.

9 Well, I like those kind of questions.

10 In my testimony in 438 I identified some
11 specific elements that I felt this Commission could
12 take directly from other states and use in Missouri.
13 And the reason for my testimony in that proceeding
14 being such was that there are certain elements that
15 when Southwestern Bell deploys them, they deploy them
16 regionally.

17 Examples of that that I used in my testimony
18 in 438 was the AIN query. It's a regional system.
19 The cost study that you filed wherever you filed it
20 always relies on the cost from a regional perspective
21 and that you identify all of the costs for the STPs
22 and databases that those STPs have to query.

23 So with the exception of common cost
24 differences, which -- my recollection was Commissioner
25 Gaw asked a series of questions trying to understand

1 this, but with the exception of common cost
2 differences between Texas and Missouri, you should
3 expect to see exactly the same results between a cost
4 study in Texas for that element and a cost study in
5 Missouri.

6 Q. All right. Let me be more precise with my
7 question then.

8 With regard to loops, first, would you agree
9 with me that there are factors that vary between
10 states that can result in different loop costs in
11 different states?

12 A. Yes.

13 Q. Some of those factors that can vary include
14 loop length, density of population, cost of labor, and
15 so forth? Those are examples. Correct?

16 A. Yes, they are.

17 Q. Okay. And there is also other factors that
18 may vary depending upon how the Commission in another
19 state treats a particular element of cost. Correct?

20 A. I'm not sure I follow that question.

21 Q. Okay. Would you agree with me that
22 Commissions can make different decisions with regard
23 to items such as cost of capital, depreciation rates,
24 and fill factors?

25 A. Okay. I just wasn't sure what you were

1 getting at.

2 Yes, they can make different decisions.

3 Q. And there's potentially hundreds of items
4 that the commission can come to a conclusion in one
5 state and a commission in another state comes to a
6 different conclusion. Right?

7 A. Yes.

8 Q. Okay. Did you review Mr. Hampton's
9 testimony in this case from Southwestern Bell who
10 responded to your Direct Testimony?

11 A. Yes, I did.

12 Q. Okay. And did you review the survey of the
13 unbundled network element prices that were attached as
14 two different exhibits to Mr. Hampton's testimony?

15 A. I reviewed them briefly.

16 Q. I want to focus, first, on the schedule 2 to
17 Mr. Hampton's testimony that attaches a survey done by
18 Mr. Gregg at the Consumer Advocate Division of the
19 West Virginia Public Service Commission.

20 Did you review that study?

21 A. Only briefly. I mean, if you're going to
22 ask me questions about it, I'm probably going to need
23 to have a copy of it.

24 MR. LANE: May I approach the witness, your
25 Honor?

1 JUDGE RUTH: Yes.

2 Show the document to counsel first, please.

3 BY MR. LANE:

4 Q. I'm showing you schedule 2 to Mr. Hampton's
5 Direct Testimony, the survey of unbundled network
6 element prices in the United States, and I have a few
7 questions about that for you.

8 Would you agree with me that that survey, to
9 the extent it reflects Missouri prices, was done in
10 the spring of 2001 and doesn't reflect the additional
11 reductions in the unbundled network element platform
12 prices that Southwestern Bell offered in the M2A?

13 A. That, I can't confirm sitting here.

14 MR. LANE: May I approach, your Honor?

15 JUDGE RUTH: Uh-huh.

16 BY MR. LANE:

17 Q. Referring you to Page 4 of 7 of schedule 2
18 from Mr. Hampton's Direct Testimony, would you agree
19 with me that that reflects the rates for the unbundled
20 network element platform elements in Missouri?

21 A. It appears to reflect the recurring
22 elements.

23 Q. Okay. And with regard to the recurring
24 elements for the unbundled element platform, would you
25 agree that this reflects the rates that the Commission

1 had established in Case No. TO-97-40 and don't reflect
2 the additional reductions to those prices that
3 Southwestern Bell voluntarily made in connection with
4 the M2A?

5 A. It doesn't appear to me that that's the
6 case.

7 Q. Okay. What rate do you see that's
8 different?

9 A. Well, it's the rates that aren't different.
10 I mean, I pulled up the switching rates, but it's
11 possible -- well, two things: For the rates that I
12 remember reviewing in preparation for this testimony,
13 the rates here are the same, the urban rate, for
14 instance, for switching.

15 But it's possible that you guys -- you guys,
16 Southwestern Bell, let me be more precise, reduced
17 nonurban rates for switching that I just didn't do a
18 comparison for in preparation for my testimony. So
19 the only way that I could answer your question is if
20 you were to hand me the M2A price list. If you want
21 me to say on the record that they are, in fact,
22 different, you would have to hand me that.

23 Q. I'll do that.

24 First, let me ask you about the loop rates.

25 Would you agree with me that the loop rates

1 that are reflected on page 4 of 7 of schedule 2 of
2 Mr. Hampton's testimony are those that were ordered by
3 the Commission in Case No. TO-97-40 and they are
4 higher than those contained in the M2A for zones 2, 3,
5 and 4?

6 A. I can't answer that.

7 MR. LANE: Okay. May I approach the
8 witness, your Honor?

9 JUDGE RUTH: Yes.

10 BY MR. LANE:

11 Q. I'm going to show you the M2A appendix
12 pricing UNE schedule of prices and ask if you agree
13 that the costs -- excuse me -- that the rates for the
14 unbundled loop reflected in there are lower than those
15 that are reflected on page 4 of 7 of Mr. Hampton's
16 schedule 2 for the nonurban zones?

17 A. The rates in what you're representing as
18 being the M2A for the nonurban zones for the loop are
19 lower than what are in JLH 2-9.

20 Q. And with regard to local switching, would
21 you agree with me that the rates that are reflected in
22 appendix pricing UNE of the M2A, page 2 of 9, are
23 lower than the switching prices that are reflected on
24 page 4 of 7 of schedule 2 of Mr. Hampton's testimony?

25 A. Yes, I would agree with that.

1 Q. Okay. And so earlier when you indicated
2 that page 4 of 7 of Mr. Hampton's testimony reflected
3 switching rates that were the same as the M2A, that
4 really isn't correct, is it?

5 A. According to the documents that you've
6 placed in front of me today, that's true.

7 Q. And is it possible, Mr. Turner, that you did
8 not take into account the 18 1/2 percent reduction
9 that Southwestern Bell voluntarily offered in the M2A
10 when you were determining what you thought were
11 Southwestern Bell's switching rates in the M2A?

12 A. Well, that really wasn't the point of my
13 testimony. I was simply trying to calculate what a
14 per-port rate would be, and it's possible that I used
15 a number that's higher than -- so I should probably
16 revise my proposed interim rates downward. But I
17 wasn't doing that kind of comparison in my testimony.

18 Q. Okay. And it's also -- let me step back a
19 minute.

20 It's also fair to say that as reflected in
21 the -- Mr. Hampton's schedule 2 that he attached that
22 the loop rates that Southwestern Bell has and the
23 switching rates that Southwestern Bell has that are
24 reflected in there that are higher than the M2A
25 nevertheless are in the middle to lower middle of the

1 range of states that are depicted. Right?

2 A. That's what Mr. Hampton said, yes.

3 Q. You don't have any reason to disagree with
4 him, do you?

5 A. No, I do not.

6 Q. And, if you would, turn to schedule 3 of
7 Mr. Hampton's testimony.

8 I'll ask you, first, if you reviewed that
9 schedule which is Commerce Capital Markets' analysis
10 of UNE platform rates in regional Bell territories?

11 A. No, I did not.

12 Q. Okay. You did think it was important to
13 take a look at that?

14 A. Not for what I think is important in this
15 case.

16 Q. Okay.

17 A. I don't believe that comparisons to other
18 states, particularly other states that are outside SBC
19 jurisdictions, are particularly meaningful for whether
20 or not this Commission does a reevaluation of your
21 loop rates and switching rates. I think what's more
22 important is to look at what your statement as a
23 company have been in terms of what the forward-looking
24 costs for loops and switching would be given the
25 deployment of Project Pronto and given the two mergers

1 that have taken place since the cost studies were done
2 here in 1997.

3 Q. Okay. And just so it's clear, you're not
4 attempting to convey to the Commission in any fashion
5 that the rates that Southwestern Bell has in the M2A
6 are out of line with rates in other states as has been
7 depicted in Mr. Hampton's schedules 2 and 3?

8 A. The only thing that I did in my testimony
9 was to at least point out to the Commission that they
10 should be concerned about the significant difference
11 between suburban rates in Illinois compared to urban
12 rates in Missouri, that urban rates in Missouri are
13 81 percent higher than suburban rates in Illinois.

14 I felt that was instructive, but the basis
15 for what I've suggested to the Commission be a need to
16 reevaluate loop prices is what I've already said, the
17 passing of time, mergers, significant process changes,
18 the deployment of Project Pronto, and there was
19 switching, some of the same factors, but also that
20 your costs are really port derived, but not usage
21 derived.

22 Q. Would it also be instructive for the
23 Commission to consider schedules 2 and 3 of
24 Mr. Hampton's testimony which demonstrate that the M2A
25 rates are in the middle to lower middle of the UNE

1 platform rates across the country? Would that be
2 instructive to the Commission?

3 A. Actually, I don't believe so.

4 Q. Okay. And would you have an objection in
5 this case if the Commission reaches out and takes
6 higher UNE platform rates from another state and says
7 we ought to use that in the Southwestern Bell/WorldCom
8 interconnection agreement?

9 A. I would, of course, but the basis would be
10 the same as if they reached out and took a lower rate.
11 The Commission has an obligation to set cost-based
12 rates, and I believe there is ample evidence in my
13 testimony that the rates for loops in this state at
14 present aren't cost-based.

15 The odd thing about it is that your
16 witnesses --

17 Q. You've answered my question

18 A. -- also say that they are not cost-based.

19 Q. Thanks.

20 A. Thank you.

21 Q. You also mention in your testimony that
22 WorldCom is interested in a generic proceeding.

23 If the Commission were to conduct a generic
24 proceeding on rates, is it your belief that if the
25 Commission finds that rates are higher, that the M2A

1 rates would nevertheless be available to WorldCom and
2 other CLECs?

3 A. It seems to me that that's a legal question
4 that I've really not spent any time thinking about.

5 Q. Okay. I'm not asking in the legal sense.

6 From a policy perspective, is it your view
7 that if the Commission holds a generic proceeding and
8 finds that prices for unbundled network elements
9 should be higher than those reflected in the M2A, do
10 you believe that CLECs should or should not still have
11 the ability to utilize the rates from the M2A instead
12 of the higher rates the Commission finds?

13 A. In my opinion, if the Commission were to do
14 a generic proceeding for rates, and "generic" meaning
15 other CLECs would be able to participate as well, they
16 would effectively be redoing rates that are currently
17 in the M2A, and those would -- the redone rates would
18 become the new rates.

19 And so to be precise, I don't believe that
20 you could continue to pick and choose between the old
21 M2A rates and those that were done in the generic
22 proceeding, in my opinion.

23 Q. Okay. And would you agree that if the
24 Commission were to conduct a generic proceeding, that
25 it would also be inappropriate from a policy

1 perspective to allow CLECs thereafter to attempt to
2 arbitration different rates than those set by the
3 Commission in that generic proceeding?

4 A. I believe my understanding of the Federal
5 Act is CLECs have to be afforded that right, but --
6 well, that's what my testimony says.

7 Practically speaking, the intervals for
8 arbitrations and the complexity of the cases do not
9 allow rate setting or cost evaluation to take place in
10 that forum. So you have to take cost studies in a
11 rate setting outside of one-on-one company
12 arbitrations, in my opinion, to do them effectively.

13 Q. Okay. And your answer wasn't -- I'm not
14 sure was clear on the question I asked.

15 Is it your view that other CLECs should be
16 or should not be permitted to arbitrate rates for UNEs
17 in the future shortly after the Commission renders any
18 decision in that generic proceeding that you're
19 proposing?

20 A. Again, I'm not an attorney, and that seems
21 like a legal question, but my understanding of the law
22 is that CLECs would still be allowed to participate in
23 the process that we're in right now, which is not
24 particularly effective. But they would be allowed by
25 law to do that.

1 Q. Okay. Switch over and talk about unbundled
2 local switching for a minute, which I think is DPL 11
3 in this case?

4 A. Yes, sir.

5 Q. WorldCom proposes here a single flat rate
6 port charge rather than a separate charge for the port
7 and for usage. Right?

8 A. That is correct.

9 Q. Okay. And in your testimony, you cite one
10 particular quote from an FCC decision concerning
11 reciprocal compensation. Do you recall that?

12 A. Yes, I do.

13 Q. Okay. Would it be fair to say that you
14 didn't cite any other FCC decisions that specifically
15 pertained to local switching rates and how they were
16 to be set under the Act?

17 A. It would be fair to say that's the only one
18 that I cited.

19 Q. Okay. It's also fair to say, isn't it, that
20 WorldCom made the same argument to the FCC back in
21 1996 when the FCC was setting its TELRIC rules that
22 it's making here today. Right?

23 A. That, I do not know.

24 Q. You didn't go back and take a look at the
25 First Report and Order in the local competition case?

1 A. I did not go back and read what MCI's
2 comments were in that, no.

3 Q. Did you read the order? Have you ever read
4 the order?

5 A. Yes, I have.

6 MR. LANE: Your Honor, may I approach the
7 witness?

8 JUDGE RUTH: Yes.

9 BY MR. LANE:

10 Q. Mr. Turner, I'm going to show you the First
11 Report and Order in the local competition case, as
12 it's frequently called, in front of the FCC, which is
13 Docket No. 96-98, and it's the August 8 of '96 order.

14 And referring specifically to paragraph 799,
15 would you agree with me that it reflects in there
16 that, "MCI states that switching costs are a function
17 of line connections, trunk connections, and busy hour
18 demand on the switch matrix and processor; hence, the
19 rate for the switching element should have a
20 subelement price relating to each subelement set to
21 recover the associated TSLRIC"?

22 A. Yes, that's what the statement says there.

23 Q. Okay. And referring above, would you
24 agree -- and I may have misstated when I said
25 WorldCom, but LDDS in that case argued that unbundled

1 local switching should be priced on a flat rate per-
2 line charge rather than any usage-based rate?

3 A. What it says is, LDDS argues that the price
4 of unbundled switching elements should reflect as
5 closely as possible the manner in which switching
6 costs are incurred. It believes that line-related
7 costs should be recovered through a flat per-line
8 capacity charge based on a contracted for number of
9 lines with an additional usage base trunking port
10 charge and a combination of per-line and usage-based
11 charges to recover busy-hour related costs.

12 Q. And then referring over to paragraph 810,
13 would you agree with me that the FCC's order
14 determined that it would utilize -- that states were
15 permitted to adopt unbundled local switching prices
16 that consist of both a flat-rated charge for line
17 ports and a per-minute usage charge?

18 A. That is -- you're asking me if that's what
19 the FCC concluded?

20 Q. Right.

21 A. Yes. In paragraph 18 -- 810, that is what
22 the FCC concluded.

23 Q. And that's what's reflected in
24 section 51.501 -- excuse me -- section 51.509(B) of
25 the FCC's rules. Correct?

1 A. That is correct.

2 Q. Okay. And it's also fair to say, isn't it,
3 Mr. Turner, that the vast majority of states that have
4 considered unbundled local switching have done what
5 Missouri has done and had a flat per-line port charge
6 plus a per-minute-of-use charge?

7 A. That is correct.

8 Q. Do you know, does WorldCom utilize -- any of
9 the WorldCom companies utilize their own switch here
10 in Missouri?

11 A. I do not know.

12 Q. Did you undertake any kind of investigation
13 to find out how WorldCom operates in Missouri today?

14 A. No, I did not.

15 Q. Do you know whether WorldCom utilizes any
16 unbundled local loops from Southwestern Bell?

17 A. I do not know.

18 Q. Or whether they utilize any of their own
19 loops?

20 A. I don't know.

21 Q. Okay. Would you agree with me that under
22 the existing FCC TELRIC rules that costs are to be
23 based on a forward-looking network as opposed to the
24 existing network?

25 A. Yes.

1 Q. It's fair to say that comparing embedded
2 costs to forward-looking costs can be an apples to
3 oranges comparison?

4 A. It's going to depend on what you're looking
5 at.

6 Q. With regard to unbundled network elements in
7 particular, wouldn't you agree with me that Bell
8 operating companies and other ILECs around the country
9 have protested the TELRIC standard because it utilizes
10 forward-looking costs that don't reflect the higher
11 level of embedded costs in their network?

12 A. That has been their argument.

13 Q. And if you're taking a look at the impact of
14 a Project Pronto or of mergers -- of the merger
15 between SBC and Ameritech, that statements which
16 Southwestern Bell made with regard to cost savings
17 reflect those from its existing network rather than
18 the network that is hypothesized in the TELRIC
19 standard?

20 A. That, I would not agree with.

21 Q. Is that because you believe that
22 Southwestern Bell's existing network is the same as
23 the hypothetical TELRIC network?

24 A. No, not necessarily. But some of the
25 assumptions that -- the reason I said it depends on

1 cost elements is that some of the elements that are
2 used to develop things such as the maintenance factors
3 and expense factors that are applied to investments
4 largely depend on your current operations to develop
5 those factors.

6 When you then make statements that Project
7 Pronto is going to fundamentally alter the way that
8 you do dispatches, fundamentally alter your ability to
9 do maintenance on the loop plant, and then you start
10 to identify cost savings out into forward-looking
11 years, I believe that those types of things have to be
12 reflected in your maintenance factors to develop
13 appropriate costs.

14 And so you're not comparing apples and
15 oranges when you deal with the maintenance costs and
16 maintenance factors that are used in the studies today
17 versus what you've said are going to happen and are
18 already happening with the deployment of Project
19 Pronto.

20 Q. And you're aware, are you not, that
21 Mr. Smallwood in this case has testified that
22 Southwestern Bell's forward-looking cost studies do
23 take into account the proposed Pronto network, are you
24 not?

25 A. He says that in the new studies, but he's

1 not saying that about the old studies. And there
2 simply was not sufficient time for me to evaluate
3 whether or not Mr. Smallwood's assertions are
4 accurate, but on its face, it appears that what
5 Mr. Smallwood said is not accurate in that SBC has
6 publicly said that you're significantly reducing the
7 cost of your loop plant and, yet, what you have
8 proposed in this proceeding is an increase in the cost
9 of the loops by approximately 250 percent.

10 So it seems contrary to what your public
11 statements as a company are what you filed in the cost
12 study in this proceeding.

13 Q. And Mr. Smallwood pointed out that the
14 statements you are referring to were based on
15 Southwestern Bell's existing network rather than on
16 the network that was contemplated by the TELRIC
17 standard. Correct?

18 A. He does say that. I believe Mr. Smallwood,
19 though, needs to probably be more precise in his
20 answer, because a lot of what I'm relying on as the
21 significant cost savings are -- I'm not saying they
22 are embedded -- related exclusively on embedded costs,
23 but they start with actual costs, particularly related
24 to things such as maintenance factors and other items
25 related to that for which Southwestern Bell has

1 identified specific cost savings that you expect to
2 achieve with the deployment of Project Pronto.

3 Q. The dispatch rate affects nonrecurring costs
4 as opposed to recurring costs for the loop. Correct?

5 A. I believe it affects both. Depend -- based
6 on what you've said that I was able to rely on in this
7 state, it affects both.

8 Q. And you're aware that Mr. Smallwood says it
9 affects only the nonrecurring costs. Right?

10 A. I believe Mr. Smallwood is, once again,
11 incorrect, because what you're dealing with when you
12 maintain an existing loop is Southwestern Bell's
13 statements that you're going to be able to do that
14 maintenance and reduce the number of dispatches for
15 that maintenance. That affects maintenance factors
16 which when applied to the investment per loop are
17 going to result in lower costs. That's not a
18 nonrecurring activity.

19 Q. Could you turn to page 14 of your Rebuttal
20 Testimony?

21 And on page 14 of your Rebuttal, you make
22 the assertion that you sought information concerning
23 cost studies in Illinois and Michigan. Do you see
24 that?

25 A. Yes, sir.

1 Q. And you criticize Southwestern Bell for not
2 providing that information to you. Correct?

3 A. That's correct.

4 Q. And would you -- were you made aware that
5 WorldCom had withdrawn its request for discovery of
6 those items prior to the time that you filed your
7 Rebuttal Testimony?

8 A. I was made aware of that fact after my
9 testimony was filed.

10 Q. Okay. So when you filed it, you believed
11 that Southwestern Bell should have provided you the
12 study, but you later learned that WorldCom had, in
13 fact, withdrawn the request. Right?

14 A. Yes. But I still believe since your own
15 witnesses relied on information from those studies
16 that you should have provided it.

17 Q. And do you think it's reasonable to continue
18 your testimony here today and reflect criticisms of
19 Southwestern Bell for failing to provide information
20 that WorldCom agreed to withdraw?

21 A. They agreed to withdraw that particular
22 question, but there is a standing discovery request,
23 at least my recollection is, that to the extent that
24 your witnesses relied on the review of any material in
25 preparing their cost study, they are supposed to

1 provide that. I believe it's the first discovery
2 request.

3 Q. Okay.

4 A. And Mr. Smallwood makes specific reference
5 to cost information out of Illinois and Michigan that
6 only he would have access to and that he did not
7 provide in this proceeding.

8 Q. Okay. And you were asked the same question,
9 were you not, Mr. Turner?

10 A. Yes, I was.

11 Q. And you gave nothing in return, did you not?

12 A. For this proceeding, I only relied on what I
13 have cited to or provided in my testimony.

14 Q. Okay. And you have some discussion in your
15 testimony in this case about a generic cost proceeding
16 and the inability to conduct a good cost analysis in
17 the time that you have available. Do you recall that
18 subject generally?

19 A. Yes, I do.

20 Q. And would you agree with me that WorldCom
21 itself could have assisted itself in this case by
22 filing its Petition for Arbitration at the earliest
23 date rather than at the very tail end of the time that
24 is available to it under the Act?

25 A. Theoretically, they could, but it is -- I'm

1 not the best witness to ask that question of, but it's
2 likely that there was a desire to continue negotiating
3 that precluded them from filing it earlier.

4 Q. You're aware under the Act that a party can
5 file for arbitration that -- I believe it's between
6 the 135th day after negotiations start and the 160th
7 day after negotiations start. Correct?

8 A. I am familiar with that.

9 Q. And in this case the negotiations began on
10 June 1 according to WorldCom. Right?

11 A. I'm not familiar with the exact date.

12 Q. Okay. Assuming that it was June 1 as
13 reflected in WorldCom's Petition for Arbitration in
14 this case, would you agree that the filing was on
15 approximately the 158th or 159th day after
16 negotiations began?

17 A. I don't know.

18 Q. Did you participate in the negotiations?

19 A. No, I did not.

20 MR. LANE: Judge, I have more, but my
21 45 minutes are up, and I don't -- I'm trying to play
22 by the rules, so -- I have more. I want you to know
23 that, but I do believe my time is up.

24 JUDGE RUTH: Okay. We are going to take a
25 break for lunch. When we come back on the record we

1 will discuss whether or not you are making a formal
2 request for more time, and, if so, an estimate of how
3 much time you will need. I'm not saying whether that
4 will be granted or not, but if you're not finished and
5 you're going to request more time, we'll do that when
6 we come back after lunch.

7 It is almost 20 after 12:00. We will break
8 until 1:30. We'll go back on the record at 1:30.
9 Thank you.

10 (A recess was taken.)

11 JUDGE RUTH: When we took a break for lunch,
12 Mr. Lane was asking cross-examination questions.

13 Mr. Lane, are you finished?

14 MR. LANE: I did have some more, your Honor,
15 but I'm okay with where we are right now.

16 JUDGE RUTH: Okay. Then we'll move to
17 Staff.

18 MR. BATES: Thank you, your Honor.

19 CROSS-EXAMINATION BY MR. BATES:

20 Q. Good afternoon, Mr. Turner.

21 A. Good afternoon.

22 Q. I just have a few questions for you.

23 Would you please turn to your Direct
24 Testimony, please, page 4.

25 A. Yes, sir.

1 Q. And I would like you specifically to look at
2 lines 1 through 9. And would you agree with me that
3 there you discuss the cost structure associated with
4 switching investment?

5 A. That's correct.

6 Q. Let me ask you this question: Is
7 Southwestern Bell's proposed rate structure for local
8 switching consistent with your understanding of
9 TELRIC?

10 A. No, it is not.

11 Q. And how is it different?

12 A. The difference is that from a cost
13 standpoint, the way that Southwestern Bell incurs the
14 cost for switching is on a per-port basis, and,
15 therefore, the rate structure for the recovery of that
16 cost should also match the way they incur it, and it
17 should, therefore, also be on a per-port basis.

18 Q. Okay. Would you please turn now to your
19 Rebuttal Testimony, specifically page 12.

20 A. I'm there.

21 Q. On lines 6 through 18 I believe you make a
22 suggestion that a generic proceeding be opened.

23 A. That's correct.

24 Q. Are you proposing that this Commission
25 incorporate the results of such a generic proceeding

1 into this arbitration?

2 A. I think technically that this Commission
3 believes that it has to wrap up this arbitration by
4 some date which would be prior to when a generic
5 proceeding could be conducted, and so the generic
6 proceeding, in my opinion, would have rates that would
7 be developed that could be -- the Commission could
8 write an order that says, For these rates, we're going
9 to have those rates be established in a generic
10 proceeding, and, therefore, by inference, you would
11 take them into what we complete here in 222, but it
12 doesn't exclusively have to be that way.

13 A generic proceeding could apply generally
14 to the M2A rates. It could apply to this arbitration
15 to the extent that this arbitration cannot determine
16 final rates for elements. So I think it's somewhat
17 open-ended how that -- I wouldn't say open-ended.
18 It's more that the Commission can define, I believe,
19 how the generic proceeding would be used.

20 Q. If the Commission were to open a generic
21 proceeding, would WorldCom be able to opt into those
22 rates for this agreement?

23 A. I believe that it would be appropriate to
24 allow that, but, again, the Commission would have to
25 define what the rules would be for taking this

1 arbitration, which in my opinion will not be able to
2 fairly evaluate rates, taking the results of this and
3 allowing a generic proceeding to have rates be
4 developed that would then apply to this arbitration.

5 Q. And could you please tell me why you think
6 that this -- the Commission could not fairly arbitrate
7 the rates in this proceeding?

8 A. Well, in my experience, and we have recent
9 experience here in 438, it takes a good bit of time to
10 take Southwestern Bell's cost studies, to do adequate
11 discovery on those cost studies, and then prepare
12 alternative cost studies, and then carefully document
13 the changes. And this Commission knows that in 438
14 that's what I did for about 35 cost studies, but to do
15 that took a fairly intensive effort over the course of
16 about three months.

17 In this proceeding, there was 20 days
18 between when Southwestern Bell filed its cost studies
19 and when I had to file Rebuttal. There were two
20 holidays in those 20 days, and I actually did not
21 receive the cost studies themselves until the day
22 before my Rebuttal was due. And it was five boxes of
23 cost study material from Southwestern Bell.

24 And, you know, what I mean by fair is that I
25 would think the Commission would want the level of

1 analysis that I did in 438, they would want that type
2 of analysis to be done so that you don't just have one
3 side of the story. Right now in this arbitration, for
4 most of the elements, you only have one side of the
5 story. I've attached my 438 testimony so that at
6 least for 35 of those cost studies the Commission has
7 an alternative view. But I would think to be fair to
8 both sides the Commission would want to do a
9 comprehensive cost proceeding such as what we did in
10 438, and that can't be done in the time frame allotted
11 for an arbitration.

12 MR. BATES: Thank you, Mr. Turner.

13 JUDGE RUTH: Thank you.

14 THE WITNESS: Thank you.

15 JUDGE RUTH: Okay. We will move to
16 questions from the Bench.

17 Commissioner Murray, do you have any
18 questions?

19 COMMISSIONER MURRAY: I have a few. Thank
20 you, your Honor.

21 QUESTIONS BY COMMISSIONER MURRAY:

22 Q. Good afternoon, Mr. Turner.

23 A. Good afternoon.

24 Q. Is WorldCom attempting to MFN any portions
25 of any interconnection agreements other than the M2A?

1 A. I do not know the answer to that question.

2 Q. Your counsel in opening statements indicated
3 that WorldCom would like the opportunity to opt into
4 the 438 UNE rates after the 438 decision. Is that
5 your understanding?

6 A. That's what I heard him say, yes, ma'am.

7 Q. Now, that is not an interconnection
8 agreement case; is that correct?

9 A. It seems -- you know, I've tried, as you
10 know, to study the history of where you got to that
11 case, and it appears to me that it does trace its
12 history back to an interconnection case out of 97-40
13 in that there were a number of elements that were not
14 determined in 97-40, where reviewed in 98-115 but not
15 ordered.

16 In the 97-40 case, my understanding is that
17 it does trace back to an interconnection issue between
18 AT&T and Southwestern Bell, so I think that it -- I
19 think that it is related to an interconnection issue
20 in 2001-438.

21 Q. 97-40 was an arbitration case; is that
22 right?

23 A. I believe it was.

24 Q. So, basically, is it your understanding that
25 what WorldCom is asking for in relation to 438 is that

1 it at least be treated like an interconnection
2 agreement for the purposes of being able to adopt
3 portions of it?

4 A. I bel-- there may be some legal aspect to
5 what it means to have an interconnection arbitration
6 that I'm not knowledgeable of the implications of
7 that, but I believe what -- if I could put it in my
8 own lay terms, because I know costing well. I don't
9 know maybe the legal side of that real well.

10 But from a costing standpoint, I think it is
11 an acknowledgment that there were a lot of rate
12 elements in 438 that are necessary to have a
13 comprehensive set of rates. And what WorldCom's
14 counsel was recommending was that since this
15 Commission has already undertaken a comprehensive
16 review of those, that when you complete that process,
17 that you would allow the WorldCom/Southwestern Bell
18 interconnection agreement to reflect that decision as
19 well rather than having the potential that the same
20 evidence that Southwestern Bell presented in 438 and
21 now here again in 222 might lead to two different
22 conclusions.

23 So I thought what was being suggested by
24 WorldCom's counsel was more a way to be expedient in
25 terms of taking advantage of work that this Commission

1 has already done for rate elements that are necessary
2 for an interconnection agreement.

3 Q. Do you think that would -- that rationale
4 would apply if the rates established in 438 were
5 higher than the rates that came out of this
6 proceeding?

7 A. Those questions are always interesting.
8 My view would be that what WorldCom and
9 Southwestern Bell and this Commission would all want
10 are cost-based rates, and I believe the best
11 opportunity for that given the state of this
12 proceeding as compared to the state of 438, your best
13 chance of making an informed decision on that is in
14 438. So whether you would choose higher rates or
15 lower rates here isn't the basis of my thinking. It's
16 more that you've had an opportunity in 438 to make a
17 more informed decision about what rates to select --

18 Q. Okay.

19 A. -- or what inputs to use.

20 Q. And on page 31 of your Rebuttal Testimony,
21 you reference TO-97-40 and state at line 7 and
22 following that your recommendation is that the
23 Commission simply use the rates that are already
24 approved for these elements and dismiss SWBT's cost
25 study filings for these 41 rate elements.

1 You're referencing 41 rate elements that
2 were set in TO-97-40; is that right?

3 A. Okay. I'm sorry. You're talking about my
4 Rebuttal Testimony in 438. Correct?

5 Q. I'm talking about your Rebuttal Testimony in
6 this case on page 31.

7 A. I apologize, because I'm looking at it and I
8 don't see -- okay. Here it is, perhaps.

9 Q. It's under the question posed at line 4,
10 summarizing your testimony.

11 MR. LUMLEY: Your Honor, if I could, that is
12 the 438 attachment as --

13 COMMISSIONER MURRAY: Oh, I'm sorry. You're
14 right.

15 THE WITNESS: And what page again was that
16 on?

17 BY COMMISSIONER MURRAY:

18 Q. That is page 31.

19 A. Right.

20 Q. Let me rethink my question in light of --

21 A. Okay. Because we had a long discussion
22 about -- this was, again, an historical development of
23 these rates in that some had already been determined
24 by this Commission, some of which Mr. Hughes
25 subsequently agreed with me had already been

1 determined.

2 And so I was saying for these 41, since the
3 Commission had already decided them in 97-40, that I
4 didn't think it was appropriate to be reevaluating
5 them in 438, given the nature of what that proceeding
6 was doing.

7 Q. So you think that they were -- there were
8 cost studies and they were determined to be TELRIC
9 compliant and were set appropriately in 97-40?

10 A. The appropriateness of them and the TELRIC
11 compliance of them was -- I testify in 438 that in
12 some cases I would agree with them and some cases I
13 would not agree. But what I tried to lay out in 438
14 was the principle that said if the Commission had
15 already determined rates, whether I felt they cut for
16 or against the CLECs that we were only supposed to be
17 doing in 438 rate elements that had not already been
18 decided.

19 Now, to the extent that Southwestern Bell
20 may want to reopen these, or CLECs may want to reopen
21 some of them, that could be done in a generic
22 proceeding, but in 438, my understanding was we were
23 trying to bring some closure to rates that had started
24 in 97-40, then reviewed in 98-115 but not ordered. We
25 were trying to bring closure so you had a

1 comprehensive set of rates coming out of 2001-438.

2 And for those 41 rate elements, I thought that the

3 Commission had already done their work.

4 COMMISSIONER MURRAY: Thank you.

5 I think that's all I have. Thank you.

6 JUDGE RUTH: Commissioner Gaw?

7 COMMISSIONER GAW: Thank you, Judge.

8 QUESTIONS BY COMMISSIONER GAW:

9 Q. Good afternoon, Mr. Turner.

10 A. Good afternoon.

11 Q. In a general sense, help me to understand
12 WorldCom's position to the extent you're aware of it
13 as their expert witness.

14 In regard to what appropriately we will have
15 evidence of in -- so that we can make determinations
16 in this case and what we should defer, and explain to
17 me -- and I know this is in the testimony, but I want
18 you to explain to me why that is that you -- that
19 WorldCom believes that some things should be deferred,
20 and then I want to follow up.

21 A. Let me take just two examples, DPL 10 and
22 DPL 11.

23 DPL 10, what I think the Commission could
24 decide now is whether or not there is sufficient
25 information to know that the rates that you have for

1 unbundled loops today are no longer appropriate from a
2 TELRIC standpoint.

3 And so I basically lay out in my Direct
4 Testimony and then respond to some of Bell's testimony
5 in my Rebuttal saying that -- you know, that
6 fundamentally that significant amount of time has
7 passed, that the purchasing power of Southwestern Bell
8 has been greatly increased through two mergers, that
9 they have significant process improvements that they
10 have documented publicly that will affect the cost of
11 their loops, and that they have deployed \$6 billion in
12 new technology to fundamentally alter the cost
13 structure of their loops, and that because of that --
14 and then I quote many places where they say that in
15 merger -- merger discussions, that I believe the
16 Commission could rationally conclude that there is a
17 need to reevaluate the forward-looking cost of loops.

18 I think you have enough information in this
19 proceeding to make that decision.

20 On the same hand, switching. I quote
21 Southwestern Bell testimony to the effect that they
22 now purchase switching on a flat-rate basis, per-port
23 basis, identify that with very limited exceptions.
24 Usage does not factor into the cost variables for the
25 switch, identify that -- that they incorporate those

1 usage characteristics in determining the configuration
2 of the switch, but they then purchase that on a
3 per-port basis.

4 And so what the Commission could make a
5 decision today on is structurally should there be a
6 reevaluation of the cost recovery for switching. What
7 I don't believe the Commission has enough information
8 to do today is to address the actual costs for those
9 items.

10 Southwestern Bell has introduced, I believe,
11 in Mr. Smallwood's testimony a new loop study, and
12 loop studies are a fairly complex undertaking. And
13 right now what the Commission has is Mr. Smallwood's
14 testimony as to what they've done and a response to me
15 that says that my criticisms that the loop rates
16 should be different don't have merit, and he gives his
17 reasons why.

18 But what you don't have is me having an
19 opportunity to go into that loop study and giving a
20 comprehensive response to the study as to different
21 inputs that I would recommend based on discovery that
22 we could do, errors in the loop studies which my
23 experience would show that it's very likely that there
24 would be significant errors in the study. You only
25 have one side of the story right now, and you have no

1 opportunity to have anything other than one side of
2 the story on the loop because of the time
3 considerations.

4 With switching, Southwestern Bell's
5 testimony actually says they didn't even have enough
6 time to redo the switching study. They were able to
7 redo the loop study for the proceeding today, but they
8 were not able to do the switching study.

9 I'm not sure that they would want to or not,
10 but I think in a generic proceeding you would have the
11 opportunity to allow them to put forward their version
12 and view of how the switching should cost and allow
13 the CLECs to do the same.

14 So I think you can make policy decisions
15 with the information that's been presented to the
16 Commission in written and hopefully some oral
17 testimony. I don't believe you can make cost
18 decisions today. And that's just two examples, but if
19 you go through each of them, and I think you would
20 find a similar pattern.

21 Q. Are there any of them where that -- that
22 analysis that you have just made would not apply?

23 A. Well, on DPL item No. 12, that's the DUF,
24 daily usage file, I recommend that from a policy
25 standpoint, that you would conclude that the DUF

1 should stay as it currently is in Missouri, stay at
2 zero. And because this issue has not had much
3 evaluation in Missouri and, really, what we're doing
4 is we're basically bootstrapping work done in Texas,
5 I've quoted extensively from the Texas arbitrations
6 that related to DUF.

7 I think from a policy standpoint you could
8 conclude that there is no incremental cost over the
9 AIN query, which, by the way, is an element we're
10 evaluating in 438, and over the cost for local
11 switching, which is an item that was set in 97-40 but
12 for which WorldCom would like to reevaluate in a
13 generic proceeding.

14 But I think you could make a policy decision
15 that says that there is no incremental cost above
16 that. Therefore, Bell, you do not need to file a cost
17 study in a generic proceeding on DUF, which is what
18 they're effectively asking you in their testimony.
19 Let us set an interim rate based on Texas, for which I
20 think there is a tremendous amount of testimony that
21 says there is no basis for that interim rate, but then
22 they want you to allow them to file a cost study for
23 that in a generic or some other proceeding. It's
24 really kind of vague when they really want that to be
25 done.

1 Q. What would be the impact on the relationship
2 that's -- let me start over.

3 What would be the impact of the proposed
4 method of dealing with this case in the interim up
5 until 438 were concluded as far as the prices were
6 concerned between the -- between WorldCom and
7 Southwestern Bell? How would that be handled?

8 A. Well, it's possible -- I think there could
9 be a couple of stages. Between now and when you rule
10 on 222, it would operate off of their existing
11 interconnection agreements. In 222, you could render
12 a decision that says -- I'm going to just propose
13 something, but I think you'll get the gist of what I'm
14 thinking.

15 In 222 you could say something to the effect
16 that we believe that there is merit to reevaluating
17 the cost for unbundled loops in a generic proceeding,
18 and pending that generic proceeding taking place, we
19 order that the price for loops in the interim should
20 be X. I would probably propose that in the interim
21 you use the M2A rates.

22 Let's take another example just so I can be
23 more comprehensive.

24 DUF -- and I'll turn one against me. I hope
25 you won't do this, but let's say on DUF that you

1 decide that it's possible that there should be a rate
2 for DUF but that you don't believe that Southwestern
3 Bell has presented any evidence in this case as to
4 what that rate should be since by their own admission
5 they don't have a cost study. So on an interim basis
6 you are going to order what's in the M2A which is zero
7 but you are going to permit Southwestern Bell to file
8 a cost study in the generic proceeding.

9 That, kind of, is the framework that I would
10 do. And let me just add the third example, which
11 would be the 438 rate.

12 AIN triggers, AIN queries, right now, to my
13 knowledge, there is no rate for that element in the
14 M2A, but I could be wrong. If there was, though, in
15 the interim, when you ruled on 222, you would be
16 effectively saying there should be a rate for this
17 element because Southwestern Bell has asked for it.
18 We're not opposing, by the way, that there should be a
19 rate.

20 But in the interim, prior to your decision
21 in 438, you could either order what's already in the
22 M2A, or, if my recollection is correct and there is no
23 rate, you would continue to have no rate until which
24 time one is set in 438.

25 And I think that captures kind of the three

1 scenarios, but all of them -- in those that I just
2 laid out, all of them ultimately need for this
3 Commission to determine that a generic proceeding is
4 appropriate. And I actually think that it would not
5 only be in the CLECs' best interest for that, but I
6 also believe there are elements that Southwestern Bell
7 wants to have considered such as the DUF rate if a
8 generic proceeding was undertaken, that they would
9 most likely file that cost study in.

10 Q. Earlier in opening statements -- were you
11 here during opening statements?

12 A. Yes, sir.

13 Q. There was some discussion by WorldCom
14 counsel regarding the -- the -- well, let me back up.

15 You suggested earlier -- and I think you
16 have probably said this in different ways at different
17 times that you were unable to calculate certain
18 numbers, unable to assess the costs of certain things
19 in this case. Did I understand that correctly?

20 A. That is correct.

21 Q. And is that purely related to the time
22 constraints of this case?

23 A. Yes, sir.

24 Q. I heard WorldCom counsel, I think, mention
25 that he believed that this Commission was taking a

1 different position on the time frame within which
2 these arbitrations had to be resolved under the
3 Federal Act. Am I correct in that?

4 A. I believe that was -- excuse me. I believe
5 that was WorldCom's counsel's position.

6 Q. Without asking you to tell me what he meant
7 by that, have you been -- you've been involved in
8 these arbitration cases in other states, haven't you?

9 A. Yes, sir.

10 Q. Do you know about how many other states?

11 A. Probably -- oh, you mean how many different
12 states I've been in?

13 Q. Yes.

14 A. I've probably been in 25 different states.

15 Q. More than once in most of those states?

16 A. Yes, sir.

17 Q. Are you familiar with the time frames that
18 you have generally encountered in those other states?

19 A. Yes, sir. In general, what I've observed is
20 when Commissions take on terms and conditions only,
21 they tend to clos-- pretty closely follow the
22 arbitration time line found in the Federal Act. When
23 they involve cost, my experience has been that the
24 Commissions generally do not follow the time lines
25 found in the Act.

1 Q. Okay. And are you -- are you aware of the
2 rationale utilized to -- to escape those time limits?

3 A. That -- I think the rationale is realism,
4 that you just realistically cannot do an effective job
5 on a cost proceeding in the intervals permitted in the
6 Federal Act.

7 I mean, the FCC right now is doing an
8 arbitration that I was a witness in in Virginia. You
9 would be -- you would be interested to see how long
10 they've taken to do a cost proceeding, and it's -- you
11 know, it's just -- I think they ended up taking
12 testimony for probably four weeks on just cost issues.
13 And there were four rounds of testimony and, good
14 night, probably 300 or 400 discovery requests per
15 party, and that was just on cost. Then they had a
16 separate arbitration on terms and conditions.

17 So, I mean, even the FCC -- I'm not saying
18 that they are the ultimate arbiter of time lines,
19 because it's a Federal Act issue, has taken some
20 latitude in what the timing -- the time line is.

21 So my experience has been that when it's a
22 terms and conditions issue, like, you know, the
23 alternatively billed traffic, which is not one of my
24 issues, but that's a terms and conditions question, I
25 believe, that you would generally find the Commissions

1 pretty closely follow the time line in the Federal
2 Act.

3 But as soon as you get into cost
4 proceedings, to give the parties a realistic chance to
5 exchange discovery, to perform depositions in your
6 state that allows it, to do restatements of cost
7 studies, to write testimony that would explain what
8 you've done, Commissions allow themselves more freedom
9 than this Commission allows itself.

10 Q. Based upon -- and you have -- have you
11 reviewed the testimony that's been prefiled in this
12 case?

13 A. I've reviewed it for all of the issues that
14 I'm responding to.

15 Q. Let's stick with those.

16 A. Okay.

17 Q. In that regard, is it true that the only
18 information that we have in that prefiled testimony in
19 regard to costs comes from Southwestern Bell other
20 than the testimony regarding other states' rates that
21 have been -- that have been interjected into some of
22 the testimony? Can you answer that question?

23 A. I believe you could -- you can break their
24 cost studies into two camps. There's 35 cost studies
25 that were in 438. I have attached a nonproprietary

1 version of my 438 testimony to at least get some
2 information in the record here about the problems in
3 it. Because of my trying to be responsive to
4 protective agreements, I didn't file the cost studies
5 or anything like that, so you have a limited response
6 to 35 cost studies.

7 There's 27 cost -- or 28 -- excuse me --
8 28 cost studies that Southwestern Bell has filed that
9 they only provide cost information for and that I did
10 not -- as I've said before, did not have an
11 opportunity to respond to.

12 Q. All right. Well, let me ask you this way
13 then: Do you believe that this Commission has -- will
14 have a sufficient record if we -- if we assume that
15 the subject matter of that record is basically what's
16 contained in the prefiled testimony on the issues that
17 you are doing to render a fair judgment on the costs
18 of those elements?

19 A. No. And I include all 63 cost studies in my
20 "no" for that answer.

21 Q. All right. And that, again, is based upon
22 what?

23 A. There is simply not the information
24 necessary from both sides. Southwestern Bell has got
25 their side in, but the information is not in the

1 record for CLECs to give you a balanced perspective on
2 what the forward-looking costs should be for those
3 63 cost studies.

4 Q. So this may be a bit of a jump, but could I
5 conclude from that unless a generic docket is opened
6 on those costs that the only numbers that I would have
7 in the record regarding costs would agree with
8 Southwestern Bell if I were to make a judgment on this
9 case based upon the record that has been determined up
10 to this point?

11 A. That's correct regarding costs. You're
12 absolutely right.

13 COMMISSIONER GAW: That's all I have. Thank
14 you.

15 Thank you, Mr. Turner.

16 THE WITNESS: Thank you.

17 QUESTIONS BY JUDGE RUTH:

18 Q. I wanted to follow up on some of the
19 questions from the Bench to make sure I understand.
20 And you may have already answered them, but be patient
21 with me.

22 There was some discussion earlier where you
23 said, to paraphrase, And so what the Commission could
24 make a decision on today would be a reevaluation of
25 the cost recovery for switching. What I don't believe

1 the Commission has enough information to do today is
2 address the actual costs for those items.

3 Do you remember that discussion?

4 A. Yes, ma'am.

5 Q. Would your answer have been any different to
6 that question if WorldCom had been allowed to pull in
7 the record from 438, or are those two different things
8 here?

9 A. The cost studies for switching are in those
10 28 cost studies that were not evaluated in 438 --

11 Q. Okay.

12 A. -- that Bell did file in this proceeding.
13 That involved things like switching, loops, forms of
14 transport that were not in 438 but for which they
15 wanted to reevaluate here. And I could give you
16 others if you need me to.

17 Q. So there's 63 cost studies filed by Bell?

18 A. Yes, according to my count, there are 63.

19 Q. And 28 of them were not evaluated in 438?

20 A. That's correct.

21 Q. All of the others were evaluated in 438?

22 A. Yes.

23 Q. Is there any document anywhere -- this is a
24 question for any of the parties -- that lays out in
25 what place which ones -- which issues pertaining to

1 which cost studies were laid out where -- did that
2 question make sense -- in other words, where I could
3 find a list in one place without going through the
4 entire record of the 28 that were not evaluated in 438
5 then versus the remainder, which would be 45 or
6 something, that were.

7 A. I have prepared a spreadsheet for my own
8 preparation of my testimony that identifies the 63
9 cost studies and I identified in that spreadsheet
10 which ones I felt were undertaken in 438 and which
11 ones were not. So I have such a document, but I don't
12 believe it -- but I have that for my own preparation.
13 I didn't attach it to my testimony.

14 What I was also starting to do, but it's a
15 fairly lengthy process, is that Mr. Hughes has an
16 exhibit to his testimony where he identified the rate
17 elements that he had cost support for, and what I was
18 starting to do, but simply ran out of time, because
19 there really was a very limited time with the
20 holidays, was trying to line that up against
21 Mr. Hughes's -- well, it wasn't his. It was
22 Ms. Fuentes' exhibit in 438, so that you could see the
23 rate element overview exchange. I did not complete
24 that task.

25 But in terms of a document that's in this

1 proceeding right now, no, there is nothing that -- to
2 my knowledge that does that. But I have it on a cost
3 study basis already, and it would be a reasonable task
4 to give it to you on a rate element basis.

5 Q. Can you tell me, should I be able to easily
6 determine that based on my own reading of the record?

7 A. If you look at -- I have a schedule 36.

8 Q. To your Direct?

9 A. To my Rebuttal; to -- it's actually, like,
10 schedule 2 of my Rebuttal. It's where I add the
11 Rebuttal that I wrote in 438 but put it in here.

12 Q. Okay.

13 A. It identifies the rate elements that were
14 evaluated in 438.

15 You could then lay this next to Mr. Hughes's
16 exhibit to his Direct Testimony where he identifies
17 the rate elements that he wanted considered in this
18 proceeding and that would give you -- as one of the
19 attorneys spoke about the Vin diagram, that would give
20 you the circle that fits within what Southwestern Bell
21 filed in 222. This list -- my schedule 36 would give
22 you the 438 elements, and then that fits within what
23 Southwestern Bell has filed here in 222.

24 But -- so the answer to, Could you do this
25 yourself? The answer is yes, but you would have to

1 take those two exhibits, and if you flip through here,
2 what you'll notice is -- and I'm not trying to
3 overwhelm you, but there's 424 lines in the
4 spreadsheet, and Mr. Hughes's testimony, this is from
5 memory, I believe he had about 670 or 680 lines, and
6 they are not organized exactly the same way. So
7 you're going to have to line up 424 lines to about 650
8 lines, say, and then you could see which ones are
9 overlapped with 438 on a rate element basis.

10 I don't feel like I'm answering your
11 question from your facial response, so am I not
12 hitting what you're asking, or --

13 Q. No. I think you are. I want to follow up
14 on that a little bit more, and I had one other
15 question. But stay at the witness stand. I want to
16 take just a minute to ask a question.

17 Still on the same bit where I paraphrase
18 some of your testimony and you said, What the
19 Commission could make a decision on today is that
20 there be a reevaluation of the cost recovery for
21 switches, or switching. What I don't believe the
22 Commission has enough information to do today is
23 address the actual cost for those items.

24 So clarify for me what it is, exactly
25 WorldCom's position, that the result be if the

1 Commission were to find what WorldCom wants on this.

2 A. What you would find is that switching should
3 be priced on a per-port basis. If you wanted to take
4 it the full extent of what I believe WorldCom's
5 position is, you would also order interim port-only
6 rates which I attached in my Direct Testimony as
7 schedule -- I'm not finding it right now, but I know
8 it's here.

9 Q. Well, let me ask you: You say WorldCom
10 would request interim rates then pending the results
11 of a generic case. Is that what you were about to
12 say?

13 A. Yes. It's Exhibit SET 2, so you could order
14 these interim rates, but that you would then order a
15 permanent or a generic rate proceeding -- or generic
16 cost proceeding, excuse me, where the cost for
17 switching on a port only basis would be evaluated.

18 Q. Okay. And, hypothetically, if the
19 Commission is unwilling to order interim rates which
20 is something that was addressed somewhat at the
21 beginning of this case, if the Commission says, No, we
22 need to decide permanent rates for this case, what
23 would the result be? Is there a way to find for
24 WorldCom on this issue? Because you said that the
25 Commission could make a policy decision that it needs

1 to be on a per-port, you said, but there's no numbers,
2 then, associated with that.

3 A. Well, there are in Exhibit SET 2.

4 Q. Okay.

5 A. But the way that I derived these was using
6 existing cost recovery through a recurring rate
7 structure where about two-thirds of the cost is placed
8 on usage, which is not cost-based.

9 So what I've -- you know, this is the thing
10 we keep dancing around. If you feel like you have to
11 make the cost decisions in this time line, the best
12 you could do for switching if you wanted to find for
13 WorldCom would be to take the rates I've proposed in
14 exhibit SET 2.

15 Q. Which are the nonTELRIC?

16 A. I don't believe they are TELRIC. They are
17 just the best that I can do given the limited
18 information and time that I had available to me.

19 But I believe you're really in trouble on
20 the loop, because you've got both Southwestern Bell
21 saying the loop should be redone in their testimony;
22 you've got WorldCom saying it needs to be redone in my
23 testimony, so we're in agreement there, but you only
24 have one side's view of what that cost should be.

25 So if you decide to find in favor of both of

1 us that the loop should be repriced, you,
2 unfortunately, only have one party's view of what that
3 cost should be and you have a procedural schedule that
4 effectively precluded WorldCom from putting up an
5 alternative price.

6 Q. And is that alternative price contained in
7 438?

8 A. No.

9 Q. Not at all. So that would have to come --

10 A. The first time Southwestern Bell put forward
11 that new cost study, to my knowledge, was in this
12 proceeding, 222, and filed it on December 18th. And I
13 got it on January 4th just through the vagaries of
14 getting five boxes from Southwestern Bell to me.

15 Q. Okay. You've answered my question.

16 Back to where we were discussing comparing
17 the two documents, at this point I'm not going to ask
18 you to prepare a late-filed exhibit.

19 What I would like you to do is keep in mind
20 what we were discussing, and if later this afternoon
21 or tomorrow the Commission decides that they do want
22 that comparison, you'll remember what we were talking
23 about without having to go back through the court
24 reporter.

25 A. That would be no problem. I would only need

1 you to specify whether you want it on a cost-study
2 basis or a rate-element basis. Just so that we're --
3 a cost study may generate ten or fifteen rate
4 elements, so if you want it on a cost-study basis,
5 it's done. I could give you my interpretation of
6 their filing. If you want it on a rate-element basis,
7 it would just take me some time to prepare that.

8 But I can remember our conversation. I
9 would just need you to be --

10 Q. Clarify.

11 A. -- clear on which one you want or if you
12 want both.

13 Q. At this point, then, we'll leave it at that,
14 and I'm not asking you to file anything.

15 A. Okay.

16 JUDGE RUTH: Commissioner Murray, did you
17 have any additional questions?

18 COMMISSIONER MURRAY: No.

19 JUDGE RUTH: Commissioner Gaw?

20 COMMISSIONER GAW: Maybe just a couple.

21 FURTHER QUESTIONS BY COMMISSIONER GAW:

22 Q. Is it your belief, Mr. Turner, that the
23 costs of some of the elements that were set in the
24 97-40 case could have changed since that case was
25 decided?

1 A. Yes, sir.

2 Q. And forgive me for being overly simplified
3 with this, but if -- if that is the case, can you
4 contrast and explain how that fits in with the setting
5 of rates on a forward-looking basis under TELRIC to
6 begin with? Why should they change if they were set
7 at the -- set under TELRIC principles to begin with?

8 Again, I'm being overly simple here on
9 purpose.

10 A. In some cases the item that we costed out in
11 '97, "we," meaning, Southwestern Bell and the
12 CLECs, now believe that we were costing the wrong
13 thing, and I'll just give you an example of that.

14 The cross-connect for a two-wire loop to a
15 switch port, this is from memory, but in 97-40, it has
16 a recurring rate of some -- it's a modest amount. In
17 Southwestern Bell's filing in 438, they actually
18 proposed a recurring rate of zero.

19 From a cost standpoint, I said it should
20 also be zero, but on the principle that things have
21 already been decided by this Commission in 97-40
22 should stick for the purposes of 438, which, in my
23 view, was to wrap up getting one complete set of rates
24 done for once, I suggested we keep the recurring rate
25 as it was.

1 So that's one example that there are things
2 that what best-intentioned parties in 97-40 did, they
3 did not cost out what we now know gets deployed.

4 Second is you have significant change in the
5 network, and that's effectively what I'm asking for
6 you to consider with the loop where Southwestern Bell
7 in their own engineering documents and in their own
8 assertions before Commissions for the merger
9 agreements and in their own -- their own briefings of
10 financial analysts on Wall Street have said that the
11 loop plant that they are putting in place today
12 fundamentally alters their cost structure from what it
13 was when we did these cost proceedings in '97, and in
14 '97 they were based on architectures that were, like,
15 from '94 to '96. I mean, there's a window in time
16 they were done under. If you were to do that today in
17 2002, you would have a completely different forward-
18 looking architecture you would evaluate the cost
19 under.

20 I think that CLECs should have an
21 opportunity to benefit and have their customers -- and
22 have customers in the state of Missouri benefit from
23 that lower cost structure.

24 In '97, Southwestern Bell had the purchasing
25 power that was reflected in the cost studies across

1 five states, Texas, Missouri, Oklahoma, Kansas, and
2 Arkansas. Since that time they've added the
3 purchasing power of eight states additional. They
4 have -- and I've got the quotes here. They've
5 regularly asserted that the ability to purchase across
6 all thirteen states allows them to significantly lower
7 procurement costs for transmission equipment, for
8 switching equipment, for loop plant. CLECs -- TELRIC
9 requires that those significantly different cost
10 structures be reflected in forward-looking loop prices
11 for CLECs.

12 In '96-97 time frame there was a paradigm
13 that had been incorporated in a model called SCIS,
14 switching cost information system, that showed the
15 recovery of costs for switching to be predominantly
16 usage-based.

17 When you look at Mr. Lane asking me to read
18 stuff that was done by the FCC in '96 and '97, it was
19 still based on this historical mindset that was
20 ingrained in SCIS that you recover cost through usage-
21 based elements. But what we know now, having done
22 cost proceedings between '96 and 2001, is that
23 Southwestern Bell, SBC, does not purchase switching in
24 that way. They purchase it on a per-port basis.

25 So the information that we knew when we did

1 this cost in 97-40 and the information that we know
2 today in 2002-222 is fundamentally different in the
3 way you should recover the costs for switching. And
4 so I'm giving you a kind of an array of answers, an
5 array of examples, but the learning curve that the
6 industry has gone through over the last six years of
7 understanding incumbent cost and understanding the
8 cost structure of -- as to how they incur costs has
9 advanced sufficiently since '96, which was the
10 snapshot for which 97-40 rates were done, that I would
11 feel that you would feel compelled to want to relook
12 at those.

13 Q. Mr. Turner, at the time it was -- when 97-40
14 was being examined, it was true, was it not, that
15 TELRIC principles were at least stated to be
16 applied -- to be applied in that case by the
17 Commission?

18 A. Yes.

19 Q. And --

20 A. That's correct.

21 Q. It's also true, I assume, that at the time
22 if you used the TELRIC principles and applied
23 forward-looking costs that there would be some
24 anticipation of technological changes, advances that
25 might have an impact on costs and efficiencies in a

1 positive way for CLECs.

2 A. Actually, that's not the case. The first
3 part is true. The second part is not --

4 Q. All right.

5 A. -- in my opinion.

6 Q. Tell me why not.

7 A. The form of TELRIC that got deployed or
8 implemented was that you had to use currently
9 available technology. And, you know, there was a
10 whole debate back in the '96-97 time frames as to what
11 really was TELRIC. But the form that got deployed is
12 you had to use what was actually available at the
13 time. That was the definition of "technical
14 feasibility," and I'm simplifying it for this.

15 Q. That's what I would like you to do.

16 A. So NGDLC, the arguments went back in the '97
17 time frame, because I was -- I participated in some of
18 them, was, does it exist? Well, yes, but it was only
19 at that time on spec sheets. We knew the technology
20 was coming, but we did not have a good grasp of what
21 it cost or what its benefits would be or how
22 ubiquitous it would be deployed in the incumbent
23 network.

24 So the technology that was used in '97, or
25 '96 and prior, was a combination of IDLC, integrated

1 digital loop carrier, and UDLC, universal digital loop
2 carrier. But the technology state of the art that
3 Southwestern Bell is deploying today -- and not just
4 deploying on a trial basis, they invested \$6 billion
5 in it, and of that \$6 billion, 4 1/2 billion went into
6 loop plant -- is to use NGDLC. That technology was
7 not incorporated in any forward-looking, hypothetical
8 way in '97 because the technology wasn't being
9 deployed in their network.

10 Q. So would it be fair to say that at the time
11 that that case was decided that some of the
12 presumptions of the forward-looking technology would
13 not be true today?

14 A. That's correct.

15 Q. And would it also be fair to say that
16 that -- that that's one of the arguments to re-examine
17 these costs to bring them up to date?

18 A. Yes, sir.

19 Q. Are you aware of other states that have
20 re-examined costs that they have previously set?

21 A. Yes.

22 Q. Is that something that you have been
23 involved with?

24 A. Yes, sir.

25 Q. Is that ongoing in one or two states or many

1 states --

2 A. It depends -- I mean --

3 Q. -- that you're familiar with?

4 A. New York is a state that I have participated
5 in where this has been done, and Illinois.

6 Massachusetts, Georgia, these are states where I've
7 been asked to do either the first and then subsequent
8 proceedings or I'm doing the subsequent proceedings.

9 Some states have legislative mandates that
10 rates be reevaluated on either an every-two-year or
11 every-three-year basis, but -- so in some cases it's a
12 legislative requirement that the commissions undertake
13 the work. In other cases, it's a situation where the
14 Commission has recognized that the state of our -- or
15 understanding of TELRIC cost is more advanced today
16 than it was previously.

17 So there's many states that I would consider
18 to be among the leaders from a regulatory standpoint
19 that are, in fact, doing this type of reevaluation
20 work.

21 COMMISSIONER GAW: All right. I believe I'm
22 going to stop. I think I've going to eat into too
23 much time, but I appreciate the time I got.

24 Thank you.

25 THE WITNESS: Thank you.

1 JUDGE RUTH: Any further questions?

2 (No response.)

3 JUDGE RUTH: Recross based on questions from
4 the Bench. Mr. Lane?

5 Pursuant to the procedural schedule, you
6 have five minutes.

7 RECROSS-EXAMINATION BY MR. LANE:

8 Q. You were asked some questions from
9 Commissioner Murray concerning the 438 case. Let me
10 start with -- you recognize, do you not, that the 438
11 case was established as a spinoff from the
12 Southwestern Bell's 271 proceeding in Missouri?

13 A. Yes, I recognize that the proceeding was a
14 spinoff from that, yes.

15 Q. And it was designed to set rates for the M2A
16 that were interim in the M2A. Correct?

17 A. No. I believe it had a different purpose
18 than that in mind.

19 Q. The purpose that the Commission established
20 in its order establishing the case was that it was to
21 make permanent rates that were interim -- some of the
22 rates that were interim in the M2A. Right?

23 A. There is a "yes, but" to that. I'll make my
24 "but" quick.

25 The "but" to that was that Southwestern Bell

1 identified on its own what was interim and not
2 interim, and so there was an extensive discussion in
3 the 438 hearing that we could redo today, but there
4 was an extensive discussion that the purpose for the
5 proceeding was not just to decide what Southwestern
6 Bell decided was interim but to fill out the set of
7 rates that were not done in 97-40 and were done in
8 98-115 but not ordered. So the universe of rates that
9 needed to be studied was broader than what
10 Southwestern Bell defined as being interim in the M2A.

11 Q. That's the short "but"?

12 A. That's the short "but".

13 Q. And there were other dockets that were also
14 established as spinoffs to make rates or terms and
15 conditions permanent under the M2A?

16 A. Yes, 2001-440, I believe, and perhaps 439
17 also.

18 Q. And if WorldCom wants to take advantage of
19 those rates that the Commission ultimately sets, it
20 had and has the option to opt into the M2A all of
21 attachments 6 through 10, including the prices, and
22 then it would receive those rates when the Commission
23 makes its ultimate determination. Correct?

24 A. I know that that is one option. I don't
25 know if this Commission is considering other options

1 such as allowing WorldCom to opt into it out of its
2 own interconnection agreement.

3 Q. They can opt into that under the M2A, right,
4 and they could get the benefits of 438. Right?

5 A. That is an option. I don't know if the
6 Commission allows other options.

7 Q. And you indicated at a couple of times where
8 you were implying, I think, that Southwestern Bell
9 wanted another cost proceeding to be conducted. Would
10 you agree with me that Southwestern Bell has taken the
11 position pretty clearly without question in this case
12 that it doesn't think that a generic or subsequent
13 cost proceeding is appropriate?

14 A. I don't -- you have said that in testimony,
15 but you've also indicated that there are elements for
16 which you need to file studies that you have not done
17 so.

18 Q. And with regard to loops, in particular,
19 Southwestern Bell has filed cost studies that
20 demonstrate that the cost of the loop is significantly
21 higher than what's in the M2A, but Southwestern Bell
22 has said they were willing to live with the rates that
23 were proposed in the M2A for purposes of that for
24 those CLECs that want to opt into it. Correct?

25 A. Yes. But you do not believe that they are

1 cost-based.

2 Q. All right. We believe they are lower than
3 TELRIC requires. Correct?

4 A. That's your position.

5 Q. Okay. And with regard to your questions
6 from Commissioner Gaw and, I think, from Commissioner
7 Murray as well concerning what's changed since '97,
8 would you agree with me that AT&T raised the same
9 claim in front of the FCC that the TELRIC rates this
10 Commission had set that formed the basis of the M2A
11 shouldn't be accepted because technology had changed
12 and the FCC clearly and unequivocally rejected that
13 claim?

14 A. I do not know that.

15 MR. LANE: Okay. Your Honor, may I approach
16 the witness?

17 JUDGE RUTH: Yes.

18 BY MR. LANE:

19 Q. Let me show you, Mr. Turner, the FCC's
20 decision in CC Docket No. 01-194, dated November 16th
21 of 2001, Southwestern Bell's 271 case, and ask you to
22 look at paragraph 61 of that order, and ask if you'll
23 agree that it provides that AT&T claimed that TELRIC
24 rates had not been met in that case because of changes
25 in technology, and the FCC rejected that contention?

1 I'm sorry. I should have said paragraph 61
2 and 62, but 61 is the relevant one here.

3 A. Well, I wish I could read this whole
4 paragraph into the record because it's pretty
5 enlightening, but I know you're running out of time.

6 JUDGE RUTH: I will allow time to read it
7 into the record, if necessary.

8 THE WITNESS: It does say what Mr. Lane is
9 saying, but it's because they put faith in this
10 Commission.

11 "We disagree with AT&T's assertion that
12 SWBT's rights in Missouri were set several years ago
13 and the declining cost over the years causes SWBT's
14 existing rates to be out of date and not TELRIC
15 compliant. We approve SWBT's rates based on our
16 determination that its voluntarily discounted rates
17 fall within a range of what TELRIC would produce.

18 "As noted above, the Missouri Commission has
19 demonstrated its commitment to TELRIC, is in the
20 process of re-examining a number of rates on ongoing
21 rate cases. Ratemaking is a complex endeavor and it
22 is common for state rate cases to last many months.
23 We are confident that the Missouri Commission will
24 make any future rate modifications in compliance with
25 our TELRIC standard. The DC court of Appeals stated,

1 'State agency approved rates are always subject to
2 refinement,' and 'Rates may often need adjustment to
3 reflect newly discovered information...'

4 "If new information automatically required
5 rejection of section 271 applications, we cannot
6 imagine how such applications could ever be approved
7 in this context of rapid regulatory and technological
8 change."

9 So I think the full answer is, you're right,
10 that from a 271 review process you have to take a
11 snapshot in time and evaluate whether this Commission
12 followed its standard. But the FCC also noted that
13 additional information can come to light, and they
14 trusted this Commission with a responsibility of
15 evaluating that information and making appropriate
16 adjustments in the future.

17 BY MR. LANE:

18 Q. And the "permanent" rates that were
19 established by the Commission that found their way
20 into the M2A were all of the UNE-P rates, loop,
21 switching --

22 A. Yes.

23 Q. -- correct?

24 A. Based out of cost studies done in '97 on
25 information in '96 and before.

1 Q. And AT&T's contention in the 271 case that
2 those were no longer TELRIC compliant because
3 technology had changed was rejected for purposes of
4 that case, was it not?

5 A. For the purposes of evaluating their
6 compliance with the 271 standard, I agree. But I
7 think this Commission can still evaluate new
8 information and is encouraged to do so on a
9 going-forward basis.

10 Q. And you had indicated that there was a
11 spreadsheet that you had prepared in your preparation
12 of this case, and was that something that you had
13 supplied in the context of discovery in this case?

14 A. No. I prepared that the day before Rebuttal
15 was due, and it's where I calculated the number 35
16 that I cited to in my testimony and the number 28 that
17 I cited to in my testimony.

18 Q. WorldCom has proposed cost studies of its
19 own in other states, has it not?

20 A. Yes.

21 Q. And in Missouri they've proposed cost
22 studies of their own, have they not?

23 A. I do not know.

24 Q. Okay.

25 A. When you say "of their own," do you mean of

1 their own creation or meaning restatements of
2 Southwestern Bell's studies?

3 Q. I'm talking about of their own creations.

4 A. Yes, they have in Missouri. The collocation
5 cost model is an example.

6 Q. And with regard to loops and switching,
7 would you agree with me that WorldCom and other
8 CLECs in other states have presented their own cost
9 studies often based on the Hatfield model or HAI
10 model?

11 A. Yes, they have done that in other states.

12 Q. And have you yourself participated in
13 proceedings where results of the HAI model were
14 presented as the CLECs' position for what rates should
15 be based on in that particular state?

16 A. Yes, I have.

17 Q. And that was available to WorldCom in this
18 case from the very beginning, was it not?

19 A. That is -- if the question is, was the model
20 available to WorldCom, I would suppose that it's
21 available to them. This Commission, though, has
22 already evaluated the HAI model, and there is a
23 history here of not using it. So that would have been
24 an unfruitful exercise, I believe, to have filed that
25 here.

1 Q. Nevertheless, if WorldCom had chosen to
2 present its own version of costs in the case, there is
3 material out there that would have permitted it to do
4 so in this case had it chosen to. Right?

5 A. I believe that it is possible that they
6 could have done that.

7 Q. And the fact that the Commission has
8 rejected something in the past, there's a number of
9 issues in this case where the Commission has decided
10 it directly contrary to WorldCom, but that hasn't
11 stopped you from making the same proposals again, has
12 it?

13 A. Well, in cost cases, at least in my
14 experience in this state, we have tended to follow the
15 pattern of using the Southwestern Bell models.

16 Q. But my question to you was, there's a number
17 of other instances of issues in this case where the
18 Commission has already ruled and ruled against
19 WorldCom, but that hasn't stopped WorldCom from
20 presenting its own position again. Right?

21 A. I'm not -- I'm not saying that wouldn't
22 happen, but, according to my knowledge, that's not the
23 case.

24 Q. That hasn't happened?

25 A. Not for the issues that I'm testifying to.

1 Q. And you had indicated intraLATA toll on a
2 response to one of the questions here today. Did you
3 make any reference to that, or am I mistaken?

4 A. You're mistaken.

5 MR. LANE: That's all I have.

6 Thank you, your Honor.

7 JUDGE RUTH: Thank you. Staff, are you
8 ready?

9 MR. BATES: We have no questions. Thank
10 you, your Honor.

11 JUDGE RUTH: We'll move along to the
12 redirect.

13 I gave Mr. Lane a little bit of leeway in
14 his time limitations, so I will give you a little bit
15 of leeway on yours also.

16 MR. LUMLEY: Thank you, your Honor.

17 REDIRECT EXAMINATION BY MR. LUMLEY:

18 Q. Mr. Turner, throughout the questioning today
19 there has been some references to the 140 pages of
20 your testimony from the 2001-438 case. Do you recall
21 that?

22 A. Yes, sir.

23 Q. And just for clarity, that's referring to
24 the 35 studies that were submitted in that case that
25 Southwestern Bell has submitted again in this case.

1 Correct?

2 A. Yes, sir, that's correct.

3 Q. And at pages 4 through 20 of that testimony,
4 you list a sampling of about 20 errors that you've
5 observed in those studies. Correct?

6 A. That's correct.

7 Q. And included in that testimony are the rates
8 that you propose in that case. Correct?

9 A. That's correct.

10 Q. And as Mr. Lane was asking you, in
11 calculating those rates, you worked from your
12 corrections to Southwestern Bell's 35 studies and the
13 9.38 cost of capital from Mr. Hirshleifer and the
14 various factors that Mr. Rhinehart identified?

15 A. That's correct.

16 Q. And you believe in that case and in this
17 case as well that those rates are reasonable and
18 TELRIC compliant; is that correct?

19 A. Yes, with the explanation that schedule 36
20 reflects the use of 97-40 rates to be consistent
21 with the principle I laid out in the testimony.
22 Schedule 37 is, if the Commission decides to reopen
23 rates, then I did my TELRIC compliant cost for those.

24 Q. And you weren't able to undergo a similar
25 140-some-odd page analysis of the other 28 studies?

1 A. No, I was not.

2 Q. Would your ability to have reviewed those
3 studies with equal detail have been enhanced had
4 Southwestern Bell provided them promptly upon the
5 request for negotiations on June 1st as opposed to on
6 December 18th?

7 A. Yes, that would have been very helpful.

8 Q. Would it have made much difference if -- in
9 being able to conduct that kind of analysis if
10 WorldCom had filed the Petition on day 135 after
11 June 1st as opposed to 160?

12 A. No. The extra 25 days would not have made a
13 material difference.

14 Q. You had some questions both from Mr. Lane
15 and from Commissioner Gaw with regard to the
16 forward-looking network in the older studies, the
17 forward-looking network and Mr. Smallwood's new
18 studies regarding loops, and, in particular, you were
19 discussing with Commissioner Gaw IDLC versus NGDLC.
20 Do you recall that?

21 A. Yes.

22 Q. First, can you explain what those two types
23 of digital loop carriers are, just what the acronyms
24 stand for?

25 A. IDLC stands for integrated digital loop

1 carrier. NGDLC stands for next generation digital
2 loop carrier.

3 Functionally, IDLC, the capabilities of that
4 are subsumed within what NGDLC can do. But the NGDLC
5 is capable of doing far more in that you can change
6 out cards at the remote terminal and are able to
7 provide voice-only service or voice and DSL or DSL
8 only and has other capabilities as well.

9 Q. And is Southwestern Bell deploying NGDLC in
10 connection with Project Pronto?

11 A. Yes, it is.

12 Q. And are they -- according to Mr. Smallwood,
13 are they assuming the use of NGDLC in their new loop
14 studies?

15 A. According to his written testimony, the
16 representation there, he is saying they are using
17 that.

18 Q. In the study?

19 A. Yes. That was the way I understood it. I
20 believe he's also using a mix of other technologies as
21 well, but it appeared to me that he was saying that he
22 was also using the new technology.

23 Q. Is there a distinction between how you would
24 approach a new study on that point and what you
25 understand they are doing?

1 A. The significant distinction would be that we
2 would want to review their engineering guidelines for
3 how they deploy NGDLC, which those exist, and confirm
4 that they were incorporating their best practices into
5 the cost study consistent with what they have
6 documented as being their procedures and their loop
7 deployment guidelines. And that review is something
8 that I could not undertake in the time allotted in
9 this proceeding, nor did we have the material to be
10 able to do that.

11 Q. And with regard to switching costs, you had
12 several questions.

13 Can you explain why it is that switching
14 costs should now be on a flat rate basis?

15 A. Principally, it is because Southwestern Bell
16 purchases switching on a flat rate basis from their
17 venders.

18 Q. And what do you mean by that?

19 A. They negotiate per-port investment cost
20 for the purchase of switching from their venders,
21 Lucent and Nortel. And that is the cost driver for
22 them is how much do they invest per port. This cost
23 should then be recovered through a comparable rate
24 structure which would be also a port-only recovery
25 mechanism.

1 Q. And how does that approach to purchasing
2 switching relate to the busy hour capacity that you
3 discussed?

4 A. Well, busy hour capacity will be factored
5 into what equipment the profile of your switch has to
6 be spread across the number of ports. So there is
7 certainly going to be an exchange between Southwestern
8 Bell and their venders over what the profile of the
9 switch will be from a usage standpoint, but once the
10 decision is made to purchase those switches, those
11 decisions and that purchase is done on a per-port
12 basis with those venders.

13 Q. In a forward-looking study, that should --
14 should that anticipate, you know, future demand at the
15 busy hour?

16 A. Yes, it would.

17 Q. Mr. Lane discussed with you some old orders
18 about switching rate structures.

19 Are you aware of any prohibition of using a
20 flat rate structure?

21 A. No, I'm not.

22 Q. Should the Commission have any concern that
23 a flat rate structure would somehow allow CLECs a free
24 ride on switching?

25 A. No, they should not be concerned with that.

1 That is the structure that is already being used today
2 between Southwestern Bell and its users. When they
3 move over to a CLEC that's using unbundled switching,
4 they would simply be migrating that usage to the CLEC.
5 So from, you know, one customer subsidizing another,
6 that would not be an issue at all.

7 Q. And you got into discussions about the DUF
8 rate, I believe, with Commissioner Gaw. And now
9 having had a chance to review Southwestern Bell's
10 Rebuttal Testimony, do you still stand by your
11 position in the case with regard to that rate?

12 A. Absolutely, yeah.

13 MR. LUMLEY: I believe that's all of my
14 questions, your Honor.

15 JUDGE RUTH: We're going to take a break
16 then and resume at ten after three.

17 Go off the record.

18 (A recess was taken.)

19 JUDGE RUTH: Before the break we had
20 finished with the cross-examination of Mr. Turner. We
21 are now ready to move on to Southwestern Bell's first
22 witness on this issue. Is that Mr. Avera?

23 MR. LANE: Dr. Avera.

24 JUDGE RUTH: Dr. Avera.

25 (Witness sworn.)

1 JUDGE RUTH: Thank you.
2 Please be seated.
3 WILLIAM E. AVERA, Ph.D., CFA, testified as follows:
4 DIRECT EXAMINATION BY MR. LANE:
5 Q. Good afternoon.
6 A. Good afternoon, Mr. Lane.
7 Q. Would you state your name for the record,
8 please?
9 A. William E. Avera.
10 Q. Dr. Avera, by whom are you employed?
11 A. FINCAP, Incorporated in Austin, Texas.
12 Q. And, Dr. Avera, did you prepare Direct
13 Testimony in this case that has been premarked as
14 Exhibit 3?
15 A. Yes, sir, I did.
16 Q. Do you have any changes to that testimony?
17 A. No, Mr. Lane.
18 Q. If I were to ask you the questions that are
19 contained in your prefiled Direct Testimony today,
20 would your answers be the same?
21 A. Yes, sir, they would be.
22 Q. And are those answers true and correct to
23 the best of your knowledge and belief?
24 A. They are.
25 MR. LANE: Your Honor, at this time we would

1 offer Exhibit 3, and tender Dr. Avera for cross.

2 JUDGE RUTH: Okay. Exhibit 3 has been
3 offered into the record, Dr. Avera's Direct Testimony.

4 Are there any objections to it being
5 received into the record?

6 MR. BATES: No, your Honor.

7 JUDGE RUTH: Okay. Seeing no objections, it
8 is received.

9 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

10 JUDGE RUTH: Okay. Mr. Lumley, we are ready
11 for cross-examination from WorldCom, and it is my
12 understanding you are electing to take 15 minutes
13 approximately for this witness.

14 MR. LUMLEY: Yes, your Honor.

15 Thank you.

16 CROSS-EXAMINATION BY MR. LUMLEY:

17 Q. Good afternoon, sir.

18 A. Good afternoon, Mr. Lumley.

19 Q. The 12.19 percent cost of capital that
20 you're recommending in this case, that's the same
21 position you took in the 438 case; is that correct?

22 A. Yes, sir.

23 Q. And it's also the same position you took in
24 the AT&T/Southwestern Bell arbitration which was
25 called the 455 case?

1 A. Yes, sir.

2 Q. And it's the same figure that you proposed
3 in May of 1999 in the Nevada proceeding; is that
4 correct?

5 A. Yes, sir.

6 Q. And that was the first time that you used
7 the study that generated that figure?

8 A. Yes, sir.

9 Q. And you've attached that Nevada testimony to
10 your testimony in this case; is that correct?

11 A. Yes, sir, I have.

12 Q. And that's -- you're relying on that 1999
13 analysis?

14 A. I am, in addition to the reviewing, as I
15 express in my Direct Testimony, to assure myself it
16 remains conservative and applicable here in Missouri.

17 Q. You've indicated in your testimony that this
18 cost of capital study was conducted for the use of all
19 of SBC's LEC subsidiaries; is that correct?

20 A. Yes, sir.

21 Q. And so the result that you obtain would be
22 uniform across all of the states in which SBC
23 operates?

24 A. That is correct.

25 Q. And you start your analysis by considering

1 the company as a whole; is that correct?

2 A. That's correct.

3 Q. And then you injected your judgment as to
4 the relative risk of providing unbundled network
5 elements and interconnection. Correct?

6 A. Well, my judgment as informed by a review of
7 investors' opinions and other materials to convince
8 myself that no adjustment was necessary for any
9 difference in risk.

10 Q. And so you agree with the proposition that
11 the Commission should be looking at and determining in
12 conjunction with these cost studies a cost of capital
13 for a LEC in Southwestern Bell's position in Missouri
14 that is offering a line of business of leasing UNEs to
15 CLECs?

16 A. That is correct. The cost of capital should
17 be one that is applicable to that circumstance and
18 would reflect investor requirements of investing in
19 that type of enterprise.

20 Q. Your analysis includes a conclusion about
21 capital structure. Correct?

22 A. Yes, sir.

23 Q. And you indicate in your testimony that the
24 capital structures of LECs are in a state of change.
25 Correct?

1 A. That is correct.

2 Q. And that was a statement you made in 1999?

3 A. Yes, it is.

4 Q. You include in your Nevada testimony a
5 reference to the Wall Street Journal speaking about
6 Bell companies being banned from the long distance
7 market. Do you recall that?

8 A. Yes, sir.

9 Q. And that would be incorrect for Missouri at
10 this point; is that correct?

11 A. That is correct. As things have developed,
12 the FCC has approved the 271 filing.

13 Q. At page 14 -- let me ask you this: The
14 Nevada testimony, the pagination is the same as in the
15 438 case? It's the same document, or do you know?

16 A. I'm not sure if the pagination is the same.
17 As I discuss in my Direct Testimony, the 438
18 attachment was sent electronically, and in sending it
19 electronically, we were apparently behind one draft
20 and also it didn't print out exactly as it had been
21 created because of the transformation between Word
22 Perfect and Word. So what I've done for this filing
23 is to go back and get the file-stamped copy of what
24 was actually filed in Nevada, and that's what's been
25 attached to this testimony.

1 Q. But in your testimony you contrast what you
2 call the critical network elements that incumbents
3 provide CLECs as opposed to competitive
4 telecommunications services; is that correct?

5 A. I remember a discussion of that sort.
6 Where are you looking in the testimony for
7 that -- those words?

8 Q. I believe it was page 14, but I didn't
9 realize that your page numbers had changed.

10 But if I show you that question and answer
11 from the 438 case, would that refresh your
12 recollection?

13 A. Yes, sir.

14 MR. LUMLEY: May I approach, your Honor?

15 JUDGE RUTH: Yes.

16 THE WITNESS: I recall the discussion of the
17 438 case.

18 BY MR. LUMLEY:

19 Q. All right. And you're using the constant
20 growth formula of the DCF model in calculating cost of
21 equity; is that correct?

22 A. Well, I have three or four different
23 approaches to estimating the cost of equity. Two of
24 them involve the constant growth DCF model.

25 Q. And you indicate in your testimony that the

1 assumptions underlying the constant growth formula of
2 the DCF model are not met in the real word. Correct?

3 A. That's correct. Like many economic models,
4 it is based on abstract assumptions that you have to
5 test the results against what happens in the real
6 world, and it turns out that the constant growth DCF
7 is consistent with what we observe in the real world,
8 notwithstanding the assumptions are not always met.

9 Q. But you would agree it's a simplification of
10 the real world?

11 A. Yes. It is a simplification of the real
12 world but one that is workable.

13 Q. And I think you touched on it -- on this,
14 but just to clarify, it's your opinion that while
15 you're looking at the UNE line of business that the
16 diversified portfolio of SBC is likely to be of equal
17 risk?

18 A. I believe it is of equal or lesser risk than
19 the UNE business, so I see no reason to adjust the
20 results of my cost of capital study to reflect a
21 difference in risk between the holding company and the
22 UNE business.

23 Q. And you explain in your testimony that book
24 value dividends, earnings, and price are all assumed
25 to move in lockstep in the constant growth DCF model.

1 Correct?

2 A. Yes. That's one of the assumptions.

3 Q. And price, we're talking about stock price?

4 A. Yes, sir.

5 Q. And you used a recent price, and that was a
6 recent price as of 1999. Correct?

7 A. That is correct. I used the same price that
8 lined up with my other inputs which was the price that
9 appears on the top of the Value Line sheets on the
10 date that I did my analysis.

11 Q. And in your testimony you refer to a current
12 equity risk premium from the Harris & Marston
13 viewpoint, and that was current as of 1999. Correct?

14 A. That was based on the '99 estimate.

15 Q. And when you refer to a current long term
16 U.S. treasury bond yield, again, that's current as of
17 1999?

18 A. That's correct. 5.8 percent then prevailing
19 in 1999.

20 Q. And when you -- when you discuss the risks
21 of the UNE line of business, I think we distilled this
22 down in the 438 case, that it's not really the risk of
23 a particular loop, for example, that a CLEC is using
24 and the customer switches back to Southwestern Bell or
25 switches to another CLEC and continues to use the

1 loop, but, actually, you're talking about a risk that
2 plant would actually become stranded or idle; is that
3 correct?

4 A. I think that is one of the risks. We had
5 extensive discussion, you and I, Mr. Lumley, about the
6 fact that we want to look at the risk from the
7 perspective of the investors who are putting up the
8 money because the question is, what return do
9 investors require. So we tried to look at the kind of
10 risk that investors would perceive in putting their
11 money into assets that are being made available for
12 UNEs. And we talked about a bunch of those.

13 One of those is that the investment might be
14 made in the assets, the CLEC lease the assets, the
15 customer leave the CLEC or the CLEC provide the
16 service to the customer through another means, and
17 Southwestern Bell never be able to fully utilize those
18 assets again.

19 Q. And you also agree with me in that case that
20 Southwestern Bell's use of bridge tap would ameliorate
21 that risk by facilitating the use of plant for
22 different customers; is that correct?

23 A. I think we agreed that there could be some
24 mitigation of the risk, but still the investor looks
25 at the chance of getting all of their money back, a

1 return on and a return of all of their money, and
2 there is a significant probability that that would not
3 happen with at least some of these assets dedicated to
4 the UNE business.

5 MR. LUMLEY: That's all of my questions,
6 your Honor.

7 JUDGE RUTH: Mr. Bates?

8 MR. BATES: No. Thank you, your Honor.

9 JUDGE RUTH: Commissioner Murray?

10 COMMISSIONER MURRAY: No questions. Thank
11 you.

12 JUDGE RUTH: Commissioner Gaw?

13 COMMISSIONER GAW: No questions. Thank you.

14 JUDGE RUTH: Okay. Since there are no
15 questions from the Bench, we will not need to have
16 recross based on the questions from the Bench. We'll
17 move right on to redirect.

18 MR. LANE: Just a few, your Honor.

19 REDIRECT EXAMINATION BY MR. LANE:

20 Q. Dr. Avera, you were asked some questions by
21 Mr. Lumley concerning the 1999 study that is
22 incorporated as an attachment to your testimony in
23 this case.

24 Has the cost of capital that is reflected in
25 that 1999 study been accepted in any other states for

1 use in setting UNE rates?

2 A. It was accepted in Nevada. It was
3 subsequently presented and accepted in Connecticut.
4 It has been presented in Wisconsin. We're still
5 awaiting the decision of the Wisconsin commission.

6 Q. And is it your view that the 12.19 percent
7 cost of capital that you present in your Direct
8 Testimony remains at least as high today as it was
9 back in 1999?

10 A. Yes. If you look at the elements of it,
11 interest rates are demonstrably higher for corporate
12 securities than they were in 1999, so that element
13 would go up. I think the methods that I used to
14 estimate the cost of equity today would result in a
15 higher cost of equity than what I used in 1999. I
16 think it is probably true that the market value
17 capital structure has shifted slightly toward more
18 debt and less equity, but if you look at the magnitude
19 of that shift, it's more than overwhelmed by the two
20 elements that increase, so I think if it were done
21 today, we would get a higher result than the 12.19.

22 Q. And you were asked some questions about
23 whether it was appropriate to set a cost of capital
24 based on a company that's engaged in the business of
25 providing UNEs. Do you recall those questions?

1 A. Yes, sir.

2 Q. And is there any company that exists today
3 that does nothing but provide unbundled network
4 elements to CLECs?

5 A. No, sir, Mr. Lane. There is no place we can
6 look out in the market to see what investors are
7 actually requiring. So we have to look to the market
8 information that we have for local exchange companies,
9 the holding companies like the Standard & Poors sample
10 that I used which included SBC, and then based on the
11 cost of equity and cost of debt and the capital
12 structure we observe for those companies, adjust that
13 if necessary to bring it to UNEs.

14 I looked very carefully at the adjustment
15 and made the conclusion that investors would see the
16 business of investing in UNEs as at least equivalent
17 risk of the general business of investing in a
18 diversified holding company.

19 Q. And what are some of the reasons in your
20 analysis that the cost of capital required by
21 investors for a company engaging solely in the
22 provision of UNEs would be at least equal to that of
23 the proxies that you've utilized?

24 A. One of the reasons is the unique
25 circumstance of leasing UNEs in that you have many of

1 the disadvantage of any leasing operation, which is
2 your asset base -- if your asset is overcome by
3 technology, if your asset is no longer useful, you
4 can't get any income out of that asset. You can't
5 continue to lease it.

6 On the other hand, you have the
7 disadvantages also of a regulated business which means
8 you are not free to set the price of the leases, you
9 are not free to withdraw from the business in those
10 areas that you find it unattractive.

11 So the UNE business as it's been set up by
12 the Telecommunications Act of '96 requires that these
13 assets be made available, that the services that go
14 with the assets be made available, where necessary
15 expansions be made where requested by the CLECs, but
16 there is no guarantee as there normally is in the
17 regulatory arena that the investment made in those
18 assets will be recovered over time or even that you
19 will get the return you expect on those assets over
20 time.

21 So it's a problem of having assets which are
22 in large part geographically stuck, committed to a
23 certain community or area. You can do some things to
24 mitigate maybe some of those assets or use them in the
25 same general area, but you're still tied to an

1 investment that may not result in the returns that are
2 necessary to justify the money you put into the
3 investment.

4 So that's the kind of risk that is unique to
5 the UNE business, which really has no counterpart
6 either in kind of competitive leasing of oil tankers
7 or real estate or cars or construction, and it really
8 has no counterpart in the normal regulated world that
9 we observe of electric, gas, water and waste water
10 utilities.

11 Q. Is the business of leasing UNEs subject both
12 to competitive risk and to regulatory risk?

13 A. Yes, sir. You in some ways have the worst
14 of both worlds. You have the competitive risk, but
15 you have no guaranteed market. You have no guaranteed
16 ability to gain income, but you have the regulatory
17 risk that your ability to price and your obligations
18 associated with these assets are not in the control of
19 your management. They are under the control or at
20 least the oversight of regulatory bodies.

21 MR. LANE: Thank you. That's all I have.

22 Your Honor, if there are no questions, could
23 I ask that Dr. Avera be excused from the case?

24 JUDGE RUTH: Not all of the Commissioners
25 are here right now for me to be able to excuse the

1 witness. I will pose the question to the other
2 Commissioners, and we will discuss it again at the end
3 of the day.

4 MR. LANE: Thank you, your Honor.

5 JUDGE RUTH: So I'll ask you to remain at
6 least through today.

7 THE WITNESS: Yes, judge.

8 JUDGE RUTH: Southwestern Bell, it's my
9 understanding your witness is next; is that correct?

10 MR. KRIDNER: Yes, sir.

11 JUDGE RUTH: Is this Mr. Naughton?

12 THE WITNESS: Yes, it is.

13 (Witness sworn.)

14 JUDGE RUTH: Thank you.

15 Please be seated.

16 Proceed.

17 MR. KRIDNER: With your permission, your
18 Honor.

19 PHILIP G. NAUGHTON testified as follows:

20 DIRECT EXAMINATION BY MR. KRIDNER:

21 Q. Would you please state your name?

22 A. My name is Philip Naughton.

23 Q. And by whom are you employed?

24 A. I'm employed by SBC-Ameritech Services.

25 Q. Are you the same Philip Naughton who has

1 caused to be filed in this proceeding Exhibit 4NP, for
2 the public version and Exhibit 4HC for your direct
3 (sic) version of your testimony?

4 A. Yes, I am, sir.

5 Q. I'm sorry. HC being the highly confidential
6 version?

7 A. Yes, sir.

8 Q. Okay. Do you have any changes to this
9 testimony at this time?

10 A. No, sir.

11 Q. If I were to ask you the same questions
12 today, would your answers be the same?

13 A. Yes, sir.

14 Q. And are the answers true and correct to the
15 best of your knowledge, information, and belief?

16 A. Absolutely.

17 MR. KRIDNER: Your Honor, at this time, we
18 would move for the admission of Exhibit 4NP and
19 Exhibit 4HC.

20 JUDGE RUTH: Exhibit 4NP and 4HC,
21 Mr. Naughton's Direct Testimony, have been offered
22 into the record. Any objections?

23 MR. BATES: None.

24 JUDGE RUTH: Okay. Seeing no objections,
25 both 4NP and 4HC are received.

1 (EXHIBIT NOS. 4NP AND 4HC WERE RECEIVED INTO
2 EVIDENCE.)

3 MR. KRIDNER: And, your Honor, we would
4 offer Mr. Naughton for cross-examination at this time.

5 JUDGE RUTH: Okay. It's my understanding,
6 Mr. Lumley, that you are electing zero minutes to
7 allocate towards this witness.

8 MR. LUMLEY: Your Honor, if you wouldn't
9 mind me asking one question of the witness.

10 JUDGE RUTH: I'll give you that leeway.

11 MR. LUMLEY: Thank you, your Honor.

12 CROSS-EXAMINATION BY MR. LUMLEY:

13 Q. Mr. Naughton, the 2000 cost study economic
14 lives that are attached to your testimony --

15 A. Yes.

16 Q. -- is that the same information you
17 submitted in the 438 case?

18 A. Yes, sir.

19 MR. LUMLEY: Thank you.

20 JUDGE RUTH: Mr. Bates?

21 MR. BATES: No questions. Thank you.

22 JUDGE RUTH: We'll move to questions from
23 the Bench.

24 Commissioner Murray, do you have any
25 questions?

1 COMMISSIONER MURRAY: No questions. Thank
2 you.

3 JUDGE RUTH: Commissioner Gaw?

4 COMMISSIONER GAW: No questions. Thanks.

5 JUDGE RUTH: Then on to redirect.

6 MR. KRIDNER: Your Honor, we would have no
7 redirect for the witness.

8 And also subject to the comments you made
9 with respect to Mr. Turner and Dr. Avera with respect
10 to releasing the witness, we would also request that
11 this witness be released at the earliest possible
12 time.

13 JUDGE RUTH: Okay. So I will at this point
14 not excuse the witness. I will take that under
15 advisement. We will address it again at the end of
16 today.

17 MR. KRIDNER: I understand.

18 Thank you, your Honor.

19 JUDGE RUTH: And you may step down.

20 THE WITNESS: Thank you.

21 JUDGE RUTH: The next witness, is that
22 Mr. Cass?

23 MR. KRIDNER: Mr. Cass.

24 (Witness sworn.)

25 JUDGE RUTH: Thank you.

1 Please be seated.

2 Proceed.

3 MR. KRIDNER: With your permission, your
4 Honor.

5 CHRIS F. CASS testified as follows:

6 DIRECT EXAMINATION BY MR. KRIDNER:

7 Q. Would you please state your name?

8 A. Chris F. Cass.

9 Q. And by whom are you employed?

10 A. SBC Telecommunications, Incorporated.

11 Q. And are you the same Chris F. Cass who has
12 caused to be filed in this proceeding what has been
13 marked as Exhibit 5NP for the public version and
14 Exhibit 5HC for the highly confidential version, your
15 Direct Testimony?

16 A. Yes, I am.

17 Q. Do you have any changes to this testimony at
18 this time?

19 A. No, I do not.

20 Q. If I were to ask you the same questions
21 today, would your answers be the same?

22 A. Yes, they would.

23 Q. And are the answers true and correct to the
24 best of your knowledge, information, and belief?

25 A. Yes, they are.

1 MR. KRIDNER: Okay. Your Honor, at this
2 time Southwestern Bell offers Exhibit 5NP and
3 Exhibit 5HC, being the public and highly confidential
4 versions of the direct testimony of Mr. Chris F. Cass.

5 JUDGE RUTH: Okay. Exhibits 5NP and 5HC,
6 are there any objections to these two documents being
7 admitted?

8 MR. BATES: No.

9 JUDGE RUTH: Seeing no objections,
10 Exhibits 5NP and 5HC are received into the record.

11 (EXHIBIT NOS. 5NP AND 5HC WERE RECEIVED INTO
12 EVIDENCE.)

13 MR. KRIDNER: Okay. Your Honor, at this
14 time we offer Mr. Cass for cross-examination.

15 THE WITNESS: Your Honor, if I may. I
16 didn't grab my cost studies the first time over.

17 JUDGE RUTH: Go ahead and get them. Thanks.

18 MR. LUMLEY: Thank you, your Honor.

19 CROSS-EXAMINATION BY MR. LUMLEY:

20 Q. Mr. Cass, are any of the -- any of the cost
21 studies that you're addressing in your testimony the
22 same studies that were submitted in the 455 case?

23 A. Yes, some of them are.

24 Q. Can you identify those for us?

25 A. I believe so.

1 Q. And if you could, work from pages 1 and 2 of
2 your -- 1, 2, and 3 of your Direct Testimony and go in
3 that order.

4 A. Sure.

5 Q. Thank you.

6 A. The first cost study mentioned at the bottom
7 of page 1 two-wire analog loop and so on was not in
8 case 438.

9 Q. I'm sorry. I asked you about Case 455?

10 A. Oh, 455.

11 JUDGE RUTH: Could you use the microphone,
12 too. You might make sure it's --

13 THE WITNESS: Okay. The first cost study,
14 the loop cost study for two-wire analog, four-wire
15 analog, and two-wire digital, a similar cost study was
16 filed in 455, but not exactly the same.

17 BY MR. LUMLEY:

18 Q. And how is it different?

19 A. We updated some of the time estimates from
20 the installation maintenance work group.

21 Q. Would that be a cost factor adjustment or in
22 the study itself?

23 A. Within the study itself, the times are
24 updated.

25 I believe the same case for the first study

1 listed on page 2, the two-wire digital loop, and also
2 the same case for the subloops, which is schedule 4.
3 Maybe I should give these by schedule number.

4 Do you only want me to do 455, or do you
5 want me to do 438 along with it?

6 Q. If you can do them both at the same time,
7 that's fine. That would be my next question.

8 A. Okay. Cross-connects to collocation cage,
9 it tests my memory a little, but I believe that was
10 the same as the 455 case.

11 The recurring study I believe was in there
12 also. I can't remember offhand if they were the exact
13 same or not, but relatively close, I'm sure.

14 Q. That's schedule 6?

15 A. That was schedule 6.

16 Schedule 7, dark fiber, to the best of my
17 knowledge, that was also in the 455 case. The
18 elements were in dispute, I believe. So was
19 schedule 8, the recurring dark fiber.

20 Schedule 9, the dB loss was in dispute in
21 455, as well as schedule 10, dB loss was in dispute in
22 455.

23 The schedule 11, network interface device,
24 was at issue in 455.

25 The unbundled dedicated transport

1 interoffice facilities, DS1 through OC12, I don't
2 recall whether or not those were in 455. I believe at
3 least a portion of them were in 438. I'd have to
4 check whether or not the whole thing was. I think
5 only a portion of those were in dispute though.

6 The same with schedules 12 and 13 and 14,
7 are all of the interoffice facilities. If I remember
8 correctly, 13 and 14 were in 438.

9 Schedule 15, unbundled dedicated transport
10 entrance facilities, and schedule 16 is the recurring
11 unbundled dedicated transport interoffice
12 facilities -- or entrance facilities, I believe a
13 portion of those were in 438. I don't have my 438 or
14 455 testimony with me, so I'm not exactly sure. They
15 are kind of boring together a little bit.

16 There is also another entrance facility
17 study that would go along with schedule 17.

18 Schedules 18 and 19, with regard to the
19 dedicated transport cross-connects, digital
20 cross-connect system and multiplexings, those were in
21 438.

22 Schedules 20 and 21, LSP to SS7 links
23 cross-connects and interoffice for voice grade and
24 DS1, recurring and nonrecurring, were in 438.

25 The unbundled network element loop

1 cross-connects, schedules 23 -- or 22 and 23, the
2 recurring and nonrecurring versions, I believe were in
3 438.

4 Q. And have you attached the complete studies
5 to your testimony or just portions?

6 A. To my testimony itself, I believe the
7 methodology and the results were attached, and the
8 complete cost studies were sent separately to reply to
9 a data request, 1-1, I believe.

10 Q. Page 4 of your testimony, line 8, you
11 indicate that it would be in keeping with forward-
12 looking cost principles to reflect only new technology
13 that would be used; is that correct?

14 A. To be specific, I said, "In keeping with
15 forward-looking cost principles, investments reflect
16 only new technology that would be used if the existing
17 equipment were to be replaced today."

18 Q. Page 10, you indicate that the recurring dB
19 loss conditioning cost study is still in its original
20 form from 1996 to '98; is that correct?

21 A. That is correct.

22 Q. And dB, that stands for decibel; is that
23 correct?

24 A. Yes, I believe so.

25 Q. And you indicate further on that page that

1 your cost group basically didn't have time to update
2 that one?

3 A. That is correct.

4 MR. LUMLEY: That's all of my questions,
5 your Honor.

6 JUDGE RUTH: Staff?

7 MR. BATES: No questions. Thank you, your
8 Honor.

9 JUDGE RUTH: Commissioner Murray?

10 COMMISSIONER MURRAY: I don't have any
11 questions. Thank you.

12 JUDGE RUTH: Commissioner Gaw?

13 COMMISSIONER GAW: No. Thank you.

14 JUDGE RUTH: Okay. Mr. Cass, you -- whoops.
15 Sorry. I almost forgot to redirect.

16 MR. KRIDNER: Your Honor, we have no
17 redirect for this witness.

18 However, we also would ask that he be
19 excused at the earliest possible time.

20 JUDGE RUTH: What I'll do is, at this point,
21 you're not excused. You'll need to remain available,
22 but we'll address this again at the end of the day,
23 whether or not that can be changed.

24 MR. KRIDNER: Thank you, your Honor.

25 THE WITNESS: Thank you.

1 JUDGE RUTH: Southwestern Bell, you may call
2 your next witness.
3 MR. KRIDNER: Your Honor, Southwestern Bell
4 calls Mr. Makarewicz at this time.
5 (Witness sworn.)
6 JUDGE RUTH: Thank you.
7 Please be seated.
8 And you may proceed.
9 MR. KRIDNER: Thank you, your Honor.
10 With your permission.
11 THOMAS J. MAKAREWICZ testified as follows:
12 DIRECT EXAMINATION BY MR. KRIDNER:
13 Q. Would you please state your name.
14 A. My name is Thomas J Makarewicz. It's
15 spelled M-a-k-a-r-e-w-i-c-z.
16 Q. And by whom are you employed,
17 Mr. Makarewicz?
18 A. SBC Telecommunications, Incorporated.
19 Q. Now, are you the same Thomas J. Makarewicz
20 who has caused to be filed in this proceeding exhibits
21 6NP, being the public version, and Exhibit 6HC, being
22 the highly confidential version of your Direct
23 Testimony?
24 A. Yes.
25 Q. And are you also the same -- or did you also

1 cause to be filed as Exhibit 7NP for the public
2 version and Exhibit 7HC for the highly confidential
3 version of your Rebuttal Testimony?

4 A. Yes, I did.

5 Q. Now, do you have any changes to any of this
6 testimony at this time?

7 A. Yes, I have one slight change to the
8 Rebuttal Testimony -- I'm sorry -- to the Direct
9 Testimony.

10 Q. Okay. Exhibit 6. Would you please identify
11 the page?

12 A. It appears on page 22.

13 Q. And what is that change?

14 A. It's at line 21.

15 At the end of the line it reads -- I want to
16 change the word "increasing" and substitute
17 "decreasing."

18 Q. And would that be on both the public version
19 and the confidential versions?

20 A. Yes.

21 MR. KRIDNER: Your Honor, with your
22 permission, if the witness may make that change to the
23 record copies of the testimony?

24 JUDGE RUTH: Yes. That's fine.

25 Can you clarify for me again what page that

1 was on?

2 THE WITNESS: It's page 22 of the Direct
3 Testimony, line 21.

4 JUDGE RUTH: Thank you.

5 BY MR. KRIDNER:

6 Q. Do you have the record copy in front of you?

7 A. Yes, I do.

8 Q. Would you make that change, please?

9 A. Yes.

10 Q. Okay. Now, then, if I were to ask you the
11 same questions today, would your answers be the same?

12 A. Yes, they would.

13 Q. And are the answers contained in your Direct
14 and your Rebuttal Testimony true and correct to the
15 best of your knowledge, information, and belief?

16 A. Yes, they are.

17 MR. KRIDNER: Your Honor, at this time
18 Southwestern Bell offers Exhibit 6NP and Exhibit 6HC
19 being the public and confidential versions of
20 Mr. Makarewicz' Direct Testimony, and Exhibit 7NP and
21 Exhibit 7HC, being the public and highly confidential
22 versions of Mr. Makarewicz' Rebuttal Testimony.

23 JUDGE RUTH: First let's address the Direct
24 Testimony, 6NP and 6HC. Are there any objections?

25 MR. BATES: No objection.

1 JUDGE RUTH: Seeing no objection, 6NP and
2 6HC are received into the record.

3 (EXHIBIT NOS. 6NP AND 6HC WERE RECEIVED INTO
4 EVIDENCE.)

5 JUDGE RUTH: 7NP and 7HC are the Rebuttal
6 Testimony of the witness. Any objection to those
7 being received?

8 (No response.)

9 JUDGE RUTH: Seeing no objections, 7NP and
10 7HC are also received into the record.

11 (EXHIBIT NOS. 7NP AND 7HC WERE RECEIVED INTO
12 EVIDENCE.)

13 MR. KRIDNER: Your Honor, at this time we
14 pass Mr. Makarewicz for cross-examination.

15 CROSS-EXAMINATION BY MR. LUMLEY:

16 Q. Are the cost factors that you're sponsoring
17 the same as your company sponsored in the 438 case?

18 A. Yes, they are.

19 Q. Were they also the same in the 455 case, the
20 AT&T arbitration?

21 A. Yes, they were. There actually -- for the
22 455 case, there were two versions of cost factors,
23 some of which applied to the 1997 studies, the others
24 of which applied to the 2000 studies.

25 Q. And these would be the 2000 studies?

1 A. Actually, both.

2 Q. It would be both. Okay.

3 And in the 438 case, these were presented by
4 Mr. Ries, is that correct --

5 A. Yes.

6 Q. -- for your company?

7 And a witness for AT&T, Mr. Rhinehart,
8 presented some critiques of the factors; is that
9 correct?

10 A. Yes, he did.

11 Q. And did you make any adjustments from the
12 factors that were presented in the 438 case to get to
13 these factors based on that critique by AT&T?

14 A. No, we did not adjust the factors based on
15 AT&T's criticism.

16 Q. On page 3, line 7, you indicate that for
17 certain types of equipment a current vender price is
18 the starting point; is that correct?

19 A. This is Direct Testimony?

20 Q. Yes.

21 A. Sorry. At what line?

22 Q. Page 3, line 7.

23 A. Yes.

24 Q. Page 9, at the bottom, still in your Direct
25 Testimony, you indicate that -- you have the

1 statement, "The percentage does not apply to
2 right-to-use fees included in central office expense
3 accounts." Do you see that?

4 A. Yes, I see it.

5 Q. And just for the record, what percentage are
6 we talking about, or are you talking about?

7 A. This is -- this answer deals with the
8 adjustment we made to remove nonrecurring costs from
9 the -- from the factor development, and it's that
10 adjustment for nonrecurring that doesn't apply to the
11 right-to-use fees.

12 Q. And why doesn't it apply?

13 A. It's limited -- let's see. I can't -- I
14 can't speak precisely to that.

15 Q. On page 10, line 7, you indicate that you
16 discovered an error that results in a slight
17 overstatement of maintenance costs; is that correct?

18 A. Yes, that's correct.

19 Q. And you provide a schedule that breaks out
20 the specific impact of that error; is that right?

21 A. Yes, that's correct.

22 Q. And is that just a matter of multiplying
23 those percentages to adjust for it, or is it more
24 complicated than that to eliminate that error?

25 A. Well, to eliminate the error -- well, to

1 eliminate the error would be to adjust the maintenance
2 factors and then -- and the maintenance factors are
3 applied in each and every cost study that's at issue.
4 So I'm simply identifying the magnitude of this error
5 on the overall annual charge factor and showing that
6 it's fairly small.

7 Q. But can you just adjust the annual charge
8 factor by those percentages to effectively eliminate
9 the error, or do you have to do something different?

10 A. You would adjust the annual charge factor
11 and then have to run those through -- all of the cost
12 studies through the models to have that correction
13 apply to the end resulting costs.

14 Q. Are you able to estimate today the actual
15 impact on the final resulting costs of this on average
16 1.68 percent error?

17 A. It would be the resulting -- I believe the
18 result on the cost would parallel the change to the
19 factor.

20 Q. So then you could just multiply that
21 percentage?

22 A. That -- we would have to get -- you might
23 get a slightly different variation of that, but I
24 think it would be something very close to
25 1.68 percent.

1 Q. In your Rebuttal Testimony, page 4, I
2 recognize the number is highly confidential, but
3 you're discussing your current shared and common cost
4 factor; is that right?

5 A. Yes, that's correct.

6 Q. And is this the same figure that you've
7 proposed in both the 438 and the 455 cases?

8 A. It's -- well, there are two factors listed
9 there.

10 Q. I'm talking about the current one as opposed
11 to what you're labeling the previous one.

12 A. The current one is what Southwestern Bell
13 proposed in the 438 docket. It is not the one that
14 Southwestern Bell proposed in 455.

15 Q. That was the first time that that was put
16 forth; is that correct?

17 A. The 438 docket was the first time
18 Southwestern Bell advanced this number, yes.

19 MR. LUMLEY: All right. That's all of my
20 questions, your Honor.

21 JUDGE RUTH: Staff?

22 MR. BATES: Thank you, your Honor.

23 CROSS-EXAMINATION BY MR. BATES:

24 Q. Good afternoon, Mr. Makarewicz.

25 A. Good afternoon, Mr. Bates.

1 Q. I just have a few questions.

2 Referring to your Direct Testimony,
3 particularly that which is contained between pages 7
4 and 10, could you please identify for the record the
5 data year for Southwestern Bell's proposed maintenance
6 factors?

7 A. It would be 2000, year 2000.

8 Q. Year 2000. Would you agree that all of
9 these -- that although these factors are based on
10 actual 2000 -- year 2000 data, they reflect a
11 forward-looking network because they are applied to a
12 forward-looking investment?

13 A. That's true. In the actual studies
14 themselves, they are applied to the investments
15 derived from the cost models, the switching model or
16 the loop model. Those are all forward-looking
17 investments.

18 Q. Is it possible that savings associated with
19 the Project Pronto upgrade could begin to reduce
20 Southwestern Bell's maintenance expenses over the next
21 several years?

22 A. Yes. And we do, in fact, take that into
23 account in the loop study. And this goes back to a
24 discussion that Mr. Turner was making earlier, and I
25 think it was a misunderstanding.

1 For -- we developed a number of maintenance
2 factors, but there are two at issue that might help if
3 I clarified more. There is a maintenance factor for
4 cable facilities, loop facilities, for copper and a
5 separate maintenance factor for fiber. For Missouri,
6 the maintenance factor on fiber is significantly
7 lower than that of the maintenance factor for
8 copper.

9 Now, the loop cost study projects a forward-
10 looking loop network which models out a much higher
11 incidents of fiber in the -- in the feeder than
12 currently exists in the embedded network. And
13 wherever there is fiber in the loop study, what's
14 applied to that to capture the maintenance cost is the
15 fiber maintenance factor, which is, again, lower than
16 that of copper.

17 So to the extent that Pronto is about
18 pushing the use of fiber much deeper into
19 Southwestern Bell's loop network, we would capture
20 the lower maintenance cost associated with that by
21 applying the fiber maintenance factor which is
22 lower than that of copper. So I believe that we
23 do -- the loop cost study does reflect many of the
24 maintenance cost savings that are associated with
25 Project Pronto.

1 MR. BATES: Thank you very much.
2 JUDGE RUTH: Questions from the Bench.
3 Commissioner Murray, do you have any?
4 COMMISSIONER MURRAY: I have none. Thank
5 you.
6 JUDGE RUTH: Commissioner Gaw?
7 COMMISSIONER GAW: None. Thank you.
8 JUDGE RUTH: Redirect?
9 MR. KRIDNER: Your Honor, I would have no
10 redirect for this witness, and I would ask, as the
11 previous witnesses, that he be excused at the earliest
12 possible time.
13 JUDGE RUTH: My answer will be the same
14 then. We'll continue to address that.
15 Thank you. You may step down.
16 THE WITNESS: Thank you.
17 JUDGE RUTH: We will move along to
18 Southwestern Bell's next witness.
19 MR. KRIDNER: Yes, your Honor. We would
20 call Mr. Barch.
21 (Witness sworn.)
22 JUDGE RUTH: Thank you.
23 Please be seated.
24 You may proceed.
25 MR. KRIDNER: With your permission.

1 DAVID J. BARCH testified as follows:

2 DIRECT EXAMINATION BY MR. KRIDNER:

3 Q. Would you please state your name?

4 A. My name is David J. Barch, B-a-r-c-h.

5 Q. And by whom are you employed, Mr. Barch?

6 A. I'm employed by SBC Telecommunications,
7 Incorporated.

8 Q. And are you the same David Barch who has
9 caused to be filed as Direct Testimony Exhibit 8NP for
10 the public version and Exhibit 8HC for the
11 confidential version?

12 A. Yes.

13 Q. And did you also cause to be filed
14 exhibits -- as your Rebuttal Testimony Exhibit 9NP for
15 the public version and Exhibit 9HC for the highly
16 confidential version?

17 A. Yes.

18 Q. Do you have any changes let me ask you first
19 to Exhibit 8 at this time, the Direct Testimony?

20 A. Yes, I do. I have three for my Direct, the
21 first of which begins on page 5. At line 7 the
22 section labeled "F, Service Orders," should be labeled
23 "F, Miscellaneous."

24 Q. Now, that's the section title?

25 A. Yes, it is.

1 The second correction is schedule A-2 of my
2 direct. Under the overview of the two-wire analog
3 trunk port (DID) study, under the section "Service
4 Description," the second line, the word "hunk" should
5 be changed to "trunk," t-r-u-n-k.

6 Q. So it refers to trunk studies instead of
7 hunk studies?

8 A. That is correct.

9 Q. And the third correction?

10 A. The third and final change is schedule B1 of
11 my Direct. Under the overview for the STP port study,
12 under the nonrecurring elements section, under the
13 element STP port termination per port connect, the
14 second sentence "Included are A-link translations and
15 testing activities" should be the only sentence,
16 meaning that the words "as well as exchange carrier
17 relations (ECR) work activities" should be removed.

18 MR. KRIDNER: And, your Honor, may the
19 witness make these changes to the record copy?

20 JUDGE RUTH: Yes.

21 BY MR. KRIDNER:

22 Q. If you would do so, Mr. Barch.

23 A. I have done so.

24 Q. Thank you.

25 Do you have any changes to your Rebuttal

1 Testimony, Exhibit 9?

2 A. No, I do not.

3 Q. Now, if I asked you the same questions
4 today, would your answers be the same?

5 A. Yes, they would.

6 Q. And are the answers true and correct to the
7 best of your knowledge, information, and belief? And
8 both the previous question and this question are for
9 both Exhibits 8 and 9.

10 A. Yes, they are.

11 MR. KRIDNER: Your Honor, at this time,
12 Southwestern Bell offers Exhibits 8NP and 8HC as the
13 direct confidential -- I'm sorry -- first the public
14 and then the highly confidential versions of
15 Mr. Barch's Direct Testimony, and Exhibits 9NP and 9HC
16 as the public version and the highly confidential
17 version of Mr. Barch's Rebuttal Testimony.

18 JUDGE RUTH: Okay. First, Mr. Barch's
19 Direct Testimony, 8NP and 8HC. Are there any
20 objections?

21 (No response.)

22 JUDGE RUTH: Okay. Those two documents are
23 received into the record.

24 (EXHIBIT NOS. 8NP AND 8HC WERE RECEIVED INTO
25 EVIDENCE.)

1 JUDGE RUTH: 9NP and 9HC are Mr. Barch's
2 Rebuttal Testimony. Any objections?
3 (No response.)
4 JUDGE RUTH: Seeing no objections, these two
5 are also admitted into the record.
6 (EXHIBIT NOS. 9NP AND 9HC WERE RECEIVED INTO
7 EVIDENCE.)
8 MR. KRIDNER: Thank you, your Honor.
9 At this time we offer Mr. Barch for
10 cross-examination.
11 CROSS-EXAMINATION BY MR. LUMLEY:
12 Q. Okay. First to your Direct Testimony.
13 Starting at page 4 and carrying on to page 5, you list
14 the various studies that you're addressing; is that
15 correct?
16 A. That's correct.
17 Q. And does this list include studies that
18 Mr. Makarewicz originally sponsored in the 438 case
19 and you ultimately adopted his testimony in that
20 regard in that case?
21 A. Yes, it does. Of these 37 studies there are
22 20 such that would fit that description.
23 Q. Could you identify those 20?
24 A. Yes.
25 Q. If you use the schedule, that's probably the

1 easiest way.

2 A. Yes, I'll do that. A-3, A-5, A-10, A-11,
3 B-1 through B-7, C-1 through C-4, and E-1 through E-5.

4 Q. On page 6 you talk about on line 16
5 subsequent updates incorporated in 2001. Are those
6 updates that were already submitted in the 438 case or
7 is that a subsequent change?

8 A. I'm not sponsoring those -- those studies
9 specifically with regards to the loop and
10 cross-connect, so I do not know the specific updates
11 that were incorporated.

12 Q. What about farther down in line 20, the same
13 reference to updates in 2001. Are those updates that
14 are at issue in the 438 case?

15 A. They may or may not be, but I think that
16 would be a more appropriate question for the cost
17 witness sponsoring those.

18 Q. On page 7 you indicate on line 5, "...due to
19 the strict time schedule and comprehensive nature of
20 the instant proceeding, SWBT did not have sufficient
21 time to update most of the remaining studies"; is that
22 correct?

23 A. That's what I state in my Direct for those
24 studies that were not updated.

25 Q. And then you go on and talk about local and

1 tandem switching studies and indicate that these are
2 the same studies that were submitted in the TO-97-40
3 docket, the first interconnection arbitration in this
4 state; is that correct?

5 A. That's correct. The studies we are
6 sponsoring in this proceeding are those original 97-40
7 studies.

8 Q. And those are in the format as originally
9 filed by your company and they do not include
10 adjustments made by the Commission in that case?

11 A. That is correct.

12 Q. On page 13, line 11, you talk about a local
13 switching cost decrease of 14.5 percent?

14 A. Yes. I see where you're at.

15 Q. And then further down on line 17 you talk
16 about a tandem switching cost decrease of 3.6 percent?

17 A. Yes.

18 Q. And those decreases are not reflected in the
19 studies that you're submitting; is that correct?

20 A. The resulting calculations incorporating
21 such percentages are not reflected in the results of
22 the study, but what I'm trying to convey at least in
23 this portion of my testimony is saying that those
24 adjustments that the Commission ordered in 97-40 that
25 we believe are reasonable would result in such

1 amounts.

2 Q. And are those adjustments reflected in the
3 rates that Southwestern Bell has put forth for
4 switching in this case?

5 A. No, they are not.

6 Q. Similarly, on page 15, line 20, you discuss
7 a reduction in analog line side port cost (recurring
8 only) of 8.3 percent.

9 A. Yes.

10 Q. And is that reflected in the studies or in
11 the rates put forth by your company in this case?

12 A. No. This is similar to the local and tandem
13 switching.

14 MR. LUMLEY: That's all of my questions,
15 your Honor.

16 JUDGE RUTH: I'm sorry. You said that's all
17 of your questions?

18 MR. LUMLEY: Yes.

19 JUDGE RUTH: Staff?

20 MR. BATES: Thank you.

21 CROSS-EXAMINATION BY MR. BATES:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. I'll try and be brief here.

25 Is -- in your opinion, is Southwestern

1 Bell's proposed rate structure for local switching
2 consistent with your understanding of TELRIC?

3 A. Yes, it is.

4 Q. And how is it consistent in your opinion?

5 A. It's consistent inasmuch as our
6 understanding of TELRIC includes not only a flat rate
7 port cost but also a minute of use cost. That is how
8 Southwestern Bell Telephone incurs switching costs.

9 Mr. Turner earlier on the stand a couple of
10 times and as well in his prefiled testimony mentions
11 that Southwestern Bell may be receiving pricing that
12 is on a port-only basis, but it's a non sequitur to
13 say that Southwestern Bell does not incur any CCS or
14 usage-related switching costs in discussions between
15 our -- I'm sure our procurement group as well as our
16 switching vendors. The engineering specifications of
17 CCS are very instrumental in those, and the bottom
18 line is if Southwestern Bell were to incur more usage,
19 our switching pricing from our vendors would certainly
20 go up.

21 Q. You say it's a non sequitur. Do you have
22 anything else to add to explain that other than what
23 you just said?

24 A. Well, most of my Rebuttal Testimony at least
25 through page 10 provides justification as to why

1 Southwestern Bell incurs the cost of capacity in a
2 switch which is that portion of the switch beyond the
3 termination or the port.

4 Q. And why do you think it also includes minute
5 of use?

6 A. The capacity beyond the port is measured in
7 centum call seconds which is a time-based standard of
8 measurement. A minute of use is a fair bridge also
9 being a time of measurement to express that cost.

10 Q. Do I understand from what you're saying that
11 you think that WorldCom does not accept that, the
12 minute of use?

13 A. My understanding of WorldCom's position with
14 regards to DPL 11 with respect to the cost components
15 of that is that Southwestern Bell incurs no
16 incremental cost for usage, or if it does, it's to no
17 effect and it ought to be costing it on a flat-rated
18 port basis.

19 Q. And you disagree with that position for the
20 reasons that you've already stated here?

21 A. Yes, I do.

22 MR. BATES: Thank you very much.

23 JUDGE RUTH: Commissioner Murray, do you
24 have any questions?

25 COMMISSIONER MURRAY: No questions.

1 JUDGE RUTH: Commissioner Gaw?

2 COMMISSIONER GAW: No.

3 JUDGE RUTH: Redirect?

4 MR. KRIDNER: Yes, your Honor. If I could
5 have one moment.

6 MR. KRIDNER: With your permission, your
7 Honor.

8 JUDGE RUTH: Please proceed.

9 REDIRECT EXAMINATION BY MR. KRIDNER:

10 Q. Mr. Barch, you were asked by Mr. Bates
11 several questions concerning the switching costs. Do
12 you recall those questions?

13 A. Yes.

14 Q. Could you please elaborate on how the -- the
15 usage on a switch affects the cost that Southwestern
16 Bell incurs with respect to the prices it pays for its
17 switches to the venders?

18 A. To the degree I can. It's my understanding
19 that Southwestern Bell receives vender pricing to some
20 extent on a flat rate port basis, if you will. That's
21 kind of the outward view, but it's certainly not based
22 solely on that. It's a very simplified form of
23 pricing that incorporates many things, one of which is
24 CCS.

25 It's my understanding there are a number of

1 engineering specifics, capacities, thresholds, in our
2 contracts with our venders that need to be met either
3 at the beginning or monitored throughout, which is an
4 indication of usage cost.

5 Q. And what does CCS refer to?

6 A. CCS, my understanding is that it's centum
7 call seconds, or 100 call seconds.

8 Q. And would you agree that -- well, what would
9 be the maximum call seconds that you could have? Do
10 you know?

11 A. In a busy hour, that would be 36 CCS, or
12 3,600 --

13 Q. And would -- I'm sorry.

14 A. -- or 3,600 seconds.

15 Q. Would that be the equivalent of a switch
16 being fully in use so that it's 100 percent full?

17 A. That's the theoretical hypothetical maximum.
18 The engineering maximum would probably be something
19 much less than that.

20 Q. Okay. Now, with respect to the usage placed
21 on a switch by the various callers, how does that
22 drive CCS?

23 A. Well, the more minutes of use sent to a
24 switch, the more capacity that is required.
25 Southwestern Bell has undertaken and it incurs jobs

1 above and beyond the basic deployment of a switch to
2 add capacity to a switch as that usage increases, and
3 not only that, but there are several instances of
4 switches that have declining port or line usage but
5 have increasing CCS usage.

6 Q. Okay. And is it your understanding that
7 CCS -- as CCS increases on a switch under the current
8 or forward-looking contracts that Southwestern Bell
9 could pay more to the switch venders?

10 A. Absolutely.

11 Q. Are you familiar with the Commission's First
12 Report and Order in 96-98?

13 A. From a reference standpoint, yes.

14 Q. Okay. Do you happen to have a copy of that
15 order with you?

16 A. Not in its totality, but I have several
17 portions with me.

18 Q. Do you have the section in the -- that
19 includes paragraph 810?

20 A. Yes, I do.

21 Q. Okay. Would you review that paragraph to
22 yourself for just a moment?

23 A. All right.

24 Q. Now, in that paragraph of the First Report
25 and Order, how does the FCC state that the switch

1 charges, the charge for the switching matrix and for
2 trunk ports, should be recovered?

3 A. Well, what they find -- and this is
4 something I do state in my Rebuttal -- is that there
5 is an insufficient basis to conclude a requirement for
6 two flat rates for unbundled local switching, and
7 those two flat rates would be for line ports as well
8 as for the matrix.

9 Q. Okay. Does the FCC recognize the use of
10 per-minute-of-use charges for the switch matrix?

11 A. Yes.

12 Q. Okay. Do you also happen to have a copy of
13 the FCC rules, specifically 51.509(B)?

14 A. No, I do not.

15 MR. KRIDNER: Your Honor, may I approach the
16 witness?

17 JUDGE RUTH: Yes.

18 BY MR. KRIDNER:

19 Q. Mr. Barch, what does the rule I just cited,
20 51.509(B), provide with respect to recovery of the
21 cost associated with the switch matrix?

22 A. It states, Local switching -- local
23 switching costs shall be recovered through a
24 combination of a flat-rated charge for line ports and
25 one or more flat-rated or per-minute usage charges for

1 the switching matrix and for trunk ports.

2 Q. And is it a fair conclusion, then, that the
3 FCC rules permit recovery of switching on a
4 per-minute-of-use basis?

5 A. Yes, it is.

6 MR. KRIDNER: Your Honor, I have no further
7 questions for this witness.

8 And I would also ask that this witness be
9 excused at such time as is earliest available.

10 JUDGE RUTH: Okay. Thank you.

11 I think what we're going to do, then, is
12 take a short ten-minute break so I can confer with the
13 Commissioners on a few elements. We will come back on
14 the record at 4:32.

15 (A recess was taken.)

16 JUDGE RUTH: Let's go back on the record,
17 please.

18 First, I want to address the requests that
19 the witnesses that have testified so far be excused.
20 That would be Turner, Avera, Naughton, Cass,
21 Makarewicz, and Barch.

22 At this point the Commission is unwilling to
23 excuse those witnesses, but they will take up that
24 question again tomorrow, probably not first thing, but
25 tomorrow. At this point, those witnesses need to come

1 back tomorrow.

2 MR. LANE: What time do you think tomorrow
3 you might be able to address that, your Honor?

4 JUDGE RUTH: It depends on when the
5 Commissioners in question have had a chance to decide
6 if they have any more questions, and then it also
7 could be dependent on whether or not there is a Motion
8 for Reconsideration filed, as we discussed earlier.
9 We're going -- which if there is a Motion for
10 Reconsideration filed, it would be done first thing,
11 and then hopefully by noon would be taken care of and
12 the Commissioners would know if they have any further
13 questions.

14 MR. LANE: Okay.

15 JUDGE RUTH: Then the Commissioners have
16 also discussed asking the counsel a few questions, and
17 what we're going to do is give the Commissioners an
18 opportunity to state what some of their questions are,
19 and counsel perhaps can leave here tonight, think
20 about them, and actually answer tomorrow first thing
21 on the record. And it's my understanding these
22 questions have to do with perhaps the big picture or
23 the scope of the case.

24 And I'll let Commissioner Murray start.

25 COMMISSIONER MURRAY: I'm going to attempt

1 to articulate a couple of things that I would like
2 counsel to be thinking about in terms of whether this
3 could be presented to us in a way that could help
4 clarify specifically how many issues could we
5 eliminate if we decided a couple of basic things.

6 First of all, of the unresolved issues, how
7 many of those issues would be resolved if we made the
8 determination that any provision of the M2A can only
9 be adopted in combination with what the M2A itself
10 called legitimately related provisions and whether
11 there are credible arguments that any or all of the
12 provisions that were termed in the M2A to be
13 legitimately related provisions are not so?

14 And if the answer to that question is yes,
15 is that true for all or for only some of those
16 provisions that were termed legitimately related?

17 And if the -- if the Commission were to
18 decide in this case that WorldCom could opt into the
19 prices and/or terms and conditions that are set in
20 438, since 438 was a spinoff of the M2A, wouldn't that
21 result in WorldCom having to take all of the
22 legitimately related provisions to those UNEs set in
23 Case No. 438?

24 And this is -- I'm trying to articulate
25 these questions because it seems that we really need

1 to narrow the issues, and if the answer to those
2 questions results in a narrowing of the issues, I
3 would like to know it earlier rather than later in
4 this proceeding.

5 Thank you, Judge.

6 JUDGE RUTH: Commissioner Gaw?

7 COMMISSIONER GAW: If I could just follow up
8 with what Commissioner Murray was requesting, it would
9 be very helpful to have a better sense of the parties'
10 arguments on how the reasonably or legitimately
11 related provision applies to the issues in front of us
12 so that -- so that we have a sense -- and perhaps --
13 perhaps that can be drawn to -- our attention can be
14 drawn to the portion of the record that reflects that
15 if it's already contained in the prefiled testimony,
16 in particular, how that issue relates to the resetting
17 of cost for rate elements, excuse me, in any one
18 particular provision without changing other
19 provisions? And I'm not necessarily talking about in
20 different paragraphs but in some cases within the same
21 paragraph.

22 I'm also interested in knowing whether the
23 parties believe there is a distinction that is
24 substantive between deferring a decision on those
25 elements -- cost elements that are contained in 438

1 and setting rates that are based on costs that have
2 previously been set by this Commission in the M2A or
3 in other cases with a provision that at the conclusion
4 of 438 WorldCom could automatically opt into those new
5 rates and whether there is a distinction between those
6 two -- those two approaches. And that may not be
7 clear.

8 MR. LANE: Could you restate that? It
9 wasn't clear to me. Sorry.

10 COMMISSIONER GAW: What I'm getting at --
11 I'm not sure that there is a distinction, but what I'm
12 getting at is whether or not if this Commission were
13 to say we're deferring those cost elements, or
14 those -- to the 438 case, whether that's different
15 than saying we are going to go ahead and set rates
16 based upon determinations of this Commission in other
17 cases but allowing WorldCom to opt into new prices at
18 the conclusion of 438 in this arbitrated agreement. I
19 hate using the word "arbitrated agreement," but did
20 that help?

21 MR. LANE: Yes. Thank you.

22 COMMISSIONER GAW: And, again, that --
23 that -- to make full circle, that again raises the
24 question of how the provisions in the M2A that refer
25 to, as Commissioner Murray said, legitimately related

1 matters would raise its head.

2 Again, if that latter -- that latter
3 statement that I made in regard to allowing the opt-in
4 into new prices would have an impact on -- on the just
5 carte blanche idea that there could be some capturing
6 of new costs of 438 without further exploration, if
7 I'm making -- if I'm making sense on that.

8 I'm looking for assistance from counsel in
9 discussing those issues and whether or not they are
10 even issues of concern. I hope that helps.

11 And I think that's all I have right now, but
12 maybe in the morning I may have a couple of other
13 questions.

14 JUDGE RUTH: And somewhat related to this,
15 the Commission had issued an order directing a filing
16 on the 9th where Staff complied on January 11th, and
17 the Commission had directed that responses to that be
18 filed within two business days, which would be
19 tomorrow.

20 I'm going to request that they not only be
21 filed tomorrow, but first thing tomorrow by 8:30 so
22 that the Commissioners would have that available. I
23 would appreciate an electronic copy of any response.

24 And when you're reviewing Staff's response,
25 I'd like you to pay particular attention on page 3

1 there's a couple of paragraphs, one begins "Therefore,
2 according to attachment 26, WCOM must accept all
3 legitimately related provisions into which CLECs MFN
4 under section 252(I)," and that continues on down
5 through the page.

6 You know, address everything that you want
7 in your response, but be sure and address whether or
8 not you agree with Staff's statements in these two
9 paragraphs and perhaps clarify your understanding what
10 the correct answer is.

11 Any questions from the parties on what the
12 Commission expects in this area?

13 (No response.)

14 JUDGE RUTH: The responses to Staff's filing
15 were directed to be in writing. You can also mention
16 whatever you put in there in your oral discussion to
17 the Commissioners, but go ahead and file that in
18 writing, please.

19 COMMISSIONER GAW: I may have one more
20 thing.

21 I think it might be helpful to me, although
22 there was some discussion in testimony today, and I
23 realize that the parties have stated, and correctly
24 so, that there -- this issue has been visited in the
25 past, but the issue of the timing on this arbitration,

1 there evidently is a -- continues to be discussion
2 about whether or not this case in total has to be
3 concluded by a certain time, and I want to understand
4 from the attorneys their positions regarding how that
5 time frame that's set forth in the Federal Act impacts
6 our decision regarding the cost elements in this case
7 and the determination of rates from that.

8 That's it. Thanks.

9 JUDGE RUTH: I wanted to ask one more
10 question. It overlaps, but I just want to make sure
11 that you understand to address this too.

12 Some of the witnesses today said that the
13 Commission was not going to have enough information to
14 make a decision on certain elements when we came out
15 of here. I'd like to ask again to clarify which
16 issues would the Commission have enough information if
17 we were to allow all of the 438 information in? In
18 other words, which ones will we not have enough
19 information now but if the Commission had made a
20 different decision on the 438 issue, what then would
21 we have had enough on?

22 Okay. Is that it, Commissioners?

23 COMMISSIONER MURRAY: I think so. Thank
24 you.

25 COMMISSIONER GAW: I think so.

1 JUDGE RUTH: We're off the record for today.

2 (A discussion was held off the record.)

3 JUDGE RUTH: I need to clarify that the only
4 thing that has to be in writing was the prior
5 requirement that the parties -- if you have a response
6 to Staff's filing of January 11th, that needs to be in
7 writing. That was previously ordered by the
8 Commission last week. That still needs to be in
9 writing. That's not changed.

10 The only thing that's changed is the
11 Commissioners want to hear some oral argument on these
12 other issues. That stuff does not have to be prepared
13 in writing for tomorrow. And if for whatever reason
14 the parties have already prepared your response to
15 this document and you did not include what I asked you
16 to include, a specific response to those paragraphs on
17 page 3, I'll let you supplement that orally if you've
18 already taken care of that document and don't want to
19 change it. Okay?

20 Thank you.

21 Back off the record.

22 (EXHIBIT NOS. 48 AND 49 WERE MARKED FOR
23 IDENTIFICATION.)

24 WHEREUPON, the hearing of this case was
25 continued to 8:30 a.m., Tuesday, January 15, 2002.

1	I N D E X	
2		
3	Opening Statement by Mr. Morris	76
	Opening Statement by Mr. Lane	85
4	Opening Statement by Mr. Bates	101
5		
	WORLDCOM'S EVIDENCE:	
6	STEVEN E. TURNER:	
	Direct Examination by Mr. Lumley	105
7	Cross-Examination by Mr. Lane	109
	Cross-Examination by Mr. Bates	141
8	Questions by Commissioner Murray	145
	Questions by Commissioner Gaw	151
9	Questions by Judge Ruth	163
	Further Questions by Commissioner Gaw	171
10	Recross-Examination by Mr. Lane	179
	Redirect Examination by Mr. Lumley	188
11		
12	SOUTHWESTERN BELL'S EVIDENCE:	
	WILLIAM E. AVERA, Ph.D., CFA:	
13	Direct Examination by Mr. Lane	195
	Cross-Examination by Mr. Lumley	196
14	Redirect Examination by Mr. Lane	204
15	PHILIP G. NAUGHTON:	
	Direct Examination by Mr. Kridner	209
16	Cross-Examination by Mr. Lumley	211
17	CHRIS F. CASS:	
	Direct Examination by Mr. Kridner	213
18	Cross-Examination by Mr. Lumley	214
19	THOMAS J. MAKAREWICZ:	
	Direct Examination by Mr. Kridner	220
20	Cross-Examination by Mr. Lumley	223
	Cross-Examination by Mr. Bates	227
21		
	DAVID J. BARCH:	
22	Direct Examination by Mr. Kridner	231
	Cross-Examination by Mr. Lumley	234
23	Cross-Examination by Mr. Bates	237
	Redirect Examination by Mr. Kridner	240
24		
25		

		Marked	Received
3	Exhibit No. 1	15	108
4	Direct Testimony of Steven E. Turner		
5	Exhibit No. 2	15	108
6	Rebuttal Testimony of Steven E. Turner		
7	Exhibit No. 3	15	196
8	Direct Testimony of William E. Avera		
9	Exhibit No. 4NP	15	211
10	Direct Testimony of Philip G. Naughton, NP		
11	Exhibit No. 4HC	15	211
12	Direct Testimony of Philip G. Naughton, HC		
13	Exhibit No. 5NP	15	214
14	Direct Testimony of Chris F. Cass, NP		
15	Exhibit No. 5HC	15	214
16	Direct Testimony of Chris F. Cass, HC		
17	Exhibit No. 6NP	15	223
18	Direct Testimony of Thomas J. Makarewicz, NP		
19	Exhibit No. 6HC	15	223
20	Direct Testimony of Thomas J. Makarewicz, HC		
21	Exhibit No. 7NP	15	223
22	Rebuttal Testimony of Thomas J. Makarewicz, NP		
23	Exhibit No. 7HC	15	223
24	Rebuttal Testimony of Thomas J. Makarewicz, HC		
25			

1 E X H I B I T S I N D E X Continued

2		Marked	Received
3	Exhibit No. 8NP	15	233
4	Direct Testimony of		
4	David J. Barch, NP		
5	Exhibit No. 8HC	15	233
6	Direct Testimony of		
6	David J. Barch, HC		
7	Exhibit No. 9NP	15	234
8	Rebuttal Testimony of		
8	David J. Barch, NP		
9	Exhibit No. 9HC	15	234
10	Rebuttal Testimony of		
10	David J. Barch, HC		
11	Exhibit No. 10NP	15	
12	Direct Testimony of		
12	James R. Smallwood, NP		
13	Exhibit No. 10HC	15	
14	Direct Testimony of		
14	James R. Smallwood, HC		
15	Exhibit No. 11	15	
16	Rebuttal Testimony of		
16	James R. Smallwood		
17	Exhibit No. 12	15	
18	Direct Testimony of		
18	Thomas F. Hughes		
19	Exhibit No. 13	15	
20	Rebuttal Testimony of		
20	Thomas F. Hughes		
21	Exhibit No. 14	15	
22	Direct Testimony of		
22	Christopher C. Thomas		
23	Exhibit No. 15	15	
24	Direct Testimony of		
24	Don Price		
25			

1 E X H I B I T S I N D E X Continued

2		Marked	Received
3	Exhibit No. 16NP	15	
4	Rebuttal Testimony of		
5	Don Price, NP		
6	Exhibit No. 16HC	15	
7	Rebuttal Testimony of		
8	Don Price, HC		
9	Exhibit No. 17	15	
10	Direct Testimony of		
11	Daniel Aronson		
12	Exhibit No. 18	15	
13	Rebuttal Testimony of		
14	Daniel Aronson		
15	Exhibit No. 19	15	
16	Direct Testimony of		
17	Jerry L. Hampton		
18	Exhibit No. 20	15	
19	Rebuttal Testimony of		
20	Jerry L. Hampton		
21	Exhibit No. 21	15	
22	Direct Testimony of		
23	Timothy Oyer		
24	Exhibit No. 22	15	
25	Rebuttal Testimony of		
26	Timothy Oyer		
27	Exhibit No. 23	15	
28	Direct Testimony of		
29	Michael D. Kirksey		
30	Exhibit No. 24	15	
31	Rebuttal Testimony of		
32	Michael D. Kirksey		
33	Exhibit No. 25	15	
34	Rebuttal Testimony of		
35	Natelle Dietrich		

1 E X H I B I T S I N D E X Continued

2		Marked	Received
3	Exhibit No. 26	15	
4	Rebuttal Testimony of		
4	Walter Cecil		
5	Exhibit No. 27	15	
6	Direct Testimony of		
6	Mike McKanna		
7	Exhibit No. 28	15	
8	Rebuttal Testimony of		
8	Mike McKanna		
9	Exhibit No. 29	15	
10	Direct Testimony of		
10	Michael Lehmkuhl		
11	Exhibit No. 30	15	
12	Rebuttal Testimony of		
12	Michael Lehmkuhl		
13	Exhibit No. 31	15	
14	Direct Testimony of		
14	Roseann Kendall		
15	Exhibit No. 32	15	
16	Rebuttal Testimony of		
16	Roseann Kendall		
17	Exhibit No. 33	15	
18	Direct Testimony of		
18	Linda De Bella		
19	Exhibit No. 34	15	
20	Rebuttal Testimony of		
20	Linda De Bella		
21	Exhibit No. 35	15	
22	Direct Testimony of		
22	June Burgess		
23	Exhibit No. 36NP	15	
24	Rebuttal Testimony of		
24	June Burgess, NP		
25			

1 E X H I B I T S I N D E X Continued

2		Marked	Received
3	Exhibit No. 36HC	15	
4	Rebuttal Testimony of		
4	June Burgess, HC		
5	Exhibit No. 37	15	
6	Direct Testimony of		
6	Roman Smith		
7	Exhibit No. 38	15	
8	Rebuttal Testimony of		
8	Roman Smith		
9	Exhibit No. 39	15	
10	Direct Testimony of		
10	Michael A. Beach		
11	Exhibit No. 40	15	
12	Rebuttal Testimony of		
12	Michael A. Beach		
13	Exhibit No. 41	15	
14	Direct Testimony of		
14	Michael W. Schneider		
15	Exhibit No. 42	15	
16	Rebuttal Testimony of		
16	Michael W. Schneider		
17	Exhibit No. 43	15	
18	Direct Testimony of		
18	Edward J. Caputo		
19	Exhibit No. 44	15	
20	Rebuttal Testimony of		
20	Edward J. Caputo		
21	Exhibit No. 45	15	
22	Direct Testimony of		
22	Jan D. Rogers		
23	Exhibit No. 46	15	
24	Rebuttal Testimony of		
24	Jan D. Rogers		
25			

1	E X H I B I T S I N D E X Continued	
2		Marked Received
3	Exhibit No. 47	15
4	Rebuttal Testimony of Bill Peters	
5	Exhibit No. 48	252
6	Cross-Examination of William E. Avera, TO-2001-438, Volume 3	
7	Exhibit No. 49	252
8	Cross-Examination of Philip G. Naughton, TO-2001-438, Volume 3	
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