

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

3

4

TRANSCRIPT OF PROCEEDINGS

5

HEARING

6

May 23, 2005

7

Jefferson City, Missouri

8

Volume 3

9

10

Southwestern Bell Telephone, L.P.,)
11 d/b/a SBC Missouri's Petition for)Case No.
Compulsory Arbitration of Unresolved)TO-2005-0336
12 Issues for a Successor Interconnection)
Agreement to the Missouri 271)
13 Agreement ("M2A"))

14

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KEVIN A. THOMPSON, Presiding
DEPUTY CHIEF REGULATORY LAW JUDGE.

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TRACY L. THORPE, CSR, CCR
19 MIDWEST LITIGATION SERVICES

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1 JUDGE THOMPSON: We are here for Case
2 No. TO-2005-0336, Southwestern Bell Telephone, LP, doing
3 business as SBC Missouri, their petition for compulsory
4 arbitration of unresolved issues for a successor
5 interconnection agreement to Missouri 271 agreement known as
6 the M2A.

7 My name is Kevin Thompson. I have been
8 designated by the Commission as the Arbitrator pursuant to the
9 Commission's rules on arbitration under the Telecommunications
10 Act.

11 At this time we'll go ahead and take entries of
12 appearance. If there is an outstanding motion for leave to
13 appear pro hoc vici, please advise me of that at this time.
14 Why don't we start with SBC.

15 MR. LANE: Good morning, your Honor. Paul
16 Lane, Leo Bub and Robert Gryzmala on behalf of Southwestern
17 Bell Telephone, LP doing business as SBC Missouri. Our
18 address is One SBC Center, Room 3520, St. Louis, Missouri
19 63101.

20 JUDGE THOMPSON: Thank you, Mr. Lane. Be sure
21 you speak into your microphone.

22 Why don't we start on this corner and just work
23 back. Mr. Comley?

24 MR. COMLEY: Without a microphone --

25 JUDGE THOMPSON: Just shout.

1 MR. COMLEY: Let the record reflect the entry
2 of appearance of Mark W. Comley, Newman, Comley and Ruth, 601
3 Monroe, Jefferson City, Missouri on behalf of AT&T
4 Communications of the Southwest, Inc., TCG Kansas City and TCG
5 St. Louis.

6 Also, the gentleman to my left, let me
7 introduce Kevin K. Zarling. There is an outstanding motion
8 for Mr. Zarling to appear pro hoc vici. His associate,
9 Michelle Bourianoff has already been approved for appearance
10 pro hoc vici, but their business address is 999 -- excuse me,
11 919 Congress Avenue, Suite 900, Austin, Texas 78701-2444.

12 And with respect to Mr. Zarling, we'd move that
13 he be allowed to appear today.

14 JUDGE THOMPSON: Thank you, Mr. Comley.

15 Mr. Zarling, have you paid the required fees to
16 the Missouri Supreme Court?

17 MR. ZARLING: Yes, your Honor.

18 JUDGE THOMPSON: And you're not under any kind
19 of discipline in any court to which you've been admitted?

20 MR. ZARLING: No, your Honor.

21 JUDGE THOMPSON: Very well. We'll go ahead and
22 admit Kevin Zarling pro hoc vici for purposes of this
23 proceeding. Thank you.

24 Next up?

25 MR. MORRIS: Stephen F. Morris on behalf of

1 MCI. Address is 701 Brazos, B-r-a-z-o-s, Austin, Texas 78701.

2 Also appearing on behalf of MCI are Lee Curtis
3 and Carl Lumley with the law firm of Curtis, Heinz, Garrett
4 and O'Keefe, 130 South Bemiston, Suite 200, St. Louis,
5 Missouri 63105.

6 JUDGE THOMPSON: Thank you, sir.

7 Mr. Johnson?

8 MR. JOHNSON: Thank you, Judge. Mark Johnson
9 of the law firm Sonn--

10 JUDGE THOMPSON: I apologize. I missed
11 someone.

12 MR. MAGNESS: While we're still in the back of
13 the room.

14 JUDGE THOMPSON: I do apologize.

15 MR. MAGNESS: Bill Magness with the law firm of
16 Casey, Gentz and Magness, 98 San Jacinto Boulevard, Suite
17 1400, Austin, Texas.

18 Also appearing are Mr. Curtis and Mr. Lumley on
19 behalf of the CLEC Coalition as well.

20 Your Honor, the CLEC Coalition in this case,
21 and I'll say this once for the record and then refer to it as
22 CLEC Coalition from here on out, the Coalition is composed of
23 the following companies: Big River Telephone Company, LLC;
24 Birch Telecom of Missouri, Inc.; Ionics Communications, Inc.;
25 NuVox Communications of Missouri, Inc.; Socket Telecom, LLC;

1 XO Communications Services, Inc.; Xspedius Management --
2 excuse me, Xspedius Management Company Switched Services, LLC,
3 doing business as Xspedius Communications, LLC. Thank you.

4 JUDGE THOMPSON: Thank you, sir. And you are a
5 Missouri attorney?

6 MR. MAGNESS: I'm a Texas attorney, your Honor.

7 JUDGE THOMPSON: Do you need to be admitted for
8 the purposes of this or have we already done that?

9 MR. MAGNESS: I believe we've taken care of
10 that. I've paid my fee and I believe we've already taken care
11 of that.

12 JUDGE THOMPSON: Thank you. I knew we had
13 already done one or two.

14 Sir?

15 MR. MORRIS: Your Honor, for the record,
16 Stephen F. Morris. I am also a Texas attorney, not a Missouri
17 attorney, but I've been admitted and have paid the required
18 fee to the Missouri Supreme Court.

19 JUDGE THOMPSON: Very well. Thank you,
20 Mr. Morris.

21 I think now, Mr. Johnson, we can go to you.

22 MR. JOHNSON: Thank you, your Honor. Mark
23 Johnson with the law firm of Sonnenschein, Nath and Rosenthal
24 appearing today on behalf of Navigator Telecommunications and
25 Charter Fiberlink. My address is 4520 Main Street, Suite

1 1100, Kansas City, Missouri 64113.

2 We have pending before the Commission motions
3 for admission pro hoc vici of Christopher W. Savage and K.C.
4 Halm, H-a-l-m, member -- both members of the District of
5 Columbia Bar. Mr. Savage is also a member of the California
6 Bar and Mr. Halm is a member of the bar of the state of
7 Maryland. They will be appearing today on behalf of Charter
8 Fiberlink. Their address is 1919 Pennsylvania Avenue,
9 Northwest, Washington, DC 20006.

10 JUDGE THOMPSON: Thank you. Mr. Savage, you
11 have paid the required fee to the Missouri Supreme Court

12 MR. SAVAGE: Yes, sir.

13 JUDGE THOMPSON: And you're not under any kind
14 of disciplinary sanction in any court that you are a member
15 of?

16 MR. SAVAGE: No, sir.

17 JUDGE THOMPSON: Very well. We'll admit you
18 pro hoc vici for the purposes of this proceeding.

19 Mr. Halm --

20 MR. HALM: Yes, sir.

21 JUDGE THOMPSON: -- you have paid the required
22 fees?

23 MR. HALM: I have, sir.

24 JUDGE THOMPSON: You're not under any kind of
25 discipline in any court in which you are admitted?

1 MR. HALM: No, sir.

2 JUDGE THOMPSON: Very well. We will admit you
3 pro hoc vici for the purposes of this proceeding.

4 MR. HALM: Thank you, sir.

5 JUDGE THOMPSON: Thank you.

6 Who's next? Surely there's more attorneys in
7 this room than the ones we've heard from.

8 MR. LEOPOLD: Your Honor, I'm Brett D. Leopold.
9 I'm entering my appearance for Sprint Communications Company,
10 LP. My address is 6450 Sprint Parkway, Overland Park, Kansas
11 66251.

12 JUDGE THOMPSON: Thank you very much,
13 Mr. Leopold.

14 Anyone else need to enter their appearance?

15 Very well. Let's turn to preliminary matters.

16 First of all, the lunch hour is going to be from 1:00 to 2:30
17 today. I have another appointment that I need to take care of
18 during that time. I don't intend to take a 90-minute lunch
19 every day during this week. In the event that you think that
20 that's too long, we can get a switch-hitting judge in here.
21 Let me know what you prefer. Anyone have a strong preference
22 either way?

23 MR. LANE: We really want you, Judge.

24 JUDGE THOMPSON: Very well. Then let's just
25 plan to do the lunch hour from 1:00 to 2:30. Okay?

1 Unless I hear objections, we're going to be
2 streaming the proceedings over the Internet, which means that
3 other people in the building and I guess around the world
4 would be able to tune in to what's going on here, so make sure
5 you talk into your microphone and have your best side
6 presented towards the camera.

7 We will, of course, stop the streaming when
8 we're talking about highly confidential matters. And I will
9 rely upon the attorneys to warn me when we need to go into
10 closed session. But at this point I just want to know if
11 there's anyone who has a general objection to streaming the
12 proceedings at all?

13 I hear none so I'll assume there are none.

14 With respect to the witness list and the time
15 schedules, I have what I believe are the latest versions that
16 were sent to me by e-mail so that, for example, I can see that
17 for today we only have four and a half hours actually
18 scheduled; is that correct?

19 MR. BUB: Your Honor --

20 JUDGE THOMPSON: Or was that hopeful?

21 MR. BUB: Probably hopeful. That time does not
22 include redirect examination by the attorneys nor does it
23 include any questions that you would like to ask from the
24 Bench or questions from the arbitration Staff. So this is
25 only the amount of time that we, as attorneys, estimated that

1 we would need for our direct examinations -- I'm sorry, our
2 cross-examination.

3 JUDGE THOMPSON: I appreciate that.

4 MR. ZARLING: Your Honor, it was anticipated I
5 think that we would start --

6 JUDGE THOMPSON: An hour late.

7 MR. ZARLING: -- we would start interconnection
8 today if we got that far.

9 JUDGE THOMPSON: Absolutely. We're going to do
10 everything we can up until five o'clock. You know, State
11 workers vanish into the midst at five o'clock and that's what
12 I plan to do today. If later in the week we seem to be behind
13 schedule, then of course, we will do some evening work as
14 necessary.

15 I can tell you we are going to finish this
16 hearing this week and I can tell you we're going to have a
17 final arbitration report on the date designated in the
18 procedural schedule. If I do my job right, all of you will
19 hate it.

20 MR. JOHNSON: Your Honor, I assume -- will we
21 be starting at 8:00 a.m. for the rest of the week?

22 JUDGE THOMPSON: Let's see how we do today.
23 The eight o'clock starting time is hard on the Commission
24 Staff, it's hard on the technical people who take care of the
25 streaming video and audio and keep my computer working and

1 help with the ELMO, it's hard on the court reporters. So we
2 may start later than that if it looks like we're moving along
3 at a good pace because we can always go later in the evening.
4 But we'll talk at the end of the day today as to when exactly
5 we'll start tomorrow. Okay?

6 With respect to the exhibits, first of all, all
7 of the pre-filed testimony is already present on the
8 Commission's EFIS system; is that correct? You've all filed
9 it into EFIS as well as providing me with hard copies and with
10 by word process word copies and I appreciate that.

11 Consequently, I see no need to provide the
12 reporter with a hard copy here. Okay? It's already on the
13 EFIS system and all we have to do is declare it to be part of
14 the record or not depending on what happens here. So I would
15 just propose that we not provide the reporter with a copy.

16 We can still designate the testimony with
17 exhibit numbers if you would like, although we can also just
18 refer to them by the name of the witness and whether or not
19 it's direct and rebuttal. So I don't know that we even need
20 numbers for them. Do we have any strong feelings? Yes, sir.

21 MR. MAGNESS: I strongly feel that's probably
22 the best way to go. I don't think we need to bother with
23 exhibit numbers or an additional copy. I just would note
24 though that for CLEC Coalition, this may be true of other
25 parties, we have some witnesses who filed on particular topics

1 by subject area. So when the lawyers refer to, for example,
2 Mr. Falvey's testimony, we just need to be sure we're looking
3 at the testimony on the proper topic for the questioning.

4 JUDGE THOMPSON: Thank you for pointing that
5 out. And I had noticed we had multiple pieces of testimony
6 from some of the witnesses. And, in fact, I propose to go
7 quickly through this list to make sure that I have everything
8 that has been filed.

9 If anyone has exhibits, by the way, that
10 they're going to introduce in the hearing, we'll do that in
11 the normal way and you will need a copy of that for the
12 reporter and you will need a copy of that for me and you'll
13 also need a copy of that for all the other counsel. Okay?

14 So if you're going to send somebody up with a
15 spreadsheet sheet or something that's not already in the EFIS
16 system as a scheduled attached to somebody's testimony, right,
17 you'll need to provide those additional copies, we'll put them
18 down on the standard old-fashioned sheet with numbers. And
19 I'm going to be starting with 201. I decided to start there
20 just in case we did assign numbers to the pre-filed testimony.
21 Okay?

22 Now, with respect to the testimony, for SBC I
23 have direct and rebuttal from Atwal, Chapman, Christensen,
24 which is HC, Constable, Douglas, Dysart, Hamiter, Hatch,
25 McPhee, Pool, Quate, Read. And I have only rebuttal from

1 Schilling; is that correct?

2 MR. LANE: Yes, your Honor.

3 JUDGE THOMPSON: Very well.

4 I have rebuttal and direct from Silver and
5 Smith and Weydeck, which is HC by the way. And I have only
6 direct from Yoest; is that correct?

7 MR. LANE: That's correct, your Honor.

8 JUDGE THOMPSON: Very well.

9 For AT&T I have direct and rebuttal from Guepe,
10 Henson, Rhinehart and Schell; is that correct?

11 MR. ZARLING: That's correct, your Honor. And
12 it's Mr. Guepe.

13 JUDGE THOMPSON: Guepe. I apologize. I'm
14 certainly bound to be mispronouncing things as we go along.
15 Just correct me. I do learn. It's slow.

16 For charter Fiberlink I have direct and
17 rebuttal from Barber and Cornelius.

18 MR. MAGNESS: Yes, sir.

19 JUDGE THOMPSON: From Sprint, I have direct and
20 rebuttal from Burt, Fox, Gates, Knox, Maples, Shipman, Sywenki
21 and that's it.

22 MR. LEOPOLD: Sywenki, that's correct.

23 JUDGE THOMPSON: Sywenki, thank you.

24 For MCI I have direct and rebuttal from
25 Collins, I have only direct from Hurter, I have direct and

1 rebuttal from Lichtenberg, Price and Ricca and only direct
2 from Tenerelli; is that correct?

3 MR. MORRIS: That's correct, your Honor. And
4 part of Price's direct is HC.

5 JUDGE THOMPSON: And part of Price is HC.
6 Thank you very much. I will so designate it.

7 From Xspedius I have direct and rebuttal from
8 Mr. Falvey.

9 MR. MAGNESS: That's correct, your Honor.
10 Mr. Falvey testified for Xspedius on general terms and
11 conditions and interconnection issues.

12 JUDGE THOMPSON: Very well.

13 For the CLEC coalition I have direct and
14 rebuttal on collocation issues from Cadieux, on GTC issues
15 from Cadieux, on UNE issues from Cadieux, on inter-carrier
16 compensation from Falvey, on general terms and conditions from
17 Falvey. I have direct and rebuttal from Mulvaney-Henry, I
18 have direct and rebuttal from Ivanuska on general terms and
19 conditions and also on UNEs. From Mr. Kohly, direct and
20 rebuttal, from Krabill, direct and rebuttal, two sets,
21 coalition -- collocation, excuse me, and inter-carrier
22 compensation. From Land, direct and rebuttal and from Sauder
23 only rebuttal; is that correct?

24 MR. MAGNESS: What you've listed is correct,
25 your Honor. In addition, there was Direct Testimony of Mary

1 Jo Wallace.

2 JUDGE THOMPSON: I have Wallace direct and
3 rebuttal; is that correct?

4 MR. MAGNESS: That's complete, yes, sir.

5 JUDGE THOMPSON: Thank you.

6 From Navigator I have direct and rebuttal from
7 Cadieux.

8 MR. JOHNSON: That's correct.

9 JUDGE THOMPSON: Very well.

10 From the pager company I have direct from
11 Schmick.

12 MR. JOHNSON: Your Honor --

13 JUDGE THOMPSON: I think we're not going to be
14 doing pagers; is that right?

15 MR. JOHNSON: That's correct..

16 JUDGE THOMPSON: So are we going to not want to
17 admit that?

18 MR. JOHNSON: I don't see any reason to burden
19 the record with it.

20 JUDGE THOMPSON: Very good.

21 And finally, from WilTel I have rebuttal only
22 from Porter and Schwebke; is that correct? And WilTel has no
23 attorney here today as far as I know. Well, I guess whoever
24 it is will show up when they want to play.

25 Mr. Bub, you had filed a couple of motions to

1 dismiss removing some of the respondents; isn't that correct?

2 MR. BUB: Yes, your Honor.

3 JUDGE THOMPSON: Are you able to give me a
4 quick rundown on who you've dismissed?

5 MR. BUB: No. I think it would probably be
6 better if -- I can give you a written list of the active
7 parties. We've dismissed the pager company and Metro
8 Teleconnect as well.

9 JUDGE THOMPSON: Well, I can just go ahead and
10 look at your motions too.

11 MR. BUB: I don't have a copy in front of me.
12 I don't want to leave some out.

13 JUDGE THOMPSON: Very well. I was hoping you
14 just happened to have a list right there.

15 Okay. And I assume we're not going to be doing
16 opening statements, is that correct, or are we?

17 MR. MAGNESS: We're not.

18 JUDGE THOMPSON: It's your hearing. You tell
19 me what you want to do.

20 MR. BUB: We hadn't planned on it, your Honor.

21 JUDGE THOMPSON: Very good. I think we all
22 know what the issues are and we all know what the evidence is
23 going to show, which is for each of you that you win so we
24 don't need to do that.

25 In that case, I suggest we proceed immediately

1 then to cross-examination. And who's going to go first, SBC
2 or the CLECs?

3 MR. LANE: I think we're following the witness
4 list, your Honor, that we submitted and on almost all the
5 issues, if not all of them, SBC witnesses would go first.

6 JUDGE THOMPSON: Okay. So the CLECs then would
7 have the first shot at them. And the CLECs anticipate two
8 hours, is that correct, excluding redirect and questions from
9 the Bench? Okay. Let me ask you this. CLECs, how do you
10 propose to divide up your two hours? Are you going to keep
11 track of that?

12 MR. MAGNESS: Bill Magness for CLEC Coalition.
13 We discussed it on the call we had Friday, and I think each
14 counsel committed to certain time limits for themselves. That
15 made up the block of time. So we can self-enforce that unless
16 anyone --

17 JUDGE THOMPSON: Very good. I've got a
18 stopwatch here and I'm going to do my best to operate it. I
19 don't know. It might be technically challenging for me. But
20 I would suggest that you ask your best questions first, don't
21 save them for last. Okay?

22 Very well. So we need -- let's see.
23 Christiansen is excused, Hatch is excused, McPhee is moved to
24 a later time; is that correct?

25 MR. BUB: Yes, your Honor.

1 JUDGE THOMPSON: So we really just have Quate
2 and Silver; is that right?

3 MR. LANE: That's correct, your Honor.

4 JUDGE THOMPSON: Okay. Why don't we have Quate
5 stand up. Now, we're going to do this as a panel or witness
6 by witness?

7 MR. LANE: Witness by witness.

8 JUDGE THOMPSON: Witness by witness. Very
9 well. Ms. Quate, please come up to the witness stand. Great.
10 We can do that the traditional way.

11 MR. MAGNESS: Your Honor, just one process
12 issue maybe to save a bit of time. I wonder if we might have
13 a swearing in now to save us a few minutes. I think we
14 discussed that on the prehearing call.

15 JUDGE THOMPSON: That's certainly okay with me.
16 Let me get my camera.

17 All right. Everyone here who's a witness,
18 stand up. We're going to have to have a role call so the
19 record shows that you're here and that you've been sworn.
20 Okay? We have Ms. Quate standing in the witness box. We know
21 who she is. Let's go from you and across and then back, sir.

22 MR. SILVER: Michael silver on behalf of SBC.

23 JUDGE THOMPSON: Very well.

24 MS. SHIPMAN: Linda Shipman on behalf of
25 Sprint.

1 JUDGE THOMPSON: Very well. White-haired
2 gentleman.

3 MR. GUEPE: Richard Guepe on behalf of AT&T.

4 MR. SCHELL: John Schell, AT&T.

5 MR. SYWENKI: Pete Sywenki on behalf of Sprint.

6 MR. BURT: James Burt, Sprint.

7 MR. CADIEUX: Ed Cadieux, NuVox.

8 MR. FALVEY: James Falvey on behalf of Xspedius
9 Communications and CLEC Coalition.

10 JUDGE THOMPSON: You'll have to yell.

11 MR. LAND: Charles Land for the CLEC Coalition.

12 JUDGE THOMPSON: Thank you, sir.

13 MS. CHAPMAN: Carol Chapman, SBC.

14 MR. SMITH: Roman Smith, SBC.

15 MR. MCPHEE: Scott McPhee, SBC.

16 MR. CONSTABLE: John Constable, SBC.

17 MR. HAMITER: James Hamiter, SBC.

18 MR. HATCH: Richard Hatch, SBC.

19 MR. POOL: Wesley Pool, SBC.

20 JUDGE THOMPSON: Very well. Have we gotten
21 everybody?

22 (Witnesses sworn.)

23 JUDGE THOMPSON: Very well. Let the record
24 show that the enumerated witnesses have all been sworn.

25 MR. LANE: Your Honor, we had talked during the

1 prehearing conference about jointly submitting or submitting
2 all of the testimony and having it accepted up front without
3 the necessity of going through the usual ritual. Is that
4 still your intent to do that?

5 JUDGE THOMPSON: That is my intent and thank
6 you for reminding me.

7 We've already gone over all the pieces of
8 prefiled testimony that I have. Are there any objections?

9 MR. ZARLING: Your Honor, no objection, but I
10 know the case of AT&T we're just discovering some errata. The
11 pace of this case has been very quick. None of it I think is
12 really substantive or would be objectionable, but we haven't
13 been able to submit an errata sheet as of yet.

14 JUDGE THOMPSON: Well, my preference would be
15 that as you discover mistakes, that you provide corrections by
16 e-mail to me and everybody else and file a copy into the EFIS
17 system. But I don't know if that's acceptable to everyone.
18 Mr. Lane?

19 MR. LANE: Your Honor, may I suggest this?
20 That if there are relatively few that need to be covered, that
21 when the witness takes the stand, the company sponsoring that
22 witness's testimony could ask the witness to explain any
23 changes that they have to their pre-filed testimony.

24 JUDGE THOMPSON: That's acceptable.

25 MR. MAGNESS: Bill Magness for CLEC Coalition.

1 One other process note related to Mr. Lane's point. There are
2 we know at least a couple of issues that have settled since
3 filing of rebuttal and we thought we'd have the witness
4 explain those as well and let you know what issues are off the
5 table and what testimony then doesn't need to be paid
6 attention to.

7 JUDGE THOMPSON: You could do that or you could
8 just give it to me in writing so that we don't necessarily
9 waste the witness time with that.

10 MR. MAGNESS: That's fine.

11 JUDGE THOMPSON: Okay. Very well. Hearing no
12 objections, then all of the enumerated pieces of pre-filed
13 testimony, direct and rebuttal, except for that filed by
14 Witness Schmick on behalf of the pager company is hereby
15 received and made a part of the record of this proceeding.

16 (Exhibits received.)

17 JUDGE THOMPSON: Well, whoever would like to
18 ask questions of Ms. Quate, come forward.

19 SUZETTE QUATE testified as follows:

20 DIRECT EXAMINATION BY MR. LANE:

21 Q. Preliminary. Ms. Quate, do you have any
22 changes to your pre-filed testimony?

23 A. Yes. A couple. On the table of contents,
24 No. 13, that is -- should be MCI GTNC 9 only.

25 On page 4 under A, that also includes MCI 1.

1 Q. That would be on line --

2 A. It would be --

3 Q. -- 19?

4 A. -- 19, yes. I'm sorry. And that's it.

5 Q. Any changes in your Rebuttal Testimony?

6 A. No.

7 MR. LANE: Thank you.

8 JUDGE THOMPSON: Thank you, Mr. Lane.

9 CLECs, questions for Ms. Quate?

10 MR. ZARLING: No questions, your Honor.

11 JUDGE THOMPSON: Let's just go through the

12 list. That might be the best way to do it.

13 AT&T, questions for Ms. Quate?

14 MR. ZARLING: No questions, your Honor.

15 JUDGE THOMPSON: Very well.

16 MCI, questions for Ms. Quate?

17 MR. MORRIS: No questions, your Honor.

18 JUDGE THOMPSON: CLEC Coalition?

19 MR. MAGNESS: No questions, your Honor.

20 JUDGE THOMPSON: Charter Fiberlink?

21 MR. SAVAGE: I have just a few, your Honor.

22 JUDGE THOMPSON: Please step forward to the

23 podium and fire away.

24 MR. SAVAGE: If I could yield my time first to

25 Mr. Johnson for Navigator.

1 JUDGE THOMPSON: Absolutely.

2 How long do you expect to be?

3 MR. JOHNSON: 15, 20 minutes.

4 JUDGE THOMPSON: Okay.

5 CROSS-EXAMINATION BY MR. JOHNSON:

6 Q. Ms. Quate, I'm appearing today on behalf of
7 Navigator Telecommunications, so I'll ask you some questions
8 about your testimony related to Navigator.

9 First, with respect to insurance rated
10 issues --

11 MR. JOHNSON: And, your Honor, this is issue
12 No. 3 in the GTNC's -- on the Navigator/SBC DPL.

13 JUDGE THOMPSON: Yes, sir.

14 BY MR. JOHNSON:

15 Q. Ms. Quate, does SBC buy Workers' Compensation
16 insurance for Navigator's employees?

17 A. No.

18 Q. Do you know how many employees Navigator has in
19 Missouri?

20 A. No.

21 JUDGE THOMPSON: Is your microphone on?

22 THE WITNESS: Yes. Sorry. I'll speak up.

23 BY MR. JOHNSON:

24 Q. Would you agree with me that Workers'
25 Compensation insurance is intended to provide benefits for

1 employees of a company when those employees are injured?

2 A. For -- yes.

3 Q. Would you agree with me that SBC buys Workers'
4 Compensation insurance for its own employees?

5 A. Yes.

6 Q. And it does not buy Workers' Compensation
7 insurance for the employees of other companies?

8 A. No.

9 Q. Do you know whether SBC employees would be
10 protected by the Workers' Compensation insurance that
11 Navigator buys for its employees?

12 A. No, I do not.

13 Q. Do you know whether Navigator's Workers'
14 Compensation insurance would protect SBC from being sued by
15 Navigator employees who are injured as a result of SBC
16 actions?

17 A. I'm sorry. Could I get you to repeat that?

18 Q. Be happy to. Do you know whether Navigator's
19 Workers' Compensation insurance would protect SBC from being
20 sued by Navigator employees for injuries which they suffer as
21 a result of SBC actions?

22 A. I'm not familiar with Navigator's insurance.

23 Q. We're talking about Workers' Compensation
24 insurance.

25 A. Okay.

1 Q. So you don't know?

2 A. No.

3 Q. All right. Is it correct that as far as you
4 know, Navigator's Workers' Compensation insurance would afford
5 no protection to SBC?

6 A. I would -- don't know that, but I would suspect
7 that that's correct.

8 Q. All right. Now, in your testimony, you also
9 provide information concerning SBC's position on Navigator's
10 purchase of commercial general liability insurance, do you
11 not?

12 A. I'm sorry. Would you repeat that?

13 Q. I'd be happy to. In your testimony you also
14 provide information concerning SBC's position on Navigator's
15 purchase of commercial general liability insurance?

16 A. Yes.

17 Q. Would you agree with me that the disagreement
18 concerning -- between the proposals of Navigator and SBC have
19 to do with the amounts of commercial liability insurance that
20 Navigator would purchase?

21 A. I believe that's correct. There were a lot of
22 different issues and everything, but I believe that is
23 correct, yes.

24 Q. And just to make sure we're clear on the
25 record, you're not saying that Navigator's position is that it

1 should not have to buy any commercial general liability
2 insurance?

3 A. I don't believe I made that statement, no.

4 Q. Okay. For how long has Navigator been doing
5 business with SBC in Missouri?

6 A. I do not know.

7 Q. To your knowledge, has SBC made any claims
8 against Navigator as a result of Navigator's actions in
9 Missouri?

10 A. No. To my knowledge, I do not know of any.

11 Q. Do you know of any damage that SBC's network
12 has suffered in Missouri as a result of Navigator's actions?

13 A. No.

14 Q. Would you agree with me that the amounts of
15 insurance coverage which SBC proposes that Navigator purchase
16 are higher than the amounts of coverage now provided for in
17 the Navigator/SBC interconnection agreement?

18 A. I did not check that.

19 Q. So you don't know?

20 A. I didn't look at the old agreement. I do
21 know -- or what I believe is that the insurance limits that
22 we've set are reasonable in -- when compared to the risk that
23 SBC is at.

24 Q. Thank you for providing your -- telling us your
25 testimony again.

1 A. You're welcome.

2 Q. But I'm asking whether you know if the limits
3 of insurance which you, on behalf of SBC, recommend that
4 Navigator purchase are higher than the limits provided for in
5 the existing interconnection agreement?

6 A. And I -- I believe I said no.

7 Q. You don't know?

8 A. I don't know.

9 Q. Okay. Do you know whether Navigator collocates
10 in any SBC central offices --

11 A. No, I do not.

12 Q. -- in Missouri?

13 A. Our insurance provides though that if they're
14 not a collocator, they would not -- they'd buy the insurance
15 that they're -- that they need. If they're not collocated,
16 they would not have to provide insurance for the collocation
17 portion of it.

18 Q. Do you know whether that appears in the
19 language that SBC has proposed?

20 A. I believe it does.

21 Q. All right. Let me refer you to your Rebuttal
22 Testimony, page 44, lines 12 and 13. Would you agree with me
23 you say, It is not commercially reasonable to enter into an
24 interconnection agreement without any insurance provisions?
25 Do you see that?

1 A. Yes, I do.

2 Q. I just want to make sure that you agree with me
3 that Navigator is not making that proposal. They are not
4 proposing that its interconnection agreement with SBC not
5 provide for insurance?

6 A. I -- no, I did not make that assertion. I just
7 believe that our insurance limits are appropriate, again, for
8 the risk that we -- that SBC is exposed to.

9 Q. Would you agree with me that at least some of
10 the risk that SBC is exposed to in Missouri and in its
11 relations with CLECs would be a result of CLEC collocation in
12 SBC central offices?

13 A. Would I agree that some of the risk --

14 Q. Yes.

15 A. -- is that?

16 Some of the risk would be.

17 Q. Okay. And then to the extent you have a CLEC
18 that is not collocated, then that risk -- SBC would not
19 experience that risk?

20 A. That would be correct. And our insurance
21 provisions provide for that.

22 Q. In calculating your risk, the risk that SBC
23 believes it is exposed to in Missouri, did you take into
24 account the amount of annual premiums that Navigator would
25 have to pay to purchase that insurance?

1 A. No. I can't say we did. I think what we took
2 into consideration was the expense of replacing the network,
3 say -- say, for example, a tandem switch or something along
4 those lines depending on if they're collocating and so forth.
5 For example, our -- our insurance provisions for a resell CLEC
6 are not as -- are not as high as it would be for somebody
7 collocating.

8 So we have taken in consideration what would be
9 needed based on the risk. I did not -- I mean, I do not know
10 where anybody -- the company actually looked at what the
11 insurance premium would be.

12 Q. So I just want to make sure your testimony is
13 clear that SBC, in its proposal, draws a distinction between
14 resale and UNE-based CLECs?

15 A. It draws a distinction between -- yes.

16 Q. Where does that appear?

17 A. Section 2.3.1 refers to CLECs that are
18 reselling SBC's resale services.

19 Q. Wouldn't you agree with me that that relates to
20 Workers' Compensation insurance and not commercial general
21 liability insurance?

22 A. It refers to, A, commercial general liability
23 insurance and, B, the personal lim-- personal injury and
24 advertising insurance.

25 Q. Are you referring to the DPL?

1 A. Yes. I'm looking at DPL issue No. 3 for
2 Navigator. I'm looking at Section 2.3.1.

3 Q. Right. Which relates to Workers' Compensation
4 insurance. Correct?

5 A. The DPL I'm looking at says, For CLECs -- 2.3.1
6 says, For CLECs that are reselling SBC Missouri resale
7 services. So that says one -- that says the insurance
8 provisions for SBC's proposal for resale.

9 2.3.2, on the other hand, sets out insurance
10 requirements for unbundled network elements and for
11 interconnection.

12 MR. JOHNSON: Your Honor, may I approach?

13 JUDGE THOMPSON: You may.

14 MR. JOHNSON: I think she may have the wrong
15 DPL.

16 THE WITNESS: It's dated 5 and 20.

17 BY MR. JOHNSON:

18 Q. Right. This is the Navigator DPL.

19 A. Navigator.

20 Q. Dated 5/20.

21 A. Yeah. This is the same DPL. Look right here.
22 For CLECs.

23 Q. That's the CLEC -- that's Navigator's proposed
24 language.

25 A. Okay. I'm sorry.

1 JUDGE THOMPSON: Believe me, we're all having
2 problems.

3 BY MR. JOHNSON:

4 Q. You would agree with me that Navigator is
5 making the proposal you just talked about; is that right?

6 A. That is Navigator's proposal.

7 Q. So you would agree with me then that SBC makes
8 no distinction between resale and UNE-based CLECs; is that
9 correct?

10 A. According to this DPL, that is correct.

11 Q. Okay. Let me ask you a few questions about
12 issue No. 4. This relates to the deposit requirement. First,
13 let me ask you a definitional question. I believe SBC
14 proposes that the word "deposit" be eliminated and the term
15 "assurance of payment" be substituted; is that correct?

16 A. I know that they did change the term.

17 Q. Okay. Well, in your mind, are we talking about
18 the same thing?

19 A. They're the same, yes.

20 Q. Okay. Just wanted to make sure about that.

21 And is it correct that Navigator's proposal is
22 that the deposit be the equivalent of one month's anticipated
23 charges; SBC's proposal, on the other hand, is that it be
24 three months of anticipated charges?

25 A. That would be correct.

1 Q. Another distinction between the two proposals
2 is that if SBC believed that Navigator should make a deposit,
3 then it would have 10 business days to provide the deposit;
4 Navigator's proposal, on the other hand, is that it would have
5 20 business days to make the deposit?

6 A. I believe that's correct. I know our language
7 says 10 days.

8 Q. Right. But, otherwise, the proposals are
9 identical as far as you know?

10 A. As far -- I mean, I'd have to look. Can you
11 tell me what issue that is?

12 Q. It's issue No. 4.

13 A. It appears that that is correct.

14 Q. Thank you.

15 Ms. Quate, to your knowledge, has Navigator
16 presented a credit risk to SBC in Missouri?

17 A. No. Not to my knowledge they have not. And
18 our language provides that if a CLEC has established 12 months
19 credit, that they do not have a declining credit worthiness,
20 that their credit worthiness is maintained or there is not an
21 admission that they can't pay their debts, that they would not
22 be required to make a deposit.

23 Q. Let me ask you a couple of questions about
24 that. When you say that Navigator has had a 12-month record
25 of good payment, what you mean though, isn't it, that SBC has

1 not sent Navigator a collection letter within the past
2 12 months?

3 A. What I mean is if they've paid their bills or
4 disputed their bill by the bill due date.

5 Q. Do you know whether Navigator is current on its
6 payments to SBC today?

7 A. No, I do not.

8 Q. Now, on page 48 of your Direct Testimony is it
9 correct that -- this is page -- pardon me, page 48, line 18.

10 A. I'm sorry?

11 Q. Page 48, line 18, your direct.

12 Is it correct there that you indicate that the
13 three-month deposit which SBC is proposing is appropriate
14 given the length of the disconnection process?

15 A. The -- the -- yes. That takes that in
16 consideration, the 30-day transition period should -- the
17 CLEC -- their end-users have to be migrated from one CLEC to
18 another.

19 Q. Would you agree with me that if Navigator fails
20 to make the deposit within the 10 business days that SBC
21 proposes, that SBC could then cut off service to Navigator?

22 A. What SBC would do would be to suspend new
23 orders or pending orders. They would not -- did you say cut
24 off services?

25 Q. Well, this is Section 3.9 as proposed by SBC.

1 A. May I ask what issue?

2 Q. This is issue 4. And this is on page 5 of the

3 DPL.

4 A. Okay.

5 Q. Are you with me? Okay.

6 A. And what section were we reading?

7 Q. 3.9.

8 A. Okay.

9 Q. Would you agree with me that Section 3.9 says

10 that if Navigator fails to make the deposit within the

11 10 days, then SBC Missouri shall have no obligation thereafter

12 to perform under this agreement until such time as the CLEC

13 has furnished SBC Missouri with assurance of payment

14 requested? Would have no further obligation to perform.

15 A. I agree that's what it says.

16 Q. Okay. It doesn't say it's not limited to

17 providing new lines, the language that SBC is proposing?

18 A. Not in this section, no.

19 Q. Okay.

20 A. We have another section that addresses that.

21 Q. Now, would you agree with me that the deposit

22 requirement would be triggered if Navigator's credit is

23 impaired? I believe that's indicated on page 49, line 15 of

24 your Direct Testimony.

25 A. Yes, I would.

1 Q. Okay. On what information would SBC conclude
2 that Navigator's credit has been impaired?

3 A. By down rating in Standard and Poor's or
4 Moody's.

5 Q. Is that the only information on which SBC would
6 rely?

7 A. It's the one we primarily rely on.

8 Q. What others do you rely on?

9 A. Well, I think what you're suggesting is
10 possibly a Wall Street Journal article or something of that
11 nature.

12 Q. Right. Would SBC --

13 A. I know --

14 Q. Sorry. Go ahead.

15 A. I can say that articles in the Wall Street
16 Journal, for example, of the MCI bankruptcy, you know, it
17 was -- it was in the paper before MCI -- you know, before the
18 Standard and Poor's or Moody's lowered their rates. So as a
19 result, we found that a lot of times that's very dependable.

20 Q. Whatever the source of that information would
21 be --

22 A. Not --

23 Q. -- in the newspaper article?

24 A. -- whatever. It's not going to be the National
25 Enquirer.

1 Q. But let me just make sure I understand. That
2 in saying that SBC will trigger the deposit requirement upon
3 an indication that Navigator's credit worthiness is impaired,
4 you would rely on indicia other than Navigator's credit
5 rating; is that correct?

6 A. We'd certainly take it into consideration. The
7 primary -- we would -- that would certainly make red flags,
8 but we would be watching then for Standard and Poor's and
9 Moody's.

10 Q. Would SBC declare the need for a deposit before
11 Navigator's credit rating is downgraded?

12 A. I think our language would allow us to do that,
13 although I do not -- it's not necessarily that we would, no.

14 Q. Okay. But the language would allow you to do
15 that?

16 A. I think that's right.

17 Q. All right. Now, in your rebuttal on pages 37
18 and 38 -- we talked about this a moment ago. You talk about
19 SBC's exposure for, what, up to 90 days if -- and that being
20 the rationale for proposing the three-month deposit; is that
21 correct?

22 A. Yes.

23 Q. Would you agree with me that there are sort of
24 four events that would trigger, under SBC's proposal, the need
25 for a deposit from Navigator?

1 A. Yes.

2 Q. Four types of events?

3 A. The four events?

4 Q. Right.

5 A. Which four are you speaking of, I guess?

6 Q. Well, the four examples that you use, they
7 appear on page 49 of your Direct Testimony. The first is the
8 paying party has not established satisfactory credit, the
9 second is an impairment of financial health or credit
10 worthiness of the paying party, the third is that the paying
11 party has failed to timely pay a bill rendered to it, and the
12 fifth [sic] is if the paying party has admitted that it's not
13 going to be able to pay its bills. Would you agree?

14 A. I do agree with that, yes.

15 JUDGE THOMPSON: You're at about 20 minutes and
16 30 seconds.

17 MR. JOHNSON: Okay. I'll move right along
18 then.

19 BY MR. JOHNSON:

20 Q. Would you agree with me that the 90-days
21 exposure would not be -- wouldn't exist for the triggering
22 events that you talk about other than if -- other than that
23 situation in which Navigator failed to pay a bill in a timely
24 fashion?

25 A. You're going to have to restate it. I was --

1 didn't follow your question.

2 Q. Okay. Would you agree with me that the three
3 months exposure that you say that the SBC would experience
4 would not appear, would not exist for three of those
5 triggering events; in other words, the events other than
6 Navigator failing to pay a bill in a timely fashion?

7 A. The three-month trigger -- the 90 days that
8 we're talking about takes into consideration from the bill --
9 bill date to the bill due date, then the notices and -- that
10 are sent, the first notice, second notice, trying to get
11 payment, and then should we not have payment -- receive
12 payment, then the 30-day transition period. So it -- the
13 30 -- the 90 days deposit language is taking -- is meant to
14 correspond to the non-payment of the bill.

15 Q. Okay. Thank you.

16 Now, issue 10, which relates to escrows for
17 disputed amounts, I believe -- you address this on page 46 of
18 your Direct Testimony.

19 A. Thank you.

20 Q. Sure. Do you have that there?

21 A. Yes, sir.

22 Q. Okay. Would you agree with me that the
23 termination of service -- the termination of service is not
24 appropriate if Navigator makes timely payment of non-disputed
25 charges?

1 A. Say that again.

2 Q. Would you agree with me that termination of
3 service by SBC is not appropriate if Navigator makes timely
4 payment of non-disputed charges?

5 A. SB-- well, SBC's position is they should make
6 payment of both non-disputed and disputed. The disputed into
7 an escrow account.

8 Q. I'll get to that in a second.

9 As I understand the proposal for Section
10 14.2.4, that's on page 16 of the DPL, SBC would not consider
11 unpaid charges to be disputed unless that amount has been paid
12 into escrow; is that correct?

13 A. SBC does not want to begin investigating
14 disputes prior to it being in the -- the amount being placed
15 into escrow simply because of the time and expense to
16 investigate the disputes.

17 Q. Let's get back to my question.

18 A. I'm sorry. I thought I answered it.

19 Q. Well, you just told me why. I just want to
20 know yes or no.

21 A. Oh, okay.

22 Q. SBC would not consider unpaid amounts to be
23 disputed unless that amount had been paid into escrow.
24 Correct?

25 A. Yes.

1 Q. So without an escrow, SBC would consider unpaid
2 amounts to be undisputed. Correct?

3 A. Well, I think we're here to determine whether
4 an escrow account is appropriate. So that will be determined
5 by the outcome of the -- as to whether or not it's disputed.

6 Q. Let me get back to my question.

7 A. Okay.

8 Q. So SBC would not consider amounts which have
9 not been paid into escrow to be undisputed?

10 I'll ask it another way. Anything that hasn't
11 been paid into escrow would be considered undisputed. Right?

12 A. It may be disputed. Obviously we should have
13 received a notice of dispute. It would be disputed. However,
14 we will not begin investigation -- our policy is we won't
15 begin the investigation until an escrow payment has been made.

16 Q. To the extent any amount that has not -- that a
17 CLEC may dispute but which is not paid into escrow, SBC would
18 consider that undisputed and would initiate disconnection of
19 service for failure to pay. Correct?

20 A. No. I don't believe that's correct.

21 Q. Okay. Does Navigator provide any service to
22 SBC?

23 A. Not that I'm aware of, no.

24 Q. So is it fair to say that this escrow provision
25 really is a one-way street, that only Navigator would have to

1 pay amounts into escrow, that SBC never would?

2 A. Well, Navigator is buying the services for --
3 from SBC so, yes, it would only be appropriate since Navigator
4 is buying services on credit from SBC that they would be the
5 ones that would be paying into escrow.

6 Q. Okay. Do you know whether Navigator has ever
7 raised any frivolous billing disputes with SBC in Missouri?

8 A. No.

9 Q. Have you ever heard anybody within SBC say that
10 Navigator has filed frivolous billing disputes --

11 A. No, I have not.

12 Q. -- in Missouri?

13 Now, is it correct that under certain
14 circumstances, SBC would not require an escrow?

15 A. That is correct.

16 Q. Okay. One example would be if SBC determined
17 that it made a material billing error?

18 A. That would be correct. That would be one of
19 the instances.

20 Q. Understood. In your testimony, do you define
21 what you mean by material? Would it be a certain dollar
22 amount or a certain percentage of number of claims filed,
23 disputes made?

24 A. It would be -- no, it's neither of those. It
25 would be whatever it is. For example, it could be -- it could

1 be, say, a computer glitch that kept billing something wrong
2 and maybe we had to go back and try to find in the system to
3 get it corrected. So a material billing error could possibly
4 go on for two or three months during this process. Certainly
5 we would not expect the CLEC to -- to pay the escrow in those
6 situations.

7 Q. Do you know whether SBC has found a material
8 billing error that it made in 2005?

9 A. No. Not during 2005, no.

10 Q. Okay. Do you know how many billing disputes
11 Navigator has filed in Missouri in the last 12 months?

12 A. No, I do not.

13 Q. So you wouldn't know how many of those disputes
14 have been resolved within the last 12 months?

15 A. No, I do not.

16 Q. Now, issue 12, this concerns the accessible
17 letters. Do you agree with the statement, quote, It is not
18 SBC's intent to change the terms of the ICA via an accessible
19 letter, closed quotes?

20 A. Yes, I do.

21 Q. Are accessible letters negotiated between the
22 parties?

23 A. No, they are not.

24 Q. Does the CLEC -- or does any CLEC sign an
25 accessible letter?

1 A. No.

2 Q. Finally, Ms. Quate, on the issue of
3 retroactivity of contract amendments, this is issue 16 now,
4 would you agree with me that the language which SBC proposes
5 to add to Section 66.1 of the Navigator interconnection
6 agreement would prohibit refunds and true-ups as a result of
7 any amendment to the interconnection agreement?

8 A. Yes, I would.

9 Q. Would you agree with me that the parties should
10 implement interconnection agreement amendments as soon as they
11 can?

12 A. Yes, I would.

13 Q. Would you agree with me that there are
14 circumstances which would require SBC to file a tariff change
15 as a result of an amendment to the interconnection agreement?

16 A. It could.

17 Q. Okay. Would you agree with me that it's up to
18 SBC to file the revised tariff sheets, that Navigator can't
19 file those sheets on SBC's behalf?

20 A. Yes, I would agree with that.

21 Q. And until those tariff sheets are approved by
22 the Commission, then Navigator would be unable to take
23 advantage of the change in the amendment to the
24 interconnection agreement which required the change in the
25 tariff?

1 A. Well, the agreement overrides the tariff price.
2 So if it was negotiated as an amendment into the agreement,
3 that would be -- that would be the -- where the charge would
4 come, if that's what you're asking. That's the provisions
5 that the parties would be operating under.

6 Q. What if we are talking about something other
7 than price? What if we're talking about a term or a
8 condition --

9 A. Then again --

10 Q. -- an interval for provision of service, for
11 example?

12 A. Then again, the agreement supersedes the tariff
13 unless the agreement refers to the tariff and it's
14 incorporated into the agreement by reference.

15 Q. Okay. But let's say the change in the
16 interconnection agreement indicates -- says that there will be
17 a change in SBC's tariff relating to the provision of a
18 certain type of service. Okay?

19 A. Uh-huh.

20 Q. If that's the case, then Navigator would not be
21 able to take advantage of that change in the agreement until
22 SBC has filed and obtained approval of the tariff change?

23 A. In that scenario that would be true. But if
24 we're talking about an order or something that gave a date for
25 the effective date, then that effective date would apply.

1 MR. JOHNSON: That's all I have. Thank you,
2 Ms. Quate.

3 Thank you, your Honor.

4 JUDGE THOMPSON: Thank you. 32 minutes and 45
5 seconds.

6 MR. JOHNSON: Does that count against me in my
7 subsequent cross for other witnesses?

8 JUDGE THOMPSON: Well, you know, we're going to
9 get done with this thing this week. I'm not keeping time just
10 because I'm insane.

11 Let's start with Charter Fiberlink, Mr. Savage.
12 Mr. Savage, can you tell me how long you expect to be?

13 MR. SAVAGE: Well, I can tell you that my
14 associate last week reserved an hour for me with Ms. Quate. I
15 would be surprised if I took that long, but I'll appreciate
16 the results when I get done.

17 JUDGE THOMPSON: Very good. You're on the
18 clock.

19 CROSS-EXAMINATION BY MR. SAVAGE:

20 Q. My name is Chris Savage. I represent Charter
21 Fiberlink.

22 A. Good morning.

23 Q. Listening to the last cross-examination, I have
24 a question. How many different CLEC proposals did you have to
25 look at in putting your testimony together?

1 A. A lot.

2 Q. Would a lot be a dozen, two dozen?

3 A. The parties to this proceeding.

4 Q. Each one had a slightly different one?

5 A. Sometimes, yeah. There were different -- for
6 deposits, for example, that each of them had a different take.
7 And whether they were the same or not, you still reviewed
8 them.

9 Q. So, for example, on the deposits Navigator said
10 one month, you said three months. Do you know what Charter
11 said about the amount of a deposit, how much that would be?

12 A. I think it was two months.

13 Q. Does that sound reasonable, between one and
14 three? Can we settle on two?

15 A. I think three sounds reasonable.

16 Q. There you go.

17 More serious question. In the course of
18 preparing your testimony here, is it fair to say that you did
19 not review the individual operations of each of these CLECs
20 and the individual -- you know, whether it's credit history or
21 services they buy from SBC or what have you, is that correct
22 you didn't do that?

23 A. That is correct.

24 Q. So is it fair to say you, sitting here today,
25 don't really have much of an idea of what Charter Fiberlink

1 does or how it does it or what it buys from SBC; is that fair?

2 A. I've read their testimony and what they say
3 they provide and do.

4 Q. But you haven't investigated that?

5 A. No, I have not investigated it.

6 Q. So to the extent that a particular CLEC
7 operates in a different way than the other CLECs that are
8 involved in this case and has different needs or different
9 business concerns, that really didn't play into your testimony
10 in any way; is that right?

11 A. Actually, I did give some consideration to that
12 once I read their testimony. And I know that they -- and I
13 know they're an interconnection, they're not using UNEs or
14 resale. And they said frequently in their testimony that
15 because of that, that the deposit escrow provisions and so
16 forth should not apply to them in the same way that it would
17 one of those CLECs that do resell or buy -- purchase UNEs from
18 SBC.

19 So my concern was if that's true, then do they
20 have UNEs and resale provision in their agreement. And I
21 checked with the negotiator and she said, yes, they're going
22 to have a full complete contract, it's going to have UNEs,
23 it's going to have resale.

24 So with that -- with that knowledge, I was
25 aware that -- and Charter even made the argument, yes, it is

1 reasonable if you've got a resale CLEC or a UNE CLEC use the
2 provisions then, yeah, maybe they do need deposit escrow, they
3 need that stuff.

4 So I also, as an ILEC, understand that SBC has
5 an obligation to allow them to MFN in. And because of that,
6 then these provisions are still important. If, in fact,
7 Charter does -- if it is all bill and keep -- and all the
8 provisions concerned me, but if it is bill and keep and they
9 don't -- we don't swap -- there's not an invoice, then
10 obviously our language doesn't hurt Charter simply because it
11 doesn't require a deposit if there's 12 months good payment
12 history and all the things that Charter says won't apply to
13 them anyway. So I didn't see how the language could hurt
14 Charter.

15 But with my MFN concerns -- let me just finish.
16 with my MFN concerns, then I felt like that we do need that
17 language in the agreement.

18 Q. These provisions don't hurt Charter as long as
19 the bills you send us are accurate. I mean --

20 A. Well --

21 Q. -- you can certainly send us a bill for UNE
22 related stuff even though we don't have any UNEs; isn't that
23 right?

24 A. And that's when you would dispute the bill and
25 certainly you would dispute that bill.

1 Q. We would.

2 A. Right. And if you did dispute that bill, then
3 you would not be required to -- you know, the escrow divisions
4 would be -- would be -- come into play and so forth.

5 Q. Wouldn't you agree that if we don't buy any
6 UNEs and you send us a bill that's related to a UNE-related
7 charge, you would agree that would be a material billing error
8 on your part?

9 A. Yeah. I would say that's definitely incorrect.
10 And our language provides that, you know, if -- in the escrow
11 division it's there's an error and you contact us, that you
12 wouldn't have to escrow in that situation. So our language is
13 written, in my opinion of course, that -- so that it will work
14 with the CLEC under the situation.

15 Q. Yeah, I accept that that's your opinion.

16 Let me ask you a different question. Could you
17 take a look at issue No. 41 in our DPL?

18 A. Sure.

19 Q. It's something I've been curious about. Do you
20 know how many customers, while you're looking for that -- how
21 many customers approximately Charter has in the St. Louis area
22 where it operates?

23 A. No, sir, I don't.

24 Q. Would you accept, subject to check, it's on the
25 order of 40- or 50,000 residents or customers?

1 A. Okay.

2 Q. Would you agree with me that in the St. Louis
3 area, SBC is probably the main provider of residence telephone
4 exchange service to that class of customers?

5 A. I -- I don't know that for a fact either. I
6 haven't had a chance to research that, but I will agree
7 subject to check.

8 Q. Now, suppose Charter came up with some new
9 innovative pricing plan or some new innovative service plan
10 and wanted to tell the world on TV that our service is cheaper
11 than SBC's. Do you think we should have to ask you for
12 permission before we do that?

13 A. I don't -- yes. I do not believe that we ought
14 to put in -- that SBC should be obligated in a 251 agreement
15 something that is not -- is not a 251, 252 obligation.

16 Q. I understand that's what you said. But that
17 wasn't my question. My question was, do you think we should
18 have to come to you and ask -- if we want to do an ad that
19 says SBC's service is, you know, \$15 but you can get it from
20 Charter for 9.95. We can't say that unless we ask your
21 permission. That's what you think is -- should be in this
22 agreement?

23 A. I don't know that -- I do not think it would be
24 appropriate to do -- for that, yes. And I do think -- if your
25 question is should you have to ask --

1 Q. That's the question.

2 A. Yeah, I'm sorry.

3 Q. Should we have to ask you --

4 A. I realize --

5 Q. -- because we want to take you on --

6 A. Yes.

7 Q. -- head to head on advertising?

8 A. Yes.

9 Q. Now, do you have the actual contract language

10 in front of you?

11 A. I have.

12 Q. I know you have the DPL, but do you have the

13 actual contract?

14 A. I have the DPL.

15 Q. Take a look at the DPL. What's shown in the

16 DPL is our proposal for 18.3, which is not withstanding the

17 contrary, we could do what I was talking about. We could just

18 go ahead and use your name if we wanted to say that we were

19 better. Do you know why in the context of the contract we

20 wrote that as a separate section?

21 A. No.

22 Q. Okay. Do you know what Section 18.2 of the

23 contract says?

24 A. No.

25 Q. Would you agree with me --

1 A. Not offhand.

2 Q. -- subject to check that 18.2 says that we
3 can't use -- either party can use the other's name or anything
4 in any context?

5 A. That doesn't sound unreasonable to me.

6 Q. Now, is it your testimony that a provision that
7 says we can't use each other's name is within the context of
8 251 and 252, but then a provision that says except in the case
9 of truthful comparative advertising is outside the context of
10 251, 252?

11 A. Now, what was the first part of that question?

12 Q. All right.

13 A. Neither one are 251, 252 obligations.

14 Q. So we could delete both of them then on the
15 strength of your logic that says if it really isn't about 251,
16 252, it shouldn't be in the contract at all?

17 A. I think 18.2 is agreed-to language.

18 Q. I'm simply testing the scope of your
19 understanding --

20 A. Okay.

21 Q. -- of this principle --

22 A. Okay.

23 Q. -- that it shouldn't apply.

24 And so what you're saying is it's okay in 18.2
25 but it's not okay in 18.3?

1 A. Well, the fact of the matter is SBC would not
2 want our name used in that way.

3 Q. I bet you wouldn't.

4 A. We don't intend to use Charter's that way.

5 Q. Today.

6 A. So -- so that is also, as stated in our
7 preliminary position, one of the -- our concerns.

8 Q. Okay. Let's move on to a different issue.
9 Issue No. 21 and 22 having to do with reference documents and
10 referenced instruments. Now, I heard you say in response to
11 some questions of Mr. Johnson in your view that if there's a
12 matter that's directly addressed by the interconnection
13 agreement, that the interconnection agreement language would
14 supersede any contrary tariff language?

15 A. Yes.

16 Q. Okay. So just -- I mean, to anticipate a
17 question that's included in Mr. Barber's testimony that I
18 expect to be asked about tomorrow, you know, if we were to
19 agree that we will, you know, use this or that kind of
20 trunking and that's just laid out in our interconnection
21 agreement and SBC were to file a tariff with the Commission
22 saying notwithstanding anything else, we're going to do it
23 some other way, SBC's position is that's simply ineffective.
24 That the interconnection language simply trumps a tariff that
25 isn't incorporated by reference?

1 A. Until that interconnection agreement is
2 amended, that would be correct.

3 Q. Okay. Now let's talk about things that aren't
4 tariffs. Let's talk about things that might be under your
5 control. Does SBC have a thing that it -- a CLEC manual, CLEC
6 handbook that lays out all the ways we're supposed to deal
7 with you?

8 A. The CLEC handbook on SBC's website.

9 Q. Right. You have such a document?

10 A. Yes.

11 Q. Okay. Now, do you think it's fair that SBC
12 should be able to change that at will and material increase --
13 materially increase Charter's obligations to you whether it's,
14 you know, making additional deposits or filing 50,000 copies
15 of something or using a particular computer system without
16 asking us?

17 A. Quite frequently changes in the CLEC handbook
18 are the result of collaboratives with the CLECs --

19 Q. Okay.

20 A. -- so --

21 Q. Sure.

22 A. -- I don't think that -- that you can say
23 categorically that we just change things in the CLEC handbook
24 that materially changes the agreement. In fact, we don't
25 intend to materially change the agreement through

1 modifications to the CLEC handbook.

2 Q. So if that's true, you wouldn't be harmed in
3 any way by language that makes clear that you are not allowed
4 to materially change CLEC obligations simply by changing the
5 CLEC handbook?

6 A. I believe my concern with Charter's language is
7 it was too broad and it said that -- I'm trying to recall
8 exactly.

9 Q. You didn't actually answer my question.

10 A. Okay.

11 Q. My question was, you would agree with me that
12 SBC would not be harmed by language that limits its ability --

13 A. Oh, I was getting to that.

14 Q. Why don't you get to that first and then you
15 can give the explanation. You would agree you wouldn't be
16 harmed by that?

17 A. I believe we could be harmed.

18 Q. How? How could you be harmed by a restriction
19 on your ability to materially change Charter's obligations
20 without our consent?

21 A. Reference documents include more than the CLEC
22 handbook.

23 Q. Wait, wait. I understand. But I was asking
24 about the --

25 MR. LANE: Your Honor, I'd ask that she be

1 given the opportunity to finish.

2 MR. SAVAGE: She's not answering my question.

3 JUDGE THOMPSON: Let's give the witness an
4 opportunity to respond. Okay? And then you can always ask --
5 re-ask your question if you haven't gotten what you want.

6 Please finish your question, ma'am -- or your
7 response.

8 THE WITNESS: Reference documents include more
9 the CLEC handbook. They include telecordia documents, various
10 documents that the parties use by reference. Those documents
11 SBC has no control over. And the language concerns me that
12 there could be changes in those documents that we would not be
13 able to update our network with -- according to the most
14 recent -- say, the OBF form or something, some of the things
15 that come out of that. Those scenarios that -- that we would
16 be limited, that -- that's part of the concern --

17 BY MR. SAVAGE:

18 Q. Okay.

19 A. -- so -- okay.

20 Q. Are you done now?

21 A. Yes.

22 Q. Okay. You mentioned telecordia and OBF. For
23 the moment, put those aside. I actually do want to ask you
24 about that. I'm now asking you only entirely about the CLEC
25 handbook which is under SBC's control. You understand where

1 I'm focusing on right now?

2 A. Uh-huh. Uh-huh.

3 Q. Is there any possible way -- given what you've
4 said, that SBC does not intend to materially change or
5 increase the CLEC's obligations by changes in the CLEC
6 handbook, is there any way that SBC could be harmed by
7 language that prevents you from doing that? Focusing right
8 now on the CLEC handbook.

9 A. I cannot think of any, but that's not what
10 their language says.

11 Q. Well, the thing you're concerned about that it
12 says beyond that is modifications to some telecordia documents
13 or OBF documents or other industry documents. Now, is it your
14 understanding that when the OBF gets together and says, We're
15 going to do some new format for a call detail record what have
16 you, does SBC immediately and without question simply
17 slavishly implement what the OBF says?

18 A. Not that I'm aware of, but I'm not -- I'm not
19 familiar with that. I'm not the witness for that.

20 Q. Okay. And with telecordia, if they still
21 exist, if they would come up with some new, you know, GR303
22 thing about who how the new world is going to look like this
23 and look like that, does SBC just because telecordia does
24 that, go spend millions of dollars to upgrade all its software
25 and all its switches?

1 A. Again, I'm not the witness for that.

2 Q. Let's assume for my next set of questions that
3 SBC, in fact, doesn't simply slavishly follow these industry
4 documents but instead makes its own business judgments as to
5 when and at what pace and where to modify its own systems in
6 its own business judgment to reflect them. Do you understand
7 what I'm asking you to assume?

8 A. Uh-huh.

9 Q. If that's true, then why, in your judgment,
10 should SBC be permitted to impose those costs on Charter
11 Fiberlink or other CLECs on SBC's schedule even if they
12 materially affect the other CLECs without consulting with the
13 other CLECs? Does that make sense?

14 A. I believe that SBC has to be able to run its
15 network. We have to be able to stay technically current to
16 keep, you know -- and we do not want stagnant technology. I
17 believe for the most part that SBC, if it's a forum of some
18 sort, we're involved in that. And so we have some input into
19 that. I believe that -- that we -- we need to be able to run
20 our network, and that this language would limit us -- our
21 ability to do that.

22 Q. Do you believe that Charter needs to be able to
23 run its network?

24 A. Certainly.

25 Q. Okay. And given that we're interconnected, do

1 you agree that we have to make sure that when we're running
2 our networks, that they talk to each other properly and are
3 generally in synchrony with each other?

4 A. I would believe Charter's probably involved in
5 the same forums and collaboratives that SBC is.

6 Q. Maybe we are, but that wasn't my question. My
7 question is, would you agree since we both have to maintain
8 our networks and bring them up to whatever speed, that we have
9 to keep them in synchrony with each other?

10 A. Yes. I agree with that.

11 Q. So you would agree that even if there's no
12 dispute that, you know, the wizards at Nortel or somewhere
13 have come up with some great new way to do things and we all
14 think it's great, that actually implementing that could affect
15 both SBC and Charter Fiberlink?

16 A. Yes, I agree.

17 Q. And, therefore, wouldn't you agree with me that
18 before SBC simply implements something that would have a
19 material effect on Charter's performance obligations, that the
20 parties should talk about it?

21 A. I think SBC generally -- I don't know what you
22 mean by "talk about it."

23 Q. Assume by "talk about it" what I mean is --

24 A. I think --

25 Q. -- should we have to agree on the schedule on

1 which these changes will be made if, on your hypothesis,
2 there's some new thing that we're all trying to do to keep our
3 networks current, shouldn't we both agree when that's going to
4 happen in our interconnection agreement?

5 A. No, I do not agree with that. I do believe
6 that SBC interconnects with many more CLECs than Charter. And
7 for us to get agreement from every CLEC on when we can
8 implement a change would be impractical at the best. I don't
9 believe -- I mean, personally I don't believe you could do it.
10 Then SBC should though make the parties aware of
11 implementation schedules and so forth so that they can be
12 prepared.

13 Q. Putting aside resellers, do you know how many
14 let's call them broadly facilities-based CLECs in Missouri SBC
15 actually exchanges traffic with?

16 A. No, sir, I do not.

17 Q. Do you think it's more than 20?

18 A. I do not know.

19 Q. Do you think it's more than 10?

20 A. Do not know.

21 Q. Do you think it's more than 5?

22 A. I do not know.

23 Q. Do you think that's too big a number to work
24 out the process of interconnecting and making sure when there
25 are these external technical things, actually agreeing when

1 that will be implemented as compared to simply you doing it on
2 your schedule? Do you think that's too many?

3 A. I don't know how many it is. I still believe
4 that -- as I said earlier, that SBC should not be required to
5 go and get permission and -- from the CLECs on when we can
6 implement changes to our network.

7 Q. Even when those changes materially increase the
8 obligations of the CLEC interconnecting with you?

9 A. I believe -- I believe SBC has an obligation to
10 make CLECs aware of what changes that its planning and it does
11 that by and large I think through the accessible letter
12 process.

13 Q. Would you agree that if Charter were to adopt
14 some, let's say, more modern and more forward-looking industry
15 standard way of doing something, that SBC should be required
16 to simply modify its network to accommodate Charter's being a
17 little bit more modern than SBC?

18 A. I'm not the network snee.

19 Q. I'm asking about the general business question.

20 A. But in -- but I believe that the parties have
21 an obligation to work together and -- but I don't believe that
22 they need to seek our permission. Now, the problem is going
23 to be, of course, whether or not they would work together.

24 Q. Who do you think would be hurt more if the
25 networks stopped working together?

1 A. I think both parties would be hurt. I don't
2 know that one would be hurt any worse than the other.

3 Q. Okay. Let's talk for a minute about issue
4 No. 29, which has to do with successor agreements. This is
5 maybe a small point, but I want to make sure I understand what
6 SBC's position is.

7 Here's the scenario that I want you to tell me
8 how it would work. Let's assume we enter into this agreement,
9 it's three years term. We get down to the last, I don't know,
10 six months, whatever it is, nine months and one or the other
11 of us says, Great, let's negotiate a successor agreement. And
12 we're going right along and life is good.

13 And then for some reason the Commission has a
14 terrible scheduling problem and they say, Parties, we'd like
15 to, if it's okay with you, just extend this proceeding by a
16 month and a half, by 90 days.

17 Now, from a business perspective fine with
18 Charter, fine with SBC. The way I understand your language to
19 read, however, is at the end of 10 months from the beginning
20 of the negotiation, the agreement would expire irrespective of
21 whether a successor agreement has actually been completed.
22 Is that your understanding of SBC's modified position?

23 A. Yes. SBC --

24 Q. Okay.

25 A. -- has -- provides for the negotiation, a

1 35-day negotiation, then the arbitration time frame. The issue
2 SBC is trying to address here is when we get into negotiations
3 with CLECs and they just never come to conclusion.

4 Now, in the case of where both parties are
5 acting in good faith and negotiating, quite frequently
6 arbitration negotiation windows will open and the parties --
7 you can't get the other party to negotiate, at least that's
8 been my experience. So we provided language that the parties
9 would be more inclined -- we want the parties to come to the
10 table and negotiate.

11 If we get towards the end of the table, as you
12 described, end of the window, then the parties could agree
13 to -- to -- to extend that negotiation to -- to set a new
14 negotiation start date, to accommodate either the Commission's
15 schedule or the parties. The key here would be whether or not
16 the parties were negotiating in good faith.

17 Q. Okay. Let me then ask you about issue 26.
18 This is insurance, but a slightly different twist --

19 A. 26.

20 Q. -- than we were talking about. Yeah, Charter
21 issue 26.

22 Now, do you believe that Charter has an
23 incentive to provide adequate insurance for the protection of
24 its own network and its own operations?

25 A. Yes.

1 Q. Okay. Do you think Charter has any incentive
2 to buy insurance from a company that would not actually be
3 able to pay if there were some problem?

4 A. I believe CLECs and Charter --

5 Q. I'm asking about Charter. We talked about
6 CLECs in general, but now I'm asking about Charter. Charter,
7 which has a network, which has a business of 45,000 customers
8 of its own.

9 A. Well, okay. Charter may be looking to get the
10 cheapest premiums and not looking to the viability of the
11 insurance company providing that.

12 Q. Why would we do that?

13 A. I don't know why you would do that.

14 Q. I don't know either.

15 A. Some -- some -- but that does happen.

16 Q. You say that does happen. I mean, to be clear,
17 nowhere in your testimony do you identify any specific
18 situations where --

19 A. That is true.

20 Q. Okay. And, in fact, to your knowledge, that's
21 never happened in Missouri, has it, where a CLEC had
22 inadequate insurance?

23 A. That is true.

24 Q. To your knowledge, has it ever happened
25 anywhere?

1 A. I -- no, I did not investigate that, no.

2 Q. All right. Now, assume with me for the moment
3 that Charter doesn't resell any of your services and assume
4 with me for the moment that Charter doesn't buy any UNEs from
5 you and that all we do is interconnect and exchange traffic
6 and that sort of thing.

7 Well, actually a foundational question. I
8 looked at your background. You aren't personally involved,
9 are you, in the investigation and settling of billing
10 disputes?

11 A. No, I'm not.

12 Q. Okay. So do you have any idea of the kind of
13 billing disputes that might typically arise with CLECs that
14 are in different types of businesses?

15 A. To some degree, yes, from working with that
16 group.

17 Q. Okay.

18 A. While I don't process the billing dispute, I do
19 work with them.

20 Q. To give an example, suppose I'm a reseller and
21 I don't have any of my own facilities, I just buy your stuff
22 and resell it at a markup. What are the kind of billing
23 disputes that resellers will with you, do you know?

24 A. Bills for when a -- they're saying the service
25 is disconnected but they continue to be charged, a rate's

1 inappropriate or wrong or something of that effect.

2 Q. Okay.

3 A. Maybe somebody's been disconnected but it
4 wasn't reflected on the bill.

5 Q. Okay. How about CLECs that operate by means of
6 buying your UNEs, you know, collocating in your central office
7 and buying UNE loops and that sort of thing. What are the
8 kinds of billing disputes that they have?

9 A. They could say a rate element is incorrect, too
10 many rate elements charged.

11 Q. Now, assuming that Charter doesn't use UNEs and
12 doesn't engage in resale, those kind of things -- would you
13 agree those are the bread and butter of billing disputes for
14 CLECs where you're sending out all these bills to all these
15 resellers and all these UNEs and, I didn't buy that, you know,
16 those are the main kind of problems you have?

17 A. I'm sure there are others that escape me now.

18 Q. But of --

19 A. Those are the examples that I gave, yeah.

20 Q. But sitting here today right now, those are the
21 ones you can think of. Right?

22 A. Uh-huh.

23 Q. I mean, those are the kind of billing disputes
24 you get into with CLECs when they buy services from you --

25 A. Uh-huh.

1 Q. -- is that right?

2 A. Yes.

3 Q. Okay.

4 JUDGE THOMPSON: We've been going for about an
5 hour with this witness. We're going to take a break now.

6 MR. SAVAGE: Not an hour of my time.

7 JUDGE THOMPSON: Only 26 minutes and
8 49 seconds.

9 MR. SAVAGE: Thank you.

10 JUDGE THOMPSON: So let's be back at about --
11 no more than 10 minutes.

12 (A recess was taken.)

13 BY MR. SAVAGE:

14 Q. Before the break, Ms. Quate, we were talking
15 about the kind of billing disputes that were most common. Do
16 you agree with me that the nature and type of information
17 necessary to state and explain a billing dispute will vary
18 from case to case depending on the nature of the dispute?

19 A. Yes. I could agree with that.

20 MR. SAVAGE: I have nothing further.

21 JUDGE THOMPSON: Thank you very much. 27, 19.

22 MR. SAVAGE: Your Honor, I hope to maintain
23 that record as time goes on.

24 JUDGE THOMPSON: Maybe I'll give an award for
25 whoever has the best time in the course of this hearing,

1 something you can put up on your ego wall or display proudly
2 in your home.

3 Okay. Let's see. That was Charter Fiberlink.
4 Sprint.

5 Before you get started, I wonder if you could
6 give me some idea of how long you expect to be, Mr. Leopold?

7 MR. LEOPOLD: I hope to get through in
8 20 minutes or less.

9 JUDGE THOMPSON: Very good. Okay. You're on
10 the clock.

11 CROSS-EXAMINATION BY MR. LEOPOLD:

12 Q. Ms. Quate, I'd like to direct you to the issue
13 related to escrow disputes. And specifically at page 26 of
14 your direct you make a reference to provisions for CLECs that
15 have a good payment history and meeting other criteria not
16 being required to escrow disputed amounts. Is that your
17 recollection?

18 A. Yes.

19 Q. And regarding the good payment record, is there
20 any detail or explanation of what would constitute a good
21 payment record in the contract language or is that something
22 within the discretion of SBC to determine?

23 A. It's -- I'm not -- I'm trying to recall if it's
24 in the contract language, but it's 12 months of timely
25 payments.

1 Q. That's the policy?

2 A. Yes, sir.

3 Q. It may not be in the contract language?

4 A. That's correct.

5 Q. And it would be my reading of the contract that
6 that, in fact, is not in the contract language.

7 And so if a person were to miss one payment,
8 whatever the reason, whatever the explanation in a 12-month
9 period, they would then be subject to the escrow period
10 until -- the escrowing process until they could go for
11 12 consecutive perfect months subsequent. Is that how it
12 works?

13 A. It's possible. But if the parties had good
14 payment history for some time, it would not be necessarily.
15 It -- it would not just automatically take place.

16 Q. But you would agree with me, based on your
17 testimony, that it is appropriate to draw some distinction
18 between reliable CLECs as opposed to other CLECs, certainly
19 none of which are in this room, that are unreliable and, you
20 know, regularly having problems with their payment?

21 A. Yes.

22 Q. There's another criteria you reference I guess
23 for that more reliable category of CLECs that you evaluate,
24 which is filed disputes that are resolved in favor of the
25 CLEC. And you indicate in your testimony that if disputes are

1 resolved largely in favor of the CLEC, that might be another
2 criteria where that CLEC would not be subject to the escrow
3 requirements; is that correct?

4 A. That is correct.

5 Q. Is there any specification in the contract as
6 to how you determine if a CLEC has had disputes largely
7 resolved in their favor? Is 51 percent adequate, for
8 instance, or what criteria --

9 A. That is not shown in the contract language, no.

10 Q. Okay. And I guess just to wrap up this portion
11 of the questioning, I was going to ask you to review the
12 contract appendix you'd proposed to Sprint and/or the DPL to
13 show me the language that reflects these items. And it was my
14 expectation that you would not find these items in the Sprint
15 contract or in the Sprint DPL. Is that your understanding,
16 that these items are not actually --

17 A. That is correct.

18 Q. -- specified in the contract?

19 A. That is correct.

20 Q. Are you aware that the average SBC response
21 time to a billing dispute with Sprint is approximately
22 30 days?

23 A. I'm not aware of that -- the timeline with
24 Sprint -- the actual timeline, no. I know that SBC -- their
25 goal is to resolve billing disputes within 30 days, but I do

1 not know what the timeline is with Sprint, no.

2 Q. Under the contract as SBC has proposed, if
3 Sprint were to file a billing dispute but not pay that amount
4 into escrow, what would SBC do?

5 A. Well, it would be -- if it's a part of the
6 agreement, the -- that would be violation of the terms of the
7 agreement. If they did not and they were asked to, we
8 would -- and they continued not to pay it, then we would
9 suspend acceptance of new orders and suspend completion of
10 pending orders. And then if they continued to not, under the
11 terms of the agreement, then we would start disconnection
12 procedures.

13 Q. Are there time frames specified for when you
14 might disconnect service if Sprint were to fail to pay into
15 escrow with regard to an amount that they had disputed but
16 they had not paid into the escrow account?

17 A. If they were not -- I believe there are, yes.

18 MR. LEOPOLD: I have no more questions.

19 JUDGE THOMPSON: Thank you, Mr. Leopold. Five
20 minutes and 40 seconds and you're going to have a lovely wall
21 plaque, I think.

22 Okay. I think that's all of the CLECs; is that
23 correct? If any other CLECs have wandered in since we started
24 that have questions for Ms. Quate, speak now.

25 Hearing none, I have no questions for you

1 myself. Actually, I do have one. Let me take that back.

2 QUESTIONS BY JUDGE THOMPSON:

3 Q. Has SBC lost a lot of money dealing with

4 CLECs --

5 A. Absolutely.

6 Q. -- with respect to unpaid bills for services,
7 UNEs and the like?

8 A. Since -- I'm glad you asked. Since 2000, we've
9 lost 255 million. I believe 180 CLECs have filed bankruptcy.
10 And so SBC is -- is -- has developed this language and takes
11 this position simply because of -- of that -- those -- those
12 losses.

13 JUDGE THOMPSON: Thank you very much.

14 Now I'm going to see if any of my advisory
15 staff have questions and I'm just going to go through them.
16 The order means nothing other than that's the order in which I
17 wrote down their names. Mr. Williams, do you have any
18 questions?

19 MR. WILLIAMS: No, sir.

20 JUDGE THOMPSON: Ms. Dietrich?

21 MS. DIETRICH: Just a couple.

22 Should I say my name for the record?

23 JUDGE THOMPSON: Just fire way.

24 QUESTIONS BY MS. DIETRICH:

25 Q. Ms. Quate, in response to questions to

1 Navigator, specifically at the DPL, page 5, that's the
2 Navigator DPL.

3 A. Page 5?

4 Q. Yes.

5 A. I'm there.

6 Q. Okay. On issue 3.9 the language says that SBC
7 shall have no obligation thereafter to perform under this
8 agreement. You said that's what it says here, but in other
9 places it says something to the effect of that you would
10 suspend service first and then things like that. Can you
11 point me to that language?

12 A. Yes, I can. I don't know that I can point you
13 to it in here, but it would be in the billing section of their
14 appendix. I mean, I'm not sure the language is in the DPL and
15 I don't recall the exact section number now, but I can get
16 that for you.

17 Q. Okay. Then the next one -- I'm not sure if you
18 can answer or give me another SBC witness that can answer
19 this. You've talked about accessible letter process this
20 morning. Can you just briefly describe that process, like
21 time frames when you send a letter and things like that?

22 A. I could do it very briefly at a high level.
23 When some -- when an occurrence happens that needs -- that the
24 CLEC community needs to be aware of it -- for example, there's
25 a new product price, then SBC would -- the product manager

1 develops an accessible letter after developing the product and
2 provides -- and provides that information to the CLEC.
3 It's -- we -- we generally e-mail those to the CLECs and then
4 we also place them in a searchable format on our website
5 for -- for later review.

6 Q. Do you know if there's, like, a standard
7 time frame that this will take place in X number of days?

8 A. It would vary depending on what the issue was
9 that they were addressing.

10 MS. DIETRICH: Okay. Thank you.

11 JUDGE THOMPSON: Thank you.

12 Mr. Johnson, any questions?

13 MR. JOHNSON: No, sir.

14 JUDGE THOMPSON: Mr. Scheperle, any questions?

15 MR. SCHEPERLE: No, sir.

16 JUDGE THOMPSON: Mr. McKinnie?

17 MR. MCKINNIE: No, sir.

18 JUDGE THOMPSON: Thank you.

19 MR. JOHNSON: Your Honor, I'm sorry. I would
20 just like to find out when the witness intends to supply this
21 information to Staff that she just said she was going to
22 supply, because if it's going to be in the record, we should
23 certainly know what it is.

24 JUDGE THOMPSON: Absolutely.

25 MR. LANE: We'll submit it by tomorrow.

1 JUDGE THOMPSON: Okay. And provide copies, of
2 course, to all the parties.

3 MR. LANE: I think we'll be identifying --

4 THE WITNESS: The section.

5 MR. LANE: -- a section number of a contract.

6 JUDGE THOMPSON: Very well. Thank you,
7 Mr. Lane.

8 Any redirect?

9 MR. LANE: Yes. Thank you.

10 REDIRECT EXAMINATION BY MR. LANE:

11 Q. In response to some questions from Mr. Johnson
12 on behalf of Navigator related to GTNC issue No. 3 with them,
13 you were discussing workers' comp insurance and comprehensive
14 general liability insurance. Do you recall that discussion?

15 A. Yes.

16 Q. Would you agree that the parties in that case
17 both agree that insurance should be included in the contract,
18 but there's a difference in the amount of insurance that each
19 party recommends?

20 A. Yes, I do.

21 Q. And why is it that SBC recommends the amounts
22 that it does?

23 A. SBC has taken into consideration its risk. For
24 example, a switch for a collocation in -- I've heard upwards
25 figures of 10 million to replace a network switch. If, for

1 instance, there was a problem with that, a fire in the -- the
2 CO as a result that was determined to be in -- started in one
3 of the CLEC's collocation cage, SBC believes that the -- the
4 insurance coverage should at least be enough to cover the cost
5 of one's switch or they could introduce something through our
6 OSS's that creates a problem with the -- the systems. We feel
7 like that that's reasonable.

8 And as I said earlier, you know, the -- the
9 risk that SBC has is what is -- we've taken into consideration
10 when establishing those limits.

11 Q. With regard to deposit language with Navigator
12 on GTNC issue No. 4, would you agree that the difference
13 between the parties on that one -- one of the differences is
14 that they recommend a deposit equal to 30 days of the average
15 billing or the most recent month's billing versus SBC
16 Missouri's proposal of 90 days billing?

17 A. That is correct.

18 Q. And would you explain, in your view, why a
19 30-day period is inadequate in terms of assurance of payment?

20 A. It doesn't cover the time frame under which
21 they would -- if we were talking about disconnection, it
22 doesn't cover the time frame of the risk that SBC would be --
23 would have.

24 Q. And in terms of non-payment risk, what is the
25 amount that SBC has at issue?

1 A. At issue would be 90 days. That would be
2 30 days from the bill date to the bill due date, the -- the
3 time frame when we're sending out the notice letters trying to
4 get the CLEC to remit and 30 days for the transition period of
5 moving CLECs off that network onto either another CLEC's
6 network or SBC.

7 Q. You were also asked by the attorney for Charter
8 concerning the deposit requirement and you were asked whether
9 you reviewed individual credit issues of Charter. Do you
10 recall that?

11 A. Yes, I do.

12 Q. In your view, is the particular payment history
13 of Charter relevant to whether there should be a clause in the
14 contract concerning deposits?

15 A. No.

16 Q. Could you explain why that is?

17 A. Charter may at some point in time decide to
18 broaden its business plan and they are going to have UNEs and
19 resale provision in their agreement, whether they use them at
20 this point in time or not. Should they ever decide to avail
21 themselves of UNEs, then we need language in there that
22 addresses that, not to mention the CLECs that could MFN into
23 the agreement.

24 Q. And could you explain what you mean by "MFN
25 into the agreement"?

1 A. According to the Most Favored Nations, the --
2 the -- the act in which the CLECs -- a CLEC could MFN into an
3 existing agreement, CLECs have -- there are some CLECs that
4 have signed memorandums of understanding that they will opt
5 into one of the agreements that is -- comes out of this
6 arbitration.

7 Certainly if I was a CLEC that had reselling
8 UNEs and that was my business plan and here's Charter's
9 agreement that has reselling UNEs in it whether I intend --
10 whether Charter intends to implement them or not, I would
11 probably lean toward opting into that agreement if it did not
12 contain deposits, escrows, audits, things that the other CLECs
13 may be required to do.

14 Q. And with regard to the M2A, in particular,
15 would you agree that SBC Missouri's petition for arbitration
16 identified more than 40 companies at that point that had
17 decided to opt into one of the contracts that will result from
18 this proceeding?

19 A. Yes.

20 Q. Okay. And so from SBC Missouri's perspective,
21 it's important for each of the contracts here to reflect the
22 possibility that others that may not have the same credit
23 history or the same business plans or those that are appearing
24 in front of the Commission today nevertheless have provisions
25 in there that adequately cover risks that SBC Missouri could

1 incur?

2 A. It is very important that all agreements
3 contain those provisions.

4 Q. You were asked some questions by the attorney
5 for Charter concerning GTNC issues 21 and 22 concerning
6 modifications to the CLEC handbook and modifications that are
7 necessary as the result of industry practices like OBF and
8 telecordia changes. Do you recall those?

9 A. Uh-huh.

10 Q. Would you agree that there's a number of CLECs
11 that operate in Missouri today and that dozens of CLECs are
12 currently operating in Missouri today?

13 A. I believe so, yes. I agree.

14 Q. And do you think it's practical to require SBC
15 Missouri to try to assess for dozens of CLECs whether any of
16 them would be materially affected by some change in industry
17 practice and then negotiate changes in the network to try to
18 accommodate each of those individual CLECs?

19 A. I think it would be impractical, if not
20 impossible.

21 Q. Would it, in your view, lead to the network
22 becoming kind of a least common denominator of whatever the
23 least -- whoever the CLEC that wanted to do the least chose to
24 perform?

25 A. Yes. I agree.

1 MR. LANE: That's all I have. Thank you very
2 much.

3 JUDGE THOMPSON: Thank you, Mr. Lane.

4 I believe you're done for now. Could you just
5 state your name for the reporter?

6 THE WITNESS: Suzette Quate.

7 MR. SAVAGE: Your Honor, I had two questions of
8 recross, if that's permitted.

9 JUDGE THOMPSON: Do you guys want to get into
10 recross?

11 MR. LANE: Normally that's not permitted in
12 Missouri, your Honor.

13 MR. SAVAGE: Let the record reflect I only used
14 27 minutes of the hour I had set aside.

15 JUDGE THOMPSON: Very well. Then we'll have to
16 give Mr. Lane another shot at redirect after that.

17 MR. SAVAGE: Very well.

18 RE-CROSS-EXAMINATION BY MR. SAVAGE:

19 Q. Ms. Quate, just to be real clear, your counsel
20 suggested that there were dozens of CLECs operating in
21 Missouri today. And when I'd asked you questions, you said
22 you really didn't know how many there were. Do you have any
23 knowledge, sitting here today, that there are dozens of
24 facilities-based CLECs who have their own networks operating
25 in Missouri today?

4 Q. You don't really know whether it's dozens or
5 not, do you? Physical interconnecting -- CLECs, are there
6 dozens of physically interconnecting CLECs?

10 Q. Then one other question. Would your concerns
11 about the escrow and deposit stuff that we were talking about
12 and you were talking about with your counsel with Charter go
13 away if we would simply agree that we would not have the UNE
14 and resale provision in our agreement? Would that address
15 those concerns if we'd simply not have the right to resell and
16 not have the right to access UNEs?

21 MR. SAVAGE: Okay. Thank you.

23 MR. JOHNSON: Your Honor, a couple of
24 questions.

1 scope is going to be limited to questions from the Bench.

2 This is recross.

3 MR. JOHNSON: Understood. If that's the
4 limitation on recross, then I don't have any.

5 JUDGE THOMPSON: Well, what I want to avoid
6 is --

7 MR. JOHNSON: No, I understand.

8 JUDGE THOMPSON: -- a cascade of testimony --
9 cross, recross, redirect, recross, Bench questions that might
10 never end. I mean, I can understand that perhaps another
11 counsel asked a question that gave you a thought about, Well,
12 yeah, I'd better get that --

13 MR. JOHNSON: Well, counsel for SBC created a
14 misimpression that I'd like to clear up, but I --

15 JUDGE THOMPSON: He's redirect. He's at the
16 end. He gets to create those misimpressions.

17 MR. JOHNSON: I'll clear up this issue in other
18 ways.

19 JUDGE THOMPSON: Thank you very much.

20 Additional redirect, Mr. Lane?

21 MR. LANE: No, your Honor.

22 JUDGE THOMPSON: Thank you. I think --

23 MR. LANE: Could I ask that -- I think this is
24 it for Ms. Quate. Could I ask that she be excused, your
25 Honor?

1 JUDGE THOMPSON: You may be excused.

2 THE WITNESS: Thank you.

3 MR. JOHNSON: Your Honor, I do have a concern
4 about that because apparently testimony is going to be
5 provided on her behalf after she's excused concerning some --

6 JUDGE THOMPSON: Are you talking about the
7 information requested by Staff?

8 MR. JOHNSON: -- unspecified portion of another
9 attachment to the interconnection agreement.

10 MR. LANE: I think it's a cite to a section of
11 the interconnection agreement and the parties can read it and
12 argue whatever they want to argue about it.

13 JUDGE THOMPSON: Why don't we do this. I'm
14 going to excuse Ms. Quate. If someone comes up with an
15 additional question for Ms. Quate that absolutely they feel
16 has to be asked on the record in this proceeding, I'll let
17 Ms. Quate respond over the telephone. All right? I mean, I
18 think we have to be sensitive to the fact that these witnesses
19 have lives outside of this room. All right?

20 Okay. Now, I think we're ready for Witness
21 Silver; is that correct?

22 MR. LANE: Yes, your Honor.

23 JUDGE THOMPSON: Michael D. Silver.

24 And you've already been sworn; is that correct?

25 THE WITNESS: That's correct.

1 JUDGE THOMPSON: Would you just state your name
2 for the reporter?

3 THE WITNESS: Michael D. Silver.

4 JUDGE THOMPSON: Very good. Take your seat.

5 And AT&T, any questions for Mr. Silver?

6 MR. LANE: Your Honor, I think I need to do a
7 little --

8 JUDGE THOMPSON: That's right, corrections and
9 the like. Go ahead.

10 MR. LANE: And let me -- well, let me ask
11 first, I guess I had an understanding that Mr. Silver was
12 going to be both on GTNCs, price and definitions, the three
13 topics that he's -- I'm sorry, two topics GTNCs and price. Is
14 that everyone's understanding?

15 JUDGE THOMPSON: And we're doing resale now
16 too; isn't that correct?

17 MR. LANE: Yes. But he's not listed as a
18 witness under that. I'm just trying to clarify that we're
19 taking care of both GTNCs and price at this point. That was
20 my understanding.

21 JUDGE THOMPSON: That's my understanding too.
22 Anyone not in agreement with that? Looks like we're all on
23 that page.

24 MICHAEL D. SILVER testified as follows:

25 DIRECT EXAMINATION BY MR. LANE:

1 Q. Okay. So I'm going to ask you some questions
2 about the pricing portion of your testimony as well.

3 Mr. Silver, do you have any changes at this
4 point to your pre-filed testimony?

5 A. No, I do not.

6 Q. Okay. Do you have any change in position with
7 regard to MCI pricing issue No. 3?

8 A. Yes, I do. SBC is willing to accept MCI's
9 proposed rates for lines 33 through 41 of the pricing
10 schedule, which have to do with -- lines 33 through 36 are the
11 ISDN-BRI loops for zones 1 through 4. And lines 38 through 41
12 are the ISDN-PRI loops for zones 1 through 4.

13 Q. And then with regard to MCI issue 9, do you
14 have any change in SBC's position that you want to make?

15 A. Yes, I do. Concerning lines 119 through 121,
16 which are analog loops to colo 2 wire, that's line 119, analog
17 loop to colo 2 wire without testing, which is line 120, and
18 analog loop to colo 4 wire, which is line 121, we will accept
19 MCI's proposed rates.

20 Q. So that's only a part of issue 9; is that fair?

21 A. That's correct.

22 Q. And then finally, with regard to MCI issue 29
23 on pricing, do you have any change in SBC's position on
24 that --

25 A. Yes.

1 Q. -- SBC Missouri's position?

2 A. Yes. For lines 819 to 849 regarding service

3 order charges, we are willing to accept MCI's proposed rates.

4 MR. LANE: That's it. Thank you, your Honor.

5 JUDGE THOMPSON: Thank you, Mr. Lane.

6 Okay. AT&T?

7 MR. ZARLING: We have no questions of

8 Mr. Silver. Thank you

9 JUDGE THOMPSON: Thank you.

10 MCI?

11 MR. MORRIS: No questions, your Honor.

12 JUDGE THOMPSON: CLEC Coalition?

13 MR. MAGNESS: No questions.

14 JUDGE THOMPSON: Navigator?

15 MR. JOHNSON: Nothing, thank you.

16 JUDGE THOMPSON: Charter Fiberlink?

17 MR. SAVAGE: No questions.

18 JUDGE THOMPSON: Sprint?

19 MR. LEOPOLD: No questions.

20 JUDGE THOMPSON: Okay. Turning to the

21 arbitration Staff, Mr. Williams?

22 MR. WILLIAMS: No questions.

23 JUDGE THOMPSON: Ms. Dietrich?

24 MS. DIETRICH: No questions.

25 JUDGE THOMPSON: Mr. Johnson?

1 MR. JOHNSON: No.

2 JUDGE THOMPSON: Mr. Scheperle?

3 MR. SCHEPERLE: No questions.

4 JUDGE THOMPSON: Mr. McKinnie?

5 MR. MCKINNIE: No questions.

6 JUDGE THOMPSON: You may sit down, sir.

7 MR. LANE: I have some redirect.

8 JUDGE THOMPSON: Okay. Now we're ready, I

9 believe, to move to the CLEC witnesses who will be examined by

10 SBC; is that correct?

11 MR. LANE: Yes, your Honor.

12 JUDGE THOMPSON: So let me know if I'm wrong.

13 And I believe the first one would be Mr. Guepe; is that

14 correct?

15 And you were sworn. Is that correct, sir?

16 THE WITNESS: That is correct.

17 JUDGE THOMPSON: Would you please state your

18 name for the reporter?

19 THE WITNESS: Richard T. Guepe.

20 JUDGE THOMPSON: Spell your last name.

21 THE WITNESS: G-u-e-p-e.

22 JUDGE THOMPSON: Very well.

23 Proceed, Mr. Zarling.

24 RICHARD GUEPE testified as follows:

25 DIRECT EXAMINATION BY MR. ZARLING:

1 Q. Mr. Guepe, do you have any changes to your
2 Direct or Rebuttal Testimony for the general terms and
3 conditions issues?

4 A. Yes, I do. In the direct on page 9, I believe
5 it's line 6, references an issue 10. That 10 should be 2.

6 And in Rebuttal on page 13 beginning on
7 line 30, the sentence beginning with "not" -- or the beginning
8 of the sentence beginning with "not" and going through line --
9 into line 32 the word "but" should be deleted. That's about
10 two sentences worth on there that should be deleted. And
11 that's all.

12 MR. ZARLING: Thank you, your Honor,

13 JUDGE THOMPSON: Thank you, Mr. Zarling.

14 Mr. Lane, I assume you'll be inquiring?

15 MR. LANE: Yes, your Honor.

16 JUDGE THOMPSON: Very well.

17 CROSS-EXAMINATION BY MR. LANE:

18 Q. Good morning, Mr. Guepe. I'm Paul Lane with
19 SBC Missouri.

20 A. Good morning.

21 Q. I'm going to run through the DPL issues that we
22 have identified with AT&T. And the first one is issue No. 1
23 on general terms and conditions. May be some disagreement
24 about what your language does and doesn't do and I'll try to
25 clarify that.

1 A. Okay.

2 Q. Is it the intent of SBC's language here that --
3 I'm sorry, of AT&T's language here that SBC Missouri be
4 required to provide services to AT&T under this agreement if
5 SBC Missouri chooses to operate in another ILEC's territory
6 such as Sprint?

7 A. No. If -- if SBC is operating as -- as a CLEC,
8 they're certainly not responsible to make any of that
9 available. I think the issue gets down to kind of a
10 specific --

11 Q. Okay.

12 A. Okay.

13 Q. So just for clarification then, if SBC Missouri
14 is operating outside of its incumbent local exchange
15 territory, then it would not be required to provide any UNEs
16 or the like to AT&T in that situation; is that right?

17 A. If they were operating as a CLEC. Now, when
18 you -- I think when you're getting into this outside of their
19 territory is where there is some confusion because you've got,
20 for example, a tandem which may serve areas outside your
21 traditional area, but if you refuse to open up NPA NXX codes
22 in that tandem so that AT&T can serve those areas, it's --
23 that -- those are outside of your area, yes, but the tandem is
24 not.

25 Q. All right. And so your language should not be

1 interpreted, if it's adopted by the arbitrator, to provide
2 that SBC Missouri must provide loops to AT&T if AT&T -- if SBC
3 Missouri has some loops that it's acquired from Sprint or that
4 it's put in itself in Sprint's territory; is that right?

5 A. Yeah. I believe so, yes. When you say has
6 acquired from Sprint, you're -- you're operating as a CLEC and
7 buying them as opposed to you've bought some of Sprint's
8 territory, you know.

9 Q. Right. That's the assumption?

10 A. If you're operating as a CLEC, then no.

11 Q. Okay. If we're operating as a CLEC and we
12 acquire some loops from Sprint or we're operating in Sprint's
13 territory and put in our own loops, your proposed language
14 should not be interpreted to require SBC to provide AT&T with
15 those loops in that circumstance. Right?

16 A. That's correct.

17 Q. Your second issue involves requests by AT&T to
18 purchase a service that's not listed in the contract. Right?

19 A. That's correct.

20 Q. And that's AT&T issue 2 under general terms and
21 conditions. Right?

22 A. Correct.

23 Q. And you understand that SBC Missouri's position
24 is that it need not supply a service or an element that's not
25 listed but that AT&T should either seek to amend the contract

1 to include that service or element or enter into the BFR or
2 bona fide request provisions of that contract. Right?

3 A. That is the -- essentially the disagreement.
4 AT&T believes that where the service or the product is not in
5 the contract when SBC does offer it through the tariff, where
6 AT&T agrees that we will use the tariff rates, the tariff
7 terms and conditions, if there's no reason to delay the
8 availability of that service to customers -- to Missouri
9 consumers by requiring the interconnection agreement we fully
10 updated.

11 Q. Isn't it also AT&T's position that if SBC
12 Missouri offers an element or a service to some other CLEC,
13 that that automatically be available to AT&T without going
14 through the process of negotiating and amending the contract?

15 A. You mean through like general terms? It's
16 either through a tariff or through their general pricing list?

17 Q. Right.

18 A. Yes. Either one. And we would accept whatever
19 those general terms or -- or the price of that offer is.

20 Q. Now, you would agree with me that under the
21 act, that the parties are to negotiate individually. Right?

22 A. You mean --

23 Q. The CLEC is to negotiate individually with the
24 ILEC. Right?

25 A. Yes.

1 Q. And there may be tradeoffs that are involved in
2 reaching the agreement with the particular CLEC. Right?

3 A. That's true. But we're not asking for anything
4 out of somebody else's ICA here. I believe we're asking for
5 if you've got it -- you've done a tariff on it or you've done
6 it in your -- kind of a general price list that you've made
7 available.

8 Q. When you say "a general price list," the
9 language you used says a generic contract. And that's
10 something that SBC makes available to those CLECs that want to
11 opt into that generic contract. Right?

12 A. Generic contract, correct.

13 Q. And so your provision here would allow AT&T to
14 garner the benefits of some particular offering that was
15 agreed to with a CLEC in the course or in the context of a
16 larger agreement that may cover other issues. Right?

17 A. Not necessarily. Because my understanding of a
18 generic contract is that that offer is out there generically
19 to everyone.

20 Q. But that generic contract has provisions that
21 govern all aspects of the interconnection between SBC Missouri
22 and the CLEC that opts into that generic contract. Right?

23 A. Not necessarily, because the generic
24 contract -- I'm -- my understanding is -- and I could be
25 wrong, but the generic contract is not that expansive. It's

1 not a full-blown interconnection agreement.

2 Q. You think it's not a full-blown interconnection
3 agreement?

4 A. The generic -- the generic -- you've got
5 Missouri tariff or a generic contract where it might be
6 something -- a product you're offering which is for one reason
7 you don't have to tariff.

8 Q. Okay. Well, no UNEs are offered under tariff
9 in Missouri. Right?

10 A. That's -- I believe so.

11 Q. So we don't need your provision to cover that
12 eventuality because that doesn't exist. Right?

13 A. For UNEs, that's correct.

14 Q. Okay.

15 A. But there could be -- there could be other
16 offers.

17 Q. And if the generic contract is actually an
18 interconnection agreement, it covers all aspects of the
19 interconnection between SBC Missouri and the CLEC that chooses
20 to opt into that, then the end result of your proposed
21 language here would allow AT&T to pick and choose terms from
22 that to have added to its agreement without going through any
23 negotiation or amendment process. Right?

24 A. We're asking that we be able to offer that
25 essentially if -- under your scenario what we're asking for is

1 that we -- if you've got it out there and it's not in our
2 contract, to be able to offer it under the same terms and
3 conditions and price that's in your generic offer and do that
4 until we can negotiate and update our -- our agreement with --

5 Q. All right. I think your answer to my question
6 is yes, but I need to be certain. You want to be able to pick
7 out some particular price out of that generic contract for a
8 particular service and import that into your agreement but not
9 the rest of what's out there in the generic contract. Right?

10 A. If you were offering a specific product or
11 service as part of a generic contract that you're not -- that
12 is not in our interconnection agreement, we would like to be
13 able to use the same terms and conditions that you're offering
14 it under in the generic contract and rates that you're
15 offering in the generic contract.

16 Q. But not all the other terms and conditions and
17 elements and prices that may be contained in that generic
18 contract. Right?

19 A. I -- I don't know. I really -- I mean, it's --
20 we're asking -- when you're saying all the rest of them,
21 because when you look at our language, we're saying if
22 provision pursuant to an applicable SBC Missouri tariff or
23 generic contract and --

24 Q. That's your language, right --

25 A. Right.

1 Q. -- with reference to the generic contract?

2 That's not our language?

3 A. That is our language.

4 Q. And the generic contract covers other terms and
5 conditions besides the particular element that you may want to
6 seek to have added to the AT&T contract. Right?

7 A. I suppose they could.

8 Q. Okay. And -- all right. And that's fine.

9 Are you aware generally of the FCC's
10 requirement concerning pick and choose?

11 A. Yes.

12 Q. And would you agree that the FCC provisions now
13 require that you take all of the terms and conditions of
14 another carrier's interconnection agreement and not just
15 selective portions?

16 A. That's correct.

17 Q. Okay. Your issue 3 concerns, on general terms
18 and conditions, what would happen if AT&T orders a service
19 that's included in the interconnection agreement but the price
20 is inadvertently not included. Right? That's what that issue
21 deals with?

22 A. Correct.

23 Q. And it's fair to say that AT&T agrees to
24 payment and retroactive true-up if the rate is to be
25 determined. Right?

1 A. Right. The latest language, which I believe
2 came out between the time when Direct Testimony was filed and
3 Rebuttal so -- narrows it down so that the main dispute is
4 when SBC wants to include the language as to including the
5 dash or a blank. And we're saying there's really no need to
6 have that dash or blank in there.

7 Q. And under your proposal if the rate isn't
8 stated as to be determined and isn't otherwise in the
9 contract, AT&T wouldn't have to pay for it but could order
10 it -- wouldn't have to pay for it up until the time that the
11 contract was amended and a price was inserted. Fair
12 statement?

13 A. I'm not sure if it is a fair statement. I
14 heard you say we would get to use it for free and I don't
15 believe we're saying we should be able to use a product for free.
16 We're willing to pay for it.

17 Q. So if the price is not listed in the tariff, it
18 doesn't say to be determined but instead there's a blank or a
19 dash, your language, if it's adopted by the arbitrator, should
20 be interpreted to require you to pay at the price it's
21 ultimately set --

22 A. No.

23 Q. -- retroactively back to the time you started
24 to order it. Is that a fair statement?

25 A. Our position is there really should not be a

1 blank or a dash in there. And that if there's a blank or
2 dash, it's probably in error and needs to be resolved that --
3 through the -- the other means of dispute.

4 Q. Okay. Let me ask my question again then
5 because we need to hone in on it. If it is marked by a dash
6 or a blank and you do order it and ultimately the contract is
7 amended and sets a price for that element, your language says
8 you don't have to pay for it back to the time you started
9 ordering it, and SBC Missouri says you should pay for it back
10 to the time you started ordering it. Right? That's the
11 issue?

12 A. No. I thought there was agreement as to the
13 retroactive application --

14 Q. Okay. And so --

15 A. -- piece of it. I mean, that's -- at least
16 that's what I have.

17 Q. So just so it's clear then on the record, if
18 your language is adopted here and we are dealing with a rate
19 that is not listed as to be determined but instead has a dash
20 or a blank, when ultimately the price is set for that, your
21 language should be interpreted to require you to pay
22 retroactively back to the time you started to use it. Right?

23 A. Well, it's -- and I'll read the language in
24 here.

25 Q. Can you just answer that?

1 A. I can't answer it yes or no because that isn't
2 what the language that we have agreed to says. I mean --

3 Q. Real simple question. Dash or a dot marks the
4 price.

5 A. Uh-huh.

6 Q. Ultimately the price is set by the Commission.
7 Do you or don't you have to pay for it back to the time you
8 started ordering it?

9 A. I mean, I guess our position is that there
10 wouldn't be anything in that price list -- there wouldn't be
11 any services with a dash or a blank to order. So that would
12 not be something that we could possibly do because there
13 should not be a dash or a blank in the price list.

14 Q. So your language should be interpreted then if
15 there's a blank or a dash in the place of the price, it should
16 be interpreted that you don't get to order that until there's
17 a price?

18 A. No. My -- by the fact that there shouldn't
19 be -- if there's a dash or blank in there, then there's an
20 error and both sides have to figure out what's the error and
21 get that resolved immediately.

22 Q. And at the end of the day how the error is
23 resolved is AT&T should pay for using it back to the time they
24 started using it. Right?

25 A. It would go through the dispute resolution

1 process and whatever that provides would be the answer to
2 that.

3 Q. And when you say "that," that's attempting to
4 say, well, there ought to be some limit because of the
5 contractual limits on back billing; is that right? You're
6 trying to avoid payment possibly for a period of time because
7 of the contractual provisions on back billing. Right?

8 A. I don't think we're trying to avoid -- avoid
9 any billing. But what the agreed-to language -- and that's
10 where I think we've got a disconnect on what the agreed-to
11 language is or at least what I've seen as the agreed-to
12 language because it -- the agreed-to language, we agree about
13 the retroactivity would be limited by with sever and
14 attachment 28 for back billing.

15 Q. I'm going to switch to issue 4 on AT&T's
16 general terms and conditions. This involves the question of
17 assignment of the contract. Right?

18 A. Right.

19 Q. And the parties agree on language when AT&T
20 wants to do the assignment. Right?

21 A. Say that again.

22 Q. Parties agree on language where it's AT&T that
23 wants to assign its contractual rights to another party.
24 Right?

25 A. I believe so, right.

1 Q. And the issue is what rights AT&T should have
2 if SBC Missouri seeks to assign its rights and obligations
3 under the contract to another company. Right?

4 A. That's correct. AT&T wants the same protection
5 that SBC has.

6 Q. Right. And would you agree with me that SBC
7 Missouri's position is that that shouldn't be included in the
8 contract because any attempted assignment of transfer by SBC
9 of its obligations under the contract would have to come to
10 the Missouri PSC for approval under the statute that requires
11 any merger or transfer of assets to be approved by the
12 Commission?

13 A. I'm not sure that is true in Missouri, whether
14 Missouri Commission does that. I know some states do. I
15 don't know whether it's true in Missouri. I was under the
16 impression they did not, but --

17 Q. Have you looked at Section 392.200 of the --
18 300 of the Revised Statutes of Missouri?

19 A. No, I have not.

20 Q. And assuming that that requires the Commission
21 to review and approve any merger, transfer of assets by SBC
22 Missouri, would you agree that that's an adequate then
23 provision for AT&T and that issue 4 could be resolved in SBC
24 Missouri's favor?

25 A. No, I would not agree to that.

1 Q. Under your proposed language, if adopted by
2 others, then SBC Missouri could be placed in the situation
3 where they would have to get approvals from as many as 80 to
4 100 CLECs of a transaction that would have to be taken to the
5 Missouri Public Service Commission for approval in any event.
6 Right? That's the practical effect of it?

7 A. If -- AT&T is attempting to protect its
8 interest just as SBC is. If other parties choose to opt into
9 AT&T's agreement, and I don't know how many may or could be --
10 you know, you use the term 80 to 100. If there were 80 to
11 100, that would be the result of it, but I'm not sure that
12 there's that many that would opt into it.

13 Q. All right. And would you agree with me that
14 that's a very impractical approach to have to take if there's
15 that many?

16 A. No. AT&T has to look out for its customers and
17 protect its customer and its interest.

18 Q. But AT&T has the opportunity to participate in
19 any proceeding in front of the Missouri PSC concerning any
20 merger or transfer of assets. Right?

21 A. They should, yes.

22 Q. All right. Issues 5 of AT&T's general terms
23 and conditions, this issue involves remedies for failure to
24 pay for services. Right?

25 A. Correct.

1 Q. And SBC wants the right to be able to
2 discontinue providing service if AT&T doesn't pay after we get
3 to the second notice stage. Right?

4 A. Correct.

5 Q. And this issues involves only the failure to
6 pay for undisputed amounts. Right?

7 A. Correct.

8 Q. If it's a disputed amount, you go through
9 dispute resolution. Correct?

10 A. Right. But AT&T also -- AT&T would like --
11 since disconnection is -- it's an extreme measure really when
12 you get right down to it. That's what impacts customers and
13 customer service. And we want the ability to go through the
14 dispute resolution process.

15 Q. All right.

16 A. And we also -- there's --

17 Q. Let me go ahead and ask the question, if I
18 could. If you do dispute a bill, the parties are in agreement
19 that you go through the dispute resolution process. Right?

20 A. Correct.

21 Q. It's when there's not a dispute on the bill and
22 AT&T still fails to pay that you want the right to prevent
23 termination of service and go through dispute resolution for a
24 payment obligation that you never disputed. Right?

25 A. It's for those instances where somebody makes a

1 mistake and -- and misses it, that -- that's correct. We
2 would still rather have the protection for the Missouri
3 consumers before the -- before they would be cut off.

4 Q. And SBC Missouri is concerned about having --
5 or SBC ILECs having lost more than \$250 million because people
6 failed to pay their bills. Right?

7 A. I will take your word for it. I can't verify
8 that.

9 MR. LANE: Okay. That's all I have. Thank
10 you, Mr. Guepe.

11 JUDGE THOMPSON: Okay. 19 minutes and 52
12 seconds.

13 MR. LANE: Where do I rank?

14 JUDGE THOMPSON: You're doing great. You rank
15 doing great.

16 Okay. Let's see.

17 MR. ZARLING: I'm sorry. Do we have the Staff
18 go before I do redirect? I think I may be premature.

19 JUDGE THOMPSON: Yeah. Yeah. We want to do the
20 redirect absolutely last so that any misimpressions you want
21 to leave, you get that opportunity. You understand that was a
22 humorous remark. I apologize.

23 I have no questions for Mr. Guepe.

24 Mr. Williams?

25 MR. WILLIAMS: I have no questions.

1 JUDGE THOMPSON: Ms. Dietrich?

2 MS. DIETRICH: No questions.

3 JUDGE THOMPSON: Mr. Johnson?

4 MR. JOHNSON: No questions.

5 JUDGE THOMPSON: Mr. Scheperle?

6 MR. SCHEPERLE: No questions.

7 JUDGE THOMPSON: Mr. McKinnie?

8 MR. MCKINNIE: No questions.

9 JUDGE THOMPSON: Very well. I assume there's

10 not any recross, so Mr. Zarling.

11 MR. ZARLING: Let the misimpressions begin.

12 REDIRECT EXAMINATION BY MR. ZARLING:

13 Q. Mr. Guepe, SBC's counsel Mr. Lane asked you

14 some questions about issue 2 on the DPL regarding AT&T's

15 proposed language to obtain products or services under a

16 generic tariff or generic contract. Do you recall those

17 questions?

18 A. Yes, I do.

19 Q. Okay. Is it your position that generic

20 contract includes an interconnection agreement?

21 A. No. It's not my impression at all.

22 Q. That's not the intent of AT&T's language, to

23 include an interconnection agreement as a generic contract?

24 A. Definitely not.

25 Q. Would you explain what a generic contract is

1 supposed to cover?

2 A. Well, a generic contract would cover -- there's
3 some items that are out there, especially price, and sometimes
4 they're put under tariff and sometimes they're put under what
5 I view as a generic contract and they've got certain terms and
6 conditions along with them.

7 And if that service is out there being offered,
8 AT&T wants the ability to provide that under those terms and
9 conditions and rates prior to actually having to go through
10 the update of its interconnection agreement because then --
11 put in an amendment to the interconnection agreement
12 although -- and we all think this should be very simple, even
13 if it's a very simple amendment, it can take some time and
14 you're delaying getting things out to your customers.

15 Q. Are you aware -- one way or another are you
16 aware of any current limitations that may exist in Missouri in
17 the ability of LECs, ILECs or CLECs to offer customer-specific
18 retail services, retail contracts to customers?

19 A. I'm not aware.

20 Q. If, for example, today there were prohibitions
21 or limitations on ILEC's ability to offer customer-specific
22 contracts, would you view the cus-- the generic contract
23 language that AT&T proposes as being immaterial or
24 inapplicable?

25 A. Can you repeat that? I kind of lost the train.

1 Q. Okay. If there were limitations or
2 prohibitions -- let's say there were prohibitions on ILECs or
3 CLEC -- let's talk about ILECs since we're talking about
4 SBC -- prohibitions against offering customer-specific
5 contracts on a retail basis to customers, in your opinion,
6 would that cause AT&T's generic contract language to be
7 inapplicable?

8 A. No. It would be quite the opposite. It would
9 make it more. Because if -- if it -- if I understand right,
10 you're saying they can't offer a customer-specific contract,
11 but maybe could offer something a little broader and put it in
12 a generic contract. And that's how they're offering it to --
13 to the customers.

14 Q. And similarly, if SBC didn't offer any generic
15 contracts to be -- that customers could opt into, how would
16 you view that?

17 A. If they didn't offer generic contracts, it just
18 makes it totally irrelevant.

19 Q. Okay. Issue 3 having to do with the to be
20 determined in the dashes and dots and --

21 A. Uh-huh.

22 Q. -- other Morse code, you mentioned that there
23 were -- there was some new agreed contract language; is that
24 correct?

25 A. Yes. Between the filing of Direct Testimony

1 and filing of Rebuttal Testimony there were several iterations
2 of proposed language that went back and forth. And the latest
3 one that I have -- I was quite confused by counsel's questions
4 because it was referring a lot to back billing and the
5 timeline for it and that's part of the new agreed-to language
6 within it. And it's in my Rebuttal on page 12 where I provide
7 that new language, what's agreed to and what is not.

8 Q. Okay. Thank you.

9 MR. ZARLING: Those are all the questions I
10 had, your Honor.

11 JUDGE THOMPSON: Thank you very much,
12 Mr. Zarling.

13 I believe you can step down, sir. And I
14 believe the next witness would be Mr. Cadieux; is that
15 correct?

16 MR. MAGNESS: Your Honor, I believe Mr. Cadieux
17 was among the group that was sworn already. I'm just here to
18 stretch my legs. He doesn't have any corrections to his
19 testimony.

20 I did want to point out Mr. Cadieux is one of
21 those witnesses we discussed earlier who has testimony in
22 different parts. The testimony that he'll be addressing this
23 morning is on general terms and conditions, then later in the
24 week in one sitting he will be addressing UNEs and collocation
25 testimony.

1 JUDGE THOMPSON: Very well. Thank you.
2 You've acknowledged you've been sworn,
3 Mr. Cadieux. Could I ask you to state your name for the
4 reporter?
5 THE WITNESS: Edward J. Cadieux.
6 JUDGE THOMPSON: And could you spell your last
7 name?
8 THE WITNESS: C-a-d-i-e-u-x.
9 JUDGE THOMPSON: Thank you.
10 Mr. Lane?
11 EDWARD CADIEUX testified as follows:
12 CROSS-EXAMINATION BY MR. LANE:
13 Q. Good morning, Mr. Cadieux. How are you?
14 A. Good morning, Mr. Lane.
15 Q. Let's start with the first CLEC Coalition GTNC
16 issue No. 1.
17 A. Right.
18 Q. This deals with certain statements that are in
19 the whereas clauses of the agreement. Right?
20 A. That's correct.
21 Q. And it's fair to say that the CLEC Coalition's
22 proposal here is an attempt to carry over some whereas clauses
23 that were in the original M2A to this new interconnection
24 agreement. Right?
25 A. Yes.

1 Q. But, in fact, you changed at least one of
2 those, did you not, from what had been in the M2A?

3 A. I'm not sure. You'd have to point me out
4 that -- point that out to me. I'm not aware of that.

5 Q. On page 5 of the DPL with the CLEC Coalition,
6 do you see the last whereas clause?

7 A. Yes.

8 Q. That references proceedings in Texas and
9 asserts that the parties are agreeing that in this contract
10 the whereas clause should reflect what happened in Texas; is
11 that right?

12 A. Yes.

13 Q. And, in fact, in the M2A that particular
14 whereas clause isn't found, is it? Instead there's a clause
15 that says that the parties agree to carry forward some terms
16 from the AT&T interconnection agreement in Missouri to the
17 M2A. Right?

18 A. I'd have to see that.

19 MR. LANE: Can I approach the witness, your
20 Honor?

21 JUDGE THOMPSON: You may.

22 MR. LANE: I'm just going to show him this. Do
23 you want to look at it?

24 MR. MAGNESS: Sure. I'll just look at it with
25 him, Paul. Save a few minutes.

1 MR. LANE: I'll go up there by myself. I'm a
2 big boy.

3 MR. MAGNESS: Okay. Sure.

4 BY MR. LANE:

5 Q. Mr. Cadieux, showing you a copy of the M2A
6 agreement in Missouri, would you agree that the whereas clause
7 that corresponds to the one we've been discussing references
8 the AT&T interconnection agreement in Missouri and not a Texas
9 agreement?

10 A. That appears to be correct.

11 Q. Okay.

12 A. And I -- I'm not sure how that got picked up,
13 but the -- the CLEC proposal would -- I would agree that our
14 proposal should be modified to reflect that M2A provision
15 because that was what the intent was.

16 Q. With regard to whereas clauses generally, those
17 are inserted in contracts to form a general understanding of
18 the party's intent. Right?

19 A. Yes. And to give some background sometimes,
20 context.

21 Q. And in this particular case, it's pretty clear
22 that the whereas clauses that you want to insert don't reflect
23 SBC Missouri's intent. Right?

24 A. That apparently is correct.

25 Q. Okay. And the purpose of the whereas clause

1 would be to be used to help interpret a substantive provision
2 of the contract that's ambiguous. Right?

3 A. Oh, it might, although I think it's -- that's
4 pretty -- I think in a contract like this, that would probably
5 be unlikely given the -- the kind of general nature of the
6 whereas clauses. I mean, the real purpose here, from the CLEC
7 Coalition standpoint of proposing to carry over the whereas
8 clauses, was really to kind of maintain what we consider to be
9 kind of a historical linkage that there were provisions and
10 commitments -- kind of I guess what I'd call, very broadly
11 speaking, kind of fair dealing commitments that were adopted
12 into the original M2A as part of the 271 approval
13 recommendation process by the Missouri PSC.

14 And we just thought it was appropriate to carry
15 those forward into the next generation of interconnection
16 agreements given that the -- the benefits of the 271 entry --

17 Q. Okay.

18 A. -- continue.

19 Q. In the M2A, SBC Missouri made certain
20 voluntarily commitments that weren't necessarily required by
21 the Act. Right?

22 A. Well, I know it was SBC's position that they
23 weren't required by the Act. And arguably they weren't
24 required by the Act.

25 Q. Well, for example, price reductions were made

1 to levels below those that had been set by the Commission on a
2 TELRIC basis. Right?

3 A. I believe that's correct, yes.

4 Q. And you couldn't dispute that that's a
5 voluntary agreement that wasn't required by the Act. Right?

6 A. If the rate had previously been set explicitly
7 on a TELRIC basis, I'd agree with you.

8 Q. Now, the Commission in other arbitration
9 proceedings has looked at whereas clauses. Correct?

10 A. I'm not familiar with that.

11 Q. Would you agree with me that in Case
12 No. TO-2001-455 where SBC Missouri was arbitrating with AT&T,
13 that SBC Missouri in that case had proposed some things for
14 the whereas clauses that the Commission looked at and
15 rejected?

16 A. I'm not familiar with that.

17 Q. Okay. Did you read -- I believe it was
18 Ms. Quate's or Mr. Silver's Rebuttal Testimony in this case?

19 A. I have not had a chance, given the late filing
20 of all the Rebuttal Testimony. My focus has been more on the
21 UNE side, so I have not had a chance to review the GTC
22 Rebuttal.

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

25 JUDGE THOMPSON: You may.

1 BY MR. LANE:

2 Q. Mr. Cadieux, showing you the arbitration order
3 in Case No. TO-2001-455, effective date of June 14th, 2001,
4 would you agree with me that the Commission there looked at
5 whereas clauses and ultimately found that interconnection
6 agreements are unlike traditional commercial contracts because
7 the parties are brought together by operation of law?

8 MR. MAGNESS: Your Honor, I'd object to this.
9 He's handled him a multi-page arbitration order not cited in
10 his testimony and asking him to agree with recitations from
11 that that Mr. Lane has obviously memorized and then asking the
12 witness to agree with them.

13 It's a public document. We can brief the
14 issue. I think in accordance with what you've been saying
15 about how we're going with legal issues, it would be more
16 appropriate to brief it.

17 JUDGE THOMPSON: Well, I'm going to allow the
18 question. If the witness needs time to review the document,
19 the witness can tell me that. If the witness -- you know,
20 whatever's necessary. If this is how Mr. Lane wants to spend
21 his two hours -- two and a half hours, excuse me, that's fine
22 with me.

23 THE WITNESS: Your Honor, I would like a minute
24 just to read the content.

25 JUDGE THOMPSON: Go ahead.

1 THE WITNESS: I would agree that the Commission
2 in this context said that they view that whereas clauses were
3 not important for determining the intent of the parties
4 because there is no coincidence of self-interest to define.
5 They also said that while some introductory recitations are
6 helpful, they're not generally much important-- of much
7 importance in the present circumstances in the context of that
8 particular arbitration.

9 BY MR. LANE:

10 Q. Okay. I'm going to switch over to issue No. 4
11 of the CLEC Coalition's GTNC and ask about that.

12 A. Okay.

13 Q. The latest DPL notes that issue 4B is resolved.
14 And I want to make sure we're on the same page here. Is that
15 Section 4.8? Is that what we're dealing with?

16 A. I believe that's correct, yes.

17 Q. And you're accepting SBC Missouri's --

18 A. Yes.

19 Q. -- language on Section 4.8. Right?

20 A. That's my understanding.

21 Q. Okay. Now, issue 4A under CLEC Coalition's
22 general terms and condition is still at issue. Right?

23 A. That's correct.

24 Q. That issue involves terms and conditions that
25 apply after expiration of this agreement but before a

1 successor agreement comes into being. Right?

2 A. That's correct.

3 Q. Okay. And the CLEC Coalition language
4 essentially provides that the current agreement remains in
5 place until a successor agreement takes its place. Right?

6 A. If -- under certain circumstances. Not -- not
7 in all circumstances. In particular, it's a provision
8 regarding when an arbitration petition has been filed.

9 Q. And if an arbitration petition has been filed,
10 then this agreement continues until a replacement's in effect.
11 Right?

12 A. That's our proposal.

13 Q. And it doesn't matter how many months that goes
14 on. Right?

15 A. No. But we assume that since the Commission
16 has control of the arbitration process, that the Commission
17 can, you know -- can limit what that amount of time might be.

18 Q. But SBC Missouri's language places a time limit
19 on it, does it not?

20 A. Right. It allows no extension beyond the
21 10 months.

22 Q. And in your statement of position, you make the
23 assertion that contingencies like here in Missouri make it
24 appropriate to have the agreement run in effect longer than
25 10 months after expiration. Right?

1 A. I have to look it up.

2 I'm not sure I see that. If you can point me
3 to the specific language.

4 Q. Sure. It's on page 18 and 19 of the DPL in the
5 CLEC Coalition on issue 4.

6 A. Right. But I'm looking for a specific
7 reference to Missouri.

8 Q. At the top of the page on 19, the first full
9 sentence, However, SBC has established a time frame that does
10 not allow for any contingencies such as that which has just
11 occurred in this M2A successor proceeding where regulatory
12 uncertainty and issues beyond the party's control has created
13 greater than the standard 10-month gap between the request for
14 negotiations and the final implementation of a complete
15 successor agreement.

16 A. Yeah. That -- the Missouri reference is
17 incorrect. It would apply though in the more -- more
18 specifically in the Oklahoma and Kansas context.

19 Q. And we're dealing obviously with Missouri, are
20 we not?

21 A. Right. But the Oklahoma and Kansas are --

22 Q. I'm not asking about Oklahoma and Kansas on
23 this.

24 Would you agree with me that the reason that
25 this Commission is deciding it within the applicable time

1 period without extension is because that's what the contract
2 calls for?

3 A. That's -- I would agree that's what the
4 contract calls for. And the timing is such relative to the
5 TRRO that it has permitted that to occur, which is not true in
6 some other states.

7 Q. In addition, it's fair to say that the CLEC
8 Coalition language presupposes that the CLEC will initiate the
9 arbitration petition. Right?

10 A. I don't believe so. It says -- the language
11 I'm looking at is on page 20 of 25 of the DPL and it's -- it
12 says, Unless an arbitration petition has been filed by either
13 party.

14 Q. But the sentence following that applies only
15 when the CLEC requests renegotiation of the contract. Right?

16 A. Yeah. That seems to be out of sync with the
17 previous -- the prior sentence. I'd agree that that probably
18 that second -- that last sentence should be if either party
19 requests negotiation of the successor agreement.

20 Q. Okay.

21 A. But also it's modified -- it's all in the
22 context of the -- the sentence right immediately previous to
23 it, which is that if an arbitration petition has been filed by
24 either party, then the prior agreement stays into effect until
25 the arbitration is resolved.

1 Q. In this particular case, we're dealing with SBC
2 Missouri having filed the arbitration petition. Right?

3 A. That's correct.

4 Q. Okay. And it's also fair to say that your
5 language doesn't address the situation where the CLEC requests
6 renegotiation but later withdraws that request. Right?

7 A. Well, you say it doesn't address it. I think
8 it does address it in that in that situation there would be no
9 arbitration petition filed. And in that situation, the
10 10-month would apply.

11 Q. No. If the arbitration petition had been filed
12 but then was ultimately withdrawn. You don't address that,
13 but SBC Missouri's language specifically addresses that.
14 Right?

15 A. Well, I would read the last two senten-- or the
16 last -- yes, the last two sentences of the CLEC language as
17 basically dealing with that situation, that the last -- the
18 last sentence relates -- has to be read in the context with
19 the immediate prior sentence.

20 So it's only when an arbitration -- that
21 certainly is the intent, only when an arbitration petition has
22 been filed will the successor agreement -- the prior agreement
23 continue into effect until the pendency of the arbitration.

24 Q. But it doesn't specifically address what
25 happens if an arbitration petition that's filed is

1 subsequently withdrawn. Right?

2 A. Well, it doesn't explicitly. The obvious
3 intent there is that if the arbitration -- that it allows the
4 prior agreement to stay in effect while the arbitration is
5 being processed. Implicitly if the arbitration petition is
6 withdrawn, then I think the reasonable interpretation of the
7 language is that the 10-month process or cap reinstates.

8 Q. Issue 21 of the general terms and conditions,
9 that involves whether this new interconnection agreement
10 operates as a novation of the prior contract. Right?

11 A. Right.

12 Q. And in your testimony you indicated that the
13 arbitrator in Kansas had agreed with the CLEC position.
14 Right?

15 A. That's my understanding.

16 Q. And would you agree with me that the Kansas
17 Corporation Commission, in considering an appeal of that
18 decision, found on that particular issue that SBC Missouri's
19 position was correct and reversed the arbitrator?

20 A. I have not reviewed that. If that's what the
21 decision says, that's what it says. I know that decision just
22 came out last week.

23 Q. All right. With regard to novation, would you
24 agree that SBC Missouri's concern is that the CLEC Coalition
25 members could argue that payment obligations and the like that

1 exist under the current agreement don't carry forward into the
2 new agreement if your novation language is accepted?

3 A. I'm not -- I mean, you're asking me for what
4 the -- SBC's concerns. I'm not sure that I understand that
5 that's a concern.

6 Q. All right. I'll ask if it --

7 A. But if it is, it is.

8 Q. Would you agree with me that if your language
9 is adopted, that it's not intended and shouldn't have the
10 effect of extinguishing obligations that arose and have yet to
11 be satisfied under the current interconnection agreement?

12 A. I'd agree with that.

13 Q. Okay.

14 MR. LANE: That's all I have. Thank you,
15 Mr. Cadieux.

16 JUDGE THOMPSON: Okay. I have no questions for
17 you.

18 Questions from my Staff, Mr. Williams?

19 MR. WILLIAMS: No questions.

20 JUDGE THOMPSON: Ms. Dietrich?

21 MS. DIETRICH: No questions.

22 JUDGE THOMPSON: Mr. Johnson?

23 MR. JOHNSON: No questions.

24 JUDGE THOMPSON: Mr. Scheperle?

25 MR. SCHEPERLE: No questions.

1 JUDGE THOMPSON: Mr. McKinnie?

2 MR. MCKINNIE: No questions.

3 JUDGE THOMPSON: Very well.

4 Redirect?

5 MR. MAGNESS: Thank you, your Honor.

6 REDIRECT EXAMINATION BY MR. MAGNESS:

7 Q. Mr. Cadieux, I'd ask you to look back at the
8 DPL on issue No. 1 on general terms and conditions --

9 A. Yes.

10 Q. -- that Mr. Lane discussed with you.

11 Now, you don't have any quarrel with Mr. Lane
12 that the SBC commitments that are represented in these whereas
13 clauses are voluntarily commitments at the time they were
14 made. Correct?

15 A. I have no disagreement with that.

16 Q. Okay. And there are other requirements set
17 forth in Section 271 about what must be in interconnection
18 agreements. Those are dealt with in another witness's
19 testimony?

20 A. That's correct.

21 Q. Okay.

22 A. I -- as I said, this issue -- I mean, pardon
23 me -- frankly, this issue is a little bit -- in one sense a
24 little bit tail on the dog. But, on the other hand, it's
25 something we did not want to just kind of quietly walk away

1 from. Frankly, I think it's really a question for the
2 Commission as much as anything else.

3 There was clearly a tie to some market opening
4 commitments from SBC at the time the M2A was adopted and they
5 were connected very directly with the Commission's process of
6 deciding to support the 271 application.

7 Here we're at the next generation of
8 interconnection agreements. And I think it's, as much as
9 anything, a policy question for the Commission as to whether
10 they think those kind of voluntary commitments should remain
11 in place in light of the fact that the 271 benefits and market
12 entry is an ongoing thing.

13 Now, that's a separate and distinct issue from
14 what I'll call the 271 unbundling obligation issue and the
15 question of where do those provisions belong. And that is a
16 subject that Ms. Mulvaney-Henry addresses in her testimony and
17 is distinct and separate from the one we're discussing here.

18 Q. And when you discuss the benefits of long
19 distance entry, is it your understanding SBC remains an
20 interLATA long distance in Missouri?

21 A. Every flier I get to switch my long distance
22 server tells me that's the case.

23 Q. Are there any pending transactions that may
24 even increase their presence?

25 A. Obviously the pending AT&T transaction.

1 Q. And let's look at these whereas clauses for
2 just a moment. There was some discussion with Mr. Lane about
3 the meaning of whereas clauses. These provisions are where
4 these commitments are reflected in the M2A; is that right?

5 A. Yes.

6 Q. And just to be sure it's clear for the record,
7 is it your -- what's your position about whether the current
8 M2A whereas clauses should be included in the agreement or
9 not, as opposed to if there is a Texas reference here
10 that's --

11 A. Again, as I hope I made clear to Mr. Lane, if
12 there's a Texas reference that was -- I mean, the confusing
13 thing is there are some Texas references that find their way
14 into other state's 2A agreements because of the -- the kind of
15 the flow originally of the T2A being the first agreement and
16 then versions of that kind of being brought to the other
17 Southwestern Bell Telephone Company region states.

18 But if there's a Texas reference in our
19 proposal that is not in the M2A whereas clauses, then that's a
20 mistake and it shouldn't be in there. Our intent was to
21 reflect the M2A whereas clauses and just bring them forward.

22 Q. I'd ask you to look at page 3 of the DPL. And
23 the whereas clauses are reflected in the CLEC language column.
24 The first one that appears there on page 3 is, Whereas, in
25 Texas SBC made the following representations as part of the

1 public interest phase of the Texas collaborative process and
2 SBC Missouri made these same representations in Missouri,
3 which the Commission finds still to be necessary for SBC's
4 Missouri's 271 relief to remain in the public interest.

5 Do you see that one?

6 A. Yes.

7 Q. And then those include -- those representations
8 include that SBC Missouri represented it has already made
9 several, and represented that it would continue, process
10 improvements designed to foster better relationships and
11 provide better service to CLEC customers. Then it lists some
12 of those improvements?

13 A. Yes.

14 Q. If this whereas clause is not included, SBC's
15 commitment to those sort of process improvements will not be
16 included in the successor interconnection agreement, will
17 they?

18 A. No, they will not.

19 Q. SBC will have not put in writing its
20 willingness to maintain those commitments. Right?

21 A. Certainly not in the interconnection agreement.

22 Q. If you go next to page 4 of the DPL, still in
23 that same column, under the subheading 3 it says, SBC Missouri
24 represented that it would continue to work with its CLEC
25 customers and invite their feedback to provide them a

1 meaningful opportunity to compete in Missouri.

2 It's your understanding SBC does not want that
3 language in the new interconnection agreements. Right?

4 A. That's my understanding. It's reflected by the
5 fact that's underscored language. It's our proposal that SBC
6 has not agreed to.

7 Q. And so those are commitments that SBC made at
8 one time, but apparently are not willing to put in writing in
9 this contract. Right?

10 A. In this contract, that's correct.

11 Q. And if the CLEC language was approved, those
12 commitments would continue to be part of the parties'
13 interconnection agreements. Right?

14 A. That's correct.

15 Q. As Mr. Lane discussed with you, he said
16 something about whereas clauses not being very important.
17 Weren't these whereas clauses where these public interest
18 commitments found a home when SBC wanted long distance relief?

19 A. Yes. I want -- and the language -- that quote
20 was from the SBC/AT&T arbitration order, which, you know, was
21 a different animal than a -- the M2A agreement, which, as
22 we've discussed here, was inextricably linked to the 271 in
23 region 1 long distance approval recommendation process.

24 Q. Okay. And on the question where you were
25 trying to reference some of the other X2A proceedings, as you

1 noted, the Missouri case has stayed on time as to the
2 termination times, etc. that are in the M2A. But what have
3 been some of the issues in Oklahoma, Kansas, Texas that have
4 led you to testify that there may be a need for some
5 flexibility on timing at the end of the agreement?

6 A. Well, Oklahoma probably is as good an example
7 as any. And their -- it's all a matter of the
8 interrelationship between when the termination dates and,
9 therefore, the negotiations and arbitrations of the
10 replacement 2A agreements fell relative to when the TRO order
11 came out.

12 Now, it so happened -- as everybody here
13 obviously is well aware, this has been a tight schedule, but
14 the situation was much more chaotic in Oklahoma, for example,
15 where the pre-filed testimony deadlines were falling right
16 on -- essentially right after the TRRO was issued and people
17 were wading through the order and trying to interpret it and
18 trying to write testimony.

19 Trying to write testimony -- I'm getting ahead
20 of myself. We didn't really have a chance to even negotiate
21 essentially -- no time for negotiation to try to implement and
22 agree upon as much of the TRRO implementing language before
23 you threw it into testimony and you were taking litigation
24 positions.

25 And it wasn't anybody's really fault, but that

1 was the inter-- you had a -- a FCC decision that was
2 fundamentally changing all of the unbundling -- core
3 unbundling obligations of the Act and people were scrambling,
4 really had no opportunity to negotiate.

5 Some more issues were litigated probably than
6 needed to be and folks were essentially drafting testimony as
7 they were interpreting the order real time. Does not makes
8 for good litigation, does not make for good negotiation.

9 Now, the problem at that point was there was an
10 unwillingness by SBC to extend voluntarily the process. I
11 would note that at this point the process has been extended
12 because once the arbitrator issued -- rendered a decision,
13 there was a desire for more time to give the Commission
14 additional time to review the record and make decisions on
15 exceptions to the arbitrator's order.

16 Q. That is in Oklahoma?

17 A. That's in Oklahoma.

18 So all by way of context, that when you get
19 a -- and I understand that there can be -- there's always
20 going to be some regulatory decisions going on. The state of
21 the law is never totally static.

22 But in a situation where you have a fundamental
23 revamping of core provisions of the Act and you -- it happens
24 to fall when you're in the midst of negotiation and
25 arbitration, we just think it makes a lot more sense to say,

1 okay, the parties are pursuing this, but there's been an
2 external event here of some substantial magnitude that really
3 calls for the parties to have some additional time to
4 negotiate.

5 And then whatever they can't negotiate in terms
6 of implementing change of law, you know, negotiating agreeable
7 implementation provisions of that external regulatory
8 decision, we'll go and litigate that, that may take some
9 additional time. If you have just a solid, you know,
10 unmovable 10-month cap, you do not have the luxury to do that.

11 MR. MAGNESS: Thank you, Mr. Cadieux.

12 That's all I have.

13 JUDGE THOMPSON: Thank you.

14 You may step down, sir. Thank you.

15 Mr. Falvey, have a seat, sir. Now, you have
16 been sworn; is that correct?

17 THE WITNESS: That's correct.

18 JUDGE THOMPSON: I wonder if you would state
19 your name for the reporter, please.

20 THE WITNESS: James C. Falvey.

21 JUDGE THOMPSON: And spell your last name.

22 THE WITNESS: F, as in Frank, a-l, V, as in
23 Victor, e-y.

24 JUDGE THOMPSON: Now, you have filed testimony
25 I believe on behalf of two different parties; is that correct?

1 THE WITNESS: That's correct. On behalf of one
2 company and also on behalf of two different parties.

3 JUDGE THOMPSON: So you're being examined now
4 with respect to the general terms and conditions testimony
5 that you filed on behalf of the CLEC Coalition; is that right?

6 MR. MAGNESS: Your Honor, we had asked because
7 of the availability of Mr. Falvey that his cross on general
8 terms and conditions on behalf of Xspedius Interconnection --

9 JUDGE THOMPSON: So just everything?

10 MR. MAGNESS: Yes. Everything at once.

11 JUDGE THOMPSON: Very well. That's all I need
12 to know.

13 MR. MAGNESS: And to that end, I'm going to ask
14 Mr. Falvey a leading question.

15 JUDGE THOMPSON: Fire away.

16 JAMES FALVEY testified as follows:

17 DIRECT EXAMINATION BY MR. MAGNESS:

18 Q. Mr. Falvey, isn't it correct that there have
19 been some issues that are referenced in your testimony that
20 have been settled by the parties?

21 A. Yes, that's correct.

22 Q. And those include using the DPL numbers NIA --
23 that is, CLEC Coalition DPL NIA 12 concerning SS7 issues; CLEC
24 Coalition DPL issues NIA 14 and NIM, as in Mary, 5 regarding
25 intra-building cabling issues; and in addition, very recently

1 by the magic of e-mail, inter-carrier compensation issue 6 --
2 CLEC Coalition inter-carrier compensation DPL issue 6
3 regarding rebuttable presumption true-ups. Is it your
4 understanding that the parties have settled those issues?

5 A. Yes. That's correct.

6 Q. Okay. And as you make any corrections or
7 changes to your testimony --

8 MR. MAGNESS: Your Honor, what we had hoped to
9 do here is have Mr. Falvey just identify the areas of his
10 testimony that could essentially be Xed out because we're not
11 seeking a Commission decision on those issues anymore having
12 settled them, and we'd just ask if he could do that for the
13 record and people can reflect that on the testimony. And
14 we'll also send an e-mail to the service list as you requested
15 concerning the content of the settlements.

16 JUDGE THOMPSON: Okay.

17 THE WITNESS: The changes to my testimony
18 are -- relate to the recip comp and the interconnection
19 issues.

20 BY MR. MAGNESS:

21 Q. When you say "recip comp," is that the same
22 thing as inter-carrier compensation?

23 A. Yes, it is. Inter-carrier compensation.

24 So my direct inter-carrier compensation
25 testimony on page 14 beginning with line 12 over through

1 page 15, end of the page, line 19. So that's page 14, line 12
2 through 15, line 19. That's withdrawn.

3 Rebuttal Testimony, again inter-carrier
4 compensation, and that begins on line -- I'm sorry, on page 8,
5 line 17 and that carries over on to page 9 -- through page 9
6 on to page 10, line 5 also withdrawn. Again, that's page 8,
7 line 17 through page 10, line 5.

8 Direct Testimony on interconnection beginning
9 on page 24, line 6 carrying over to the end of page 25. So
10 that's page 25, line 18. Again, page 24, line 6, page 25,
11 line 18.

12 Finally, again, interconnection Rebuttal
13 Testimony, page 5, line 13 through the end of page 5, which is
14 line 19. So page 5, 13 through 19 stricken carrying over to
15 page 17 -- starting up on page 17, line 1 through page 19 --
16 I'm sorry, through page 20 -- 21 -- all the way to 21, line 4.
17 Okay? So I'll repeat that one. Starting up again on page 17,
18 line 1 through 21, line 4. And that's all.

19 Q. Do you have any additional changes, corrections
20 to your testimony?

21 A. I don't at this time

22 MR. MAGNESS: Thank you, your Honor.

23 JUDGE THOMPSON: Thank you.

24 I see we're overdue for a break for the
25 reporter so we'll go ahead and take 10 minutes at this time.

1 So be back at 12:17.

2 (A recess was taken.)

3 JUDGE THOMPSON: Okay, Mr. Lane.

4 MR. LANE: Your Honor, just for clarification,
5 Mr. Falvey addresses a couple of different issues. We've
6 agreed to take him up front, but we have different lawyers on
7 the different issues, so I'm just going to start and then
8 Mr. Bub is going to help me out.

9 CROSS-EXAMINATION BY MR. LANE:

10 Q. Mr. Falvey, the only issue on general terms and
11 conditions you have is issue No. 3 of the CLEC Coalition
12 issues. Right?

13 A. There's also some testimony on issue 7A and 7B.

14 Q. Okay. Fair enough. On issue 3 that involves
15 deposit language. Right?

16 A. That's correct.

17 Q. And here Xspedius has a position that is
18 different than the rest of the CLEC Coalition. Right?

19 A. That's correct.

20 Q. And unlike the rest of the CLEC Coalition which
21 proposes a 60-day billing for the deposit, Xspedius proposes
22 30 days. Right?

23 A. That's correct.

24 Q. And the DPL indicates that that's addressed by
25 you on pages 7 to 9 of the Direct Testimony?

1 A. That --

2 Q. But I don't find that in your testimony. Can
3 you point to me where it is?

4 A. I'm looking at page 7 and it talks about
5 Xspedius GTC issue 3. And then it gives some discussion of
6 why essentially we think that SBC is already -- has ample
7 assurance of payment --

8 Q. All right.

9 A. -- from -- from Xspedius.

10 Q. Would you agree with me that under the
11 termination provisions that Xspedius proposes in the case,
12 that SBC Missouri would be at risk for more than 30 days of
13 unpaid bills?

14 A. No, I would not. As we sit here, region-wide
15 SBC holds well over \$6 million of Xspedius bills. So if
16 you -- for example, if we were to -- if you were to terminate
17 us tomorrow, you would hold over \$6 million of services
18 rendered that you have not paid for. So it's hard to say that
19 you would not be sufficiently covered.

20 Q. All right. The payments that SBC Missouri
21 might owe to Xspedius is for terminating traffic. Right?

22 A. It is for terminating traffic and also for
23 facilities charges.

24 Q. Okay. And it may or may not be in the future
25 that SBC Missouri owes Xspedius. Right? One doesn't know

1 that. Right?

2 A. Well, I do -- actually I would disagree with
3 that because SBC has essentially admitting to owing certain
4 portions of the dollars that are owed. And it turns out that
5 every time we've settled up, whether it be -- before e.spire
6 went into bankruptcy or during the e.spire bankruptcy, SBC
7 would pay millions of dollars over to Xspedius. So we have
8 yet to see an instance where your disputes proved to be even
9 50 percent accurate.

10 Q. All right. Hypothetically speaking, this
11 agreement is going to be in effect I guess for three years; is
12 that right?

13 A. That's correct.

14 Q. Okay. Two years from now, one doesn't know
15 absolutely, as we sit here today, whether SBC is going to owe
16 Xspedius money or Xspedius is going to owe SBC money. Right?

17 A. That's correct. The track record strongly
18 suggests -- if I could finish my answer. The track record
19 strongly suggests that every year you will owe us money.
20 That's the way it's been for years and years and years.

21 Q. All right. And two years from now, assume with
22 me hypothetically that Xspedius owes SBC money. Under your
23 proposed language, it's fair to say that a 30-day deposit
24 would not necessarily give SBC Missouri the assurance of
25 payment that it needs because it would take longer than

1 30 days to terminate for failure to pay. Right?

2 A. I don't know. I'd have to look at the
3 termination provisions. It is possible that SBC would have
4 some de minimis exposure. Most companies have exposure when
5 their trading partners go into bankruptcy. Only the RBOCs
6 somehow manage to protect themselves at 110 percent.

7 Q. I --

8 JUDGE THOMPSON: Mr. Falvey, I'm going to have
9 to break in here and ask you to please restrict your answer to
10 the question. If it's a yes or no question, please give a yes
11 or no answer. If you have explanatory material that you'd
12 like to bring out, that's a matter for redirect. Okay?

13 THE WITNESS: Fair enough. Will do.

14 BY MR. LANE:

15 Q. Did you read Ms. Quate's testimony which
16 indicated that SBC-affiliated ILECs had lost more than
17 \$250 million in unpaid payments?

18 A. I understand that that's her testimony.

19 Q. Okay. You understand, do you not, that other
20 carriers that are not participating in this proceeding have
21 signed memorandums of understanding in which they've agreed
22 that they're going to opt into one or more of these -- into
23 one of the interconnection agreements that come out of this
24 case. Right?

25 A. I don't know that for a fact. I know that

1 that's been the practice in some of the other states.

2 Q. All right. And so even if contrary to your
3 view -- strike that.

4 You would agree with me that other CLECs that
5 may not have the same billing arrangements that SBC Missouri
6 and Xspedius might have could opt into this language and would
7 thereby be entitled to only a 30-day deposit when for those
8 CLECs that might not be sufficient. Right?

9 A. I can't agree with your statement entirely. I
10 would agree that they might attempt to opt into this
11 agreement, but what we're asking for is admittedly an
12 Xspedius-specific provision. So if a carrier were to opt into
13 it that didn't have the same history of -- of unpaid dollars
14 from SBC, I think you would be well within your rights to come
15 to the Commission and -- and protest that portion as not in
16 the public interest.

17 Q. But that's not specifically provided in the
18 language, is it?

19 A. In -- in what language?

20 Q. In your language.

21 A. I don't think we have language in our
22 interconnection agreement that addresses the 252-I opt in
23 rights of other carriers. So I'm really talking about rights
24 that you and the other carriers would exercise under federal
25 law.

1 MR. LANE: That's all I have. Thank you.

2 THE WITNESS: Thank you.

3 JUDGE THOMPSON: Thank you, Mr. Lane.

4 Okay. I have no questions for you. Questions
5 from --

6 MR. BUB: The second half, your Honor.

7 JUDGE THOMPSON: Oh, I'm sorry.

8 MR. BUB: That's okay.

9 JUDGE THOMPSON: You guys are going to have to
10 ride herd on me during this thing.

11 CROSS-EXAMINATION BY MR. BUB:

12 Q. Hello, Mr. Falvey.

13 A. Good afternoon.

14 Q. My name's Leo Bub. I'm another SBC attorney.
15 I have some questions for you in the interconnection and in
16 the intercompany comp sections of your testimony.

17 First, I note that in reading your testimony,
18 that you're a lawyer; is that correct?

19 A. That's correct.

20 Q. Okay. And you're not an engineer?

21 A. No, I'm not an engineer.

22 Q. And that all your responsibilities with
23 Xspedius and your previous employers have been more regulatory
24 in nature rather than operational or technical?

25 A. My primary responsibilities are regulatory.

1 Invariably I work with engineers to resolve their engineering
2 operations problems.

3 Q. From a regulatory perspective. You don't
4 actually get involved in designing or provisioning?

5 A. Unfortunately, I've learned more than I'd like
6 to know about engineering, but I don't design circuits.

7 Q. For the record, I want to note that there's
8 nothing wrong with being a lawyer.

9 A. Or an engineer, for that matter.

10 Q. I'd first like to turn specifically to
11 coalition issues NIA-4 and ITR-2. Those are the one-way
12 versus two-way trunking issues. I think you can find them on
13 page 10 of your direct. Are you with me?

14 A. Yes.

15 Q. Okay.

16 A. Sorry.

17 Q. Let's start by doing a little bit of factual
18 background on one-way versus two-way trunks.

19 A. Sure.

20 Q. A one-way trunk allows calls to flow in one
21 direction only; is that correct?

22 A. That's correct.

23 Q. Say, for example, from Xspedius to SBC?

24 A. That's correct.

25 Q. Okay. And if you want calls to go the other

1 way, you'd need to establish another one-way trunk so the
2 calls then go from SBC to Xspedius?

3 A. That's correct.

4 Q. And two-way trunk, on the other hand, that
5 allows traffic to go both ways, carry traffic from either end?

6 A. That's correct. It has that capacity. They
7 can be used as one-way trunks, but they certainly have the
8 capacity to carry traffic both ways.

9 Q. Okay. And I'd like to focus now from a facts
10 perspective on the provisioning and operational aspects. And
11 I recognize in your testimony you make an argument about the
12 cost of the trunks and the allocation of costs between the
13 parties. And I'm viewing that more as a legal issue that we
14 can address in our briefs, but I'd like to focus on the
15 provisioning and operational aspect, if we could.

16 A. Fair enough.

17 Q. Okay. Looking at it from a strictly technical
18 perspective, would you agree the two-way trunks are generally
19 more efficient than a one-way trunk?

20 A. Yes. And I hope that's not lost in my
21 testimony that we prefer to have two-way trunks. We just want
22 to make sure that each carrier pays their proportional share.

23 Q. Okay. And the reason is that if one of the
24 trunks in a two-way trunk group is nearing capacity, some of
25 the calls in the high-volume direction can be handled by the

1 other trunk and that's one of the efficiencies that a two-way
2 trunking arrangement has over a one-way?

3 A. Yeah. That's one -- one of the reasons, one of
4 the things --

5 Q. Because in that situation?

6 A. The main reason is you're taking up fewer trunk
7 ports and you're setting up one trunk group -- you could be
8 quiet going one way and very busy going the other way and then
9 vice-versa and you still only need one trunk group in place.

10 Q. Okay. Okay. I'd like to go to a specific spot
11 in your testimony now that we've got that background part out
12 of the way. At the bottom of page 11, I was looking for a
13 quote, and line 21 you say that SBC simply refused to order or
14 provision one-way trunking.

15 Do you see where that quote is?

16 A. Yes.

17 Q. Okay. When you wrote your testimony, were you
18 aware that the Commission in two prior arbitrations ruled that
19 two-way trunking should be used?

20 A. You're talking about the Missouri Commission?

21 Q. Yes. I'm sorry. Missouri Public Service
22 Commission.

23 A. I mean, I don't know that I was explicitly
24 aware of any particular Missouri orders. I know that there
25 are lots of orders --

1 Q. Okay.

2 A. -- that encourage the use of two-way trunking.
3 I was basing this on my personal experience where we would
4 say, okay, we need you to turn up some one-way trunks and
5 you'd say, no, we want two-ways because we don't -- you know,
6 we won't have to pay for them.

7 Q. So your answer to my question was you weren't
8 aware of any specific Missouri Commission order that ruled
9 that two-way trunks should be used?

10 A. Well, not --

11 Q. Yes or no?

12 A. -- not specific orders. We're working out of
13 interconnection agreements throughout that process. So
14 whether those would have had an impact on my interconnection
15 agreement, I don't know.

16 MR. BUB: Okay. Your Honor, at this point I'd
17 like to ask the Commission to take administrative notice of
18 two orders I think will be coming up a lot throughout this
19 proceeding. The first is the arbitration order in Case
20 TO-97-40 that was issued December 11th, 1996. And then the
21 second one is another arbitration order that was issued in
22 Case TO-2001-455 and I believe that one was issued June 7th,
23 2001.

24 And I'd like administrative notice to be taken.
25 And in other cases the Commission has asked that we provide

1 copies so that those could be made exhibits. So I'm prepared
2 for that if you want copies distributed and to make it into an
3 exhibit, we could do that.

4 JUDGE THOMPSON: Why don't we go ahead and do
5 that.

6 MR. BUB: If we could have the first exhibit
7 marked. Could we go off the record, please?

8 JUDGE THOMPSON: Yes, we can.

9 (Exhibit Nos. 201 and 202 were marked for
10 identification.)

11 JUDGE THOMPSON: Mr. Bub has requested that we
12 take administrative notice of two previous arbitration
13 decisions by this Commission, one in Case TO-97-40, the other
14 in Case TO-2001-455. Mr. Bub has provided copies of those
15 orders which have been marked respectively as Exhibits 201 and
16 202.

17 So then with respect to the request for
18 administrative notice of the order in TO-97-40 marked here as
19 Exhibit 201, do I hear any objections?

20 Hearing none, the same is received.

21 (Exhibit No. 201 was received into evidence.)

22 JUDGE THOMPSON: With respect to the order in
23 Case TO-2001-455 marked here as Exhibit 202, do I hear any
24 objections to the receipt of that?

25 Hearing none, the same is received.

1 (Exhibit No. 202 was received into evidence.)

2 JUDGE THOMPSON: You may proceed, Mr. Bub.

3 MR. BUB: Thank you, your Honor.

4 BY MR. BUB:

5 Q. Mr. Falvey, if we could, I'd like to go back to
6 page 11. And there I think at line 19 you talk about SBC
7 originated traffic pouring onto the Xspedius network. Do you
8 see that?

9 A. Yes.

10 Q. Okay. Is it correct that on local calls from
11 SBC customers to Xspedius customers that the agreement would
12 call for SBC to pay Xspedius reciprocal compensation?

13 A. Reciprocal -- yes, it would require reciprocal
14 compensation to compensate Xspedius for the functions
15 performed after the switch. So, in other words, from the
16 point where once you get to -- start from our switch, the
17 switching function, the transport behind our switch all the
18 way up to the end-user.

19 Q. And on intraLATA toll calls from SBC customers
20 to Xspedius customers, SBC pays Xspedius intraLATA access
21 charges; is that correct?

22 A. That's correct.

23 Q. Okay. I'd like to shift gears on you, if I
24 may, and I'd like to turn to the inter-carrier compensation
25 testimony, specifically your discussion concerning ISP-bound

1 traffic. And you have this I think in your direct at page 8
2 of that other piece of testimony. And specifically it's DPL
3 issue No. 2.

4 A. Okay. I'm sorry. I'm on page 8.

5 Q. Okay. Just for background, the portion of this
6 definitional issue is its impact on intercompany compensation;
7 isn't that correct? And there I'm speaking of the charges
8 that we pay each other for terminating each other's traffic.

9 A. That's correct. That's the impact, the charges
10 that we sometimes pay each other.

11 Q. Under the Coalition's position, if the call
12 goes to an ISP, regardless of where the ISP is located, it's
13 your position that's to be considered Internet bound and then
14 the lower federal rates for Internet traffic would apply. Is
15 that a fair summary?

16 A. That's not quite fair. I mean, our position is
17 that the FCC regime applies --

18 Q. Okay.

19 A. -- right, and so some calls under the
20 three-to-one ratio will be given one rate and then calls over
21 the three-to-one ratio to be given another rate.

22 Q. And that's what I'm talking about. I'm
23 shorthanding it. The FCC's federal rates for Internet traffic
24 from a -- setting aside again the legal arguments. From a
25 practical perspective, what we're talking about here is

1 whether that federal rate applies to Internet-bound traffic
2 regardless of where that ISP is located. Is that from a
3 factual perspective?

4 A. That's general-- yeah, generally correct. The
5 one thing I wanted to make clear is you're under the
6 three-to-one ratio. It could be going to an ISP and not get
7 the ISP rate. But generally, yeah, the location of the ISP's
8 less important.

9 Q. Okay. Let's do SBC's position. It's your
10 understanding that under SBC's position, Internet-bound
11 traffic would be limited to traffic that originates and
12 terminates in the same mandatory local calling area?

13 A. That's correct. And SBC has read in a new
14 category into the ISP remand order.

15 Q. And that's something that we're going to argue
16 in our brief, but from a practical perspective, we're focusing
17 on where that ISP is located. If it's located within the
18 mandatory local calling area, SBC's position is that the
19 federal Internet compensation scheme applies; on the other
20 hand, Xspedius's position is that the location of the ISP
21 doesn't matter, it could be anywhere?

22 A. Yes. But I have to say that my position is
23 really just implementing the FCC's order, so I --

24 Q. And that's the legal position. But from a
25 fact--

1 A. It's one in the same. Our position is the
2 FCC's position. It's hard for me sometimes to divorce -- to
3 say, well, we're just talking about something else. We're
4 talking about implementing the order.

5 Q. Now, let's look at SBC's position. If that
6 were to apply -- if that were to prevail in the case, calls to
7 the Internet -- to an ISP that are within the local calling
8 area, that federal scheme, federal rate that you discussed,
9 that would apply. But if that ISP was located outside the
10 mandatory local calling area, then something like intrastate
11 access charges would apply?

12 A. You're asking me if that's SBC's position?

13 Q. That's your understanding of SBC's position?

14 A. That's my understanding of SBC's position.

15 Q. Let's go through a couple of factual situations
16 of how our respective positions would apply. First, is it
17 correct that our respective positions would apply without
18 regard to the direction of the traffic? Whatever the
19 Commission here would rule, it would apply going both ways?
20 Meaning there wouldn't be a special rule for Xspedius's
21 traffic versus SBC's traffic? We'd all have to live with the
22 same rule that the Commission adopts?

23 A. Yes. I mean, that's correct. The traffic
24 flows will drive the compensation in different directions, but
25 generally it's going to be one rule.

1 Q. And regardless of which way the traffic flows,
2 that rule is going to apply?

3 A. That's correct. There's the three-to-one
4 ratio, right, and it's all based on that.

5 Q. So, for example, under the Coalition's
6 position, if there's an Xspedius customer in Kansas City that
7 was making a call to an I-- to an SBC served ISP in Sedalia,
8 it's in a different exchange, the Coalition's position was
9 that Xspedius would pay SBC under that federal Internet rate?

10 A. Correct. I mean, again, it's a math problem.
11 Is it under the three-to-one ratio or above the three-to-one
12 ratio? That's how you get to your -- that's how you get to
13 your rate.

14 Q. Okay. And if the call went the other way,
15 under your position where you'd have a SBC customer in Sedalia
16 calling an Xspedius-served ISP in Kansas City, under your
17 position, SBC would pay under that same federal scheme?

18 A. Again, yes. Subject to the three-to-one, you'd
19 calculate the minutes. You can't look at one call. You have
20 to look at all of the minutes running both ways and then you
21 apply the three-to-one ratio.

22 Q. If you look at it from SBC's perspective, same
23 type of call, Xspedius customer in Kansas City calling
24 SBC-served ISP in Sedalia, that other exchange, under SBC's
25 position, SBC would have Xspedius pay SBC intraLATA intrastate

1 access charges?

2 A. Give me the scenario again.

3 Q. An Xspedius end-user --

4 A. Right.

5 Q. -- in Kansas City --

6 A. Right.

7 Q. -- calling an SBC-served ISP in Sedalia, which
8 is a different exchange.

9 A. Correct. So, yes, then toll rates would apply.
10 I mean, you don't serve very many ISPs, frankly, but in a
11 hypothetical world, the -- if there was an ISP that was with
12 SBC, then absolutely their toll rates would apply.

13 Q. If that call went the other way where Xspedius
14 had the ISP and SBC had the customer in Sedalia -- maybe I'll
15 make it more specific.

16 You have Xspedius -- an SBC customer in Sedalia
17 calling an Xspedius-served ISP in Kansas City. In that
18 situation SBC, under SBC's proposal, would pay Xspedius the
19 access charges?

20 A. Yes. And I'd have to say that if we're going
21 to have toll charges, right, that service isn't going to be
22 around for very long, right? Who's going to be dialing up for
23 the --

24 Q. Under the laws that exist right now --

25 A. Let me just finish my answer. If you have toll

1 charges in place, the ISP service is not going to be around
2 for very long. We're not going to be able to, for example,
3 serve Fulton out of Jefferson City, we're not going to be able
4 to serve O'Fallon out of St. Louis if you're NuVox.

5 So, yes, for some short period of time those
6 toll charges will get assessed, but what's really going to
7 happen is a constriction of the amount of ISP competition in
8 the state.

9 Q. As the law stands now with access tariffs in
10 place now, access charges would apply?

11 A. Under your hypothetical, access charges would
12 apply until the customer figures out, hey, wait a minute, I'm
13 paying toll charges, I got to get out of here.

14 Q. Let's look at another example. Let's look at
15 what Xspedius would charge its customer for that Kansas City
16 to Sedalia call. Under Xspedius's tariff, going from Kansas
17 City -- end-user in Kansas City to Sedalia, that would be a
18 toll call from your customer's perspective, just what you
19 discussed. Right?

20 A. That was your hypothetical actually. I don't
21 have my tariffs and so I can't say definitively. But if you
22 want to pose a hypothetical with that as a toll call, I'll
23 accept the hypothetical -- your hypothetical.

24 Q. From a hypothetical perspective, it's from one
25 exchange to a different Missouri exchange?

1 A. Correct. Two exchanges that have a toll
2 relationship. That's what we're talking about.

3 Q. Xspedius would charge its customer toll?

4 A. Correct.

5 Q. Okay.

6 A. But we wouldn't -- yeah, we'd charge them for a
7 toll call, that's right, until they caught on.

8 Q. Okay. And if for some reason that end-user in
9 Kansas City was PIC'd to a different long distance company,
10 say MCI, in that situation, it would be MCI charging that
11 end-user toll to make that call; is that correct?

12 A. That's correct.

13 Q. Assuming it's a toll call.

14 A. That's correct. Assuming the customer would
15 continue to make toll calls to the Internet, which is somewhat
16 unrealistic, but I will work with the hypothetical, I think
17 what you'd really see is a constriction of ISP competition in
18 the state.

19 Q. In that example that we're using, Xspedius
20 would then also be receiving originating intrastate intraLATA
21 access charges on that call from MCI, the long distance
22 provider?

23 A. You're saying it's an Xspedius customer?

24 Q. Yes. Local customer that's PIC'd to MCI, a
25 long distance carrier.

1 A. Well, MCI's going to receive the toll charges
2 if they're PIC'd to MCI.

3 Q. Yes.

4 A. So that doesn't leave us -- we don't get the
5 toll charges.

6 Q. No, you don't get the toll charges. You would
7 get the originating access charges in that situation?

8 A. Potentially, that's correct.

9 Q. Let's explore whether there are any limits on
10 the Coalition's position on this issue. Let's come up with a
11 different call. And this one would be an Xspedius end-user
12 customer in Kansas City calling an ISP in Citizens Telephone
13 Company territory. That's a small rural ILEC that's east of
14 Kansas City. And I think we have a map if you want to see it.

15 A. I would like to see it. I'd like to get some
16 sense of how far away, because our company doesn't go, you
17 know, Kansas City to St. Louis with these services. We --
18 like I said, you might try and get ISP competition out in
19 Fulton from Jefferson City. You might try and get ISP
20 competition out in O'Fallon, Missouri. Instead of just having
21 one provider, you want to have lots of providers out there.
22 So it's a limited use of this for our company.

23 Q. This is the boundary of the Kansas City
24 exchange out here, Citizens is this yellow (indicating).

25 A. Okay. Where's downtown Kansas City?

1 Q. Probably out here (indicating).

2 A. Fair enough.

3 Q. Off the map, but --

4 A. I thought it might be. Just getting some
5 sense.

6 Q. And, again, that's for a Southwestern Bell
7 Kansas City customer to make that call to Citizens in
8 Higginsville, for purposes of this hypothetical you can assume
9 that at least under our SBC tariffs that's a toll call for our
10 customers.

11 A. Understood.

12 Q. Okay. On such a call, if the ISP would be
13 located in Citizens' territory, your position would be the
14 same. That would still be an Internet-bound call; is that
15 right?

16 A. Yes. That's correct. And be treated -- yeah,
17 go ahead.

18 Q. The lower federal rate would apply to that
19 call -- the federal scheme?

20 A. Yes. The federal scheme would apply, but I
21 need to make an important point here. The federal scheme
22 applies if you choose for it to apply. The federal scheme is
23 a voluntary scheme for SBC. And so if you like it, if you
24 like the really low triple 07 rate and all the good things you
25 get out of it, then yes, it would apply and you might get some

1 of the bad things that go along with it.

2 Q. So in this example, just answer my question, it
3 would apply to that call?

4 A. Yeah. That's correct. I was answering your
5 question, for the record.

6 Q. And in that situation you wouldn't expect to be
7 paying terminating access charges to Citizens Telephone
8 Company?

9 A. You -- you're saying Xspedius?

10 Q. Xspedius.

11 A. That's correct. We would --

12 Q. Xspedius has the end-user that makes the call
13 to the ISP.

14 A. That's correct. We would have ISP competition
15 in that territory. It wouldn't just be CenturyNet, the ISP,
16 currently out there. We'd have lots of ISPs competing in that
17 territory, if you opted into it, if you choose to take this
18 regime. It's your choice.

19 Q. Under your interpretation, you would not be
20 paying terminating access charges to Citizens Telephone
21 Company?

22 A. Again, only if -- that's if you don't opt in --
23 if you opt into the ISP regime, right.

24 Q. Under your interpretation?

25 A. Well, no, it's your decision. Just to be

1 clear. Under both -- I'll take both points. One, under my --
2 the way we want the rules to read, the way the FCC says they
3 should read and if you opt into the FCC regime, yes, then --
4 then toll charges would not apply.

5 Q. Maybe just to make it clear and easier for our
6 example so we don't keep hitting this hiccup, why don't we
7 assume that an election has been made so we then understand
8 how Xspedius's position would operate.

9 A. Right. So we're working under a negotiated
10 interconnection agreement, there's an amendment of some kind
11 and -- fair enough. You've opted in and we've amended our
12 agreement.

13 Q. And now we're just trying to explore --

14 A. Understood. I just wanted -- fair enough.

15 Q. Okay. So with respect to the same call from
16 the Xspedius customer in Kansas City to the ISP that's served
17 in Citizens' territory, would you have reached any type of an
18 agreement with Citizens under which they agreed not to accept
19 that federal scheme?

20 A. No. I don't think we could avoid federal law
21 through a contract. It's just the law. That's the way the
22 FCC's designed it.

23 Q. Based on your experience in dealing with small
24 independent telephone companies, wouldn't you expect that
25 small rural LECs like Citizens would expect and want their

1 access charges to be paid to terminate calls like this?

2 A. Well, I mean, not necessarily. Let me say
3 this. Yes, clearly they would love to have your system in
4 place. But to be -- to be also clear, they're going to hand
5 the call off to you at some point, right, somewhere near the
6 boundary.

7 Q. Calls going the other way --

8 A. And what they really want is they want to be
9 CenturyNet in Century territory. Wouldn't that be great if
10 we're the only ISP in town? Guess what? Then you get to
11 charge whatever you want, you get to have all the customers.
12 So, yeah, I think they would like this. We want competition
13 and the FCC appears to want that too.

14 Q. Let's take another call. This is an Xspedius
15 customer Kansas City, same end-user. This time, for whatever
16 reason, they decide that they want to use an ISP served by SBC
17 in St. Louis. So they're going from one end of the state to
18 the other. So from our perspective --

19 A. Excuse me. Could you start other with --

20 Q. Sure.

21 A. -- you said something about Kansas City.

22 Q. Kansas City end-user.

23 A. Okay. Whose customer --

24 Q. Xspedius.

25 A. -- if I can ask a question?

1 Q. Xspedius.

2 A. Fair enough.

3 Q. Calling an SBC-served ISP in St. Louis. It's
4 still an intrastate call, but an interLATA call. With the
5 same assumption in this hypothetical would the Coalition's
6 position still be the same, that that's still an
7 Internet-bound call and that Xspedius wouldn't be paying
8 terminating access on that call? It would instead be paying
9 this -- under this federal scheme?

10 A. Yes. That's correct. It's an interim regime
11 and it's truly a hypothetical. Like I said, we don't even
12 have a presence in St. Louis so that's a hypothetical. What
13 we would use it for is to extend out into the slightly more
14 rural area.

15 Q. I just want to explore the factual impact of
16 your position --

17 A. Well, it's a hypothetical impact.

18 Q. -- and --

19 A. But, I mean, I'm fine with your hypothetical.

20 Q. In that situation if one of your customers
21 would make that call, say it's a voice call, you would get
22 toll charges for that. Right?

23 A. If it was a voice call, if it was an ordinary
24 call, Xspedius customer Kansas City calling an SBC in
25 St. Louis, yes, there would be toll charges.

1 Q. And if that customer instead hooked his laptop
2 and did a dial-up Internet call to the ISP in St. Louis, you'd
3 still charge toll on that call, wouldn't you?

4 A. You're saying that the coactivity between KC
5 and St. Louis is not IP. Right? It's circuit switched on the
6 long haul?

7 Q. Yes.

8 A. Correct. But people don't do that, right. I
9 mean --

10 Q. Under the hypothetical.

11 A. Yeah. It's an interesting hypothetical, but I
12 don't know anybody that dials the Internet with a long
13 distance call.

14 Q. And, again, I guess if that end-user was PIC'd
15 to MCI, MCI would receive the toll charges and Xspedius would
16 receive originating access on that?

17 A. That's correct.

18 Q. And on that call you'd still expect SBC to
19 accept the lower -- or the federal regime, the federal
20 Internet compensation scheme that --

21 A. If SBC opts into the plan, that's how it works.

22 Q. Okay. And if that same customer in Kansas City
23 decides for whatever reason they want to use an ISP that's
24 located in Connecticut, same situation. Right?

25 A. It's wacky, but yeah. Absolutely, yes.

1 Q. Okay.

2 A. I mean, it's an ISP bound -- that's all the FCC
3 said. It's an interim regime, you get a lot of benefit out of
4 it with the triple 07 rate and it is what it is.

5 Q. Okay. I think I have one last area to briefly
6 cover and this is also in the intercompany compensation
7 section, and actually it's located on page 8 of your rebuttal.
8 This is the issue where calls are being delivered to an ISP
9 over an FX-type arrangement.

10 A. Okay.

11 MR. MAGNESS: Your Honor --

12 JUDGE THOMPSON: Yeah.

13 MR. MAGNESS: -- Bill Magness. I just want to
14 make clear, in the DPL and in the testimony the question of
15 compensation for FX traffic is a settled issue between CLEC
16 Coalition and SBC. So I'd just as soon Mr. Bub no belabor
17 that with my witness. He can belabor it with someone else if
18 he'd like.

19 MR. BUB: Can we go off the record? I need to
20 confer with Mr. Magness for a second.

21 JUDGE THOMPSON: Absolutely. Let's go off the
22 record a second.

23 (Off the record.)

24 JUDGE THOMPSON: I've got just about
25 one o'clock. I need to break at 1:00, so why don't we pick

1 this up at 2:30 after the lunch break if that's acceptable.

2 MR. BUB: We're going to try and work this out
3 over lunch and we hope to be able to let you know that we've
4 resolved it. And then my cross-examination of Mr. Falvey
5 would be finished.

6 JUDGE THOMPSON: You all know you're free to
7 settle anything you want.

8 (A recess was taken.)

9 JUDGE THOMPSON: Mr. Falvey, I'll remind you
10 that you're still under oath, sir.

11 THE WITNESS: Thank you.

12 JUDGE THOMPSON: You may inquire, Mr. Bub.

13 MR. BUB: Thank you, your Honor.

14 BY MR. BUB:

15 Q. Mr. Falvey, where we left off, I think we were
16 at page 8 of your Rebuttal Testimony concerning inter-carrier
17 compensation issues and we were focusing on the words "carve
18 out" on line 7. If the Commission were to adopt SBC's
19 position, that carve out, that would be mutual, wouldn't it,
20 apply both ways?

21 A. That's correct. But to the extent that there
22 were FX traffic, the FX traffic going both ways, the carve out
23 would be mutual.

24 MR. BUB: Okay. Thank you. Those are the only
25 questions we had, your Honor. Thank you. We're finished.

1 JUDGE THOMPSON: Very good. Only 39 seconds,
2 Mr. Bub. Indeed impressive.

3 Mr. Williams, any questions?

4 MR. WILLIAMS: No questions.

5 JUDGE THOMPSON: Ms. Dietrich?

6 QUESTIONS BY MS. DIETRICH:

7 Q. Mr. Falvey, with questions with Mr. Bub you
8 were talking about two-way trunks. Can you just kind of walk
9 me through a little bit and explain on a two-way trunk, like
10 say, for instance, a call between Xspedius and SBC, who would
11 pay for what portions of the call?

12 A. Sure. Absolutely. The best way to think about
13 this is that the part on their side of their switch and our
14 side of our switch is not in dispute. The part that is in
15 dispute with respect to facility, at least in my testimony, is
16 the interconnection trunking between the two switches. And so
17 all we're asking is that they pay for facilities to carry
18 their traffic to our switch. And there's two ways that you
19 can do that.

20 We're perfectly fine with two-way trunks being
21 set up between the two switches. But if 90 percent of the
22 traffic on those two-way trunks are SBC originated, okay,
23 because the obligation runs to your traffic, the traffic that
24 your customers originate, under the FCC rules, you have to pay
25 a proportional share of those facilities charges. So I have

1 no problem -- in fact, we'd love to have two-way trunking in
2 place if they would pay for 90 percent of that two-way trunk.

3 If we're not going to be able to get them to
4 pay for 90 percent of the two-way trunk, then we need to have
5 that two-way broken out into two one-ways because then it
6 becomes sort of imminently clear who's using the trunks,
7 right?

8 Now all of a sudden, hypothetical situation,
9 they've got to put up nine T1's to support the traffic that
10 they're sending over onto network so they've got to pay for
11 the nine T -- one-way T1 trunks. And I only need one one-way
12 trunk to carry one T1 back the other way to go from my switch
13 to their switch and I'm willing to pay for that.

14 So that's -- that's the whole thing I think,
15 that there's a lot of heat and not a lot of light around this
16 one-way and two-way issue. It really goes back to I'm fine
17 with two-ways as long as they're willing to pay their
18 proportional share.

19 Q. Okay. And then in your Direct Testimony on
20 interconnection issues --

21 A. Yes.

22 Q. -- on page 26 starting at line 8 you talk about
23 ASR and TGSR. What is ASR?

24 A. An ASR is an access service request. And
25 basically there's no language in the agreement today that

1 supports a scenario where Xspedius issues a TGSR, a trunk
2 group service request, and then SBC would have to respond with
3 an access service request because the language isn't mutual
4 because SBC is under the misconception that they never have to
5 pay for trunking to get to my switch.

6 And so this is really just a corollary issue to
7 the broader issue of are they going to pay their bills as
8 they're required to under the federal rules. We need language
9 that establishes that we would issue -- Xspedius issues a
10 TGSR, SBC responds with an ASR.

11 MS. DIETRICH: Thank you.

12 JUDGE THOMPSON: Thank you, Ms. Dietrich.

13 Mr. Johnson?

14 MR. JOHNSON: No questions.

15 JUDGE THOMPSON: Mr. Scheperle?

16 MR. SCHEPERLE: Yes.

17 QUESTIONS BY MR. SCHEPERLE:

18 Q. Good afternoon, Mr. Falvey.

19 A. Good afternoon.

20 Q. I have a couple questions on your proposed due
21 date on invoices.

22 A. Yes.

23 Q. Could you tell me your proposal on that?

24 A. Sure. We -- we have just decided that the best
25 way to make sure that we have at least 30 days to pay the

1 bills is to come up with a round number for 45 days from
2 receipt. And so we've all put in data that shows that the
3 bills come very late, vis-a-vis the due date, whether they're
4 issued as paper bills or electronic bills.

5 And maybe to put SBC in a little bit better
6 light, all the ILECs issue their bills very late, anywhere
7 from 5 to 10 to 15 days late and sometimes you have outliers
8 that are 22 days late.

9 So any rule that starts with the invoice date
10 and adds 30 days de facto cuts us out of 6, 8, 10 days to
11 review the bills. These can be foot-high bills. We receive
12 large numbers of them. So it's not like a little -- it's not
13 like the phone bill you get at home.

14 So in order to take -- to give us back our
15 30 days, we've come up with a 45-day interval.

16 Q. Do you know what the practice today is on what
17 the M2A states on that?

18 A. As I sit here, I don't know the answer to that.
19 I'm -- I'm not in the M2A, per se. I have a combination of
20 the M2A and the AT&T agreement, but I just don't know the
21 answer to that.

22 Q. Do you know what your agreement states today
23 though?

24 A. I'd be happy to -- to find that out, but it --
25 it would not necessarily be that M2A -- it might be a section

1 of the AT&T agreement that we've opted into.

2 Q. Okay. If you propose a 45-day period, does
3 that have a bearing on the deposits that SBC would propose for
4 you to give?

5 A. We don't really see a connection to that -- to
6 the deposit. We're trying to get to a 30-day. We've offered
7 a 30-day deposit net of the dollars back the other way.
8 Remember, they owe us over \$6 million region-wide.

9 So when I go to my CFO and say, You know, they
10 want -- they want more money, they want a deposit, he says,
11 Well, don't they already have \$6 million? But where we've
12 offered 30 days, we've put in testimony that -- that they're
13 late in delivering the bills and I believe -- I'd have to
14 double check, but it's our testimony -- is that 10 or 11 days,
15 something like that.

16 Q. Okay.

17 A. We're still in -- on or about the 30-day time
18 frame, which is the amount of deposit we've offered.

19 Q. So just so I understand it, Xspedius wants a
20 one-month deposit -- or SBC to give a one-month deposit and
21 the CLEC Coalition, their proposal is a two-month deposit; is
22 that correct?

23 A. That's correct. And we have this history, one
24 settlement over \$10 million before the bankruptcy, a
25 settlement of 3 million in the bankruptcy where they paid

1 us -- when they we were in bankruptcy, they paid us over
2 \$3 million. We didn't owe them money when we were in
3 Chapter 11. They wrote checks to us. So I think that's a big
4 part of it. Two years into the Xspedius company -- they
5 didn't start up until September 2002, they owe \$6 million, so
6 we feel like one-month net is appropriate for Xspedius.

7 MR. SCHEPERLE: Okay. Thank you. That's all I
8 have.

9 JUDGE THOMPSON: Thank you, Mr. Scheperle.

10 Mr. McKinnie?

11 QUESTIONS BY MR. MCKINNIE:

12 Q. I just have a couple of inter-carrier
13 compensation questions.

14 A. Sure.

15 Q. You keep referring to the amount of money that
16 SBC owes I assume Xspedius?

17 A. That's correct.

18 Q. And if this is HC, please say so, but can you
19 tell me what that money is owed for?

20 A. In my testimony -- and I think it's actually in
21 the GTNC testimony, I'm sorry for the multiple copies of
22 testimony, it just came out that way. We have -- I've
23 included numbers, so if you give me a second, I'll find the
24 page. I was in the wrong one. Hang on a second.

25 JUDGE THOMPSON: If you're able to answer the

1 question without finding the page, that would be okay.

2 THE WITNESS: I mean, I can tell you that of
3 the 6 million region-wide, it might be -- might be about
4 50/50. It's millions for recip and millions for local -- for
5 local transport. The numbers for Missouri presently, 7,000
6 for recip comp and 150,000 for the local transport or the
7 facilities charges. That's on page 7 of my direct on the
8 GTNC.

9 BY MR. MCKINNIE:

10 Q. Okay. And is that the ISP-bound traffic
11 dispute amount or is that a different amount? And, again, if
12 that's --

13 A. The 7,000 would be related to ISP issues. The
14 local transport is not an ISP issue. That's this facilities
15 issue.

16 Q. Sure. So that's just on the 7,000. Is it fair
17 to say that's a disputed amount?

18 A. It's all disputed that the dollars -- most of
19 it is disputed what's owed. The key is that they're --
20 they're not solid disputes. And that's -- we have a history,
21 we can show that, you know, a settlement -- large settlements
22 in the past, large settlements during the bankruptcy.

23 We've never sat down and said, okay, Xspedius
24 owes you, you know, \$500,000. It's always millions of dollars
25 coming back to us. So they are definitely disputed, but

1 historically the disputes have always been worth at least
2 50 percent and usually more than that.

3 Q. Okay. So how, under the current Xspedius
4 agreement, which you said was half M2A and half AT&T, how is
5 ISP-bound traffic treated now?

6 A. We have an agreement where there's a permanent
7 rate for all traffic. We don't have an ISP amendment so we
8 don't -- we've never signed a three-to-one amendment to
9 implement the FCC's regime. That's one of the reasons I keep
10 saying well, if we opt into it, negotiate an agreement, file
11 it with the Commission. We've only done a three-to-one
12 amendment with SBC in Oklahoma.

13 Q. Okay. And I just have one last question that I
14 might have to ask of a lot of the inter-carrier compensation
15 witnesses. Is VoIP-bound traffic to a VoIP end-user ISP-bound
16 traffic?

17 A. Is VoIP traffic to an ISP end-user -- it
18 really -- there's been a lot of law around that and it's not a
19 simple answer. I'd love to give a yes or no to that one. You
20 have to go back to the Stevens report, you have to look at
21 whether it's -- how cause originated, is it originated on a
22 computer or is it originated on a -- on a regular telephone.
23 Then you have to track that forward to the AT&T order that
24 came out a while back. And, again, there they're looking at
25 things like dialing patterns, how's it dialed, 8YY and

1 one-plus and so on. So I wish I could -- I wish the FCC would
2 answer that question.

3 Q. Let me ask you about two specific situations
4 then.

5 A. Sure.

6 Q. A call from a local -- let's say an Xspedius
7 Kansas City user to a Time Warner cable customer, who some
8 people might say is a VoIP user. I know that there are
9 multiple different types of VoIP. Is that an ISP-bound call
10 and if -- you know --

11 A. I can't -- you need to have those other
12 additional details. I was in Belgium recently visiting my
13 sister and I got on her computer and I talked over the
14 computer to Michael Moore, who works for me in O'Fallon,
15 Missouri.

16 And there's no access involved in that call.
17 It was computer to computer. And it's exciting new
18 technology. I talked to him for quite a while and there
19 was -- it's a low-cost call because it's delivered over the
20 Internet. She makes other calls computer to phone for
21 1.7 cents per minute, which is very cheap for an international
22 call. So you really need all those details about what type of
23 originating technology and so on, dialing patterns, that kind
24 of thing.

25 Q. So a call that originates on the PSTN that goes

1 to let's just say a Vonage user, is that an ISP-bound call?

2 A. Is it an ISP-bound call?

3 Q. I'm just trying to tie together what's in your
4 testimony.

5 A. Yeah. I know. I understand. I appreciate the
6 effort. I'm -- would that be considered ISP-bound? If it
7 were -- again, it's a Voiceover IP call. It falls under a
8 whole another set of orders, so I think we'd have to look at
9 all the orders. I wish I could give you a simple answer, but
10 it's anything but a simple area.

11 Q. Sure. If I would have asked you from an IS--
12 or I'm sorry, from a PSTN originating call to a Time Warner
13 customer call, would I get a different answer than if I asked
14 about the Xspedius user?

15 A. No. It's going to be fact specific.

16 Q. Sure. I didn't think so, I just -- I'm
17 probably going to ask that question of about every witness.

18 A. I understand. Exploring the area.

19 Q. Okay. Thank you very much.

20 A. Sure.

21 JUDGE THOMPSON: Thank you.

22 Recross?

23 MR. BUB: None, your Honor. Thank you.

24 JUDGE THOMPSON: Bless you.

25 Redirect?

1 MR. MAGNESS: Thank you, your Honor.

2 REDIRECT EXAMINATION BY MR. MAGNESS:

3 Q. Mr. Falvey, do you think it's fair to say it's
4 somewhat unsettled what the compensation treatment of IP
5 enabled or VoIP traffic?

6 A. Yes. Very unsettled.

7 Q. Is the FCC considering rule makings on those
8 issues now?

9 A. Yes. There's a very critical docket moving
10 forward on IP enabled traffic.

11 Q. I want to talk to you a little bit about the
12 deposit questions -- deposits and payment terms. Is it your
13 understanding of SBC proposals that if there is late payment
14 from a CLEC, that it may impact whether or not SBC asks for a
15 deposit?

16 A. I think if there were late payments, then yes,
17 that SBC would be more likely to ask for deposits.

18 Q. So then when we talk about a relationship
19 between a deposit requirement and payment due date, if the
20 payment due date is too early, it may kick one into a deposit
21 requirement; is that fair?

22 A. That certainly is a connection that if -- if
23 you have -- if you had a 5-day or even 20-day turnaround and
24 nobody could make their payments on time, then all of a sudden
25 everybody would be required to file large deposits in SBC's

1 view of the world.

2 Q. Okay. And the deposit language that's in the
3 decision point list that's disputed, let me just read it just
4 before I ask you a question about it. In no event will
5 Xspedius be subject to an assurance or payment to SBC Missouri
6 that exceeds one-month's projected average billing by SBC
7 Missouri to Xspedius less the amount of billings by Xspedius
8 to SBC Missouri.

9 So is there a concept of an offset that's
10 inherent in your proposal?

11 A. Yes. In fact, if there were \$500,000 in
12 billings but they were holding onto \$300,000 that they had not
13 paid us, then we would still have to put up \$200,000 deposit
14 to make up the difference.

15 Q. And you touched on this a bit, but I want to be
16 sure we understand the full universe. What are the various
17 things that Xspedius is or may be billing SBC for that SBC
18 owes these payments on?

19 A. We've talked about a couple of them, reciprocal
20 compensation, local transport. The other one that came up
21 quite a bit in our discussion about the various types of phone
22 calls are switched ac-- switched access payments for
23 terminating long distance traffic.

24 Q. Okay. And on the local transport, in
25 particular, if one were to look for the testimony concerning

1 the local transport dispute, that's more in your
2 interconnection testimony than your reciprocal compensation
3 testimony?

4 A. That's correct. Local transport is another
5 term for interconnection facilities.

6 Q. And is it fairly common in your experience for
7 both SBC and Xspedius to dispute portions of one another's
8 bills?

9 A. Yes. It's more often than not. Month in and
10 month out both parties will file disputes.

11 Q. There was some talk of CLEC bankruptcies and I
12 think, in particular, you referenced one in which you were
13 involved with Xspedius's predecessor company. Could you
14 describe your involvement in that and the circumstances of
15 that Chapter 11 proceeding?

16 A. Certainly. Just briefly, we filed -- that the
17 company whose asset Xspedius bought, e.spire Communications
18 was forced into Chapter 11 in March of 2002. And at the time
19 we went in, we were owed tens of millions of dollars from the
20 ILECs.

21 We settled up with Verizon and they cut us a
22 check for well over \$10 million. We settled up with Bell
23 South, they cut us a check for millions of dollars. We
24 settled up with SBC. SBC cut us a check for millions of
25 dollars. So SBC has had some experience where they have lost

1 money in bankruptcies. They did not lose a penny in the
2 e.spire bankruptcy and, in fact, towards the very end of the
3 bankruptcy wrote a multi-million dollar settlement payment
4 from SBC to Xspedius.

5 Q. So when we hear the number of \$200 million that
6 SBC lost, as we heard Ms. Quate mention this morning, does one
7 need to look at the particular circumstances of each
8 Chapter 11 to understand what really happened?

9 A. Yes. That would not relate to ours. And it
10 might be interesting to -- I don't have a number, but it might
11 be interesting to look at the dollars that SBC owed to CLECs
12 when they filed for Chapter 11 settlements going the other
13 way.

14 Q. And if those payments aren't being made, they
15 could have an impact on the CLEC's cash flow, I take it?

16 A. Absolutely. When I took over as the senior
17 vice president of e.spire in 2000, we had \$60 million in
18 receivables from incumbent local exchange carriers, had a very
19 big adverse impact on the company. And that's what we're --
20 we're trying to stem that somewhat by having a deposit
21 requirement that takes into account dollars that are being
22 withheld.

23 Q. I want to switch now to the ISP-bound traffic
24 questions. I've got just a few things here. You referenced
25 SBC having a choice or volunteering to use the ISP remand

1 order regime, as you've called it. Could you just describe
2 what you mean by SBC's choice?

3 A. Sure.

4 Q. Who gave them the choice?

5 A. The FCC said that, you know, they're going to
6 address this issue of ISP-bound traffic separately. And they
7 came up with an order that, frankly, CLECs like Xspedius
8 didn't like at all. Where we were getting paid .25 cents a
9 minute -- .25 cents a minute, quarter of a penny, we were
10 knocked all the way down to triple 07.

11 Q. That's per what?

12 A. That's per minute of use of reciprocal
13 compensation. So anywhere from, you know, a fifth to a third
14 less compensation. But they left it up to the local exchange
15 carriers that -- the incumbent LECs to determine, well, do you
16 want the triple 07 rate, do you want the much lower rate? If
17 you do, you're going to become subject to FCC jurisdiction,
18 we're going to have this new category called ISP-bound traffic
19 and so on. But -- but -- but if you want to opt into this
20 interim program, we'll leave it to you.

21 And SBC, it's my understanding, has requested
22 amendments in -- at least in all five states in the MoKa and
23 Texas region.

24 Q. And the language that you're advocating for
25 inclusion in this successor agreement to the M2A would

1 include -- would incorporate ISP remand order provisions?

2 A. That's correct. We would move under the ISP
3 remand rate system with .0007, that's dollars per minute of
4 use for ISP-bound traffic.

5 Q. So just to be clear for the record, that's
6 dollar sign .0007 per minute?

7 A. That's correct.

8 Q. Okay.

9 A. And that's switched access for just --
10 interstate .005 and you can get as high as 2 or 3 cents a
11 minute of use for intrastate access. So the ILECs are
12 collecting a much, much higher access rate throughout the same
13 time period.

14 Q. And so would it be fair to say that the
15 language you're recommending would actually implement the
16 choice that SBC has already made?

17 A. That's correct.

18 Q. What is the status of the ISP remand order at
19 the FCC?

20 A. The ISP remand order is really an interim
21 order. It was -- it was appealed and the courts did not like
22 it in many respects. They remanded it and they've told the
23 FCC in no uncertain terms that it needs to be revisited.

24 But in remanding it they did not -- they did
25 not repeal the rules and the rules are still in effect today.

1 So we're all living with it, good and bad, but it's only going
2 to be around until we get through the inter-carrier comp
3 docket at the FCC. There were comments filed -- there are
4 comments being filed as we speak today and there will be reply
5 comments and then eventually we'll have another change of law.
6 And that regime, although in effect today, will not be in
7 effect once it's replaced by a permanent mechanism.

8 Q. Just two more questions. On interconnection
9 issues, those Missouri Commission orders that were admitted
10 into evidence on administrative notice, do you know what I'm
11 talking about?

12 A. Yes.

13 Q. Do you know whether those ever had application
14 to actual interconnection agreements that your company has in
15 Missouri?

16 A. No. I mean, I do know that, you know,
17 initially we did our own interconnection agreement with SBC.
18 And so --

19 Q. "We" being who?

20 A. I should say e.spire Communications, the
21 company that Xspedius purchased. I worked for e.spire and we
22 had our own interconnection agreement. It wasn't an AT&T
23 agreement. One of the orders is an AT&T arbitration. It had
24 its own language on two-way interconnection trunks.

25 We'll probably file a complaint here at the

1 Commission to go back and read the interconnection agreement
2 that governed the relationships that I was talking about in my
3 testimony. So it's -- you got to go look at the
4 interconnection agreements and these -- these orders may or
5 may not have been incorporated into the interconnection
6 agreements that e.spire and later Xspedius had with SBC.

7 Q. And, finally, I think you mentioned this
8 already, but does Xspedius operate its own switch in Missouri?

9 A. Yes. We have a switch that's located in Kansas
10 City. It's a lucent 5E and we have hundreds of miles of
11 fiberoptic route miles out and about in Kansas City,
12 substantial investment in the Kansas City area.

13 MR. MAGNESS: That's all I have. Thank you,
14 your Honor.

15 JUDGE THOMPSON: Thank you. I believe you can
16 step down, Mr. Falvey.

17 THE WITNESS: Thank you, your Honor.

18 JUDGE THOMPSON: And I think our next witness
19 would be Price.

20 MR. MORRIS: Your Honor, Mr. Price was not
21 present when the --

22 JUDGE THOMPSON: For the swearing?

23 MR. MORRIS: For the mass swearing in.

24 THE WITNESS: I didn't swear.

25 JUDGE THOMPSON: Excuse me?

1 THE WITNESS: I did not swear.

2 JUDGE THOMPSON: You did not swear.

3 (Witness sworn.)

4 JUDGE THOMPSON: Please take your seat, state
5 your name for the reporter, if you would.

6 THE WITNESS: My name is Don Price.

7 JUDGE THOMPSON: And that's P-r-i-c-e?

8 THE WITNESS: Yes, it is.

9 JUDGE THOMPSON: Very good.

10 MR. MORRIS: Your Honor, I just have to go over
11 some corrections and changes with Mr. Price.

12 JUDGE THOMPSON: Absolutely.

13 DON PRICE testified as follows:

14 DIRECT EXAMINATION BY MR. MORRIS:

15 Q. Mr. Price, you caused to be filed and
16 distributed to the parties errata sheets to your Direct
17 Testimony and I believe those were pages 13, 22, 32, 45, 69,
18 70, 81, 140, 141 and 142?

19 A. Just to make sure, I believe yes, that is
20 correct.

21 MR. MORRIS: And, your Honor, just for the
22 record, those have been filed with the EFIS system as of
23 today.

24 JUDGE THOMPSON: Thank you.

25 BY MR. MORRIS:

1 Q. In your Rebuttal Testimony, you provided some
2 testimony regarding right-of-way -- I think it was
3 right-of-way issue 1?

4 A. Yes, I did.

5 Q. Is it your understanding that that issue has
6 been settled with SBC?

7 A. Yes, it is.

8 Q. And so that testimony should be stricken as
9 well?

10 A. Yes. And that would be page 84, line 18
11 through page 87, line 4.

12 Q. Okay. Thank you.

13 A. There are --

14 Q. I'm sorry?

15 A. There are two more corrections to the rebuttal
16 that I need to make.

17 Q. Okay.

18 A. One of those is on the cover sheet where in the
19 heading it has the incorrect date under the style of the
20 docket. The correct date, of course, is at the lower left
21 part of the page, 5/19.

22 In addition, at page 48, line 10 in the first
23 line of that answer the sentence reads, SBC claims that. And
24 I would insert after the word "that" a term "battery
25 distribution fuse bays, b-a-y-s," and then put parenthesis

1 around the acronym that follows.

2 Q. In your Direct Testimony you had two
3 attachments, DGP-5 and DGP-6. I believe those were
4 inadvertently attached to your testimony and should have been
5 attached as part of the MCI Lichtenberg's Direct Testimony?

6 A. That is correct.

7 Q. Finally, were you here when SBC Witness Silver
8 testified that there were three pricing issues that were
9 resolved, at least in part?

10 A. At least in part, yes, I was.

11 Q. Okay. As to issue pricing issue 9, do you have
12 any supplements to what Mr. Silver previously testified to?

13 A. Yes. Mr. Silver and I spoke briefly after he
14 had been on the stand about the remaining -- I'm sorry. We
15 spoke and when he was on the stand, he limited the agreement
16 between the parties to certain line numbers in the -- in the
17 Excel spreadsheet.

18 After having spoken with Mr. Silver, I am
19 agreeing that lines 136 through lines 141 are being withdrawn
20 by MCI. So that portion of the dispute has been eliminated,
21 leaving only that portion from lines 130 through 135 still in
22 dispute.

23 Q. And on pricing issue 29 there's one exception,
24 I believe SBC is referencing a 2001 PUC docket?

25 A. Yes. Mr. Silver limited in -- in -- when he

1 was on the stand, he limited the scope of the agreement to the
2 portion from lines 819 through lines 849. In my discussion
3 with Mr. Silver that I referenced a moment ago, it is my
4 understanding that we have resolved the remainder of that
5 issue, which is lines 854 through lines 873, with SBC agreeing
6 to the rates that MCI had included in the -- in those lines.

7 Q. Are there any other changes to either your
8 direct or rebuttal that you need to go over?

9 A. Not to my knowledge.

10 MR. MORRIS: Thank you.

11 With that, your Honor, I'd tender the witness
12 for cross-examination.

13 JUDGE THOMPSON: Thank you very much, sir.

14 Have at it, Mr. Lane.

15 CROSS-EXAMINATION BY MR. LANE:

16 Q. Good afternoon, Mr. Price.

17 A. How are you?

18 Q. Good.

19 First question involves MCI GTNC DPL issue 3.
20 That deals with name change and payment for name changes. In
21 the DPL, MCI indicates that there may be testimony on this in
22 rebuttal. Is it fair to say you didn't address this in
23 rebuttal?

24 A. If I did, I don't recall.

25 Q. And is there another MCI witness that would

1 have addressed this besides you?

2 A. I do not believe so, no.

3 Q. And as I understand MCI's position as it's laid
4 out in its language on issue 3, MCI is seeking the right to
5 have one free name change without making any payments. Right?

6 A. I'm doing this from recollection because I
7 don't have that in front of me. It is my recollection that
8 that has been our position in prior arbitrations. I say --
9 I'm sorry. That was our position in proceedings with SBC both
10 in Texas and in Illinois in 2004.

11 MR. MORRIS: Your Honor, may I --

12 JUDGE THOMPSON: You may.

13 MR. MORRIS: -- give the witness the DPL?

14 BY MR. LANE:

15 Q. Just a single paragraph, Mr. Price. Give you
16 an opportunity to read it and tell me when you've read it.

17 A. I believe this is the same language that we had
18 proposed in the previous proceedings that I just referenced.

19 Q. Okay. And you're aware, are you not, that the
20 Commission previously addressed this same issue in the AT&T
21 arbitration Case No. TO-2001-455 where it found that the CLEC,
22 in that case AT&T, was the not entitled to a free name change
23 and that it was the one that caused the cost and should pay.
24 Are you familiar with that?

25 A. I am not.

1 Q. Now, under your language, even after the CLEC
2 gets to change its name and not get charged anything for SBC
3 Missouri to change its records accordingly, even after that,
4 if they subsequently change their name, you don't provide any
5 assurance that SBC would be able to recover its costs, instead
6 your language is limited to the right to seek recovery. Is
7 that a fair statement?

8 A. Yes. I think so.

9 Q. So that means there would be another case for
10 the Commission to decide whether the party that had reserved
11 its right, in this case, SBC Missouri, could try to at that
12 point in the second time the CLEC changes its name, recover
13 its cost for changing all of its records. Right?

14 A. I'm not aware that this instance has ever
15 presented itself at all, so a subsequent occurrence of
16 something that has yet to occur even once is, in my mind,
17 purely a hypothetical.

18 Q. All right. But the desire not to pay if there
19 is a name change was enough for MCI to dispute the issue and
20 bring it to the Commission. Right?

21 A. The desire to not pay for that first
22 occurrence, correct.

23 Q. Right. And you're not aware that that's
24 happened either, are you?

25 A. I am not.

1 Q. So that's as hypothetical as the second one,
2 from your perspective? I'll withdraw. That's okay.

3 Let me flip you over to issue 10 on general
4 terms and conditions for MCI. The issue there involves
5 whether MCI is entitled to purchase a service either from the
6 tariff or the interconnection agreement. Right?

7 A. That is correct.

8 Q. Okay. It's fair to say that your understanding
9 of SBC Missouri's proposed language is that MCI can order from
10 the tariff if the service isn't available in the
11 interconnection agreement, but that if it's already covered by
12 the interconnection agreement, then the terms of the
13 interconnection agreement control until amended. Is that your
14 understanding of SBC Missouri's position?

15 A. Generally it is, yes.

16 Q. Okay. Is it correct to say that MCI is
17 attempting to mix and match terms and conditions from the
18 interconnection agreement and from the tariff?

19 A. It is MCI's intention with this language to
20 provide itself the opportunity to do so should SBC Missouri
21 have tariffs on file in the future that do provide for
22 interconnections or wholesale services at -- at better terms
23 and conditions or at a better price, yes.

24 Q. And in that event, SBC Missouri's language
25 would permit MCI to amend the contract and decide that it

1 wants to opt into the tariff instead. Right?

2 A. Yes. And I think the key word is instead
3 because it's definitely an either/or situation in SBC's
4 language, whereas MCI's language would allow MCI to make that
5 choice on its own. In other words, the possibility could
6 exist that one element or service could be -- could be
7 purchased and that was -- out of the tariff that was similar
8 to another element that MCI continued to obtain out of the
9 interconnection agreement.

10 Q. You're aware that one of SBC Missouri's
11 objections to that is that its billing system isn't set up to
12 bill the carrier two different rates for the same item.
13 Right?

14 A. I -- that is my understanding of what
15 Mrs. Quate said, yes.

16 Q. Okay. And do you have any information that
17 what she says is incorrect?

18 A. Oh, no, I don't.

19 Q. So that billing problem could be resolved if
20 SBC Missouri's language is adopted, but MCI would still have
21 the right ultimately to choose either the contract or the
22 tariff price. Right?

23 A. Well, I think the short answer to the question
24 is yes, but there's -- there's a follow up, which is it's not
25 our view that limitations with SBC's billing systems should

1 govern the relationship -- the business relationship between
2 the parties.

3 Q. I'm going to switch over and talk about the
4 pricing DPL.

5 MR. LANE: And if I may, your Honor, in order
6 to do this, I'm going to need to mark an exhibit.

7 JUDGE THOMPSON: Absolutely. This will be 203.

8 (Exhibit No. 203 was marked for
9 identification.)

10 JUDGE THOMPSON: How should we describe it?

11 THE WITNESS: Describe it as very small print.

12 JUDGE THOMPSON: How shall we describe this
13 exhibit, Mr. Lane?

14 MR. LANE: As a jumbled mess. This is the
15 appendix pricing UNE for SBC Missouri and MCI. And it
16 contains both MCI's proposed prices and SBC Missouri's
17 proposed prices.

18 I'm sorry. What number is this, your Honor?

19 JUDGE THOMPSON: 203.

20 BY MR. LANE:

21 Q. Mr. Price, have you had an opportunity to look
22 briefly at 203?

23 A. Reviewed it in detail, Mr. Lane.

24 Q. And would you agree with me that this is a copy
25 of the appendix pricing UNE that contains both MCI's proposed

1 prices and those of SBC Missouri that are at issue in this
2 proceeding?

3 A. I believe it is, yes.

4 Q. And the way that this is set up, it reflects --
5 where it's bolded and underlined, that's MCI's proposed
6 price -- or I should say underlined. If it's underlined, that
7 represents MCI's proposed price?

8 A. Correct.

9 Q. And if it's bolded, that represents SBC
10 Missouri's proposed price?

11 A. Yes.

12 Q. And if it's neither underlined nor bolded, then
13 the parties are on agreement on the price; is that right?

14 A. Correct.

15 Q. First, with issue No. 3 then from the appendix
16 pricing DPL, you were present when Mr. Silver indicated that
17 SBC Missouri was accepting MCI's prices on that?

18 A. Yes.

19 Q. Okay. And that's acceptable, I take it?

20 A. Yes.

21 Q. Okay. That would take care of lines 33 to 42
22 of this?

23 A. Yes.

24 Q. Issue 4 then from the MCI pricing DPL relates
25 to rates for DSL and IDSL or ISDL, I'm not sure, capable

1 loops. Right?

2 A. That's correct.

3 Q. And would you agree that SBC Missouri's
4 proposed prices for those loops are set forth on lines 44 to
5 72 of 203?

6 A. If I'm not mistaken, the DPL extends that all
7 the way through line 78, Mr. Lane, row 78.

8 Q. All right. And SBC Missouri's proposal are the
9 rates that were initially set by the Commission in Case
10 No. TO-97-40, which involved both AT&T and MCI. Right?

11 A. I -- I don't know that.

12 Q. Okay. MCI was a participant in that case, were
13 they not?

14 A. I -- I believe that is correct. My answer
15 though -- my previous answer had to do with the source of the
16 rates. I believe my testimony highlighted that SBC had not
17 provided a source for these and we were not able to find the
18 rates -- these rows in question in the orders that -- that we
19 researched. Now, conceivable that we missed that '97 case
20 that you referred to, but that information was requested of
21 SBC and not provided.

22 Q. All right. I understand that's your testimony.
23 Is it fair to say that you have not reviewed the Commission's
24 order in Case No. TO-97-40 to determine whether these prices
25 that SBC Missouri propose match those or not?

1 A. That's correct. I asked -- we asked SBC for
2 the source and did not feel that it was our -- that we needed
3 to go back and try to search everywhere to find them.

4 Q. And assuming that's the source and that these
5 are accurately portrayed, are you in agreement that they're
6 appropriate?

7 A. If these are Commission-approved rates, then I
8 would withdraw my objection, correct.

9 Q. Okay. Now, let's assume that they're not, for
10 some reason. They haven't been ordered. Tell me where on
11 this exhibit I look to see what MCI thinks it should pay for
12 these XDSL and IDSL capable loops.

13 A. I believe the answer to the question would be
14 in the earlier lines that show the unbundled loops. And if
15 I'm not mistaken, Mr. Silver had made some statement to that
16 effect in his Direct Testimony, that the DSL capable loops
17 were the loop rates previously approved by the Commission that
18 were at rows 15 through 32, or at least a portion of those.

19 Q. All right. And so Mr. Silver's testimony in
20 this case had reflected his view that MCI was seeking a zero
21 price for these XDSL and IDSL capable loops. And I take it
22 that your view is that that's not correct, that you're not
23 seeking to get these loops without making any payment, that
24 instead you're willing to pay an analog loop price; is that
25 right?

1 A. Well, the first half of the -- with respect to
2 the first half of your question, it's clearly not MCI's
3 position that no compensation is due SBC for the provision of
4 DSL capable loops.

5 Q. All right. Then in this case what we need to
6 do then is, from your perspective, the Commission can check
7 its records and determine what it ordered in TO-97-40 and if
8 those are accurately portrayed in lines 45 through 78, then
9 you're okay with it?

10 A. I'm hesitating because I'm not sure that I want
11 to put that burden on the Commission. I mean, I'm happy to
12 conduct that review and report back. It certainly wasn't our
13 intent to say we don't know what happened and the Commission
14 has to go figure it out. That was something that we were
15 hoping could be resolved between our two companies.

16 Q. Switch over to issue No. 7. The latest DPL
17 that I've reviewed indicated that this issue is withdrawn by
18 MCI; is that right?

19 A. I'm afraid I don't have --

20 Q. This would be issue 7 of the DPL.

21 A. I don't -- apparently I don't have that in
22 front of me. If you could just --

23 Q. Sure.

24 A. -- tell me the issue or whatever, I'm sure I
25 could be on board with you.

1 MR. LANE: May I approach?

2 JUDGE THOMPSON: You may.

3 THE WITNESS: I'm not try being to be
4 difficult.

5 BY MR. LANE:

6 Q. I'm not either, yet.

7 Mr. Price, showing you the --

8 A. Oh, yes. Okay.

9 Q. -- DPL issue No. 7 with regard to MCI dealing
10 with shielded cross-connects, would you agree with me that the
11 latest version indicates that the issue regarding non-shielded
12 cross-connects is withdrawn?

13 A. That's correct.

14 Q. And for clarity sake, when you withdraw the
15 issue, that means that SBC Missouri's proposed rates for those
16 non-shielded cross-connects are what should be included in the
17 contract. Right?

18 A. That's correct.

19 Q. Okay. If you choose not to order them, that's
20 fine, but if you do order them, then the price that SBC
21 Missouri proposes on lines 105 to 110 would apply. Right?

22 A. Yes. With, again, qualification just so the
23 record is clear, the non-shielded rates are the rates at rows
24 107 and 108. The shielded rate is at row 106. And it was
25 really only with respect to the non-shielded rates that there

1 was a dispute, so --

2 Q. All right. With that clarification then, those
3 non-shielded rates would be in the contract. If you did
4 choose to order them, that's the price that would apply?

5 A. Correct.

6 Q. Then with regard to issue No. 9, you were
7 present this morning when Mr. Silver indicated that SBC
8 Missouri was willing to accept the prices on lines 119 through
9 121. Do you recall that?

10 A. Yes.

11 Q. And I take it that's acceptable to MCI?

12 A. Yes.

13 Q. Okay. And remaining at issue then are the
14 rates on lines 130 through 141. Right? With the exception of
15 some additional ones that I understood you to have withdrawn
16 just a few minutes ago.

17 A. Yes. That's exactly where I was going,
18 Mr. Lane.

19 Q. Okay. And let's make sure we have it right.
20 Tell me which ones are still at issue from your perspective.

21 A. The rates still at issue would be those from
22 rows 130 through 135 relating to analog loop to digital
23 cross-connect.

24 Q. Okay. And SBC Missouri does not have proposed
25 prices for those particular cross-connects. Right?

1 A. Correct.

2 Q. And that's because it's SBC Missouri's view
3 that the connection to the DCS is not a UNE and that's an
4 issue that's separately presented for the Commission -- to the
5 Commission for resolution. Right?

6 A. I agree.

7 Q. Okay. And if the Commission agrees with SBC
8 that it's not a UNE, then the prices on those lines we just
9 described wouldn't become part of the contract. Right?

10 A. I would agree with that as well.

11 Q. Okay. Issue 14 on the DPL indicates that that
12 issue is resolved. That pertains to customized routing for
13 resale?

14 A. That is my understanding.

15 Q. Okay. And, again, for clarification, that
16 means that SBC Missouri's rates for that service are the ones
17 that would go into the contract. Right?

18 A. I believe so, yes.

19 Q. And issue 15, I think it's the same issue only
20 with regard to UNE customized routing. Again, that's resolved
21 and SBC Missouri's proposed rates for UNE customized routing
22 would be the ones that should go into the contract. Right?

23 A. I believe that's right. My only caveat would
24 be that to the extent that SBC presented rates on those, then
25 yes, those would be the ones. I don't have in front of me the

1 reference that would allow me to look at your exhibit so --
2 I'm not quarrelling at all with your -- with your statement --

3 Q. Okay.

4 A. -- only with -- it hinges on whether or not SBC
5 has proposed rates.

6 Q. Okay. And issue 17, the latest DPL indicates
7 that you're withdrawing your proposal with regard to rates
8 on lines 490 through 507; is that correct? Actually, I didn't
9 ask that question very well. Let me restate it.

10 On issue 17 you indicated that the 13-state
11 agreement resolves this. Right?

12 A. And by "this" again, give me the row reference,
13 please.

14 Q. I'm thinking it's lines 490 through 507, but
15 I'm looking for you to verify that.

16 A. Well, we're doing our best here.

17 Again, just so the record is clear, if this
18 issue is the one pertaining to the rates for blended
19 transport --

20 Q. Yes, it is.

21 A. -- it actually does not -- it goes to the local
22 wholesale agreement and not the 13-state reciprocal comp and
23 network interconnection agreement.

24 Q. All right.

25 MR. MORRIS: Excuse me. Actually, MCI Witness

1 Ricca testifies on price issues 17. Might want to save your
2 questions for him.

3 MR. LANE: But I like the ones I'm getting.

4 THE WITNESS: That's a pick and choose problem,
5 Mr. Lane.

6 BY MR. LANE:

7 Q. All right. And is it your view, Mr. Price,
8 that you don't know which ones are withdrawn on this
9 particular issue, or do you understand what the issue is?

10 A. I don't have the correct references in front of
11 me. So if I would have been smart, I would have tried to
12 defer to somebody anyway.

13 Q. Fair enough. I'm going to do a group of these
14 together, if I can, Mr. Price. I'm going to ask some
15 questions about issues -- the DPL pricing issues 18, 20, 21
16 and 22. Issue 18 involves entrance facilities, issue 20
17 involves DCS rates, issue 21 involves OCN multi-plexing rates,
18 and issue 22 involves SS7 link supports and cross-connects.

19 Would you agree that those four issues have
20 something in common? From SBC Missouri's perspective, our
21 position is that those items are not unbundled network
22 elements that are under the FCC's TRO and/or TRRO orders?

23 A. I agree that what you have stated is SBC's
24 position and it is the common thread, as I see it, in SBC's
25 discussion of these issues.

1 Q. And that those are not appropriately made part
2 of an interconnection agreement nor should they be at TELRIC
3 rates. That's your understanding of SBC Missouri's position.
4 Right?

5 A. It is my understanding, yes.

6 Q. Okay. And if the arbitrator ultimately agrees
7 with our position that those either shouldn't be a part of the
8 interconnection agreement or shouldn't be a TELRIC rate, then
9 the rates that MCI proposes on issues 18, 20, 21 and 22 should
10 not be adopted. Right?

11 A. That's correct.

12 Q. Okay. Let's go over to issue 30 on the pricing
13 DPL with MCI. This involves time and material prices. Are
14 you familiar with that?

15 A. Yes.

16 Q. Okay. Would you agree that SBC -- which line
17 numbers are we talking about on this one, Mr. Price?

18 A. On the exhibit that you just handed out --

19 Q. That would be lines 883 to 896?

20 A. That is correct.

21 Q. With regard to lines 883 to 896 would you agree
22 that SBC Missouri's prices on there reflect different charges
23 for basic time, for overtime and for premium time?

24 A. That is the presentation, correct.

25 Q. Okay. And if we contrast those with the rates

1 proposed by MCI, it's fair to say that the MCI proposed rates
2 do not vary based on basic time, overtime or premium time.
3 Right?

4 A. Correct.

5 Q. And which line numbers reflect MCI's proposed
6 prices on these?

7 A. Row 896.

8 Q. And you show a labor rate per quarter hour of
9 \$10.72. Right?

10 A. Correct.

11 Q. And SBC Missouri's rates reflect rates of
12 \$30.93 for basic time, \$36.35 for overtime and \$41.77 for
13 premium time. Right?

14 A. Yes.

15 Q. And premium time basically is weekends and
16 holidays. Right?

17 A. Generally, I can agree with that. I'm not sure
18 of the precise definition that SBC uses, but that would be --
19 something near that would be my understanding.

20 Q. Okay. And MCI's proposal doesn't reflect any
21 additional payments that have to be made to workers for
22 working either on an overtime or on a weekend and holiday
23 basis. Is that a fair statement?

24 A. Yes, it is.

25 Q. You recognize that, in fact, SBC Missouri does

1 pay overtime and night and weekend -- or sorry, weekend and
2 holiday differentials to its non-union employees. Right?

3 A. I believe you meant to say to its union
4 employees, but yes, I would agree with that.

5 Q. I did mean to say that. Thank you.

6 And we also agree that the rates that SBC
7 Missouri proposes are the same as those that are presently in
8 the M2A interconnection agreement today?

9 A. I -- I did not verify that in preparation of my
10 testimony, Mr. Lane.

11 Q. Okay. One could look at the appendix pricing
12 UNE in there and determine if those are listed. Correct?

13 A. Yes.

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

16 JUDGE THOMPSON: You may.

17 BY MR. LANE:

18 Q. Mr. Price, I'm going to show you a copy of the
19 M2A Interconnection Agreement in Missouri and ask if you'd
20 take a look at appendix pricing UNE schedule of prices, page 7
21 of 9, and ask if you'd confirm that the maintenance of service
22 charges that SBC Missouri proposes here are the same as those
23 that are currently in the M2A today?

24 A. It's a real challenge. I don't see very well
25 anyway and these are really small numbers. Bear with me.

1 Q. There's a three-letter answer.

2 A. That didn't help my eyes any.

3 All right. I do agree that that is the source
4 of SBC's rates based on what I've been presented.

5 Q. And it's also fair to say, Mr. Price, that the
6 rate that you propose, which is substantially less than what's
7 in the M2A today, is not supported by any cost study that
8 you've presented in this case. Right?

9 A. Yes. That is correct. And, in fact, I
10 neglected to note at page 138, line 28 I was going to revise
11 that portion of my testimony to reflect the fact that I had
12 come to that conclusion, that the rates that I had provided
13 were not, in fact, those from the Commission order.

14 Q. And I'm not sure quite what that means. Does
15 that mean you're withdrawing your request the rates on line
16 896 be adopted?

17 A. You're carrying that just a little further than
18 what I just said. What I was trying to say was that I
19 neglected earlier to delete the phrase after the comma on
20 line 28 of page 138 of my Direct Testimony that says, Which
21 MCI has provided, because I did not do that. So that part of
22 my testimony was incorrect.

23 To the extent that the rates that we just
24 looked at were from the M2A and that were Commission-approved
25 rates, then, yes, I would withdraw the rate that we discussed

1 at --

2 Q. Line 896?

3 A. Yes, I believe it was 896.

4 Q. Okay. And issue 31 then on the DPL for pricing
5 relates to prices for coordinated hot cuts. Right?

6 A. I believe that's correct.

7 Q. That would be lines 898 through 900 for MCI?

8 A. Correct.

9 Q. And lines 883 to 895 for SBC -- excuse me, 888
10 I think is what it is. 888 to 895?

11 A. I believe that's correct.

12 Q. And the rates that SBC Missouri proposes are
13 the same rates as would apply in issue 30. Right?

14 A. I'm not quite able to get there with you,
15 Mr. Lane. I'm sorry. I'm not seeing the connection back to
16 the previous issue.

17 Q. The prices that we propose on issue 31 are the
18 same as the prices that we propose on issue 30. Right?

19 A. I'm going to have to defer to the DPL on that.
20 I don't have in front of me the reference in my testimony that
21 would allow me to confirm that.

22 Q. All right. With regard to the prices that you
23 propose then, would you agree with me that MCI has not
24 presented in this case any cost study that supports the rates
25 that you propose to adopt on lines 898 through 900?

1 A. I have not presented a cost study in support of
2 this, no.

3 Q. And so the Commission doesn't have the basis to
4 determine whether the rates that you've proposed are TELRIC
5 rates. Right?

6 A. That's correct.

7 Q. But assuming that SBC Missouri's rates -- you
8 did propose on this issue are the same as those that are
9 contained in the M2A today for time and materials charges and
10 maintenance of service charges, then there would be an
11 appropriate basis for the Commission to adopt those in this
12 case. Right?

13 A. As a general matter, I agree with that. My --
14 my hesitation is that the elements that are covered beginning
15 at line -- row 902 are for batch hot cuts, whereas, the issue,
16 at least in part, is framed as to coordinated hot cuts, which
17 is a different -- a different process. That -- that said, I
18 mean, there's -- there doesn't seem to be a coordinated hot
19 cut rate that SBC has proposed.

20 Q. But if we look at Mr. Silver's testimony, we
21 may see he proposed the rates that are listed in lines 888 to
22 895 for time and material charges. Right? And that's what
23 the DPL indicates. Right?

24 A. Subject to check, I'll accept that.

25 Q. All right. Last issue, No. 33. This involves

1 transit rates. This is on the pricing appendix for MCI.

2 A. Yes.

3 Q. It's a fair statement here that SBC Missouri
4 does not present rates for transiting traffic because it
5 believes that that's not an unbundled network element that
6 should be included in an interconnection agreement. Right?

7 MR. MORRIS: Your Honor, that's also an issue
8 that Witness Ricca addresses if you want to hold that
9 question.

10 JUDGE THOMPSON: Well, he needs to answer it if
11 he's able to.

12 Are you able to answer the question, sir?

13 THE WITNESS: Well, yes, your Honor, in part.
14 And -- and the in part had to do with when we were discussing
15 the exhibit that Mr. Lane handed out, he characterized that as
16 appendix pricing UNE. And while I don't dispute that, the
17 vast majority of the elements in here or the rates in here
18 have to do with UNEs.

19 There are also -- and we talked about the
20 issues that Mr. Lane grouped together, 18, 20, 21 and 22,
21 there are issues that from MCI's perspective don't relate to
22 SBC's unbundling obligations under 251(c) 3 that are also, in
23 our view, properly included in -- in the pricing schedule.

24 If we need to make that a -- an interconnection
25 or a recip comp or whatever pricing schedule, the point is

1 those rates do need to be in the agreement. Beyond that, I
2 will defer to Mr. Ricca.

3 BY MR. LANE:

4 Q. All right. Well, on issue 33, it's indicated
5 in the DPL under the MCI position that you're the witness on
6 this and that you addressed it on page 140 of your direct and
7 page 73 of your rebuttal. So do you feel comfortable going
8 ahead and addressing this based on that?

9 MR. MORRIS: Your Honor, for the record, I
10 misspoke. Mr. Price briefly does address this issue as does
11 Mr. Ricca. With that clarification --

12 JUDGE THOMPSON: Thank you.

13 BY MR. LANE:

14 Q. I think I just have a real simple question for
15 you. I'm trying to make sure that you agree that it's SBC
16 Missouri's position on issue 33 that it shouldn't be included
17 in the interconnection agreement because it's not an unbundled
18 network element and it's not to be priced on a TELRIC basis.
19 Is that your understanding of SBC Missouri's position?

20 A. Yes, it is.

21 Q. And if the arbitrator agrees with SBC
22 Missouri's position on that, then what the rates that you
23 propose on lines 1053 to 1064 should not be included in the
24 interconnection agreement?

25 A. That's correct.

1 MR. LANE: Okay. That's all I have. Thanks a
2 lot, Mr. Price.

3 MR. BUB: Your Honor, if I may, this is another
4 one of the witnesses where he covers multiple sections. And
5 there was a resale section that I had a few questions for him
6 as well.

7 JUDGE THOMPSON: Come on up. I'll set the
8 clock here for you, Mr. Bub. Fire away.

9 MR. BUB: Thank you.

10 CROSS-EXAMINATION BY MR. BUB:

11 Q. Good afternoon, Mr. Ricca [sic]. My name's Leo
12 Bub.

13 I'd like to take you to your discussion about
14 MCI resale issue No. 1 and it's on page 164 of your direct, if
15 that would help you.

16 A. Yes. Thank you.

17 Q. To briefly set this one up, MCI's claim here is
18 that it should be permitted to resell SBC Missouri's services
19 to another carrier. And that third carrier would then be able
20 to resell to its own customers; is that correct?

21 A. Generally. I would state it the opposite. I
22 would state that we don't feel that there's a need for a
23 prohibition in --

24 Q. Okay. That's SBC Missouri's position, isn't
25 it, that we oppose that?

1 A. Yes.

2 Q. Okay. And the legal issue that you raise is
3 whether or not that's an unreasonable restraint on resale. Is
4 that fair enough?

5 A. That is one of the points, yes.

6 Q. And leaving that aside for us to brief, what
7 I'd like to do is cover a few I guess factual questions about
8 your proposal. And for these questions, if you could assume
9 that if MCI's position was adopted by the Commission, under
10 that situation, would you agree with me that MCI would be the
11 one with the contractual relationship with that third-party
12 carrier?

13 A. Yes.

14 Q. Okay. And there would be no contract between
15 that third-party carrier and SBC under your proposal?

16 A. Correct.

17 Q. And SBC would have no control over what's in
18 your contract with that third-party carrier; is that correct?

19 A. Well, I'm hesitating because I think the -- the
20 linkage -- there would be indirect linkage because, as I
21 acknowledge in my testimony, the FCC has restricted resale
22 in -- in the one circumstance where it's cross-class selling.

23 Q. Okay. But in your language --

24 A. In other words, MCI, you know, would be
25 contractually bound to not do that in terms of its

1 relationship with SBC.

2 Q. Okay. But as far as your language goes,
3 there's nothing in there that gives us control over the terms
4 in your agreement with that third-party carrier?

5 A. True.

6 Q. Without contractual relationship with that
7 third-party carrier, would you agree SBC would have no direct
8 recourse against that other carrier? For example, we couldn't
9 sue them for breach of contract because we don't have one with
10 them?

11 A. Well, I'm not a lawyer, but that makes sense to
12 me, yes.

13 Q. The contract's with MCI; is that --

14 A. Correct.

15 Q. And from an ordering perspective, switching
16 gears a little bit, you would expect MCI to be the one
17 submitting the orders to SBC for that third-party carrier?

18 A. Yes, I would.

19 Q. Okay. And from SBC's perspective, those orders
20 would look just like MCI orders; is that correct?

21 A. Agreed.

22 Q. You'd have no way to tell if they were for some
23 other carrier?

24 A. True.

25 Q. And from our perspective, we'll think we're

1 provisioning a service for MCI?

2 A. Well, I mean, obviously SBC is aware of the
3 business that MCI was in -- is in and --

4 Q. Order by order, would we have any knowledge
5 that this one's for an MCI customer and then one's for an MCI
6 resale?

7 A. And that's really the whole point. The point
8 is --

9 Q. Well, would we know? Is there anything from an
10 ordering perspective -- we wouldn't be able to tell an MCI
11 order from an order given to you by a third carrier. From our
12 perspective it would all look like MCI orders; is that
13 correct?

14 A. Exactly. And that's what I'm saying. That is
15 the point. The restriction that SBC is seeking to impose is
16 overly broad.

17 Q. That's all I need.

18 Would you agree with me without knowing who
19 that third-party carrier is before SBC turned up the service,
20 we'd have no way to know whether that third party has a
21 certificate of service authority from the Missouri Public
22 Service Commission that would authorize that third-party
23 carrier to provide service to end-users in the state?

24 A. I would agree SBC would have no way of knowing,
25 but I don't know that there's a need for SBC to police the

1 services that MCI's providing to its customers.

2 Q. Your answer's SBC would not know?

3 A. I believe I said that, yes.

4 Q. And SBC would not know whether that third party
5 had a PSC-approved resale agreement on file I guess with MCI?

6 A. Nor should it.

7 Q. Okay. Or whether that third party has a
8 Commission-approved tariff?

9 A. Again, same answer, yes.

10 Q. Would not know?

11 A. It would not know nor should it know.

12 MR. BUB: Okay. Thank you. Those are all the
13 questions we had, your Honor.

14 JUDGE THOMPSON: Thank you very much, Mr. Bub.

15 MR. BUB: How did I do?

16 JUDGE THOMPSON: You did very well. 5 minutes,
17 33 seconds.

18 Okay. Mr. Williams?

19 MR. WILLIAMS: No questions.

20 JUDGE THOMPSON: Ms. Dietrich?

21 QUESTIONS BY MS. DIETRICH:

22 Q. I just had a couple clarifications on the
23 pricing questions on pricing DPL --

24 A. Okay.

25 Q. -- and pricing schedule.

1 On issue 7, that's where it's talking about the
2 shielded and the non-shielded cross-connects?

3 A. Yes, ma'am.

4 Q. And that's lines 105 through 110 on the pricing
5 schedule. You said that the non-shielded cross-connect issues
6 were resolved, but the DPL references the shielded also. So
7 are the shielded cross-connect rates still outstanding?

8 A. No, they are not. And I apologize for the
9 confusion. The point that I was trying to make, and very
10 inarticulately, MCI had -- had not previously had an issue
11 with the rates for the shielded cross-connects. Those -- we
12 agree that those are the rates that were approved by the
13 Commission.

14 We did not know where SBC had come up with the
15 rates for the non-shielded. And I think our latest DPL entry
16 merely reflected the fact that we're not going to order those
17 so for that reason, we find no reason to have a dispute about
18 something we're not going to use.

19 Q. Okay. Then on DPL issue No. 30, which
20 references lines 883 to 896, just to clarify, you are agreeing
21 to withdraw MCI's dispute on that issue?

22 A. No, ma'am, I'm not.

23 Q. Okay. That is still outstanding?

24 A. Yes.

25 Q. Okay. Then on that issue on the DPL it says

1 under MCI's position --

2 A. I'm sorry. I'm sorry. I was not with you.
3 Can we back up? I want to make sure I didn't give you the
4 incorrect answer.

5 Q. Okay.

6 A. We were talking about price schedule 30?

7 Q. Right, issue 30 on pricing schedule.

8 A. Okay. Would you ask me your question again? I
9 apologize.

10 Q. It's lines 883 to 896 on the pricing schedule.
11 And I was just clarifying, did you agree during your
12 cross-examination to withdraw the issues on that particular --
13 about that particular rate group?

14 A. Yes, ma'am.

15 Q. Okay. Then on issue 31, which is the
16 coordinated hot cut rates, if I'm understanding correctly,
17 MCI's proposing the rates at 89-- 898 through 900 and SBC is
18 proposing basically the time and material charges up above,
19 lines 888 through 895; is that correct?

20 A. I believe that is correct. It was -- it was
21 represented -- I do not recall the testimon-- specifically the
22 testimony of Mr. Silver that was mentioned by Mr. Lane. So --

23 Q. Okay.

24 A. -- with that -- with that, I mean, I was -- it
25 was a subject to check kind of answer.

1 Q. Okay. With regard to MCI's rates at 898
2 through 900, in the DPL under MCI's position it says, The
3 appropriate rate should be the Commission-ordered
4 forward-looking TELRIC-based cost rates. Can you tell me
5 where those rates were ordered by the Commission?

6 A. I -- I do not recall right now having -- having
7 seen the rates at rows 899 and 900 in a particular order. I
8 can review that and give you a more definitive answer later,
9 but right -- sitting right here, I cannot recall.

10 Q. Okay. And then on issue 33, SB-- excuse me,
11 MCI's position is that there should be rates in this agreement
12 for transit traffic. And on the DPL it says MCI's position
13 is, yes, since these are the current transit rates, they
14 should be included in the agreement.

15 Where are they located as the current transit
16 rates?

17 A. Are you asking me which -- which agreement
18 those rates were taken from?

19 Q. Right. Or wherever they came from. Where did
20 they come from?

21 A. It is my understanding that those rates came
22 from the -- the existing interconnection agreement between MCI
23 and SBC.

24 MS. DIETRICH: Okay. Thank you.

25 JUDGE THOMPSON: Mr. Johnson?

1 MR. JOHNSON: No questions.

2 JUDGE THOMPSON: Mr. Scheperle?

3 MR. SCHEPERLE: No questions.

4 JUDGE THOMPSON: Mr. McKinnie?

5 MR. MCKINNIE: Real quick.

6 QUESTIONS BY MR. MCKINNIE:

7 Q. I just want to flesh out the resale issue just
8 a little bit more.

9 A. Okay.

10 Q. Currently does MCI resale services to another
11 carrier that we've been discussing?

12 A. I do not believe that that exists at this time.

13 Q. Okay. Is that expressly I guess prohibited
14 under the current agreement or does that just not occur, if
15 you know?

16 A. I -- I would have to go back to the language of
17 the current agreement to know whether it's expressly
18 prohibited. My answer was based on my understanding of the
19 company's current wholesale practices. And for the most part,
20 we do not wholesale finish services.

21 MR. MCKINNIE: Okay. Thank you.

22 JUDGE THOMPSON: Thank you.

23 Recross?

24 MR. LANE: No, your Honor.

25 JUDGE THOMPSON: None? Very well.

1 Redirect?

2 REDIRECT EXAMINATION BY MR. MORRIS:

3 Q. Mr. Price, do you recall questions regarding
4 GTC issue 10 where MCI wants to be able to obtain services
5 from the -- through the interconnection agreement or from a
6 tariff?

7 A. Yes.

8 Q. And do you recall there was some discussion
9 regarding the fact that -- regarding what SBC says, they have
10 different billing systems for interconnection service --
11 different billing systems to bill for interconnection
12 agreement services versus tariff services? There was some
13 discussion about that.

14 A. The -- the question that I recall was whether I
15 had heard Ms. Quate's testimony that their billing systems
16 could only bill one or the other and could not bill from both
17 an interconnection agreement and from a tariff.

18 Q. Right. And in your opinion, is that a reason
19 for prohibiting MCI from having the opportunity to purchase a
20 particular service from a tariff?

21 A. It should not be, no.

22 Q. Okay. As to price issue 3 -- I'm sorry, price
23 issue 4, I believe, it is your testimony that you're not
24 requesting that MCI get a rate of zero for XDSL loops, are
25 you?

1 A. That is absolutely correct.

2 Q. Okay. And I think you touched on this with the
3 Staff as to price issue 7 regarding the non-shielded
4 cross-connects. Is MCI going to ever purchase non-shielded
5 cross-connects?

6 A. No. It's my understanding we don't. And --
7 and I consider that issue completely settled.

8 Q. Okay. There were a number of issues, some of
9 which were grouped for purposes of cross-examination, where
10 the discussion centered around whether a particular service
11 was or was not a UNE. And assuming the Commission determines
12 that it is a UNE, there should be a rate for that in the
13 interconnection agreement. Correct?

14 A. Well, that's -- that's absolutely correct. In
15 addition, however, particularly with respect to price schedule
16 issue 18 for entrance facilities for purposes of
17 interconnection and issue 22, the SS7 prices when used for
18 interconnection, the determination by the Commission of
19 whether those are UNEs is really irrelevant, in my mind,
20 because of the pricing requirement under the Act for elements
21 related -- network components used for interconnection.

22 Q. There was some discussion about the resale
23 issue 1 and whether SBC would be aware if, say, MCI's
24 wholesale customer -- I think it was a hypothetical if M-- if
25 SBC would be aware whether or not that customer, MCI's

1 wholesale customer, had a CCN or a tariff or was ordering a
2 particular service. Is that something that is important for
3 SBC to know?

4 A. I don't believe that SBC has a need to know
5 that information in order to perform its obligations under
6 what we believe the interconnection should look like. In
7 other words, we don't believe that there should be a blanket
8 prohibition. Any issues that SBC has with respect to the
9 services that it is reselling to MCI are issues that need to
10 be raised with MCI and not to some third party.

11 MR. MORRIS: That's all I have, your Honor.

12 JUDGE THOMPSON: Thank you, sir.

13 Okay. You may step down.

14 It's time for our last break of the day for our
15 reporter. Let's come back -- let's come back at 4:13 and
16 Ms. Shipman will be up here. Very well.

17 (A recess was taken.)

18 JUDGE THOMPSON: And you've been sworn; is that
19 correct?

20 THE WITNESS: Yes.

21 JUDGE THOMPSON: And you are Witness Shipman.
22 Am I right?

23 THE WITNESS: Yes, sir.

24 JUDGE THOMPSON: Could you please state your
25 name for the reporter?

1 THE WITNESS: My name is Linda E. Shipman.

2 JUDGE THOMPSON: And spell your last name, if
3 you would.

4 THE WITNESS: S-h-i-p-m-a-n.

5 JUDGE THOMPSON: Thank you very much.

6 You may inquire.

7 LINDA SHIPMAN testified as follows:

8 DIRECT EXAMINATION BY MR. LEOPOLD:

9 Q. Ms. Shipman, am I correct that Sprint and SBC
10 have resolved issue 10 in appendix general terms and
11 conditions by Sprint's acceptance of the SBC Missouri
12 position?

13 A. Yes.

14 Q. And am I correct that you would like to
15 withdraw your Direct Testimony page 3, line 14 through page 8,
16 line 14 and your Rebuttal Testimony page 2, line 17 through
17 page 3, line 22?

18 A. Yes.

19 MR. LEOPOLD: Ms. Shipman is tendered for
20 cross-examination.

21 JUDGE THOMPSON: Thank you very much.

22 SBC. One quick question, Mr. Lane. Did you
23 intend for 203 to come into the record?

24 MR. LANE: You know, I did. I apologize, your
25 Honor.

1 JUDGE THOMPSON: That's quite all right.

2 Anybody have any objections to the receipt of
3 Exhibit 203? It was used in the examination of the previous
4 witness.

5 Hearing no objections, 203 is received and made
6 a part of the record of this proceeding.

7 (Exhibit No. 203 was received into evidence.)

8 MR. LANE: Thank you, your Honor. I apologize.

9 JUDGE THOMPSON: That's quite all right.

10 CROSS-EXAMINATION BY MR. LANE:

11 Q. Good afternoon, Ms. Shipman.

12 A. Good afternoon.

13 Q. You indicated to your counsel that issue
14 No. 10 on the general terms and conditions of the Sprint DPL
15 is resolved. Right?

16 A. Yes. That's correct.

17 Q. And you're accepting SBC Missouri's language on
18 that proposal. Right?

19 A. Yes.

20 Q. And that deals with deposits or assurance of
21 payment, depending on how you want to word it. Right?

22 A. Correct.

23 Q. All right. But we still have at issue -- with
24 Sprint issue No. 11 concerning escrow provisions. Right?

25 A. Yes.

1 Q. And the main dispute there is whether Sprint
2 should pay into escrow amounts of the bills that it wishes to
3 dispute. Right?

4 A. Yes.

5 Q. Would you agree with me that if a company has
6 to escrow amounts that it wants to dispute from a bill, that
7 that reduces the incentive of a company to raise a frivolous
8 dispute over a billing issue?

9 A. I would -- I would agree that that would be the
10 case.

11 Q. And you're familiar with Ms. Quate's testimony
12 where she indicated that CLECs frequently raised billing
13 disputes, in her view, as simply a means to avoid payment for
14 a period of time?

15 A. I agree that was in Ms. Quate's testimony.

16 Q. It's also true that if escrow provisions are
17 made part of the agreement, that that would provide some
18 certainty to SBC Missouri that it would actually be paid if a
19 dispute was ultimately resolved in its favor. Right?

20 A. That's correct.

21 Q. And it would permit CLECs to get their money
22 returned with interest in the event that the billing issue was
23 ultimately resolved in its favor. Right?

24 A. Right. That is the terms.

25 Q. You're also familiar with Ms. Quate's testimony

1 where she indicated that SBC-affiliated ILECs had lost more
2 than \$250 million in unpaid bills from CLECs?

3 A. Yes. I recall that from her testimony.

4 Q. And would you agree that's a substantial amount
5 of money?

6 A. Yes, I would agree.

7 Q. And had Sprint lost an equivalent amount of
8 money, it would likely look to protect itself from future
9 losses in that event, would it not?

10 A. I can't really -- I mean, that's not my area so
11 I can't really speak to that.

12 Q. It makes sense though, doesn't it?

13 A. Yeah, intuitively it does.

14 Q. As I understand it, Sprint also opposes
15 applying late payment charges to amounts in escrow when the
16 dispute is ultimately resolved in SBC Missouri's favor.
17 Right?

18 A. I believe really the issue is that we oppose
19 the escrow altogether. I mean, we do in other parts of the
20 agreement agree that late payment charges would be assessed if
21 the dispute was lost.

22 Q. All right. If the arbitrator agrees with the
23 general proposition that escrow provisions are appropriate for
24 disputed amounts, then at that point you would agree that late
25 payment charges for escrowed amounts would be appropriate?

1 A. Well, I would agree that that's how it's
2 written in the language today, but as I understand the
3 language, the escrow would be an interest-bearing account. So
4 there would already be interest on that money and whomever won
5 the dispute would get the interest. So I'm not sure why late
6 payment charges would be necessary on top of that.

7 Q. All right. Would you agree with me that under
8 SBC Missouri's proposed language, that late payment charges
9 would apply to escrowed amounts only if the interest received
10 didn't equal the late payment charge that would have applied?

11 A. I'd have to review the language to make sure
12 that I agreed that that's the statement.

13 Q. Okay. Why don't you take a quick look at it?
14 We're dealing with issue 11, right, in the Sprint DPL, general
15 terms and conditions?

16 A. Do you have a particular section you could
17 point me to?

18 Q. 8.1.5.

19 A. I don't believe that's in the DPL.

20 Q. Okay.

21 A. I do have a copy of the contract. Let me
22 look -- see if I have that section.

23 8.1.5, is that what you referenced?

24 Q. Yes. I believe so. I may be incorrect on
25 that.

1 A. As I review 8.1.5, I don't see any language
2 that references a difference -- the calculation of a
3 difference between the interest on the escrow and the late
4 payment charges.

5 Q. All right. Issue 13 of the Sprint DPL on
6 general terms and conditions deals with essentially whether
7 SBC Missouri may require disputes to be made on a designated
8 form?

9 A. That's correct.

10 Q. And it also involves how much information needs
11 to be provided in order to dispute an amount that's billed.
12 Right?

13 A. Yes. And I don't think there's a disagreement
14 about the information provided, it's just the form.

15 Q. It certainly is reasonable for the party
16 disputing a bill to give the reasons why it's disputing it.
17 Right?

18 A. Yes. Most definitely. And there's not a
19 disagreement over that.

20 Q. And you're also aware, are you not, that SBC
21 Missouri has to deal with dozens of different CLECs throughout
22 its various operating regions. Right?

23 A. Yes. I'm sure that it does. As well as Sprint
24 deals with thousands of different carriers.

25 Q. And it's reasonable, is it not, for a company

1 that has to deal with dozens of different CLECs on billing
2 issues to request that a standardized form be utilized in
3 order to expedite the process of resolving disputes?

4 A. No. I don't believe it's reasonable to ask all
5 the carriers to conform to a certain standard. I do agree
6 that it's reasonable that all the information is necessary and
7 we've agreed on what elements are necessary in order to
8 investigate the dispute.

9 Q. Okay. It's fair to say, isn't it, that both
10 parties ought to want to get the dispute to be resolved
11 quickly. Right?

12 A. Yes.

13 Q. And from an administrative perspective, it
14 would help ensure that the dispute does get resolved quickly
15 if parties are utilizing a standardized form with the
16 information to be conveyed. Right?

17 A. Again, I disagree that that is necessary in
18 order to resolve the dispute. You know, I'd restate that all
19 the information needs to be available and we've agreed on the
20 specific points that need to be available, but I don't believe
21 what form, as long as all the required information is
22 submitted, is really a critical point.

23 Q. Okay. And if it's not a critical point from
24 your perspective for SBC to receive it in a particular
25 fashion, is it also not a critical point for Sprint in terms

1 of how it presents the information?

2 A. No. I disagree with that as well. I mean, it
3 is a critical point because, as I mentioned, we deal with over
4 2,000 different LECs. And if we had to use everyone's
5 standard form, that would be quite onerous. We actually have
6 a standard form that we use for everyone and that is what's
7 most beneficial for us and efficient.

8 Q. So it's a matter I guess of perspective of who
9 ought to bear the price of dealing with different forms,
10 right, to try to get the information necessary to resolve
11 billing disputes. Right?

12 A. Yes. I would agree with that point.

13 Q. And that's great. That's all I have. Thank
14 you very much.

15 A. Thank you.

16 JUDGE THOMPSON: Thank you, Mr. Lane.

17 Outstanding. 10 minutes and 38 seconds.

18 Mr. Williams?

19 MR. WILLIAMS: No questions.

20 JUDGE THOMPSON: Ms. Dietrich?

21 MS. DIETRICH: No questions.

22 JUDGE THOMPSON: Mr. Johnson?

23 MR. JOHNSON: No questions.

24 JUDGE THOMPSON: Mr. Scheperle?

25 MR. SCHEPERLE: No questions.

1 JUDGE THOMPSON: Mr. McKinnie?

2 MR. MCKINNIE: No questions.

3 JUDGE THOMPSON: Redirect?

4 REDIRECT EXAMINATION BY MR. LEOPOLD:

5 Q. Ms. Shipman, did you hear Ms. Quate's testimony
6 on this topic earlier today?

7 A. Yes, I did.

8 Q. Did you agree with her testimony that there
9 should be a distinction in the way that SBC treats reliable
10 CLECs and the more unreliable CLECs that are a constant
11 problem with many bogus billing disputes?

12 A. Yes. I definitely agree with that.

13 Q. Does the agreement in the contract language
14 proposed by SBC to Sprint draw such a distinction between
15 reliable CLECs and the less reliable CLECs?

16 A. No, it does not at all.

17 Q. Is it correct that you've testified that, in
18 fact, in 70 percent of cases when Sprint has filed a dispute,
19 they've been vindicated in those disputes?

20 A. Yes. That is correct.

21 Q. And Mr. Lane asked you about the statistic that
22 Ms. Quate has in her testimony that they have approximately
23 \$255 million lost to CLECs in disputes; is that correct?

24 A. I'm sorry. What was the question?

25 Q. Isn't that correct that that they testified

1 they've lost 255 million to CLECs through these problems with
2 billing disputes?

3 A. Yes. That's correct.

4 Q. And you also recall that that was over a period
5 of four years?

6 A. Yes.

7 Q. So a little less than \$60 million per year; is
8 that correct?

9 A. Yes.

10 Q. And then that would be divided between all the
11 SBC states; is that correct?

12 A. Yes. That is correct.

13 Q. So by the time you came up with a Missouri
14 portion of that, those perhaps millions of dollars, while not
15 insignificant, compared to the size of a company like SBC need
16 to be put into perspective?

17 A. Definitely.

18 Q. Have we had any problems disputing payments
19 with SBC using the form that we use today?

20 A. No, we haven't. We developed that form
21 specifically working together because they were not able to
22 handle our automated process that we use with a lot of other
23 carriers. So we worked together and it's been working pretty
24 well since the end of last year.

25 MR. LEOPOLD: I have no further questions.

1 JUDGE THOMPSON: Thank you.

2 You may step down. Thank you.

3 Okay. We're done for today. I think we've
4 gotten through all the scheduled witnesses for Monday; is that
5 correct?

6 MR. LEOPOLD: Your Honor, we had --

7 JUDGE THOMPSON: Did I miss somebody?

8 MR. LEOPOLD: -- we had Mr. Burt scheduled. We
9 skipped him because --

10 MR. LANE: I didn't like his looks.

11 MR. LEOPOLD: -- Mr. Lane didn't like his looks
12 and because Mr. Burt has been diligently working with SBC's
13 representatives to settle his issues throughout the day. I
14 don't know if we have a resolution.

15 Okay. I'm told we do have a resolution of
16 that. So that would mean we have a resolution of issues 2 and
17 6 and the general terms and conditions that Mr. Burt intended
18 to address, which was the definition of end-user and the
19 definition of local traffic. Correct?

20 MR. LANE: I believe it is. And then, your
21 Honor, we'll submit something to the arbitrator so you'll be
22 aware of what that resolution is.

23 JUDGE THOMPSON: That would be great. I mean,
24 by the end of this you should let me know every DP I don't
25 need to deal with. Okay?

1 MR. LANE: Yes.

2 JUDGE THOMPSON: So I apologize for missing
3 you, Mr. Burt, but I'm still correct we are done for the
4 today. Right?

5 MR. LANE: Let me ask one other thing. We have
6 Mr. Smith. I don't know whether anybody has any questions for
7 him or not, but we have him listed.

8 MR. BUB: On definitions, your Honor.

9 MR. SAVAGE: And resale.

10 JUDGE THOMPSON: Maybe we're not done for the
11 day.

12 MR. LANE: Does nobody have any questions for
13 Mr. Smith?

14 JUDGE THOMPSON: Doesn't look like anybody
15 does.

16 MR. SAVAGE: Mr. Smith is heading out.

17 JUDGE THOMPSON: Price we already had up. What
18 about Ricca?

19 MR. MORRIS: Ricca is going to be here
20 tomorrow, your Honor.

21 JUDGE THOMPSON: Okay. We'll take Mr. Ricca
22 tomorrow.

23 MR. MORRIS: Yeah. The issue under definitions
24 is actually part of a larger number of issues that are built
25 in one section.

1 JUDGE THOMPSON: I'm so glad to hear you say
2 that.

3 MR. MORRIS: And I have no questions for Smith.

4 JUDGE THOMPSON: Very good. Very good. Okay.
5 I've said it about eight times now that we're done for the
6 day. They keep pulling witnesses out of their sleeves.

7 MR. SAVAGE: I think you need to stand up and
8 leave, your Honor. Otherwise we're not going anywhere.

9 JUDGE THOMPSON: You may have that right.

10 Mr. Lane?

11 MR. LANE: I'm just getting ready to leave, but
12 waiting for you to do so first.

13 JUDGE THOMPSON: Okay. We will be in recess
14 then until tomorrow morning at 8:30. 8:30. I would
15 anticipate a one-hour lunch period tomorrow. I think we
16 should be able to get our entire schedule done. I'll try to
17 do a better job of reading the witness list. Don't stand,
18 please. Go about your business. Thank you.

19 WHEREUPON, the hearing was adjourned until
20 May 24, 2005 at 8:30 a.m.

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