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

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DEPUTY CHIEF REGULATORY LAW JUDGE.

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P R O C E E D I N G S

JUDGE THOMPSON: Good morning. We're back for hopefully the final exciting day of oral argument of the SBC arbitration case, No. TO-2005-0336. And I believe we interrupted Mr. Gryzmala's presentation in order to take a couple people out of order so that they could leave, folks who didn't need to be back here today. So Mr. Gryzmala, if you're ready, step on up to the podium, and maybe you can remember where you were. I'm afraid I don't.

MR. GRYZMALA: Okay. Thank you. Good morning everyone. Bob Gryzmala, Commissioners, for SBC Missouri. To set it up as it were, I believe where we were yesterday was having wrapped up Items 1 and 2 of Section 5, that being the point of interconnection within SBC's network, Number one. Number two, the 24 DS1 threshold for POIs. Those having both been wrapped up.

I would pick up, if I may, with Item 3, intrabuilding cable, and 4. As I mentioned yesterday, my colleague, Leo Bub will pick up 5, SS7, after I'm finished, and I will do 6 and 7 right now. I anticipate 10, 15 minutes max.

JUDGE THOMPSON: Take whatever time you need.

MR. GRYZMALA: Just a couple points regarding the item of Point 3. The -- as I mentioned yesterday, the arbitrator ruled that AT&T's language establishing that a

point of interconnection could be placed at a condominium arrangement, CLEC pop hotel, and the like, at Section 1.2 should be rejected because those points are not within SBC's network.

I don't want to go over those points again, but the language also tied in a point of interconnection being permissible at points, quote, between central office buildings utilizing intrabuilding cable, bearing in mind they had equated central office buildings in a parenthetical in that same paragraph with pops and condominium arrangements. So the first point I would make of three, your Honors, is that for an additional reason, for an additional set of reasons, for Section 1.2 should be rejected.

The language is internally inconsistent, firstly. There cannot be an intrabuilding cable between two buildings, so we don't know which they mean to mean or refer to. It's either an interbuilding cable, if there's two -- if there are two buildings involved. It's an intrabuilding cable if there is one building involved. It's confusing, it's vague, it's internally consistent (sic). And for the other reasons I mentioned yesterday as well, Section 1.2 should be rejected.

I would also point the Commission's attention to the portion of the language which follows Section 1.2, which allows AT&T to use coax cable to connect itself to our

network via the shortest practical route. Mr. Hamiter -- excuse me, our comments to the submission -- to the Commission, at Pages 188 through 192, outline the various safety factors that are implicit in using the shortest practical route for cable when there are four loading constraints, riser cable constraints, load bearing capacity.

I don't want to dwell on them in particular, but I would simply highlight that this is another reason to reject AT&T's Section 1.2. The only company, I would remind your Honors, that have asked for this kind of language among all of the CLECs in this case.

Point 4 has to do, as indicated by the issues list, which we distributed yesterday, to do with did the arbitrator err in determining that CLECs could obtain entrance facilities as interconnection facilities at TELRIC rates. Here, again, the arbitrator ruled that entrance facilities are a part of SBC's network and that they are obtainable at TELRIC rates. The arbitrator ruled so at Page 16 of Section 5 of the report.

We pointed out yesterday at some length that entrance facilities are not interconnection facilities. They are not within SBC's network for purposes of interconnection, and are thus not subject to unbundling. This is discussed -- again, our comments on this particular point are at Pages 199 to 201.

That being the case, the Commission should reject MCI's and the CLEC Coalition's proposed language that would apply TELRIC's pricing for the reasons mentioned yesterday, and for the additional reasons I supplied here, the arbitrator's ruling should be reversed as to the point -- as to this item.

The matter of one-way versus two-way trunking appears as Item 6. The arbitrator ruled that CLEC -- or that SBC could not require a CLEC to migrate from one-way to two-way trunking unless they consented to do so. The arbitrator so ruled at Page 24 of Section 5. We would respectfully submit that the Commission should reverse this decision. We would refer the Commission to our extensive comments regarding the network integrity and reliability issues, pointed out at Pages 205 and 212 -- excuse me, 205 through 212 of our comments, explaining that this proposal is designed to make the most efficient use of our network resources to forestall the need to replace or add to existing trunk capacity.

We're simply asking that the current one-way trunks should be migrated to two-way architecture under a transition plan that would not respect undue hardship to the CLECs, who on the other hand, would not only like to retain that architecture but to grow it, to continue it, and to exert additional pressure on our finite but valuable

resources.

The Texas Commission likewise decided to implement two-way trunking, and found specifically that using two-way trunk groups reduces the total number of trunks required to carry a particular load, and that two-way trunk groups provide the maximum flexibility to carry calls placed in either direction. That's the 2AA 21 [ph. Sp.] docket, your Honors, February 23rd, Pages 21 and 22.

With respect to Item 7, SBC's proposed local interconnection trunk proposal, we submit that the language proposed by SBC should be approved. The arbitrator ruled in this regard that SBC Missouri could not require two-way trunk groups against the wishes of the CLECs. Arbitrator report, Section 5, Page 26. As SBC Missouri explained in its comments, which appear at Pages 214 to 218, the proposal allows for the most efficient use of our network resources by limiting, or at least trying to slow down, the rate of tandem exhaust.

Trunking to local calling areas where CLECs serve end users works with and is compatible with a single point of interconnection architecture, as our comments explained. In contrast to those CLECs who would argue that adding additional trunks would somehow impinge upon or hamper the ability to deploy a POI on the network.

The cost of the facilities on SBC's side of

the POI, the point of interconnection where the two networks meet, would be SBC's. That was explained in our comments in testimony. We would urge the Commission to carefully consider the network resource and tandem exhaust concerns presented by SMC's witness, Jim Hamiter, particularly at Pages 50 to 58 of his direct testimony, and Pages 24 to 28 of his rebuttal testimony.

I will suggest to you, although I'm not specifically aware of all of the details, there are portions of his testimony that talk to the actual jeopardy situation of one of the tandem exhausts -- or the tandems in this state, the McGee tandem. That is discussed in his testimony. It's a real world example of why our proposal should be accepted.

My last point, your Honors, and Mr. -- and Madam Commissioner, has to do with as sort of a defensive point. This is not a point that we've advanced. It's a point Sprint has advanced, and in accordance with the rules of the proceeding here, I want to just pick that up briefly. I believe this would have to do -- and by the way, I have only one of those items.

This has to do with Sprint's point made in its comments filed with the Commission that the arbitrator erred when -- in ruling against arbitrator -- against Sprint on the allocation of costs for interconnection facilities. The

argument being that the arbitrator's ruling was inconsistent.

Now, to put this in context, what the arbitrator ruled and correctly so, is that when a POI, a point of interconnection, is established, each party is financially responsible for their network facilities on their side of the POI. Sprint's point, is though that, well, at Page 4, it seems that Sprint would be forced to absorb 100 percent of the cost of the transport facilities that physically joints Sprint's network with SBC's network since this interconnection facility resides on Sprint's side of the POI.

Well, I think they've got it right, but for the wrong reason. They are responsible for their entrance facilities, for their facilities on their side of the point of interconnection. Those are not interconnection facilities, as far as we explained yesterday. Interconnection facilities under 251(c)(2) are not entrance facilities that were no longer required -- that are no longer required to be offered as a UNE. So it is true, Sprint should absorb 100 percent of the cost of the facility that brings its network to SBC's network.

Since this is an interconnection facility? No. The rest of the sentence should read since this entrance facility resides on Sprint's side of the POI. That should cure the confusion that Sprint apparently finds.

Now, Sprint goes onto point out a couple of FCC rules, specifically 51.709(b), which says that the rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of the trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network.

That rule, from all appearances that I have been able to glean, was adopted at least as many as eight to nine years ago, perhaps in connection with the First Report and Order. It certainly was implemented by the FCC issued by the FCC before the TRO, clearly before the TRO and TRRO. It refers, as you may recall, as I noted here, to transmission facilities dedicated to the transmission. That would be a direct illusion to the previous bundling requirements which basically place dedicated transport outside of the network as the FCC declared it now.

As I pointed out yesterday, SBC's network for purposes of the applicable rules is within its network at or between its switches, under the FCC's definition of Paragraph 366. The point is, is that this FCC rule obviously predates TRO and TRRO. The TRRO governs the analysis as opposed to this rule, which was implemented many years earlier.

And it's clear that the Maryland case to which Sprint points the Commission to gets the same attention. It

relied on pre-TRRO law. It took into account nothing having to do with the FCC's activities in 2003 and 2005, February 2005 of the TRRO.

I would urge the Commission to take a look at the -- for the interest of time, I would urge the Commission simply to take a look at that case, 2004, Maryland PSC LEXUS 13, Order No. 79250, Case No. 8882, July 7, 2004. It is absolutely apparent, with connection of Issue 7, that they are referring to rules of a different era, local -- the First Order and Report rules or thereabouts of many years ago that did not take into account the TRO.

The bottom line for Sprint's proposal is that its cost sharing proposal is misplaced. The judge was right when he concluded that each party is financially responsible for facilities on its side of the POI, and that's the end of it. Unless you have any questions, I think I'm complete at this point. And Mr. Bub will take over.

JUDGE THOMPSON: Thank you, Mr. Gryzmala.

MR. GRYZMALA: Thank you.

JUDGE THOMPSON: Mr. Bub.

MR. BUB: Thank you, your Honor. Good morning. The issue I have in this network area concerns SS7, and on the agenda that was handed out yesterday, it was Item 5, and specifically, it's MCI SS7 Issue 1, and what this issue concerns is whether or not it's appropriate to have

SS7's services in a 251-252 agreement. This is one of the 271 elements that Mr. Lane referred to in his comments yesterday.

I think we can probably handle this on a very shorthand basis by referring to our comments and to the comments he had yesterday on 271 elements, so I don't think, unless you have any specific questions with regard to SS7, SS7 is simply one of those 271 elements that does not need to be placed and shouldn't be placed in a 251-252 agreement.

If you don't have any questions, I do have one issue that I want to respond to, and this was an issue that was raised by AT&T.

COMMISSIONER MURRAY: Mr. Bub.

MR. BUB: Yes.

COMMISSIONER MURRAY: Excuse me. Before you go on, I do have a question. Can you cite to a specific -- to specific language where the FCC indicated that for the Act, indicates 271 is under the jurisdiction of the FCC rather than the state's?

MR. BUB: Your Honor, the FCC has delisted SS7 services in the TRO, and the import of that is on or after March 11 of 2006, that there's no requirement to provide that as an unbundled network element and a TELRIC pricing. That's not to say we won't provide SS7. We'll do it under tariff, but that's separate from this agreement.

COMMISSIONER MURRAY: What I'm looking for is the language where you filed the 271 -- those things provided under 271, and the enforcement of that.

MR. LANE: If I may, your Honor, I was addressing this issue yesterday. The 271 and the Act itself, the only role that it's given to the states is in 271(d)(2)(b), where the FCC is the one that decides whether the box, the former Bell operating companies, are allowed into long distance service. And it gives it to the Commission to decide that, and gives the state's only role in the consultation.

And then with regard to enforcement of the -- of the 271 provisions, if you would look in 271(d)(6), enforcement of conditions, it gives that authority strictly to the FCC itself. And the FCC in its TRO, at Paragraph 664, makes that clear as well. It provides in the first sentence, quote, whether a particular checklist rate satisfies the just and reasonable pricing standard of Section 201 and 202, it's a fact-specific inquiry that the Commission, meaning the FCC, will under take in the context of the box application for Section 271 authority or in an enforcement proceeding brought pursuant to Section 271(d)(6).

COMMISSIONER MURRAY: And that was a TRO or the TRRO?

MR. LANE: TRO, Paragraph 664.

COMMISSIONER MURRAY: Thank you.

MR. LANE: And some of the surrounding paragraphs make the same point.

COMMISSIONER MURRAY: Thank you. And I realize you-all had brought those out yesterday. I think it's important that they be cited specifically where this issue comes up.

MR. BUB: Turning to the responsive issue that we have, AT&T has challenged arbitrator's decision with respect to issue NIA 15, and there they claim that the arbitrator erred in using the Commission's enhanced record exchange rule to prohibit a technically feasible form of interconnection that they say is permitted.

COMMISSIONER MURRAY: I'm sorry, which party?

MR. BUB: AT&T.

COMMISSIONER MURRAY: Thank you.

MR. BUB: And the issue, maybe this will help state the issue, is the question is may AT&T combine originating 251(b)(5) traffic in intraLATA exchange access traffic with interLATA exchange traffic on a feature group D access trunk. Essentially what they want to do is put local traffic on an access trunk, and this -- specifically they're referring to a service that they call AT&T digital linkguard ADL.

With respect to their claim about the

inconsistencies with the Commission rule, I think we would agree that a state Commission rule cannot be enforced if it conflicts with the Act. But here, there isn't a conflict. AT&T's claiming that it's being denied interconnection. That's not the case. It's just being required to establish a separate trunk for IXC traffic separate from their local-type traffic on this ADS service, which is, I think, a Plexar or Centrex-based service that they have. And we think the requirement to have that on a separate trunk is valid and appropriate reason, so that detailed and accurate billing records could be created for the IXC traffic when it enters the LEC-to-LEC network.

We do agree with them, also, that the Missouri Commission rule preserves what they say is the record creation, record exchange, and billing processes currently in place for traffic carried by IXCs using feature groups A, B, or D protocols. But here, there's no evidence that this AT&T ADS service or the traffic originates using feature group D protocols. It's, like, a one plus dialed call, and that's specifically referenced in the Commission's rule.

The only evidence that's been provided that such traffic is routed over these feature group D, as in David, access trunks. And that's not what the Missouri Commission rule contemplated, so we believe that the Commissioner -- the arbitrator correctly decided that

separate trunk groups here are necessary, so appropriate call detail records could be created.

And if you have any questions about that, I can certainly attempt to answer them.

JUDGE THOMPSON: Hearing no more questions --

COMMISSIONER MURRAY: I have one.

JUDGE THOMPSON: Please, Commissioner Murray.

COMMISSIONER MURRAY: Which issue are you talking about? I'm sorry, I missed that when -- I don't have Livenote anymore, so I can't go back and look.

MR. BUB: It's AT&T NIA 10 (sic) -- or maybe they just call it Interconnection 10.

COMMISSIONER MURRAY: Thank you.

MR. BUB: You're welcome. Thank you.

JUDGE THOMPSON: Thank you, Mr. Bub. Mr. Gryzmala.

MR. GRYZMALA: Your Honor, I made a mistake. I want to ask for just a moment more. I did have a part, I recall Charter raised the e911 point yesterday, and I thought of it as e911, and put it in the back of my mind not as network, but if I could cover that for just ever so briefly.

JUDGE THOMPSON: Do you want to cover it during the e911?

MR. GRYZMALA: It was in the network portion.

JUDGE THOMPSON: Well, step up and cover it

now, if you'd like.

MR. GRYZMALA: This had to do with Mr. -- rather, Mr. Savage's point with respect to Charter yesterday challenging the arbitrator's decision that the point of interconnection for -- in the case of 911 services should be at the selective router, SBC. That is at the arbitrator's report Section 5, Page 14.

We only wish to emphasize that we believe the arbitrator was correct in this regard. Charter is the only company who challenges the decision made by the arbitrator in this matter. Very briefly, otherwise, Mr. Savage attempted to make the point that PSAPs are SBC's customers somehow, and that has something to do with the outcome here. One of the points that is, I think, telling in response to that, is that unlike the pizza parlor that he refers to in footnote 13, the PCAP is not in the business of delivering pizzas.

The critical point for e911 service is that service is there to help the public in critical times. The beneficiary of the service is the end users of the carrier. Charter should be responsible for delivering its facilities to the POI.

My last point is that this is not new to the Commission. Separate trunks under interconnection agreements already approved in this state, separate trunks will be utilized for connecting CLEC services to each e911 tandem.

That is in both of the Sprint interconnection agreements with FamilyTel and Intermedia, Section 51.1.3 of the FamilyTel ICA of the network appendix, and Section 42.2.3 of the intermediate ICA.

That's all I have on Mr. Charter's point -- or Mr. Savage's point. Thank you.

JUDGE THOMPSON: Thank you, Mr. Gryzmala. Mr. Magness.

MR. MAGNESS: Your Honor, Commissioners, Bill Magness with the CLEC Coalition. On the interconnection issues, there were, I guess, two of the major -- two or three of the major points that Mr. Gryzmala referenced, I wanted to mention.

First, on this question of entrance facilities, it was talked about quite a bit yesterday and today. As I noted yesterday, it is unfortunate that that term is not one that's easy to understand in the first place, and then the FCC goes and uses it two different ways.

What was heard at hearing from the engineers, the people who know about the network, is essentially when an entrance facilities, when these telecom facilities are used for service to an end user, they're often -- have been in the past -- purchased as a UNE, like a loop would be purchased or transport would be purchased.

What the FCC said in the TRRO in February,

2005, is no more of that. You can't purchase those as UNEs under Section 251 anymore. Those are declassified or delisted. But then the other purpose for which these same kind of facilities are often used are for the purpose of interconnecting with the incumbent carrier, like SBC, so you can interchange traffic with them. You're not delivering something to a customer in that situation, you're using the facility for a different purpose, which is to interconnect.

Now, we heard over and over again that the idea that these entrance facilities can be used for interconnection facilities or for something else is a word game. We heard this from SBC quite a bit yesterday, but there is no denying that, really, what it comes down to is a question of what the FCC intended.

And what they told us in Paragraph 140 back in February, 2005, of their TRRO is they say in addition to our finding of nonimpairment with respect to entrance facilities, that means nonimpairment means they can't be UNEs anymore. That does not alter the right of competitive LECs to obtain interconnection facilities pursuant to Section 251(c)(2) for the transmission and routing of telephone exchange and telephone exchange access service. Thus, competitive LECs will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network.

Now, the language that the judge approved here would do just that. It would not make them available as unbundled network elements. It would make them available for the purpose of interconnecting with SBC's network. That's a permissible purpose. That's what the FCC said.

Now, Mr. Gryzmala yesterday talked to you a lot about Texas and Illinois, and Texas and Illinois have decided the other way, have gone SBC's way, they have not gone the way Judge Thompson went. Well, on Texas, there is a provision quoted from the Texas Order in mid-February in their T2A arbitration that does indeed say, as Mr. Gryzmala put it, you can't change the name of something to make it something else.

Subsequently, the Texas Commission came back and recognized the import of Paragraph 140, and that first Texas Order that was referenced was issued February 23rd, just after the TRRO came out. In some of their subsequent reconsiderations, Texas has noted the existence of Paragraph 140, in that it does make a difference to what you can use these things for, and they have subsequently come out with language in their track two Order on June 20th, I believe, that all I can tell you is we are all still trying to figure out exactly what the contract language is to be.

They did reject CLEC-sponsored language with what to do with entrance facilities, but it's not completely

clear exactly what that language is going to look like in Texas. I don't say that to contradict that Texas said what it said, as SBC cites it, but I think there have been some subsequent developments where Texas recognizes that Paragraph 140 is important.

And as to this Illinois precedent, I'm rather puzzled by it because it is -- it's cited in the context of this issue about what did the FCC mean in the TRRO in Paragraph 140, which is really what's dictating this whole fight right now is this split of UNEs versus interconnection facilities in the TRRO. The reason I say I'm puzzled is the Illinois decision that's cited in SBC's brief, and you've quoted at Page 176 and 177 of their comments, is this was decided and issued September 4th -- September 9th of 2004.

Now, I don't know how the Illinois Commission knew on September 9th of 2004 what it was the FCC was going to rule on February 6th of 2005. But I would submit that what the Illinois Commission said about what the FCC had done previously doesn't have a whole lot to do with the real dispute at hand here, which is mainly about the most recent FCC ruling on this issue. So --

COMMISSIONER MURRAY: Excuse me.

MR. MAGNESS: Yes, ma'am.

COMMISSIONER MURRAY: I'd like to ask a question here. If the facilities were delisted for purposes

of serving end users, how would your ability to get them at cost-based rates get those same facilities -- how would that affect your ability to serve end users with those at cost based rates?

MR. MAGNESS: Well, I think the distinction the FCC seems to be drawing is if you want to buy one of these things that's called an entrance facility, and you're going to use it for the purpose of connecting to the SBC network so that you can exchange traffic --

COMMISSIONER MURRAY: Right, but then does that limit you so that you cannot use it to serve end users, which was delisted?

MR. MAGNESS: It would not, because the purpose for which you're using that particular piece of the network, that particular facility, you're using that as an interconnection facility.

COMMISSINER MURRAY: But you can still go ahead and use it the way that you could before it was delisted?

MR. MAGNESS: No, you couldn't.

COMMISSIONER MURRAY: You cannot?

MR. MAGNESS: Because you still need some other facility that gets you from your switch out to that customer. Now, if you went -- let me give you an example. If you went to SBC, and you said I've looked at what you've

got available in your network, and you have what -- and I always use the term entrance facility advisably. I would hope that you would look at the testimony from the engineers about exactly what they say these things are, but just work with me as the lawyer.

But if you looked at the network and you said, okay, SBC, I see you have an entrance facility here that could connect me to your network, and all I am going to do with that facility is exchange traffic with you, my originating traffic to you and vice versa, and then I see you've got this other one over here that goes from your switch out to an end user premises, like it could be an IXC POP or some sort of end user -- normal end user, like a business.

Well, if you said I want to order both of those from you and pay cost-based rates, our view is, and I think where the arbitrator came out was, SBC can say no, you can't have that as a UNE, you can't have that end that goes out to the customer or the IXC as a UNE, not available. I might sell it to you, but I don't have to sell it to you as a UNE or at cost-based rates.

Then you turn to that other segment in the network that's going to be used just for the networks meeting and exchange traffic, and what the FCC is saying in Paragraph 140 is as an interconnection facility, the CLEC can still

obtain that at cost-based rates. So it really is that there are different piece parts of the network, and they're used for different purposes.

COMMISSIONER MURRAY: Okay. And then I have another question. In terms of the argument that entrance facilities are not interconnection facilities, what is -- what -- what would be an interconnection facility that is not an entrance facility?

MR. MAGNESS: Well, there would be -- there are certainly facilities, like, for example, a CLEC-owned facility, if the CLEC took its own fiberoptic cable and took it up to SBC and met SBC, and they interconnected that way, that would not constitute an entrance facility.

And I know -- Kevin, are you going to address any of these? Yeah, Mr. Zarling is going to address some of them as well, maybe he'll speak to some specific facilities as well. But I think there a lot of different ways that the CLEC can interconnect technically with the ILEC. The entrance facility is a particular designation of facility.

COMMISSIONER MURRAY: Okay. Thank you.

MR. MAGNESS: Sure. And it -- it -- it brings up a point, which I wanted to mention in the context of the one-way and two-way trunk issue, too, is that while many of these issues have been posed to you in the SBC comments as purely legal, I think if you look at the record that was

before the Staff and the arbitrator, there was a whole lot of testimony from Mr. Hamiter for SBC, Mr. Land for the CLEC Coalition, from the AT&T, Sprint witnesses concerning what exactly are these things, what is the nature of these things in the network.

And it makes a big difference in putting the legal issues in context to understand the economic and technical aspects which were factual issues before the judge. So on that -- that one- and two-way trunk issue, again, this is an issue where we strongly believe that if the Commission examines all the applicable FCC rules, as we believe the judge did, that it is completely permissible under those rules to allow one-way trunks as well as two-way trunks.

The great threats that Mr. Gryzmala was citing of increased one-way trunking, I don't really think are borne out by the record. If you look at the testimony of Mr. Land for the CLEC Coalition, and Mr. Faldy [ph. sp.] for Xspedius, you'll see that what the CLECs are advocating is that they be allowed to retain a business option to use one-way trunks. It's not advocacy of shifting the paradon completely and stopping using two-way and just using one-way, that's not at all what's going on here, but there are circumstances in which the one-way trunk is extremely more efficient, depending on a carrier's traffic patterns, and retaining the option to do that was the main point of this.

And in fact, on many of these interconnection issues, that did become the main point. There were two different legal ways that one could go, and they become factual economic policy issues. Many of the issues are simply about increasing the cost of interconnection, making it harder, making it more expensive or less efficient. And of course, those are issues where we believe it's important that the more efficient approach be chosen.

And while we're on the one and two-way trunk issue as well, I will note that on this and the point of interconnection issue, and several of these other issues, again, if we are to believe in the wisdom of the great state of Kansas and its Commission, as we were told to do yesterday, I would advise the Commission look very thoroughly at their interconnection decisions on these very issues where they came out much the same way as the judge did here.

Finally, one issue I just want to note from our comments, and it's one where we just want to flag it and ask the Commission to look at it. It appeared to us that there was one decision missing in the arbitrator's report. That was on CLEC Coalition NIA, that stands for network interconnection architecture, NIA 2.

The question posed is, is a metropolitan calling area considered a local calling area, and that was a DPL issue, it just may have been inadvertently overlooked.

So we'd ask that -- if we're wrong about that, let us know, but if you did overlook it, just provide a decision, if possible.

And finally, I just wanted to address, just in response to Mr. Lane, the Section 271 jurisdictional question. As we noted yesterday, as we were talking about Section 271, the statutory provisions that the CLEC Coalition is relying on for incorporating 271 checklist items in the interconnection agreements are at Section 271(c)(1)(a) and (c)(2), and then into the competitive checklist in (c)(2)(b).

And we do not disagree that if a party wants to go in and say SBC shouldn't be in long distance anymore and they ought to get out of there, they need to go to the FCC to do that, and do that under Section 271(d)(6), enforcement complaint. The point we are making, based in the statutory language, is that 271 says the box in long distance, the box has to offer the competitive checklist, keep the local market open, that offering's got to be in a 252 interconnection agreement.

And a Section 252 interconnection agreement, when it points over to Section 252, it's pointing to this very process, the state Commission, negotiation and arbitration process, and that's why we're asking that this checklist items be in the agreement. We're not asking that you take SBC out of long distance or perform an enforcement

action that is more properly the FCC's job. But we are saying that the statute says 252 interconnection agreement is where these checklist commitments live going forward. So I just want to clarify that.

Are there any questions? I think I'm all set. No? Thank you.

JUDGE THOMPSON: Thank you, Mr. Magness. Mr. Zarling?

MR. ZARLING: Good morning, Commissioners. I'm Kevin Zarling, and I represent AT&T and the TCG entities here in Missouri. Hopefully we'll be able to go through briefly a response to five of the seven points that SBC raised in their -- let's say abridged version of issues, because only five of those issues are AT&T issues.

SBC raised them, obviously, because the arbitrator agreed with AT&T's position on those, and other CLECs, and I'd like to briefly address those before talking about the two issues that AT&T raised where we feel like there was an error in the Order. One of which we feel it was probably just a typographical error, an oversight.

Another one is a very critical issue because unlike even the UNE issues that you're hearing about where by next March there's going to be, perhaps, a great loss of consumer -- competition for consumers in the state, on this other network issue that we raised, the arbitrator's ruling

could more or less immediately impact a business service that AT&T currently provides here in Missouri.

As to SBC's issues, I'll try to do this quickly, because we've covered a lot of ground, and these issues have been addressed in detail by Mr. Gryzmala, and to some degree overlapped some of the SBC's arguments in general terms and conditions. The first one, did the arbitrator err in concluding that the point of interconnection could occur at points not within SBC Missouri's network.

Obviously the dispute there is what is within SBC's network, and this does overlap with the fourth point that Mr. Gryzmala raised, but in discussing it yesterday, I thought Mr. Gryzmala made it a little more confusing than I think it needs to be. By the way, this is AT&T Network Issue No. 2. As far as what's within SBC's network, SBC's primary argument relies on what the FCC did in the TRO in defining SBC's network for the purpose of determining whether you should unbundle dedicated transport.

The FCC said for purposes of unbundling dedicated transport, that SBC's network is -- does not include the transport facilities that go from SBC switches to some other carrier's network. When the TRRO came around, the FCC completely reversed its thinking on that, and no longer addressed the issue from the perspective of determining whether dedicated transport should be unbundled from the

perspective of whether it's part of SBC's network or not. They instead did an impairment analysis.

The legal basis for defining SBC's network that SBC relies on is completely gone now with the TRRO, and so I think the arbitrator's decision is completely correct. SBC would ask you to believe that here's one of their switches, here's one of their facilities that goes to some other point, but not necessarily another SBC switch. This facility that SBC's ratepayers have paid for, it's in their rate base, it's part of the network that SBC maintains, but that is not SBC's network for purposes of interconnection. That's really something that defies common sense.

And as I said, the basis for SBC's argument was in the TRO, which the FCC no longer applies. In any event, it only had to do with unbundling. The FCC's decision about TRO, about dedicated transport, was only an unbundling decision, not an interconnection decision.

The second point that SBC raised is that the arbitrator erred in failing to specifically adopt a 24 DS1 threshold for CLECs establishing an additional POI. Mr. Gryzmala made a great deal yesterday about AT&T's language supposedly not even talking about interconnection on SBC's network. I mean, the language that AT&T proposed is SBC shall permit AT&T to interconnect at any technically feasible point on the SBC Missouri network.

I'm not quite sure why that was troubling to SBC. I mean, we did go on to say including outside plant and customer premises facilities. And AT&T's witness, Mr. Shell, explained quite clearly how those particular locations outside plant facilities and customer premises, as defined by AT&T, were points on SBC's network. The arbitrator agreed with us. But ultimately, the arbitrator chose SBC's language for the purposes of determining where the points of interconnection will be.

And frankly, we don't have any problem with that because of the arbitrator's ultimate decision that -- the one thing we did have a problem with, the threshold at which you would establish an additional POI, the arbitrator rejected. It rejected SBC's proposal that you must establish an additional point of interconnection within a LATA when you have a 24 DS1's volume of traffic going through your initial POI.

And what the arbitrator said was, and what we agree with, is CLECs have to establish an additional POI when their initial POI is no longer technically feasible. That is the standard for establishing a POI under the FCC's rules, technical feasibility. You can no longer, you know, keep the POI you have or you cannot obtain the POI you want if it's not technically feasible.

And the FCC's rule for technical feasibility

imposes a very high bar for the ILEC to reject that requested interconnection, which is technical -- infeasibility requires a clear and convincing -- or requires clear and convincing evidence of a significant and adverse network impact.

Now, you can't just say things like, well, we have tandem congestion out there, and satisfy that standard. SBC points to things like network integrity, reliability, and capacity. As abstract concepts, those do not satisfy the rule. The SBC did provide an example of one tandem in Missouri that they allege is experiencing or close to exhaust. They did explain how that exhaust is occurring.

They didn't explain where it's due to increased CMRS wireless traffic, increased IXC traffic, increased traffic from ICOs that interconnect to that tandem, but they want to impose a threshold at which CLECs could no longer interconnection through that tandem. And they haven't proven that CLECs are the source of the congestion, the alleged congestion of that tandem.

And even if there were a congestion of that tandem, SBC is seeking to impose a uniform statewide at every tandem, at every point of interconnection, threshold for when you can no longer interconnect, and must have an additional POI. That doesn't satisfy the standard of a clear and convincing evidence of a significant adverse network impact to deny a specific requested interconnection.

So the arbitrator was right on point here, and we're not going to have any trouble implementing the language that is required. When the arbitrator says we're going to go with SBC's, but as to its last point, the threshold issue, the threshold is gone. No specific threshold is required, but the reasoning in the arbitration award reads very easily the language that says we'll establish an additional POI when the POI that we're at is no longer technically feasible.

COMMISSIONER MURRAY: Mr. Zarling, I have a question on that. At what point do you think it would no longer be technically feasible? Is there a bright line?

MR. ZARLING: I disagree with Mr. Gryzmala's assertion that there needs to be a bright line. Every point of interconnection can be different, depending on who's sending the traffic in there, what the capacity of the tandem is, how old the tandem is. I mean, there's too many variables.

COMMISSIONER MURRAY: So how will you know when you've reached it?

MR. ZARLING: Well, SBC will come to us at times and say this particular tandem is congested.

COMMISSIONER MURRAY: How will they know that?

MR. ZARLING: Well, they claim their standard -- I don't know what their standard is for when it's congested. They haven't put that in the record.

COMMISSIONER MURRAY: Will some people be out of service before they know that?

MR. ZARLING: That's SBC's standard for when a tandem is getting congested and they have to move traffic off. All they've done is proposed a standard that is applicable to every tandem, even though the tandem itself may not be congested. So what their particular criteria will be in a particular tandem for when that particular tandem is congested, we don't know.

And it suggests that AT&T and other CLECs never establish additional POIs. And there's no evidence of that. You know, it's not in the record in this case. AT&T's position, as a general rule, we probably have two POIs and a LATA. We've basically been fighting since 1996 for the right to have a single POI. And we don't have that. Even though -- we've had the right, but inasmuch as starting out in '96, '97, most states didn't give us the single POI per LATA right. As a general rule, we've established multiple POIs in most LATAs today.

COMMISSIONER MURRAY: Okay. I'm going to go back for a minute to Issue No. 1, in the definition -- because you were moving pretty fast. I would have asked you when you were finished, but you never looked this way.

MR. ZARLING: I'm sorry.

COMMISSIONER MURRAY: Within the -- where the

FCC has said the POI must be within SBC Missouri's network, give me an example of something that -- where someone would set up a -- well, let me just ask the question differently.

I guess my question is what is the purpose of the FCC making that statement that it must be within SBC Missouri's network, if anywhere, that SBC serves is within that network? Why would they even need to make that statement?

MR. ZARLING: I think to accomplish one of the things that SBC doesn't want to see happen, and we don't disagree is not required of SBC. And that is to require SBC to -- and I don't want to tread on Charter's arguments, but really to extend facilities to interconnect. Now, there's meet point arrangements, and usually those are agreed to, in my experience. But we can't require SBC, for example, to, you know, extend their facilities here and to an area that they don't really have facilities in order to interconnect with us. And that's not what we're asking for.

AT&T is not asking for that. We're saying, look, SBC, for example, you've extended a transport facilities out to a carrier hotel somewhere. We can interconnect with your facility at the place where you interconnect with these other carriers to pick up their traffic. I mean, that's why SBC has extended the facility to the carrier hotel, to pick up traffic. So we're saying we

can interconnect with you there, but SBC's position is, no, you can only interconnect with us at our switches.

COMMISSIONER MURRAY: So you're not -- what you're asking is not that SBC establish new -- anything new?

MR. ZARLING: Correct.

COMMISSIONER MURRAY: To put in any new facility at all?

MR. ZARLING: Correct.

COMMISSIONER MURRAY: You're just asking to interconnect where there is the possibility of interconnection?

MR. ZARLING: Correct.

COMMISSIONER MURRAY: Okay. Thank you.

MR. ZARLING: You're welcome. Just to finish on No. 2, that 24 DS1, and kind of to duck-tail, hopefully, to the answers I was giving you, Commissioner Murray. As Charter pointed out, their cross demonstrated there was no engineering basis for SBC 24 DS1 threshold. Certainly you can't have clear and convincing evidence of a significant and adverse network impact if there's no engineering basis behind your number for establishing additional POI. It just -- network integrity, reliability, generalize the concerns about tandem suggestion, they just don't satisfy the requirements. The arbitrator's decision was a very sound one to say you get new POIs when you can demonstrate the existing POIs are no

longer feasible.

Three, did the arbitrator err in approving AT&T's interbuilding cable language. Mr. Gryzmala made some point about AT&T's language appearing to be inconsistent because part of our language includes a reference to some of these buildings, like carrier POPs that are not within the AT&T -- excuse me, the SBC central office.

Well, we just found it easier to take what might be called an interbuilding cable arrangement and label it as an intrabuilding cable arrangement along with true interbuilding cable arrangements because they're all going to be treated the same way. I mean, you can have multiple definitions or you can include things that don't appear to belong under a particular heading under that heading, but they do belong if you're just going to treat everything the same. So I think that explains the alleged inconsistency.

But the situation here, the primary thing that AT&T is concerned about, we have some arrangements in Missouri where as a result of our legacy status, if you will, back at divestiture, we had properties inside of SBC's central offices, and we've retained those -- those locations as AT&T owned properties. It's not collocation. We own the property within the SBC central office. And we just simply would like to be able to interconnect from there rather than having to have a separate collocation space.

SBC has said that's discriminatory of other carriers because you're taking advantage of your legacy situation. The FCC in the Virginia Verizon arbitration rejected that. I just don't see how it's discriminatory of us to take advantage of our legacy situation. It's only a couple central offices.

The other thing that SBC really has tried to now focus on is the idea that our language somehow permits us to have a dangerous or technically infeasible form of interconnection. First, I have to say you've got to contrast our language, which SBC says is insufficient to protect against this technically infeasible and dangerous interconnection, because we say that the cabling in this arrangement must occur across the shortest practical route. We think practical is a good limitation.

But I must point out, first, in contrast, SBC just proposes no language and opposes this arrangement entirely. So, you know, one party puts language out in arbitration, the other one doesn't like it, you know, they should propose an alternative. But to simply say although this may be technically feasible in some circumstances, for SBC, you know, to just take the position you can't do it at all, I think demonstrates the unreasonableness of SBC's position.

But as the arbitrator said in finding for

AT&T, if the use of the shortest route for interconnection of coaxial cable is technically infeasible, then SBC may refuse to interconnect in that matter. Violation of reasonable safety standards and impartially and fairly apply may be sufficient to establish their proposed method of interconnection is not technically feasible.

We don't disagree, but you've got to have contract language, and our contract language says we will take the shortest practical route. The contract language ties itself over to other contract language that says the interconnection must be technically feasible. I can't think of much more to do to satisfy SBC's concerns.

As I said, they just opposed this entirely, and my guess is because they'd rather have us pay a special access connection between our condo, than put in cable on our own or they'd rather us maintain expensive collocation than use our existing property in their buildings. But I think the arbitrator got it right on this one. I think you should sustain.

JUDGE THOMPSON: Let me interrupt you, if I could. I do apologize, Mr. Zarling.

MR. ZARLING: I know we're getting ready for agenda.

JUDGE THOMPSON: Exactly. The Commission has an agenda session that is going to begin at 9:30, and what

we're going to do is recess between 9:30 and 10:30, and I do apologize for the inconvenience, but there is, after all, no point making your arguments to an empty bench. This will permit the Commissioners to attend the agenda session, and then when the agenda session is over, they will be back down and we will resume. So you're free to remain in this room or wander about the neighborhood. And we will return with Mr. Zarling at the podium.

(A BREAK WAS HELD.)

JUDGE THOMPSON: Okay. Mr. Zarling, you may proceed.

MR. ZARLING: Thank you, your Honor. Let's see. I believe I left off at -- on SBC's list here -- or compressed list of issues. Their Issue 3, did the arbitrator err in approving AT&T's interbuilding cable language, which is SBC/AT&T Issue 9 in the network interconnection attachment.

I guess just to summarize on that one, as far as the arguments that SBC's made that at some inappropriate legacy advantage for AT&T, that was rejected by the FCC that there's some risk to the network or network reliability issue. As I had quoted from the arbitrator's award, I think that that's really not a realistic concern.

In the final analysis, whenever a CLEC wants to do something in terms of interconnection, even if the

interconnection agreement would seem to authorize it, SBC is a pretty good guardian of their network and they're going to refuse to do something that they feel puts their network at risk. So at least we have language, as AT&T had proposed, to authorize this interbuilding cabling when it's technically feasible, and that's certainly a better outcome that the arbitrator found than SBC's proposal, which is to completely deny this form of interconnection under any circumstances. Clearly that's not reasonable.

The fourth issue that SBC raised that is also in dispute with AT&T is did the arbitrator err in determining that CLECs could obtain entrance facilities as interconnection facilities at TELRIC rates. If ever there was an issue in this case that's probably been beaten to death, it's that one, but I'll make a couple of points anyway.

You know, a lot of commissions -- well, back up a second. I said yesterday how much I appreciated, and many of the other attorneys did, from all the parties, SBC, the CLECs, the work and the effort that the arbitrator and the Commission staff put into this award in the time they had. From my perspective on the network issues in particular, it was a very sage application of straightforwardness in most cases.

As someone who does these arbitrations in many

states, has been doing them since 1996, State Commissions sometimes -- some State Commissions tend to ring their hands over what seem like straightforward issues trying to find fairness in places that, you know, the law doesn't seem to really contemplate because they overlook the fact that if you just apply the law as written, the Federal Telecom Act and the FCC rules, the fairness is inherent in that.

The FCC has balanced the competing interest, Congress has balanced the competing interest. And what I found in this award on the network issue is a straightforward application of law in almost all respects. We have one network issue that I want to -- that we do take -- one network decision that we do take issue with, but this is, perhaps, one of the best examples of the staff not ringing their hands and trying to find something that isn't there.

They looked at Paragraph 140. It's a very straightforward provision in the TRRO that said you still get interconnection facilities. And while SBC would argue that it got to be something different than entrance facilities that the FCC got rid of as UNEs, as a matter of law, they don't have to be because you get interconnection facilities under one part of the Federal Telecom Act, 251(c)(2), you get UNEs under another Federal Telecom Act, 251(c)(3).

There's different standards from when you get a UNE, there's different standards from when you get

interconnection facility. You can use UNEs for different things than you can use interconnection facilities for. There are distinctions under the law, and so the FCC found it necessary to say when they were talking about getting rid of entrance facilities as UNEs, you still get interconnection facilities, because the law required them to do that, because it's a different standard for interconnection facilities. And they weren't looking at interconnection facilities in the TRO and the TRRO. They're looking at UNEs.

Now, as far as playing word games go, you know, it just occurs to me that if the FCC were really talking about a totally different animal than an entrance facility when they were getting rid of them, when they were referring to interconnection facilities, at the same time they're getting rid of entrance facilities. They're referring to something that was really totally different and fundamentally different, they wouldn't have had to mention them.

It would be obvious to everybody. When you're getting rid of entrance facilities, we're talking about those, you know, sort of like if you're talking about getting rid of cars, you don't have to mention that you're not getting rid of airplanes. But when you're getting rid of entrance facilities, because they're the same thing as interconnection facilities, when you're using them as

interconnection facilities, you've got to mention and make clear, as the FCC did, we're keeping interconnection facilities.

So it's perfectly logical for the FCC to have said what they said in Paragraph 140, it's perfectly clear to AT&T and the CLECs what they intended by that, and it's perfectly appropriate the arbitrator and the staff did not ring their hands over trying to find something that's not there, and that this Commission not rethink it as well.

The last issue that SBC raised that is a dispute with -- happens to be another dispute with AT&T Is No. 7 on their list. Did the arbitrator err in determining that SBC Missouri may not require CLECs to establish local interconnection trunks to every local calling area in which the CLEC offers service in order to establish a two-way intraLATA toll trunk group to the SBC Missouri access tandem, parentheses, where there is a separate local tandem and access tandem in the same local exchange area, close paren.

I don't really want to go into depth in this. From AT&T's perspective, it's a very simple matter of it's really the touchstone issue of many of these interconnection issues. Who really gets to choose interconnection? It's the CLEC. CLEC requests interconnection, the CLEC, under the FCC's rules, gets to choose the point of interconnection, and

it gets to choose the manner or method of interconnection, which is really what the last issue addresses.

And there's two things I'd like to read to you from the record in this case that addresses this, and from my perspective, demonstrates that the Commission really ruled in AT&T's favor on this back in docket 2001, TO-2001-455, which was the last AT&T/SBC arbitration, which Commissioner Gaw and Commissioner Murray, I know you were here at that time.

Two things: One, with regard to a CLEC interconnecting with SBC's network, and should they have to do the kind of things that SBC was asking CLECs to do in this case, and as go to a particular SBC switches to match the way SBC has developed its network. The FCC said in the First Report and Order, back in 1996, and I'll take this out of -- a little bit out of context, just to read the most relevant part, but it's cited at Pages 72 and 73 of AT&T's brief.

Incumbent LECs are not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the purposes of Section 252 -- 251(c)(2) and 251(c)(3) would often be frustrated. For example, Congress intended to obligate the incumbent to accommodate the new entrance network architecture by requiring the incumbent to provide interconnection for facilities and equipment of the new entrance. Consistent with that intent, the incumbent must accept the novel use of

and modification to its network facilities to accommodate interconnection -- interconnector or to provide access to unbundled network element.

The basic idea is that when it comes to matters of interconnection, the legacy SBC network doesn't control all aspects of interconnection. And in addressing that sort of general issue, you know, what are the obligations of SBC and what are the rights of the CLECs, and the last SBC/AT&T arbitration, docket TO-2001-455, the Commission said Southwestern Bell is obligated to interconnect with AT&T at any technically feasible point without regard to traffic volume. AT&T is free to design its own network and to capitalize on any competitive advantages conferred by its network architecture in conjunction with Southwestern Bell's interconnection.

Without going back into all the context of the issue that was involved there, in general, I think this Commission recognized in the past that SBC cannot dictate all manner of trunking, all manner of facilities, all manner of interconnection to the CLECs when it comes to interconnection. And that's what Issue 7 deal with.

The arbitrator looked at the record, made a determination that SBC was trying to impose too much on the CLECs. AT&T witness, Mr. Shell, provided very credible evidence as to why this was overburdensome, inefficient, not

the kind of interconnection, not the kind of trunking arrangements that CLECs wanted, that AT&T wanted, and that in fact, it would impose additional costs and unawarded costs, not only on AT&T, but on SBC. I don't think there are any grounds to reverse the arbitrator on this decision.

Okay. Those are SBC's points that they felt they needed to emphasize where they wanted to overturn the arbitrator's reward, and I think there's ground for sustaining everything the arbitrator did, and we would encourage you to approve the arbitrator's award on all those issues.

COMMISSIONER MURRAY: Mr. Zarling, can I just ask you to explain what SBC claims that the CLEC's proposal there would require double switching of calls? Do you refute that or do you think that's not important?

MR. ZARLING: I am -- I am guessing that SBC believes that in some instances, they would have to double tandem switch a call. It would go through a particular tandem, and then in order to route it to the terminating end office rather than being able to direct the call from the tandem in which AT&T interconnects, they would have to route the call -- instead of being able to route it directly to the terminating end office, they would have to route it to another tandem that served that end office.

Okay. So SBC's position is -- that's how I

understand their double switching argument. From AT&T's perspective, any additional switching that's required, we have to pay for in the form of reciprocal compensation, so if it gets double switched twice, you know, they're going to be compensated for it.

As far as whether that's more efficient from a network perspective, there is a balancing from network considerations. We pointed out that our concern is that if you have to put in some of these additional trunk groups that SBC's proposal would require, it's going to require additional transport facilities be put in. So -- which is not efficient. Okay. You could have -- you could be carrying this traffic on existing trunk groups.

COMMISSIONER MURRAY: When a tandem exhausts an SBC tandem exhausts, whose expense is that?

MR. ZARLING: Well, our position is SBC is compensated for the use of the tandem. If a tandem is getting close to exhaust and SBC has to put in a new tandem switch, there's certainly a lot of initial upfront capital costs, but as far as recovering that over time, they do that through the usage charges that their customers pay, including CLECs.

COMMISSIONER MURRAY: And if the CLECs had to put in the local interconnection trunks, and I'm not sure I'm using the right phraseology here, but if the CLECs had to do

that, would they not be compensated in the same fashion through reciprocal comp?

MR. ZARLING: If you put in interconnection trunks, you do get reciprocal compensation. This is actually more of a Sprint issue in this arbitration, as AT&T and SBC have basically resolved the recovery of costs of interconnection.

COMMISSIONER MURRAY: It's difficult to keep all the parties straight and what their issues are, but it does touch on your objections to SBC's Issue No. 7, does it not?

MR. ZARLING: An argument can be made that the additional costs will be recovered, but ultimately, from our perspective, it doesn't make sense to just continue putting in facilities that won't be efficiently utilized, even if you're going to be recovering the costs of those, because -- well, frankly, you may not actually recover all the costs if there isn't traffic going over all the trunks that go on an initial facility.

But even if all the costs can be recovered, then it really does come down to a network efficiency argument. And under the law, as far as the choice of interconnection, it really lies with the CLEC to make the decision about what is most efficient, what is the most efficient form of interconnection between a CLEC and an ILEC.

The law really gives that authority to the CLEC unless the ILEC can come back and make arguments of technical infeasibility, not mere convenience or routing conventions.

COMMISSIONER MURRAY: Okay. I'm struggling with how you figure out which is most efficient, because it seems that one manner would be most efficient for the CLEC, and the other manner would be the most efficient for the ILEC.

MR. ZARLING: And in that scenario, I hate to use the phrase, used the tie goes to the CLEC. If there really there isn't, you know, overwhelming evidence that the efficiencies that the ILEC claims, I suppose, rise to the level of saying that the request of interconnection is really technically infeasible, because it's going to cause all sorts of network harm, then as a matter of just simple efficiency, if it's more efficient for the CLEC, then the CLEC's choice of interconnection prevails.

COMMISSIONER MURRAY: And your source of authority for the fact that the CLEC's choice would prevail?

MR. ZARLING: It's largely in the First Report and Order. I am sorry, I don't have a cite handy. I'm sure it's in our testimony and in our briefing.

COMMISSIONER MURRAY: Okay. All right. Thank you.

MR. ZARLING: Any other questions on the SBC

issues?

Okay. AT&T in its comments on the award raised two issues of concern with arbitrator's decision in the network attachment, Section 5. One we think is really just a product of how rushed this had to be. For Issue 10, the arbitrator adopted SBC's position, not happy about it, but that's -- but we'll live with that one. But in adopting SBC's position, they -- the arbitrator and staff chose only part of SBC's language.

They found specifically that Section 6 of SBC's language under Issue 10 should be adopted, but didn't adopt Section 6.1. And those are reciprocal, symmetrical paragraphs. Section 6.0 addresses when AT&T routes its traffic to SBC, Section 6.1 addresses when SBC routes its traffic to AT&T. So from our perspective, if you're going to adopt SBC's position, you should include both those paragraphs. So that's the first point we raise, and we think that should resolve something that could be resolved fairly easily.

The other issue was a very important issue, and other than this Issue 10 I've raised, is really the only issue that either Ms. Bourianoff or myself came up to talk to you about. We've certainly tried to defend those portions of the arbitrator's award that we thought -- well, that we liked, and that we thought should be preserved in what we

anticipated would be SBC's opposition to that, and we've mostly, back up to this point, been talking to you only about those things. Let's keep the arbitrator's award where it is on those issues.

This is really the one big issue where the arbitrator -- arbitrator's decision, we feel, needs to be reversed. Certainly the arbitrator didn't agree with all of AT&T's positions. Michelle Bourianoff, yesterday, spoke to different ways to look at how you can gauge the results of an award. I don't think counting members, there's really any good satisfactory way. There's been cost cases where parties win most of the issues, but if you lose the big ones, you've really lost.

So you know, although we did quite well in the network attachment, this is an important issue to us, and it's Issue 15, which is on award Page 21. And I preface my arguments that reminding the Commission that when you talk about the network, or interconnection attachment, you're talking about facilities-based competition.

We've heard since 1996 about how bad UNEs are, how UNEs are nothing but sham resale, which the Supreme Court ultimately rejected, but when you talk about this attachment, you're talking about where the rubber meets the road as far as carriers investing in networks, and investing in facilities, and bringing services to their customers with

their own facilities and own network.

And so it's how the CLECs network interconnect with SBC's and how does a CLEC bring its facilities-based competition, not just to its customers, but -- but obviously how do its customers, then, reach the rest of the world, reach SBC's customers. That's how we have competition. Everyone must be interconnected with everyone else. They must have a Ubiquist form of service.

In Issue 15, as Mr. Bub described, because he saw it, I filed comments on this, and obviously would not like to see the arbitrator's award reversed on this one, but Issue 15 is, in essence, putting local traffic on its long distance network. Why do we do that? Because when we started local competition in 1996, AT&T had this massive investment in its long distance network, and it's a network we continue to invest in and upgrade.

We want to leverage that existing network, this massive investment of facilities, which the R box constantly said CLECs don't invest in facilities. The way we did that was to use our existing long distance switches, which means we have to use our existing long distance interconnection with SBC.

The service that we provide is a business service. It serves medium to not very large enterprise, but really small to medium to not huge customers. Basically you

have to be someone big enough to have a PBX. It's not a Centrex or Plexar-type service because the customer must have a PBX. So you can imagine it's not going to be a little, tiny shop, but it's going to be someone like Home Depot, and that's one of our nationwide customers. So it's a multiline PBX business service.

It's very popular. I haven't had time to talk to my clients since the award came out, trying to get numbers that would be confidential in any event to tell you how many customers we have, but it's a very popular service. More importantly, it's been in place for over six years. It's -- Mr. Bub's comments made it sound like something we're asking the Commission to let us now do. It's something that has been in place for over six years.

And SBC has never raised it before this Commission. It didn't bring it up in our last arbitration 2001-455. The service is also available in every Southwestern Bell state, except for Kansas. It's available in California, Connecticut, Verizon, Bell South, and Qwest territories.

Now, the report rejects AT&T's proposed language that let us route this local traffic over our long distance network. Just a little aside, the staff might be listening, too. The services originate are on a PBX, like I said, so it does originate as a feature group C type of call,

but it gets put on SBC's network, you know, I guess at a feature group D level somehow. It gets terminated-- ultimately all calls get terminated on SBC's network somehow in a future group C arrangement, though.

So it starts out as feature group C and ends up as feature group C. But when the report rejected our proposed language, and SBC proposed no language, they didn't want our language in there, that's the structure of this thing right now, the award cites to the Commission's recently adopted Chapter 29 rules having to do with enhanced record exchange. And notes that the rule allows a terminating carrier to require that local and IXC long distance -- local traffic versus IXC long distance traffic, that they should be on separate trunks.

So the rule does request that. The rule does permit SBC to request that. As someone who really didn't stay involved with the rule when it was published, due to some organizational things going on with AT&T, but as someone who was here when the problems that created the rule or created the need for the rule came up, it was never my belief that -- it's never been my belief, it's still not my belief that the intent of this rule was to ever address this situation, and the ADL type traffic.

The problem that -- that arose that caused these rules, in my understanding, that caused these rules to

be created was a problem where carriers were putting long distance, or access traffic, on the local network. And the local network that was transiting SBC's switches and going to small LECs, third party ILECs, or ICOs, as they're sometimes referred to.

And oftentimes, the CPN, or calling party number, which lets you know whose customer it is, where it's coming from, what kind of traffic it is so you know to bill access for it, that wasn't being transited with these calls. So it was long distance being put on the local network, being sent to third parties, that was really what drove, in my opinion, the creation of these Chapter 29 rules.

And part of the reason I believe that is because I worked very hard in the late 90's, getting AT&T to change some of its trunking arrangements in Texas so that for its long distance traffic, it avoided the SBC tandems, that is local originated long distance traffic, like intraLATA tolls, so it avoided the SBC tandems and went instead to our IXC POPs, so it would be routed in a way that would definitely make sure the ICOs got their access.

So I don't think the rule was really contemplating this particular situation, even though there may be some language in the rule that seems to speak to, you know, keeping local traffic off of long distance facilities. That's not the problem that I think the rule was trying to

address.

There's two points that I want to make with regard to that, to the decision and how it applies the rule. First, in the case of the ADL traffic, it clearly passes CPNs. The evidence is clear that AT&T passes calling party number. In cases where calling party number is not passed, we apply -- we do populate in the signaling string that goes to SBC, the automatic number identification of the PBX.

Again, it's something that will help identify, that does identify the jurisdiction of the call. So the problem that created the rule, the Chapter 29 rules in particular, unidentified traffic going over the feature group D network, that's not a problem with this. The evidence is very clear, it's unrebutted, that AT&T sends calling party number information to SBC.

The second point I'd like to make is that this really is a form of interconnection. It's how we choose to route our local traffic to AT&T. In that regard, it is -- it is a manner or a method of interconnection, which I said before, is left to the CLEC's discretion. SBC hasn't come in in any way alleging that it's technically infeasible for us to route our local traffic here over these kind of feature group D networks.

In that regard, we are entitled under the Federal Telecom Act to route our traffic this way. If there

were a problem of technical feasibility, then there might be an issue, but SBC has not raised an issue of technical feasibility. They have made suggestions that they can't properly identify the traffic.

As I said, we, in response to the concern that the rule is supposed to address, we do send calling party number, and we use the same methodology to develop factor for SBC to identify the local as opposed to the long distance traffic on the network. And the factor's developed in the same way that we would identify the local traffic versus the long distance traffic for purpose of putting it on separate trunks. So there's no technical feasibility issues.

There's no issues of properly identifying the traffic for purposes of compensation. All that has been addressed by AT&T, and it's something we've had in place for years with no complaint from SBC to this Commission or any other Commission, other than in an arbitration where they say we want to balkanize all these different types of traffic, put them all on different types of trunks, just so that we can be sure that everything's being paid for properly.

COMMISSIONER MURRAY: Mr. Zarling, did AT&T participate in the rulemaking?

MR. ZARLING: We did not, because we didn't believe that the rule was intended to stop this -- this process, this service.

COMMISSIONER MURRAY: But you've indicated in your remarks today that our new rule does permit SBC to request local trunking be separated from long distance trunking, correct?

MR. ZARLING: There is a provision in there that we either overlooked or we just didn't believe was supposed to work in -- apply in this scenario.

COMMISSIONER MURRAY: So are you asking us to ignore our rule?

MR. ZARLING: Not exactly. Our position is your rule conflicts with the Federal Telecom Act. In this particular scenario, the particular portion of the rule that apparently the arbitration award relies on, and I can't be certain, because the award refers to basically the whole series of Chapter 29 rules.

COMMISSIONER MURRAY: Are you challenging the rule?

MR. ZARLING: I suppose I am. I think that it is inconsistent -- whatever portion of the rule the arbitration award would rely on to support the decision that we cannot interconnect and pass traffic in this way, I believe is inconsistent with the Federal Telecom Act and cannot be applied in this instance.

I'm not saying that it can't be applied in other scenarios. I have to deal with this very strict set of

facts. I will say, of course, that the Commission has authority under its rules, under this specific rule and Chapter 2 rule to grant variances to its rules. And in as much as I don't think that this is a scenario that Chapter 29 rules were intended to address, and particularly since I think it's inconsistent with the Federal Telecom Act, I think the Commission, if it feels like it would rather -- rather than make that finding that the rule is inconsistent, I think it should grant a variance without requiring AT&T necessarily to go through separate procedural steps to request a variance.

If that would be the Commission's preference, then perhaps that's what we could see in an Order, but I'd certainly like to see something clear from the Commission that they agree that this is not something that should be shut down in Missouri. I don't relish my clients having to talk to our customers having to explain that after they've had a service for six or seven years, basically the service can't continue to be provided because if we have to pay access or if we have to put in additional facilities that basically undermine the premise of this service, which is it's built on the efficiencies of our existing long distance network, then I don't frankly see how we're going to be able to keep providing the service.

COMMISSIONER MURRAY: Okay.

MR. ZARLING: So whether you grant a variance, whether you find that the arbitrator should be reversed because on this point, Chapter 29 rules can't be applied, I respectfully urge you to overrule the arbitrator on this one issue and continue in place service that has been reflected in the AT&T agreement since we've had an agreement here in Missouri, and that it's offered in many, many other states, and not deprive Missouri customers, particularly those who are national entities and they're accustomed to getting this service around the country, the ability to continue receiving AT&T's digital link or ADL service in Missouri.

And if you have no questions -- any questions on that, if you don't have any questions on that, I'm done on this issue.

JUDGE THOMPSON: Very well. Thank you, Mr. Zarling. Mr. Leopold.

MR. LEOPOLD: Thank you. I'm Brett Leopold, and I'm representing Sprint Communications Company, LP. I'm going to talk to you about a couple of issues raised in the Sprint comments and also raised by Mr. Gryzmala. Those two issues in the interconnection appendices in the NIM appendix and in the ITR appendix are the access of Sprint to interconnection facilities, sometimes referred to in this arbitration as entrance facilities at TELRIC rates.

And I'm also going to address Sprint's request

for language that would call for the cost of that interconnection facility to be shared between SBC and Sprint in a particular context, which I will define in the course of this argument. And frankly, I think that the relatively narrow use of this interconnection facility and the types of traffic that pass over it are key to understanding these issues, and I think we'll provide a good background for the Commission to reach its ultimate -- its ultimate ruling here.

I also might add that these will be my final comments. And at the conclusion, I'd ask to be excused, but if the Commission has questions for me on any issues, they can certainly ask them, and otherwise, I'll rely upon our previously submitted written briefs, testimony, and comments.

JUDGE THOMPSON: You may certainly be excused when you finish your comments.

MR. LEOPOLD: Thank you. The SBC argument on the access to entrance facilities or interconnection facilities at TELRIC is -- is quite straightforward and it -- it's -- it's designed to overly simplify the issue. And to -- I think, in some ways, mislead the Commission as to what exactly it is that Sprint is asking for in this context.

As you've heard many times, I think all the CLECs that have participated in this arbitration acknowledge that entrance facilities are not available as a UNE. We recognize that. And SBC would have you believe that's

basically the end of the story because this idea that there's a difference between an interconnection facility and an entrance facility is a fiction and it doesn't exist.

And Paragraph 140 of the TRRO, which specifically says even though we're taking away entrance facilities as a UNE, we want to expressly reserve interconnection facilities at cost based rates. They want you to look past that and write off this whole issue as a word game.

Let me first raise one point that's covered in our brief, in our testimony, and went unrebutted by SBC in its testimony, unrebutted in its briefs, and was not discussed here today, which is that it's not a word game, and SBC knows it's not a word game, because in fact, they have provisions that are virtually identical to the one proposed by Sprint, and agreements that they have submitted to this Commission and have been approved by this Commission.

That would be the Sprint PCS agreements with SBC, the Cingular agreements, their own partially owned entity with SBC, which include interconnection facilities at TELRIC with shared -- with a shared proportionate use of the cost. So it's a bit disingenuous to throw up your hands and say an entrance facility and interconnection facility, you're making it up, when it's in agreements you've submitted to this Commission for approval. So it's not foreign to the

law, it's not foreign to this Commission.

In fact, it's entirely appropriate, and the Sprint language on these issues should be adopted. For reference, these are chiefly covered in Sprint SBC DPLs submitted in the arbitration associated with appendix ITR Issues 3C, 3D, and Issue 6 and also Sprint SBC DPL's and accompanying language for NIM Issue 5. These are the major provisions that hit these issues of interconnection facility at TELRIC, and the shared cost of facilities.

I think some of the -- some of the confusion, which can easily be explained about this distinction between an interconnection facility and a UNE goes to the issue that Mr. Magness discussed a bit, which is what is the purpose of this facility? What traffic is -- is being carried over? The -- the facility we're talking about is typically a big pipe, often with -- between Sprint and SBC -- with very significant capacity, possibly on the OC48 capacity level, and it carries different things.

The interconnection facility, which we're talking about, is a local interconnection facility, it's just designed for the exchange of traffic between the SBC and the Sprint networks. Other portions in capacities of this facility are allocated to cover other things. This includes switched access, special access, and UNEs. The Sprint language doesn't impact the charges for those -- that

component of the facility between Sprint and SBC, nor does it impact the pricing.

With regard to switched access, special access, any UNE arrangement, Sprint will still pay the tariff rate for that facility for purposes of transmitting that traffic. But as is ordered by the TRRO, for the interconnection facility capacity, for the local interconnection traffic, that SBC must get off their network and on to the Sprint network, and that Sprint must get off of its network and on to the SBC network, that's available at TELRIC, and because it's used mutually by both parties to get the traffic where it needs to go, the cost of that facility needs to be shared, and the Sprint language should be ordered to put that in place.

Again, we're talking about essentially the connection between the two major traffic aggregating points for SBC and for Sprint. This is going to be a Sprint POP, typically, and SBC tandem switch. And in order to interconnect, in order for the network to work, in order for Sprint and SBC to get the traffic going where it needs to go, you have to have this interconnection facility, and this portion of it for this traffic, is priced at TELRIC, and the cost of that facility for the purposes should by shared.

COMMISSIONER MURRAY: Mr. Leopold, may I ask you one quick question?

MR. LEOPOLD: Yes.

COMMISSIONER MURRAY: You cited the Sprint PCS and SBC interconnection agreement, and the Cingular agreement. Is there any difference for an agreement with a CMRS provider versus a CLEC?

MR. LEOPOLD: Not regarding these obligations, there's not, and SBC has cited nothing to that effect.

COMMISSIONER MURRAY: Thank you.

MR. LEOPOLD: I might add that there are also -- those agreements are attached to the Sprint legal brief. We brought those expressly to your attention. I've since been told that there are CLEC agreements with the Sprint ILEC, which also include this provision, so that's -- again, it's been recognized by this Commission as appropriate and exists in approved agreements today.

I actually, hearing Mr. -- Mr. Gryzmala's discussion and description of this interconnection facility yesterday, as a barbell, I took the opportunity to prepare a diagram, I think a fairly basic network diagram, which I think summarizes the fact of the Sprint language and the Sprint positions as laid out in their brief, and I'd like to distribute that and reference it, if I could, in the course of my argument.

JUDGE THOMPSON: Absolutely.

MR. GRYZMALA: Your Honor, if I may.

JUDGE THOMPSON: You may.

MR. GRYZMALA: I have no objection to Mr. Leopold's use of this as a pictorial. I would only like to reserve the opportunity --

JUDGE THOMPSON: Go ahead and sit down and speak into the microphone.

MR. GRYZMALA: I have no objection to Mr. Leopold's using this as a descriptive technique to providing his presentation, only to reserve the right to make a comment on it, if I may, for a moment, after he's completed it, since this is the first time I've seen it.

JUDGE THOMPSON: Absolutely.

MR. GRYZMALA: Thank you.

MR. LEOPOLD: What the diagram is intended to show is on the left-hand side is the SBC network. On the right-hand side is the Sprint network, and in the middle is the much disputed interconnection facility slash entrance facility. As the -- as the diagram indicates, Sprint customer that is on the SBC side of the network and sends traffic to an SBC end office, onto an SBC tandem, that Sprint customer is served using special access, UNEs, or switched access, that goes over the entrance facility and on to the -- from the SBC tandem to the Sprint network, and calls in both directions as the tariffs apply are charged to Sprint at the tariff -- at the tariffed and applicable special access or

switched access rates.

However, if an SBC end user makes a call that's bound from the Sprint network, the square up in the top left-hand corner, that traffic gets routed to the SBC tandem, gets sent over this -- this local interconnection facility, and on to the Sprint network to be delivered to wherever the SBC customer is calling and needs that traffic to go. That traffic is charged at a TELRIC rate, and it's -- and that proportionate use of the facility that SBC needs to get its customers' traffic on to the Sprint network is -- is charged at SBC.

Likewise, if a Sprint customer is trying to get from the Sprint side of the network and over to the SBC network, again, for purposes of local interconnection and the exchange of traffic, that interconnection facility is charged to Sprint at TELRIC for its use of interconnection facility. Both companies need that facility to get traffic to the other company's network, and when they use it for this specific, local interconnection purpose, TRRO, and the other law cited in the Sprint brief dictates that that cost should be shared and it should be shared at TELRIC.

Mr. Gryzmala very briefly dismissed the Maryland Commission's decision of 2004, which adopts this approach in pretty much every respect. His critique of that decision from 2004, as I understand it, is that among other

things, that decision in the Sprint brief cite rules that were issued pursuant to the First Report and Order prior to the TRO and the TRRO.

In my mind, that's not a very strong argument. We all know that there are plenty of rules and definitions emanating from FCC and court decisions prior to the TRO and TRRO that are still good law. You have to tell us why those definitions and those rules are no longer applicable, and Mr. Gryzmala has not even attempted to do that. Obviously the Maryland Commission in 2004, your colleagues at another state reviewing this issue, found that law was applicable and dictated the decision that they reached there.

Further, as has been pointed out, the TRO and the TRRO chiefly deal with UNEs as opposed to many of these interconnection issues, which are addressed in other orders and other proceedings, and this is an interconnection issue. It's an interconnection facility. And just as I urged you yesterday to -- if you have no time to do anything else, look at that North Carolina decision that's attached to our legal brief, I would also urge to you look at the Maryland decision, which was attached to our comments on the arbitrator's report, which will layout, I think, in a very well organized and compelling fashion a rationale for adopting Sprint's position here, and of course it's also argued in the Sprint brief.

But again, it's important to emphasize when you look at this facility, what's going over? A UNE, as SBC would tell you, and as we would all agree, is purchased for the purpose of serving an end user. That's not what we are taking about here. We're not talking about a Sprint customer over on the SBC side of the network or Sprint has purchased a UNE loop and UNE transport, and then we're buying a UNE entrance facility and we want that at TELRIC rates. That's not what we're talking about.

We're talking about an SBC customer over on the SBC side of the network that needs to send traffic to the Sprint network over a local interconnection facility, and it's that portion of the circuit, that portion of the big pipe at OC48, or whatever capacity it may be that -- that is the subject of these contract provisions. So this isn't a wholesale, rewriting of the compensation regime, doesn't impact every imitative use and every phone call that's made between and connected between the Sprint and SBC networks. It's intended to address a very limited situation that is governed by the law and it does so in an equitable and inappropriate manner.

Further, there's language in the arbitrator's report on the interconnection issues that seems to suggest that though he didn't adopt -- order the adoption of the Sprint language in every instance, that his rationale, in

fact, seems to acknowledge and does endorse the Sprint position. I quote this in our comments, but the specific sentence in the arbitrator's report on interconnection, at Page 10 says a party that agrees to carry traffic that originated or transited its network to the terminating carriers nearest tandem may require the other party to reciprocate.

So what we're talking about here on our diagram is that if Sprint agrees to carry and pay for the delivery of traffic from its network across this interconnection facility, to the SBC tandem, and is responsible for paying for that, Sprint may, according to the arbitrator's ruling, also ask SBC to reciprocate.

If an SBC end user needs to get traffic on to the Sprint network and SBC gets that traffic to its tandem, and uses that shared interconnection facility to send SBC customer traffic to the Sprint network, then SBC needs to share its proportionate use of that interconnection facility, and that's -- that's all we are taking about.

SBC would have it this way: When Sprint sends traffic across the interconnection facility, on behalf of its customer or somebody on its side of the network, then Sprint pays for its use of the interconnection facility. When SBC sends traffic across that interconnection facility on behalf of its customer or somebody on its side of the network, well

gets what, Sprint gets to pay for that use of the interconnection facility as well. Sprint pays both ways.

That's not what the law requires. That's not what fairness and, you know, basic equity would require. But more importantly, I mean, the law, in Paragraph 140 of the TRRO, says that cost of that interconnection facility should be shared and it should be shared at TELRIC.

COMMISSIONER MURRAY: I'm sorry to interrupt you, but how did the arbitrator decide that issue?

MR. LEOPOLD: Well, he -- he adopted -- he appeared to adopt, with respect to ITR Issue 6, the SBC language, on NIM Issue 5, it appeared that he adopted some Sprint language and some SBC language. On ITR Issue 3(c) and 3(d), which apply to this issue, we read the -- we read the decision as adopting the Sprint language, so it was somewhat mixed, and we think inappropriately so. We think that the Sprint language should be adopted as proposed with respect to all of those issues as it appears in the decision points list that were submitted to the arbitrator for consideration.

COMMISSIONER MURRAY: Thank you.

MR. LEOPOLD: All right. I think -- I think that would conclude what I have to say, and on this issue and the remainder of the issues put forward by Sprint, we'll rely upon our briefs and our testimony. Should I collect the diagram, Bob, or do you have comments on the diagram or? I

didn't discuss it extensively.

MR. GRYZMALA: Only in one respect, if I may.

JUDGE THOMPSON: You may.

MR. GRYZMALA: Your Honor, and Mr. Commissioners, Madam Commissioner, I had an opportunity to speak to everything except one item that Mr. Leopold brought up, so I will not repeat those arguments. I want to confine my point with regard to the very middle of the picture that shows entrance facility arrows as indicating an area which appears to be identical to the area confined by the arrows marked interconnection facility.

I want to remind the Commission that with respect to this aspect of the diagram, that is an entrance facility and nothing more. Paragraph 361 of the TRO made it abundantly clear that traffic carried to the competitor's switch or other equipment, often from an incumbent LEC central office, is along the circuit generally known as an entrance facility. That's what you are looking at. That's all I have. And thank you.

JUDGE THOMPSON: Thank you very much, Mr. Gryzmala. Someone was telling us about a dumbbell. Is this that dumbbell?

MR. LEOPOLD: I think the dumbbell would be the two circles representing the SBC tandem and the Sprint network with the interconnection facility/entrance facility

in between and I just labeled and fleshed out beyond the dumbbell event.

JUDGE THOMPSON: I just wanted to make sure I understood this. Were you the one talking about the dumbbell?

MR. LEOPOLD: I think Mr. Gryzmala --

MR. GRYZMALA: It was a crude attempt, but yes, that was me.

JUDGE THOMPSON: Okay. Just want to make sure.

MR. LEOPOLD: Okay.

JUDGE THOMPSON: Thank you. I believe that takes care of the network issue; is that correct? And our next issue is intercarrier compensation. We've got a half hour before the lunch hour starts. Why don't we go ahead and get started with intercarrier compensation.

We were just wondering how much more we have. I notice the parties keep dropping out, but we've still got -- this is only Issue No. 6.

MR. MAGNESS: Your Honor, we have one -- I'd say 1.5 issues to address on recip comp. One I just want to reiterate a request for clarification, and then we have issue on 911, and that's all that we intended to speak to and just rely on the comments of the rest.

JUDGE THOMPSON: Okay. AT&T?

MR. ZARLING: We have no more affirmative issues, and frankly may not say another word, but might it depend on what SBC says.

JUDGE THOMPSON: But no more affirmative issues?

MR. ZARLING: That's true.

JUDGE THOMPSON: Sprint?

MR. LEOPOLD: Your Honor, we're done at this point.

JUDGE THOMPSON: And you're done at this point.

MR. LEOPOLD: So I would ask to be excused.

JUDGE THOMPSON: That's right, and you are excused.

MR. LEOPOLD: Thank you.

JUDGE THOMPSON: SBC.

MR. BUB: Your Honor, Mr. Gryzmala and I have the rest of the presentation split up. I have probably -- I'm hoping I can cover this intercompany comp portion in the next 20 minutes. The majority will be responding to what Charter said yesterday, so that might be a little bit more expanded than the rest.

JUDGE THOMPSON: I understand.

MR. BUB: I have one thing I need to say in the 911 area, and perhaps one thing in, I believe, a billing

area. The last issue was mine, and I'm content, like the other parties are, to rely on what we filed in paper.

JUDGE THOMPSON: Okay.

MR. BUB: And then Mr. Gryzmala has, I think, an issue or two as well.

JUDGE THOMPSON: Mr. Gryzmala.

MR. GRYZMALA: For the score card, your Honor, I think I still am due to the respond to the collocation metering that we heard about yesterday. That's number one. I have one collo CLEC Coalition decommissioning charge. I have one pole conduit right-of-way. That's three in total. I have one PM point, that's No. 4, and one OSS point, No. 5. Rough -- rough cut, a half an hour at most for me.

JUDGE THOMPSON: Very good.

JUDGE THOMPSON: So let's forge ahead.

MR. BUB: Thank you, your Honor. I'd like to turn to an intercompany compensation issue that was raised and discussed yesterday by Charter. And my comments here in the intercompany compensation section are all more in the nature of defensive in that we didn't raise any affirmative issues here. We agree with what the Commission did with respect to the Charter issue, specifically this is Charter Intercarrier Comp Issue 1. They raised the same issue under GTNC No. 14, and then ITR 8. And all these issues regard the definition of their mandatory local calling scope.

COMMISSIONER MURRAY: I'm sorry, Mr. Bub, I wasn't listening carefully enough. Did you just say you agreed?

MR. BUB: With what the Commission did in this case.

COMMISSIONER MURRAY: Okay. Thank you.

MR. BUB: I'm sorry, the arbitrator adopted SBC Missouri's position, and Charter is the one challenging that, so we're on the defensive, so if I wasn't clear, I apologize.

COMMISSIONER MURRAY: No, you were, I just wasn't listening. Thank you.

MR. BUB: I can tell from the Commissioner's reactions yesterday to Mr. Savage's presentation that there was some unease with Charter's proposal. It's like something just didn't smell right. Well, that's because it's not right. From my perspective, I might have a different analogy than the one that's -- it's Charter and Mr. Savage was asking you yesterday, like Alice in Wonderland to step through the looking glass and look at things backwards in reverse.

If you look at any other business, in setting prices, whether that business is a telecom provider or a grocery store, when normal business goes about trying to determine what their retail price is, they look on what their wholesale costs are. What is it from telecom perspective,

what are my internal costs, what do I need to pay my other carriers if we're going to send a call to them. Those are my own wholesale costs that I have to pay, that I need to look at and analyze before I go about setting my retail price.

You want to make sure that your wholesale costs are covered, usually by marking it up and that's your retail price. Same thing with the grocery store. They look to see what their goods are going to cost from all their different suppliers, whether it's baker or any other company to put their markup on, then they determine their retail price based on wholesale cost.

What Charter wants is the reverse. They want to pay their wholesale suppliers based on how it prices its retail services. And that's just not right from a business perspective. Let's take a look at Charter's example that they discussed yesterday. The example I think that Mr. Savage used was their basic service is around $29 per month, and that gives a local calling plan.

Well, with -- if their proposal is adopted, they would want to offer a new flat-rated, expanded calling plan that would give them LATA-wide -- flat-rated, LATAwide calling for $39. An additional ten. And Charter is claiming that since it's foregoing the extra money from per minute toll charge that it otherwise would have charged its own customers, it therefore shouldn't have to pay access when it

uses another carrier's network to complete its own customers' calls and those other carriers exchanges.

And they're saying that's because they wouldn't have that extra money with which to pay those access charges. Well, that's not right either. Look at the two plans. You know, aren't they getting an extra $10 for this new expanded calling plan? Sure. They're going to have some additional internal expenses for the expanded calling plan, but they're also going to have some added expenses from using their other carrier's networks, whether they're terminating a call to us or another telecom carrier, another independent.

What this proposal is all about is they're trying to avoid these extra expenses and keep that extra ten bucks. Charter is telling you it's because they need this to compete against SBC, but that's not right either. Commission, I believe, is well aware of numerous long distance companies that offer flat-rated, expanded calling plan. Some of the calling plans LATAwide, some are statewide, others are nationwide, and all long distance companies are all able to pay other carriers access charges.

SBC itself had a LATAwide calling plan called local plus. And the Commission there required us to pay access charges to other companies when one of our customers sent a call with the local plus service that terminated in other carrier's exchange. This isn't about competition.

It's about avoiding other carrier's access charges.

Charter also isn't right on the law. In their challenge to the arbitrator's decision, Charter says that the arbitrator erred because he ignored the statutory definitions, which ss a matter of law required its position to be adopted. Congress never intended what Charter proposes here. Mr. Savage, in charting their comments, pointed to the ISP Remand Order, and there they promulgated a new rule. It's Rule 701.

Looking at the ISP Remand Order, that case had nothing to do with voice traffic. That Order was solely designed to address ISP bound traffic that appeared to be local. Charter ignores Section 251(g) of the Act, which preserves or grandfathers all existing access charge rules, including the receipt of compensation. But grandfathering is to be in place under the Act until the FCC specifically supersedes it by FCC rules.

In the ISP Remand Order, the FCC made absolutely clear that it had no intent in changing the access charge rules, and I don't want to belabor this too much, but I think it's worth at least taking a look at a couple of paragraphs, specifically in the ISP Remand Order. It's Paragraph 37, and if you'll indulge me just a little bit, I'd like to read it. It's short.

Talking about 251(g) that I referenced

earlier. This is a quote in Paragraph 37. This limitation in Section 251(g) makes sense when viewed in the overall context of the statute. All of the services specified in Section 251(g) have one thing in common. They're all access services or services associated with access.

Before Congress enacted the '96 Act, LECs provided access services to IXCs and to information service providers in order to connect calls that travel to points, both interstate and intrastate, beyond the local exchange. In turn, both the Commission and the states had in place access regimes applicable to this traffic, which they have continued to modify over time. It makes sense that Congress did not intend to disrupt this preexisting relationship.

Accordingly, Congress excluded all such access traffic from the purview of Section 251(b)(5). 251(b)(5), if you'll recall, is the portion that talks about what's recip comp and what's not. I'd also point the Commission to Footnote 65, where they talk about the term exchange service. And there they acknowledge that that term "exchange service" that's referenced in the Act isn't separately defined, and they tell you in this footnote that that is a term that came from the MFJ, which is the Modification of Final Judgment that broke up AT&T operating companies.

The term "exchange services" appears to mean in context the provision of service in connection with

interexchange communications. It is clear from those two paragraphs that there was no intent from the FCC with its new rule to change how access charges will be handled, both on an interstate or intrastate level.

It's further reenforced at Paragraph 40. Because, remember, I told you before this, they were only trying to fix one problem, and that was how that dial-up Internet access compensation perspective. In here, and this is on page -- Paragraph 40, the last sentence of that paragraph says in this instance, for the reasons set forth below, we decline to modify the restraints imposed by 251(g), and instead continue to regulate.

So in this Paragraph Order, they say we acknowledge that we have the right, if we want to understand the Act, to change the rules, how things are handled, and we're not going to do that. That's in Paragraph 40.

COMMISSIONER GAW: Mr. Bub, are you moving on?

MR. BUB: Pardon me? I'm still on this.

COMMISSIONER GAW: Okay. Because I may have a question on, this but I will just wait until you're finished with the subject.

MR. BUB: Okay. In its written comments, Charter claims that the arbitrator and SBC's position relies on, you know, the old rule, that uses the word local, and claims that that was completely repudiated, and the

arbitrator's decision here was incorrect. In legal err. But that's not correct.

In our written comments, when we were quoting from the First Report and Order, in that paragraph did have the word local, but that had nothing to do with our intent in the point we were trying to make there. In that First Report and Order, we pointed to a paragraph where the FCC was directing the State's Commission to choose a single area within, which traffic would be exchanged as 251(b) as recip comp traffic.

And this directive that we're talking about reflects the importance of establishing a common basis by which to apply compensation. And if you looked to what the FCC did themselves, when they had determined what the area within, which is he reciprocal comp, they chose a single common area. And as you know, that was the MTA. And this is also consistent with the expectation of the DC circuit in the WorldCom case, and that's the case that remanded the ISP Order, the one Mr. Savage talked about yesterday, to the FCC for consideration.

And in that case, describing its understanding of 251(b)(5), and I'm quoting from the case, it probably would help to -- this is WorldCom versus FCC, 288 f3rd 429. It's a DC Circuit 2002, and this is on Page 30. It says, due in part in the 1996 Act, local telephone service are now

typically perhaps universally served by more than one LEC. The reciprocal compensation requirement of Section 251(b)(5) quoted above is aimed at assuring compensation for the LEC that completes a call within the same area.

Now, if you look at Charter's scheme, it's not a single area. What they want is two different areas, depending on which way the traffic goes. If they have their expanded local calling plan, which their customer pays 39 bucks for, all their customers calls come into other carriers, that would be subject to recip comp if they had that local calling -- expanded local calling plan.

So for example, if one of their customers in St. Louis calls an SBC customer in Cape Girardeau, recip comp, because that's within their local area. Call went the other area, it would be a toll call for our customer, so they would expect to receive access charges. So you would have two different areas, and that's not what the FCC or the Act contemplated.

I'd also like to touch briefly on what Charter labeled as red herrings.

JUDGE THOMPSON: Pardon me, Mr. Bub. Commissioner Murray has a question.

COMMISSIONER MURRAY: I'm sorry, I hate to interrupt, but I thought Charter was saying that they would be -- those calls would be treated under recip comp, and if

-- I mean, how can recip comp be only one direction?

MR. BUB: That's our concern as well, your Honor. It would be only recip comp in the Charter to SBC direction, because they're saying that for Charter's perspective, they pay that $39, they're not charging a per minute toll charge, so therefore it's not toll, therefore it can't be access, it's therefore recip comp, and that was the beagle chasing the bunny we had yesterday.

COMMISSIONER MURRAY: But if SBC did not have the expanded calling scope, then you would be charging a toll, and therefore it would not be recip comp?

MR. BUB: Yes.

COMMISSIONER MURRAY: So there is no reciprocity in that situation?

MR. BUB: Exactly.

COMMISSIONER MURRAY: Okay. Thank you.

MR. BUB: Thank you. Yesterday, I think Mr. Savage characterized these two things as something -- claiming that the world would end, but in their brief they called it red herrings, and one is what they described as an insurmountable billing problem. I just want you to step back a little bit, and think about what Charter's asking here.

It wants SBC's wholesale billing to them for terminating their customers calls to be based on how they treat those calls on the retail side. So, you know, look at

their two plans. They have that one basic plan for $29, it gives their customers local calling; for an additional $10, they would have the expanded local calling plan. And on a call from Charter customer in St. Louis to SBC, Cape Girardeau, you know, it would be two sets of compensation.

One under the basic plan would be a toll call for their customer, so they would pay us access on that, but other set of customers that subscribe to their expanded local calling plan, they'd say that that's recip comp, and with us, we've agreed, so they would pay us nothing.

The question is from our perspective, how are we to know when to charge access and when not to? How are we to know when to create a billing record and what type of billing records? It's not just these calls don't just go to us, but to carriers behind us. And then remember that this agreement, this contract doesn't just apply to Charter.

Once approved, any other CLEC can adopt it, so this billing problem that they try to trivialize can get multiplied by 40 or more carriers into this agreement. And Charter and all those other carriers, they're all free to change their retail calling plans anytime they'd like. And we're not trying to get -- prevent them from doing it. They can do whatever they want on the retail side, but they just need to follow the rules.

Charter here claims that this is just simply a

matter of keeping some lists in the billing computer straight, but it's real easy for them to say, they don't have to implement this, and their witness has to knowledge of SBC's billing systems and their capabilities. Here the arbitrator found it just isn't practical, and they're absolutely right, because this is something that can't be done with the billing systems.

COMMISSIONER MURRAY: I'm going to interrupt one more time and ask you with this impracticality, would this be a way to shortcut the reciprocal compensation issues and just have everybody eliminate their tolls so they'd all have recip comp?

MR. BUB: It's a way to avoid access charges, I think, plain and simple, yes.

COMMISSIONER MURRAY: And if other carrier were able to do it and other carriers were able to MFN, wouldn't it be advantageous for every carrier in the state, including the ILECs, to have statewide calling, local calling.

MR. BUB: It can have very broad ramifications, yes, your Honor.

COMMISSIONER MURRAY: Would that be bad?

MR. BUB: It would, because right now, every carrier has tariffs that have been approved by the Commission. They bring in revenue streams, and we, in order

to cover our costs, all need to charge different things for -- or different prices for different types of services. And in the small LECs access charges went away, then we would have to, you know, find replacement for that revenue stream. So I think if this were to happen, Charter's scheme were to be approved, you'd see dramatic increases in local -- in basic local rates.

COMMISSIONER MURRAY: Thank you. Sorry to interrupt again.

MR. BUB: No, that's okay. Shift real quick to the other red herring, and that concerns probably a good follow-up to your question, Commissioner. It concerns our payment to other carriers.

Yesterday in their comments, they say that this contract only binds SBC and Charter, and has no effect on the rights of third party carriers to compensation. And in their brief they said, quote, whatever those rights may be. But that's not what their witness testified to.

At the hearing, he testified that instead of the access charges that apply today, Charter would expect recip comp to apply. And I specifically direct the Commission's attention to Page 649 of the transcript. And there the question was on a call from a Charter customer in St. Louis to a Steelville telephone customer in Steelville, Missouri, under their plan, they would expect to pay recip

comp.

And in its written comments, Charter says that issues regarding the appropriate compensation between Charter, SBC, and third party carriers, had to be sorted out in some other proceeding. To me, that sounds a lot like the problem we had with wireless traffic in the state. Commission approved, as you'll recall, interconnection agreements with wireless carriers and on a condition that they made appropriate compensation arrangements with the terminating carriers before they sent the traffic.

And without pointing any fingers about who is at fault, the Commission is aware that those arrangements were never made with traffic flowing. And now after about eight years of litigation before this Commission and the courts, that CMRS, the wireless issue, is finally getting sorted out. In conclusion on this issue, I think we don't want to go down that road again.

The final point, and I think this refers directly to what Commissioner Murray was talking about, was the replace -- just the elimination of access revenue. I think Congress, in preserving the -- in reserving the right of state Commission's to enforce the access tariff was fully aware of the reasons and the importance of access charges and access tariffs, both at the interstate and intrastate level and didn't intend to disrupt that.

So it might be -- I'm finished with my presentation on this particular issue, so if there are specific questions, I could address them now.

COMMISSIONER GAW: I think what I had has been discussed, so I'm okay.

MR. BUB: Okay. Thank you.

Next, I'd like to move on, and this is, I think, an area that's been lumped together, and again, an area where the arbitrator agreed with SBC, and this is the definition of 251(b)(5) traffic, the traffic that's subject to reciprocal compensation. So here, again, I'm responding to some of the arguments that have been made by the CLECs challenging the arbitrator decision.

In our view, what the arbitrator did here is fully consistent with the act And the FCC's rules and orders. An it should be affirmed. AT&T, for example, claims that we based our definition of 251(b)(5) traffic on the old rule that used the term "local". Well, that's not correct. I'd like to first go to the statutes just briefly.

Let's look just briefly at Section 251(b)(5) of the Act, that's the reciprocal compensation. And there it just simply refers to transport and termination of telecommunications. And then the FCC rules flushed that out. They hold that this section does not apply to all telecommunications traffic.

Rule 701, they state that the reciprocal compensation obligation of 251(b)(5) applies to, quote, telecommunications traffic, exchange between a LEC and a telecommunications carrier, except for telecommunications traffic that is interstate for intrastate exchange access, information access, or exchange services. What I discussed previously, for such actions.

In the ISP -- 701, the new 701 came out of the ISP Remand Order. That's where the FCC promulgated it. And there, as we discussed earlier, Commission -- the FCC said that Section 251(g) excludes this several numerated categories of traffic from the Universal Telecommunications Traffic in 251(b)(5). And so 251(b)(5) doesn't mandate reciprocal compensation for exchange access, information access, and exchange services for such access.

In describing this carve-out, the FCC in that ISP Remand Order said all traffic that travels to points both interstate and intrastate beyond the local exchange isn't subject to recip comp under 251(b)(5). And instead, 251(g), as they indicated, preserves that interstate and intrastate access regime.

So in short, 251(b)(5) requires compensation only for traffic between parties located in the same exchange. And SBC's Missouri's definition properly preserves that distinction. And the arbitrator's determination on this

should be affirmed.

There's a subset of this that -- a subset of the overall argument, I think it was in AT&T's brief, they kind of addressed it altogether, but then they had several subarguments, is probably a better classification, and one of those subarguments, had to do with ISP bound traffic. These are dial-up calls to an Internet service provider, ISP. Here AT&T claims that the arbitrator erred by excluding ISP-bound traffic from 251(b)(5).

And they -- AT&T says that we argue that the FCC classified this ISP-bound traffic as an information service, and not subject to 251(b)(5), but to Section 201. And AT&T says that in that WorldCom case I discussed earlier, that remanded -- ISP Remand Order, that it rejected the FCC's information services rationale, so therefore, it has to be 251(b)(5) traffic. Well, that's not correct.

In their comments, AT&T does acknowledge that the FCC rule and the compensation mechanism weren't vacated, but you need to know that that decision, the ISP remand decision, the Order itself, the result, wasn't vacated and that court was very clear on that. You can see that on Page 434 of that Order, where it says we do not vacate the Order. Many of the petitioners, themselves, favor billing key and there is plainly all likelihood that the Commission has authority to elect such a system.

Perhaps under 251(b)(5) and 251(d)B(i), but they remanded that decision of how they're going to get to its conclusion to the FCC to explain, but they didn't vacate the ultimate conclusion that that locally-dialed Internet traffic was not subject to 251(b)(5).

I'd like to go briefly to --

JUDGE THOMPSON: Excuse me, Mr. Bub. I plan to recess for lunch around noon.

MR. BUB: That's fine. I apologize I didn't finish.

JUDGE THOMPSON: That's quite all right. I just I apologize for interrupting your presentation. Is this a good stopping point?

MR. BUB: That's fine, it's a natural breaking point.

JUDGE THOMPSON: Very well. We'll come back at 1 o'clock.

(A BREAK WAS HELD.)

JUDGE THOMPSON: Okay. I have got four minutes after 1:00. Let's go ahead and get started. I'm sure the Commissioners are listening upstairs. Mr. Bub.

MR. BUB: Thank you, your Honor.

JUDGE THOMPSON: You are back at bat.

MR. BUB: I hope to wrap this up quickly, let me just get back to my place.

JUDGE THOMPSON: I share your hope, not that I haven't enjoyed it.

MR. BUB: Okay. Are we ready?

JUDGE THOMPSON: We are ready.

MR. BUB: Okay. Your Honor, where we left off is we were talking about ISP-bound traffic, and I had addressed the challenges that were being made by AT&T, and now I'd like to flip to some challenges that were made by the CLEC Coalition, also with respect to ISP-bound traffic, but a little different.

Here, the Coalition's taking the position that the ISP traffic -- ISP-bound traffic carve-out -- they're challenging SBC and the arbitrator's decision, is probably a better way to say it, that ISP-bound traffic carve-out includes only traffic bound for ISPs that originates in the same local calling area in which it terminates. They say that the FCC specifically did not limit its definition of ISP-bound traffic in this way, and that such limitations are completely inconsistent with the compensation regime that the FCC promulgated in the ISP Remand Order.

I think as we discussed earlier, that ISP Remand Order -- well, one, it didn't say that, and that's not what the ISP Remand Order was about. Remember the ISP Remand Order was focusing on the ISP-bound traffic that appeared to be local, that was locally dialed. It might be helpful to go

into a little bit of background of what the problem was at that time.

It was a dispute over how reciprocal compensation for ISP-bound traffic was to be handled. The -- I guess the premise of reciprocal compensation is two telephone companies exchanging calls with both sending calls to each other, terminating each other's customers' calls and paying each other reciprocally. Well, what had happened was there was various CLECs that took advantage of FCC's reciprocal compensation plan by instead of focusing on just the regular customer base, so there were calls, two-way traffic, they focused on businesses that only received traffic, like ISPs, like the AOL, NetZero, so all their customers wouldn't be making calls to SBC or other incumbent LEC customers.

They'd just be receiving the calls into themselves; therefore, they'd also only be receiving reciprocal compensation payments, and that skewed the -- the compensation regime that was anticipated by the FCC, and they really perceived the need to fix it because it got so bad that some of the CLECs were able to enter into deals with ISPs that they wouldn't either charge them nothing to provide them telephone service, or in fact, pay them to be their subscriber, in effect sharing that recip comp with them, so it really caused some economic distortions, and the FCC and

ISP Remand Order fixed that.

JUDGE THOMPSON: Did you say paying them to be their subscriber?

MR. BUB: Uh-huh, yes.

JUDGE THOMPSON: I wonder if I can get that plan.

MR. BUB: Well, it was very popular. But anyway, the FCC realized that that was an abuse of what they had set out, and the ISP Remand Order, they were addressing that. And that's all that that Order addressed. You know, there wasn't a problem with long distance calls being made to ISPs, you know, there was no recip comp anticipated or paid on that. It was only the locally dialed calls to ISPs.

And in our written comments, we had cited, you know, a particular paragraph from the ISP Remand Order just for the proposition of describing, you know, what they were trying to address, and we were criticized by that because we didn't quote the whole paragraph. But if you read the entire decision, it's very evident that that's what that decision was about.

You can also see that in the WorldCom decision that remanded that case where, you know, the Court shared that understanding. And this is on Page 430, talking about the FCC's ISP Remand Order. In the Order before us, the Federal Communications Commission held that under Section

251(g) of the Act, it was authorized to carve out from Section 251(b)(5) calls made to Internet Service Providers, ISPs, in quote, located within the caller's local calling area. That's what the Order was about, and that's what we were trying to show, and that's why we believe the arbitrator was correct in excluding ISP-bound traffic.

Only locally dialed ISP-bound traffic from the definition of 251(b)(5), the calls that were long distance to an ISP calls, you know, dialed on a one plus basis, were never subject to recip comp, access charges paid on those as reflected, I believe, in AT&T's comments. I think if you want to look at Page 26 of AT&T's comments, it acknowledges that it does pay access on long distance traffic to ISPs.

Next, I'd like to briefly touch on another subpart to this challenge, and this has to do with the ISP exemption. And here I'd just like to just briefly give a little bit of background with the ISP exemption. The history and application of the ISP -- excuse me, ESP exemption, and that's enhanced service provider, ESP. It makes clear that the exemption was never considered or intended to be a blanket waiver of all access charges in connection with any use of exchange access in which information service provider may engage.

The ESP exemption was designed specifically and exclusively to exempt traffic between an information

service provider and its own customers. And that was a policy reflecting the fact that when the exemption was, I guess, created in 1983, the FCC at that time was seeking to spare these new enhanced service providers from having to bear significant entry costs and pay access.

So instead of having to pay access charges for their customers' calls to these enhanced service providers, they were allowed to pay only business rates for the line. In that, the FCC never suggested that this exemption would extend the traffic, that an information service provider would send to another customer on the PSTN, the public switch telephone network, that wasn't its own. Say, for example, a party called by the ISP's customer.

It was with respect to that traffic, the PSTN end user isn't a customer of the ISP, and certainly not receiving an information service. When that call originates or terminates on the PSTN, it looks to the PSTN subscriber, just like any other PSTN-based call. On that leg of the call, the information service provider should have the same obligation to pay access charges as any other user of exchange access services.

And finally, I'd like to turn to IP-enabled calls. There, I'd just like to point out that the FCC rules exempting interexchange traffic from reciprocal compensation and applying access charges instead makes no exemption-based

on the type of transmission technology used to deliver an interexchange call to the PSTN.

In other words, it's technology neutral. Those rules require access charges for interexchange carriers that use local exchange switching facilities. And this rule applies whether the carrier delivering the interexchange traffic to the PSTN uses PRM technology, wireless, IP, or any other transmission technology. I'd like to point the Commission to the IP-enabled services and PRM on Paragraph 61.

The FCC says as a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, or on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those who use it in similar ways. Well, that policy is applicable here. Interexchange IP PSTN traffic, it may originate on an IP network, but it's sent to and terminated on the PSTN, just like any other interexchange traffic.

And unless and until the FCC changes those rules, it should be subject to the same compensation obligations as any other interexchange traffic. I think as we noted in our comments, this is the exact same decision that the Missouri Public Service Commission has taken in its

comments to the FCC in that same proceeding. So for all the reasons that I've discussed before and after our lunch break, we believe that the arbitrator's determination in this area was correct, it should by affirmed.

And that's -- concludes my presentation.

JUDGE THOMPSON: Thank you, Mr. Bub. Questions? I hear none.

MR. BUB: Okay. Thank you, your Honor.

JUDGE THOMPSON: Mr. Magness.

MR. MAGNESS: Thank you. Good afternoon, Commissioners. The CLEC Coalition issue in which we asked for a change is limited to, as Mr. Bub described it, a subset of a lot of these issues he was talking about, and that's this ISP-bound traffic definition.

Let me give you a quick overview and tell you why it matters to us. As Mr. Bub described in the ISP Remand Order, which was back in 2001, the FCC was addressing an issue that came to the forefront because of the emergence of ISP traffic, and the impact that it had on reciprocal compensation.

What the FCC did was had to deal with is this ISP-bound traffic which goes to the Internet, are we going to treat that like a regular voice phone call, or treat that like something different? Well, of course they had to look at the Telecom Act, and the Telecom Act says, well, what

reciprocal compensation is is what one carrier who terminates a call gets paid when it terminates it for another carrier. So when that Southwestern Bell customer picks up the phone, makes a call, and it terminates to a CLEC customer, the CLEC is completing the call for Southwestern Bell, so it gets reciprocal compensation.

It's just like access charges, except it's on a different kind of traffic. It's that fee you get for completing the call for somebody else. So the way that the Act is written on reciprocal compensation is extremely broad. It makes it an obligation of ILECs and CLECs and everybody that you provide for other carriers' compensation for the transport and termination of telecommunications.

And you say, well, what's telecommunications? The definition of that is extremely broad and includes about everything. So first question the FCC faced back in 1996 was, boy, that's a broad definition. That could eliminate access charges. They decided that isn't what Congress meant. They decided that the limit on reciprocal compensation was the reciprocal compensation applied to local traffic, and that interexchange traffic was subject to access charges.

So off everyone went and did their business plans and did their interconnection agreements back in 1996, '97, and decided, then, this ISP emerged, as the Internet emerged, and there became concerns that there was too much

recip comp flowing to the CLECs who were serving ISPs. The FCC started to look at this, and in the meantime, their ruling on what reciprocal compensation is under the Act had been over turned by the DC circuit.

So in the ISP Remand Order, they had their Order back on remand and they had to decide what to do. And they said, well, the way that we dealt with this broad statutory definition in 1996 was to draw the line saying that the circle that is covered by reciprocal compensation is local traffic. They decided in the ISP Remand Order that they were going to rethink that altogether, that they were wrong, they interpreted the statute incorrectly, and that wasn't going to work anymore.

And frankly, one of the reasons that appears from the ISP Remand Order, why thought they needed to do that was there was no way to exempt this ISP-bound traffic and put it in a different category unless you reread the statute, which is what they did. They said, okay, it's not that reciprocal compensation applies to local traffic anymore. That was wrong. We admit it.

What it applies to is all telecommunications traffic, unless that traffic is exempted under Section 251(g) of the Act, so everybody opened up their Act and looked at Section 251(g), and it excludes certain kinds of traffic, like interexchange, one plus dialed, information services,

certain things that over the years, prior to the Telecom Act had been sort of carved out for special treatment from the rest of local traffic.

So the FCC said it's a new regime, it's a new day, all those references in our rules to local traffic is the limitation on reciprocal compensation are repealed. And if you look at the ISP Remand Order in Appendix B, where they put out the new rules, they tell you that their old rules are amended by striking, quote, local, end quote, before telecommunications traffic each place such word appears. So now we all had to step back and go, okay, well, what does recip comp apply to?

Well, it's all telecommunications traffic unless it's in that section 251(g) bucket. There's a bunch of stuff in that bucket. One plus traffic, and most notably for the ISP purposes, the FCC said information services traffic. And the FCC said since those ISP calls terminate to the Internet, ultimately, that is information services traffic, information services traffic is subject to our FCC jurisdiction exclusively, we set the rules, we set the rates, and that's how it's going to be going forward.

And you will see in the ISP Remand Order that that conclusion was probably the strongest, biggest conclusion. I agree with Mr. Bub. They were trying to deal with this ISP issue primarily. But if you look at that Order

in Paragraphs 1, 52, 63, 65, 82, 78, if you look at Chairman -- then Chairman Powell's concurring statement, it's perfectly saying they're saying this is under our jurisdiction now.

And then they went about setting up a compensation structure for it, said now if you're going to terminate those calls to ISPs, that's fine, but you're going to get a lot less money for it, and it's going to be under our control. And they called it an interim regime, they promised that they would set permanent rates and permanent treatment some day. That was back in April, 2001. We're still living under the interim regime, but the FCC is considering these issues in a rulemaking right now.

So where's that leave us? The FCC said that ISP-bound traffic was information services subject to FCC jurisdiction. Now, the fact that a call was an information service call, it doesn't matter where it originates or where it terminates. It's the characteristic of it being ISP-bound. The characteristic of that call, if it's going to the Internet, that seems matter the most to the FCC.

They did not incorporate any language in that ISP Remand Order that said it's information services, it's interstate, as long as it's local. I mean, it even kind of sounds funny to say it, that they're going to declare interstate jurisdiction over traffic just as long as it's

local. Well, that isn't what they did.

And the consequence of this is important in that ISP-bound traffic has got its own compensation scheme, and it's not a rich one. The rates went down dramatically because the FCC was trying to drive down the reciprocal compensation available for it. But there is a rate structure that is applicable to ISP-bound traffic. But it's applicable to all ISP-bound traffic.

Now, we will agree with Mr. Bub that the FCC was not talking about one plus dialed traffic, which is clearly a long distance call, but there are -- there are calling arrangements, particularly when people are trying to call an ISP and they live out in a rural area, they use FX arrangements, use various times of arrangements to allow that to be a nontoll call to reach the ISP. And that's a lot of the ways that dial-up, before broadband really hit, before dial-up got into the rural and suburban areas was that kind of arrangement.

And we believe the ISP Remand Order supports the notion that is that telecommunications traffic when it's delivered from that rural area? Yes. Is it subject to 251(g)? Yes, because it's an ISP call. So is it subject to the FCC's recip comp rules? Yes. There isn't a geographic limit on that.

Now, SBC tells you about the geographic limits

that are inherent in this Order, and Mr. Bub noted that we had criticized them for partially quoting a paragraph out of the ISP Remand Order. We quoted the whole thing at Page 21 in our comments just to show you that the FCC wasn't drawing a geographic limit on this, they were just describing what they had done in the past. And that's exactly what they changed in the ISP Remand Order. So, there's a lot of background.

Now, why does it matter? To a large extent, the CLEC Coalition has settled most of our reciprocal compensation issues with SBC. If the judge will remember, we were settling issues even as their witness came up for me to cross-examine him. We were announcing new settlements, because we were trying to work those things through. And in large measure, this ISP-bound traffic is one that we've disputed around this region, and continue to dispute.

The reason it's primarily important is that the FCC, as I noted, is considering changes to the whole reciprocal compensation scheme. And we don't know what's going to come next. And unfortunately, some of these issues may come back before you once the FCC issues another Order on this issue. But the key is that the interconnection agreements that we all operate under should accurately reflect what those current FCC orders say. Whether we like them, or whether we don't like them.

And I can tell you my clients were crazy about the impact the ISP Remand Orders had, but they are concerned that we not end up with language that is inconsistent with what the FCC did. Because if the FCC then keys off of what it did in the ISP Remand Order and introduces some new concept into this mix, we want to be sure the interconnection agreements that that new concept gets poured into accurately reflect what the FCC's already done. That's why it's an important issue to us going forward.

The only other issue that we have on recip comp that we raised affirmatively is a request for clarification on this Internet protocol, or IP, traffic issue that Mr. Bub mentioned. I'm not going -- I could, but I won't, argue with him about some of the things he said on that. The key, though, here, is that there are two sections of the Order where this issue is dealt with. And we just want to be sure that they are treated consistently. We address that issue at Pages 23 and 24 of our comments.

We think that if the -- the treatment of an MCI issue and the treatment of the CLEC -- rather, yeah, the CLEC Coalition issue are harmonized, that the Commission ends up with the result that it has advocated, that is if the call is interexchange, whether it originates on the IP network or not, that it's going to be subject to access charges. But if it is not interexchange, and it originates on an IP network,

that it will not be subject to access charges.

So in any event, it's one where we just hope the Commission can look at that and be sure that we come up with a consistent treatment. Any questions?

JUDGE THOMPSON: Thank you, Mr. Magness.

MR. MAGNESS: Thank you.

JUDGE THOMPSON: Hearing no questions. Mr. Zarling.

MR. ZARLING: Commissioners, I'll keep this brief. I just want to point out that we raised what Ms. Bourianoff described as one issue where we disagreed with the arbitrator's report here. It may be considered a series of issues, because in our intercarrier compensation DPL, we had one issue that had about four or five subissues, and basically the arbitrator's report made sort of an overarching decision on kind of maybe the threshold issue and then all the subissues went the same way.

And the threshold issue was against AT&T and it had to do with what's the definition of 251(b)(5) traffic, and then sort of under that, what's the definition of ISP-bound traffic, and what's the definition of IP traffic. So at least on the ISP issue, perhaps on the 251(b)(5) issue, in general, like the CLEC Coalition, I think the arbitrator's report got it wrong by focusing on the local definition that the FCC has abandoned.

And so with that, I would just point out that we did raise those issues. They begin at Page 20 of our comments. To be fair, I said on network, most issues can be dealt with on a very straightforward reading of the law. This is a scenario where I think it's hard to just do that, but you know, what's good for the goose is good for the gander, and I know we've presented some complex legal issues that say you must really look at what's going on in the ISP Remand Order. So if the Commission's so inclined, I'd ask you to look at those arguments.

Just respond to a couple things that Mr. Bub said. I think he took some issue with or proposed definition by saying that we called 251(b)(5) -- wanted to define 251 as all traffic. Well, as Mr. Magness has explained, we think that's where the FCC in its ISP Remand Order came out. It is all traffic, with some exceptions. And our definition takes that approach.

It calls 251(b)(5) traffic all telecommunications except for the following: And they're exchange access, information access, and exchange services used to provide such access. So I want to be clear that our definition is not the way Mr. Bub described it. We're not just saying it's all traffic. We include the exceptions in our proposed language.

There's also some disagreement, again, I don't

want Mr. Bub's argument to leave the wrong impression with the Commission about what the WorldCom decision, this is the DC Circuit's decision on appeal of the ISP Remand Order did. I think it might have been suggested that AT&T's argument is we -- we don't recognize that that decision did not vacate the FCC's Order, the ISP Remand Order.

And I'm very mindful of what Commissioner Gaw seemed to be concerned about yesterday and is getting the whole picture, and I believe we did put in our comments at Page 25 a fair representation of what that Order did, which is it didn't vacate the Commission's rules, the ISP rules, and it didn't vacate the compensation scheme that's inherent in those rules. But when the DC Circuit says we disagree with your rationale, FCC, for how you got there, that rationale is invalid, not withstanding the fact that the Order is still in place.

It would be very hard for the FCC, I think, to come back to the DC Circuit and say, well, you know what, we ended up in the same place, and not expect to get reversed again -- or remanded back to them, probably reversed at that point. I think the DC Circuit decided this is one they didn't want to figure out, so they remanded it, and they had to keep something in place.

So I think we've been very clear. The ISP Remand Order is still in place. The rules are still in

place, the compensation scheme is still in place, but the rationale that -- that ISP-bound traffic is, in fact, information service and not something that's subject to 251(b)(5), and so properly included within the definition of 251(b)(5), I think the FCC's conclusion there is not in place, cannot be sustained.

And that's really the basis of SBC's argument that the FCC took ISP-bound traffic outside of 251(b)(5) and put it over someplace else. They did, but that rationale doesn't stand up anymore. And Mr. Bub also cited to where in the WorldCom decision the Court described the Order below that they were reviewing, and since local traffic, ISP traffic routed to local carriers, I contend that that's dicta, that's got nothing to do with the Order, and that's just excess verbiage from the court.

I think that's all the substantive argument. I would just say that what we are taking about here -- well, one other point. Mr. Bub did, himself, refer to what the ISP Remand Order was dealing with was locally dialed traffic. We point out in our comments, I think the other CLECs did it as well in testimony and briefs, that that's really what we're arguing about is traffic that's locally dialed, like this FX or foreign exchange type of arrangement for customers to reach their ISPs.

AT&T points out that we pay access on any ISP

calls that are dialed one plus and routed over the access network. As a practical matter, we really can't do anything else. It's truly interexchange traffic. But our position is that's not really what the law requires, but we're going to pay access on that.

But on locally dialed traffic, like an FX-dialed call, I think this Commission needs to tread very lightly in adopting a decision that might subject that kind of call to access charges. There are still a large number of people, I think, only recently, as far as national numbers indicate, only recently might it be the case that the majority of the people in this country don't access their ISP via dial-up. I think broadband might be the way most people get there. But as in rural areas, it's probably still primarily dial-up.

And the Commission, as I said, just needs to tread very lightly on access to the Internet that would diminish that access as a result of imposing access charges. And I touch in my comments on the federal policies in the Federal Telecom Act, or not in the 251 areas that we're used to for interconnection, but the FCC has cited to them in the ISP Remand Order, the access charge orders where they have preserved the access exemptions related to ESPs, which ISPs are a subset, and it's a very, very touchy subject to start applying access charges to things that -- to Internet access

that people are used to obtaining by dialing as a local call. Thank you.

Oh, and if there's any questions, I'm finished.

JUDGE THOMPSON: I see no questions from the bench. Thank you, Mr. Zarling. Mr. Leopold -- Mr. Leopold's gone. Cross one more CLEC off my list. We're down to just two, CLEC Coalition and AT&T. Very well.

MR. MAGNESS: There's seven in my group, though, so don't forget.

JUDGE THOMPSON: You're a little larger than you appear to.

MR. MAGNESS: That's right.

JUDGE THOMPSON: That was intercarrier compensation, Issue No. 7 is collocation, physical and virtual. Mr. Gryzmala, step on up.

MR. GRYZMALA: I have two collocation issues, your Honor. One is to respond defensively, if you will, to the arguments already made by both MCI and AT&T with regard to collocation power metering. And there is another issue that was raised by the CLEC Coalition having to do with decommissioning charges; that is, when a collocation cage is --

JUDGE THOMPSON: I understand.

MR. GRYZMALA: Okay.

MR. ZARLING: And I was just -- sorry to do this on the record, I was just going to think you could go straight into your poles, conduits, if you're handling that.

MR. GRYZMALA: Right after that? That would be fine.

JUDGE THOMPSON: You have no more affirmative issues?

MR. ZARLING: Actually, I lied. I have one, but it's very short.

JUDGE THOMPSON: And it's under what heading?

MR. ZARLING: Comprehensive billing.

JUDGE THOMPSON: Comprehensive billing. How about you, Mr. Magness, how many more affirmative issues do you have?

MR. MAGNESS: One on 911.

JUDGE THOMPSON: Really. Okay. And you have?

MR. GRYZMALA: One collo -- two collo; one offense, one defense, one pole.

JUDGE THOMPSON: Right.

MR. GRYZMALA: One PM, one OSS, five total, I believe.

JUDGE THOMPSON: Well, you should go ahead and do your affirmative issues, and then they're going to want to respond, and so you said you had one collo. Do you have an affirmative issue under poles?

MR. GRYZMALA: Yes, your Honor, I have an affirmative issue under poles.

JUDGE THOMPSON: Okay. And again, we'll have responses. Then e911.

MR. GRYZMALA: So I do collo and then sit down?

JUDGE THOMPSON: Yeah.

MR. GRYZMALA: Okay.

JUDGE THOMPSON: We'll continue to do it by topic area, or we'll become up here much more confused than we may already be. Okay. So just proceed as we have been. Go ahead, Mr. Gryzmala.

MR. GRYZMALA: Thank you, your Honor. This is the sole -- the only collocation power -- or collocation issue which SBC Missouri is bringing to the Commission's attention of all of the collocation issues that were presented. As I said, I am defending on another that I'll handle after this one.

This raises the question of -- as to whether the arbitrator erred in deciding the charges for collocation power shall be rated on, quote, rated power draw, end quote, when neither SBC Missouri, nor either CLEC, that being AT&T and MCI, neither of these CLECs language have proposed this method of charging or proposed any language to support it.

The arbitrator concluded that charges should

be based on the power actually consumed by the CLECs. And then proceeded to apply that to a conclusion that charges should be based on the rate of power draw. I want to keep this as brief as I can, but I do also want to point out some of the salient reasons for which we believe that rated power draw should not be adopted, but that likewise, the language proposed by both CLECs -- AT&T and MCI -- must be rejected.

There are quite a few terms here, and very briefly, we'll start with the easiest, and that is to suggest that this Commission would be well aware that for quite some time, several years, there has been a collocation tariff in place. The collocation tariff specifically provides for the methodology by which power charges would be assessed. That would be at the physical collocation, for example, Tariff Section 20.5 wherein the DC power charge consists of the use of the DC power system with AC input and AC backup for redundant DC power expressed on a per amp basis.

That's consonant with the traditional way in which power has been ordered and utilized by the CLECs on a consumption; that is, as they order it, the capacity that they need. So that is one -- that is the methodology which has been in place for -- as I mentioned -- several years. The CLECs' language wants to part from that.

The CLECs' language would require metering at their option, but there's nothing in their language as to

tell how to go about it. So when the issue of how one would go about it arose, there were three methodologies employed. I am not sophisticated on the innards of these methodologies, but suffice it to say that they were comprised of AT&T's proposed split core transducers, the handheld meter, and the returned side shunt metering. There was three of them.

Now again, none of these are in their language. MCI proposed that SBC be made to meter, but didn't propose any methodology in their language and didn't propose any in their testimony. So there's no methodology, no architecture, no means to advance by MCI. With regard to the three that were advanced by AT&T, Mr. Poole discussed each of them in great detail and described the reasons for which those methodologies would produce flawed results.

I would refer your Honors on this important issue to Poole Direct at 7 and 8, and Poole Rebuttal, particularly Pages 3 and 4, 9 and 10. But there was quite a bit of material that was devoted by him on that score, and I will note that Telcordia, in an independent analysis with regard to one of those three methodologies, concluded that it was inaccurate, that there could be errors in the results of upwards of 30 to 50 percent, if memory holds. That's in the testimony. So that's kind of where we are.

There was also testimony, as Ms. Bourianoff referred to yesterday, as to what AT&T's specific proposals

were, and that in some means -- or some, way, shape, or form, they were consonant with the arbitrator's ruling.

Ms. Bourianoff spoke to -- as I recorded -- two sections; 19.2.3.1, which says that the collocator's option power measuring units, PMUs, or meters will be installed on the BDFBs. That's not in our means - or in our frame of thought of rated power draw. The words "rated power draw" aren't used there, "shunt metering" isn't used there, "handheld metering", "split core transducers". It simply says you'll meter if the collocator asks you to do it. That does not support the outcome here.

Ms. Bourianoff also referred to 19.2.3.7, which basically -- which says that in the event that the collocator declines to convert to meter power usage, SBC Missouri will assess charges for power on a per ampere, per month basis, using the rated ampere capacity in the collocator, collocated space. I don't see the words "rated power draw" there. There's nothing that we can discern from the testimony as to what rated power draw means. Yet, that is what the arbitrator held.

We have looked very closely at Mr. Henson's testimony to which Mr. -- Ms. Bourianoff referred. There are various references to abut new terms, list one drain and list two drain. List one drain apparently it means to refer to, as Mr. Henson points out at Page 27 of his Direct, when he

refers to list one drain, he says the manufacturer's specification for the typical usage of the equipment, often referred to as list one drain.

There is reference to list two drain. At Page 21 of Mr. Henson's testimony, he says the list two drain is the current that the equipment will draw when the power plant is in distress, meaning that the power plant's batteries are nearing the point of complete failure. I don't see list one in AT&T's language, I don't see list two in AT&T's language. We don't see rated power draw in AT&T's language.

We have struggled and have found no way by which to identify that the rated power draw means of charging that was ordered by the arbitrator is linked to any of these methodologies. For that reason, and for the reasons that Mr. Poole described, we have to conclude that the rated power draw is not a means or a methodology that was advanced by any of the parties. It cannot be linked to any language, it cannot be linked specifically to any hard evidence.

With respect to the language advanced by the parties, we would respectfully submit that power metering language of AT&T and MCI be rejected. Basically, there's a concept there in the language without any means to implement it. And not only that, both of the paragraphs I read to you allows AT&T to simply walk away from it. If they want it, they can have it. If they don't want it, then they don't

have to have it. And I don't know that you can have it both ways.

Both of those paragraphs I read to you state, if I recall properly, that AT&T or the collocator at its option. For those reasons, your Honor, we submit that the arbitrator's report should not be implemented, that the language advanced by the parties should be rejected.

Now, candidly, the question becomes what is the appropriate outcome, ultimately, as a business matter? Our clients have thought about this very much. And there's no question but that the No. 1 priority is for our company to be able to stop sign to operate under the tariff. The tariff has been in place. It works. And if it doesn't work, there's a process by which to challenge it via a complaint or other appropriate Commission-approved procedural mechanism. That is the result that should obtain. And for that reason, both the rated power draw and the CLECs' language must be rejected.

There's no question, however, that metering is not the preferred choice. If it is an option between rated power draw, meaning either perhaps list one or list two, it's unclear, that is a preferable option than any power metering.

I have only a few words remaining on the other collocation issue. And that has to do with the -- my defense, if you will, of a CLEC charge having to do -- or a

CLEC attack on a win by SBC. And that win had to do with in the instance in which a collocator exits a cage or reduces its power needs. And in that regard, the cable is no longer necessary. And the charge that we asked to impose has to do with cable removal. And the arbitrator ruled that the -- I'm very sorry. I misspoke. It is not a defensive charge.

The arbitrator ruled that we could recover the charge once the work is performed for cable removal. We have asked that the charge be imposed and recoverable before the work is started. Please excuse me. I was confused. No other CLEC Coalition member, indeed no other CLEC, challenged this language. That is our language seeking to be paid for cable removal before work is done. The only suggestion that's ever been made as to why it ought not be recoverable before it's done is Ms. Crable's [ph. sp.] testimony and the CLEC Coalition has relied on it, that it may be the case that SBC may, quote-unquote, may remove it, but they may not.

And then until such time as they do, they should not be paid. There is no evidence whatsoever that that cable will not be removed. That that work will not be done. The evidence is clear that we have already been contractually required, because of agreed-upon language to remove that cable, Section 2.23.4 and 2.23.3 of agreed-upon language in the collo appendix makes it clear that SBC, quote, will perform the power cable removal work above the

rack level, and in the other reference to the language, quote, will perform the interconnection cable removal work above the rack level. Same language, replicated in both places.

There is some suggestion that it could be reused. Well, that's an assumption that has no basis in the evidence. And Mr. Poole testified to that in detail at Page 15 of his rebuttal. You can't just simply leave it in the cage thinking that it can be reused or that it will be reused. That is an assumption that has no basis. Mr. Poole did testify candidly that it may not be done right now.

Mr. Poole testified that the work might be delayed until there are other decommissioning jobs so that efficiencies allow the employees to come in and remove cable in one fell swoop, if you will. But the fact is it will be done. Therefore, we support the -- the language, we believe that that language should be implemented; that is, that cable removal costs in a decommissioning of a cage should be made, those charges and those payments should be made before the work is started, not after the work is performed. Thank you.

JUDGE THOMPSON: Questions? Thank you, Mr. Gryzmala. Mr. Magness. I have never considered the phrase "entrance facility", you know, with quite the depth and breadth that I have during this.

MR. MAGNESS: It's like considering a

beautiful poem.

JUDGE THOMPSON: It is.

MR. MAGNESS: You really have to roll it over in your mind quite a few times. Commissioners, your Honor, I just want to touch on the last issue Mr. Gryzmala raised that the only issue here is whether SBC gets paid for removing cable when they remove cable, or whether they get paid for removing cable ahead of time, whether or not they ever remove it.

This issue that, you know, it will be done, it shall be done, that the testimony actually from SBC was they wanted to get paid ahead of time in case the CLEC went bankrupt, or they wanted to get paid ahead of time in case something else happened. We believe that the testimony supports, and the CLECs are perfectly willing, to pay for these things when the work is done, pay for the labor at fair rate. But paying ahead for something that may not happen, we don't think is appropriate. So that's the only clarification on that issue. Thank you.

JUDGE THOMPSON: Thank you, Mr. Magness. Mr. Zarling.

MR. ZARLING: I just point out for the record that Ms. Bourianoff took her shot at collo issues yesterday and exited the state, so we've got -- I would say our comments are on the record, largely defensive on this one

issue of power metering that Mr. Gryzmala raised. We support the arbitrator's decision on that issue.

JUDGE THOMPSON: Thank you. Okay. That takes care of collocation. Am I correct?

MR. GRYZMALA: Yes, sir.

JUDGE THOMPSON: We're now talking about the poles, conduits, and rights-of-way.

MR. GRYZMALA: Yes, sir.

JUDGE THOMPSON: Mr. Gryzmala, step up.

MR. GRYZMALA: Thank you. Once again, against -- as opposed to several issues that were decided on poles, conduit, and right-of-way, we have but one that we would ask the Commission to look at. We're asking the Commission, that in an instance where a CLEC does not identify a pole, the owner of a pole to which it requests access, that SBC Missouri be compensated to perform the pole ownership records research on the CLEC's behalf.

This is research the CLEC could do for itself, the same way as SBC's own engineers and other employees must do. It's discussed at Section 8 of the arbitrator's report, Pages 11 to 13, and Pages 231 through 233 of SBC's comments. Now, the arbitrator in this matter did not approve the language that SBC proposed, in part because of the statement, the rationale that SBC is in a better position to know whether a pole is owned by SBC; secondly, the charging CLECs

would increase their costs of doing business; and thirdly, there was a suggestion that this kind of charging may thwart competition.

We disagree with all of those points but want to point out that instead, a pole ownership records research takes time. Our people have to do it when requested, and when requested, then it takes time and expense to do the work. I emphasize that AT&T and the CLEC Coalition employees can do the same work that it asks us to do without charge. They can identify, they can review, they can rather review our records, they can go to the field to identify ownership based on pole markings at the site, whether for example, that pole is owned by the cable company or an electrical utility or SBC or another.

The fact that we may be in a better position to know which poles are owned by us does not mean that we should not be compensated at all. The fact that it might also increase the cost of the CLECs doing business is immaterial. When you enter a business, there are certain costs that you have to reasonably absorb, and it is not fair for SBC to incur the cost of additional -- of this as within its cost of doing business when it hasn't asked for the pole research, it doesn't benefit by it at all. This is a charge that's fair and should be imposed upon the CLECs.

Now, I grant you there are, and I don't have

data and I don't know that there's data in the record, but it is fair to say there are a good number of poles that may be owned by SBC, but the fact remains they're not, and poles -- the ownership of poles changes. That is not untypical, among utilities, among pole owners, the ownership does change. Those records are in flux, they need to be researched, and when a CLEC asks us to do that work, when they don't identify an owner of a pole, we should be paid.

It might take less time if we own the pole and the search is easy after we look into the records, and that's fine. The charge will reflect that. If, however, we do have to go into anymore research, that, too, should be compensated for. Our fundamental view is regardless of pole ownership, who owns the pole, we're being asked to do a job, and we should be paid for that.

There's no question -- well, I want to touch on that there was some suggestion in the testimony that we didn't support or rather there was -- well, I'll leave it at that. Thank you.

JUDGE THOMPSON: Thank you very much. Mr. Magness.

MR. MAGNESS: Nothing on this one, your Honor.

JUDGE THOMPSON: Mr. Zarling.

MR. ZARLING: Just very briefly I would point out, I mean, the arguments that we made were largely that

this is from the existing M2A, and we're not quite sure why. This was not a burden before and it's such a burden on SBC now, except perhaps that now they've gotten their long distance relief and so they just don't want to do it anymore.

And other than the fact that Kansas and Texas recently agreed with us, I think that was basically our position. The change to the status quo by SBC really wasn't supported. Thank you.

JUDGE THOMPSON: Thank you. So now we're done with poles, conduits, and rights-of-way. This is wonderful. E911.

MR. BUB: Yes, sir.

JUDGE THOMPSON: Mr. Bub, step up, sir.

MR. BUB: Thank you, your Honor. I believe we can cover this one briefly as well. This is an e911 issue where SBC Missouri is asking the Commission to relook at one of its determinations. And specifically for your reference, it was what the arbitrator listed as Arbitrator Issue 6, and the CLEC Coalition issued it as -- or labeled it as e911 Issue 4.

And the question is who should be responsible for correcting 911 database errors caused by SBC. And here, we believe that the CLEC language improperly imposes a duty on SBC Missouri that basically it's unable to perform. In this situation, the CLEC is -- facility-based carrier using

its own switches, and in that situation, SBC Missouri doesn't have the information that would allow it to correlate the end user's physical address with the telephone number that the CLEC has assigned to it in its own switch.

And basically because this is something that we can't -- because of that information, we can't determine whether we've made an error or not, so we're unable to fix it if that responsibility is ours. So we're concerned that because we can't -- because this is something we can't do, it likely won't be done, and we're concerned that placing this responsibility on us may jeopardize public safety. So we ask the Commission to relook at it. Thank you.

JUDGE THOMPSON: Thank you, Mr. Bub. Mr. Magness.

MR. MAGNESS: Commissioner, your Honor, just one thing for the record, on the collocation issue, I left a little bit of law on the table. I wanted to cite to on that charging issue, the Commission's last generic arbitration Case TO-2001-438, where an issue arose about disconnect charges for UNEs, and the Commission ruled that those should be imposed when the disconnect actually occurs as opposed to charging them in advance. We think that's a more appropriate precedent than the negative net salvage analogy that was in the report. So I meant to add that as well.

On the 911 issue, the issue where we are

concerned shows up in the arbitrator's report Section 9, Page 5. It's entitled reference to SBC's access tariff. It's CLEC Coalition e911 Issue 3. Here the concern is with how it is that CLECs may be charged for accessing 911 services. The 911 trunks that CLECs need to use to reach the PSAPs and provide the P-S-A-P, PSAPs, and provide 911 services to their customers, excuse me, the contentions adhering are whether those are interconnection or not and whether they should be provided at cost-based rates.

The CLEC Coalition contends that SBC's arguments were incorrect on this, that at the state and federal level, 911 services are part of local service, and 911 facilities are used to interconnect the party's networks. I think as SBC referenced earlier today, 911 is not called to a 911 PSAP, it's not like a call to a pizza parlor. This is not like just serving any other customer. This is the way that all customers access emergency services.

And at the state level, Missouri statutes and rules include 911 services as part of basic local telephone communication service. In addition, there is a universal emergency number service that SBC provides to 911 entities under its general exchange tariff. The 911 entities purchase these services for the ability to receive emergency calls from all TeleCom customers regardless of which company provides those services to those customers.

At the federal level, in addition, the FCC has noted in its considerations of VoIP traffic and IP-enabled services, that -- and I'm quoting from the FCC's IP-enabled services First Report and Order issued last year, paragraph 38, that we note that the FCC, the Commission, currently requires LECs to provide access to 911 data bases and interconnection to 911 facilities to all telecommunications carriers pursuant to Sections 251(a) and (c), and Section 271(c)(2) B VII of the Telecom Act.

So again, this is a critical public safety service. The interconnection with those 911 trunks is something that is critical to CLECs' ability to provide service and public safety. CLECs providing service to Missouri exchanges under the arbitrator's award may have to purchase under the state access tariff for those interconnection services or facilities.

This would be a change to the current treatment, and we are very concerned that given the much higher level of the published rates in the SBC intrastate special access tariff where these facilities might come from, this might increase CLECs' cost of business rather dramatically, and not based on any cost study or any difference in cost, but simply on this changed purchasing out of that tariff. And increasing those costs on a service that is related to public safety and is one that the CLECs really

have no realistic choice of opting out of, we believe is inappropriate, both under the Federal Act and under state law.

Enforcement, generally, in the 911 area, the arbitrator was reluctant to make changes to the current M2A 911 language, requiring that CLECs purchase 911 facilities from the SBC intrastate access tariff is a change, as I noted, from the M2A, we believe is going to result in substantially higher costs. Understand the M2A, the current $85 per DS0, that is per voice grade line rate that's in attachment e911, includes both the trunk and the facility charge.

Under the current ruling, CLECs must continue to pay this existing rate as a trunk charge, plus purchase underlying facilities under the access tariff. So that's a major change. And just to give you some perspective, the published rate in SBC's intrastate special access tariff, the transport facility would be a minimum of $450 per month. Even when the CLEC is located in the same central office as the selective router where the PSAP is, and we really need nothing more than a cross-connect from our facility to theirs, and yet it's going to dramatically increase that cost.

We don't think this makes a lot of sense, given that we're talking about 911 service, and given that

there was absolutely no cost support that showed that anybody was losing any money under the current arrangements. So we would suggest that that portion of the arbitrator's award be reconsidered.

And that is all of the affirmative issues that the CLEC Coalition has to present to you.

JUDGE THOMPSON: Really. Thank you.

MR. MAGNESS: Thank you.

JUDGE THOMPSON: Now, are you asking to be excused or are you going to remain to rebut?

MR. MAGNESS: I will not leave until the party is over, your Honor.

JUDGE THOMPSON: I admire your stamina. Mr. Zarling.

MR. ZARLING: Luckily, we don't have any 911 issues.

JUDGE THOMPSON: Very well. Performance measures, Mr. Gryzmala.

MR. GRYZMALA: Thank you, your Honor. Our position with respect to performance measures is clear that with all due respect, the arbitrator erred in deciding the performance measurements relating to our Section 271 performance should be reflected in the CLEC Coalition's ICA.

This dispute has nothing to do with any other CLEC except the CLEC Coalition group, as it were. It's

probably self-evident that if this Commission decides, as it should, that it has no jurisdiction with respect to 271, as has been argued extensively over the last day, that the performance measurement argument follows as a matter of course.

If, as the Commission -- if the Commission holds, as we have requested that it hold in the other matters that have proceeded me, there's no occasion to measure 271 performance at all. For that reason alone, and you need to go no further.

I want to point out a couple of additional reasons, however, why the performance of SBC Missouri for under 271 should not be measured, and these are separate and independent reasons. Firstly, there is no cause for concern here. This Commission receives monthly results as to SBC's performance and has for a very long time. I would refer you to the excellent, superior nature of that performance.

Attached to Schedule 2 to Mr. Dysart [ph. sp.] testimony lays out the data on one page dating from December, 2001, which is approximately a month after SBC Missouri was granted 271 relief, and that data is never below 95 percent. That is quality wholesale service. There is no concern that based in the reported data, and no CLEC has reported any hard evidence as to any problems experienced with SBC's wholesale performance that militates in favor of adding 271 measures

into the agreement.

If there ever be any concern, as we all well know, the CLECs know exactly how to register it. They can go right to the FCC, they can ask the FCC to exercise 271(d)(6) enforcement authority, and they will be heard. In both situations in which the matter has been reviewed, in Texas and in Kansas, the proposal has been a nonstarter.

On June 20, 2005, the Texas Commission declined to include terms and conditions for the provisioning of would 271-related elements in the ICA, as we have heard. And for that reason, the Commission did the next thing with respect to PMs, and likewise determined that there would be no PM reporting either. That followed as a result of the 271 holding. I would refer you to the Track 2 Order, June 20, 2005, in docket 28821, at Page 18.

Now, if memory serves, you will not see the word PM, or performance measures, on Page 18. That is where you will find the 271 holding. What you have to kind of look at is the DPL underneath it and the DPL underneath it, the master list of issues regarding general terms and conditions, CLEC Coalition Issue No. 1, and master list of issues regarding performance measures, which refers back to the Commission Decision Issue No. 1 makes it abundantly clear. There will not be 271 PM's in Texas.

Likewise, in Kansas, the result is effectively

the same, although so far as I can tell, it is merely at the arbitration -- at the arbitrator's level. I have an Order dated June 8, 2005, in which the arbitrator concludes -- I'll quote it. The arbitrator concludes, as he did in all previous 271-related issues, that the FCC possesses preemptive jurisdiction over 271 matters, including enforcement proceedings.

Consequently, the arbitrator finds for SWBT, the agreed to PM attachment to the successor ICA shall not be applicable to 271 network elements. Again, that was at the arbitrator's level dated June 8th, that's the matter there.

My last point, frankly, two last points. One last point. The arbitrator made mention, with all due respect in his Order, that the inclusion of such performance measurements in the ICA would greatly facilitate review performance by the FCC, if necessary. That's at Page 4.

Your Honor, I would respectfully submit to you that if the FCC wants data on our wholesale performance, it knows how to ask for it. And I will commend to you the Section 271 Missouri Approval Order, which contains the same language which was used verbatim in almost every 271 Order, every one that I know of, across the United States.

In Missouri, it appears at Page -- Paragraph 139. We require SWBT to report to the Commission all Arkansas and Missouri -- because it was a combination

application -- carrier-to-carrier performance matrix, results, and performance assurance planned monthly reports beginning with the first full month after the effective date of this Order. And for each month thereafter for one year, unless extended by the Commission.

Bottom line, when the FCC granted its 271 applications out of the states, it wanted to keep a handle on wholesale performance. And so what it did in each of the 271 Orders you will find, there's always a paragraph here in the back, herein the November 16th, 2001, Arkansas Missouri 271, at Paragraph 139, it's basically saying performance reports --

JUDGE THOMPSON: You've got to slow down.

MR. GRYZMALA: I'm sorry. The FCC is saying we want these performance reports for one year. They no longer receive them. To my knowledge, the one year lapsed, and I know of no SWBT state, nor any state in SBC's 13 states that any longer provides the FCC with the performance measurement reports that were planted as a requirement in the 271 approval orders. I'm not aware of any.

It just seems counterintuitive for the FCC to have told us that they only want to see these reports for a year, while on the other hand, the Commission decides that these might facilitate FCC review sometime later down the road. The FCC knows how to ask these reports and go about

getting them. We respectfully submit our performance has been good, it's been superior. There's no reason to have these measures included. The only CLEC that wants them out of the collaboratives that ended up in the agreed new set of measures. There should be no separate measures, no additional measures for the CLEC Coalition. Thank you.

JUDGE THOMPSON: Mr. Magness.

MR. MAGNESS: I would never have predicted that the last issue I would address would involve Section 271 obligations. Much to my shock and surprise.

Commissioners, on this issue, I'd like to note just that obviously this issue rides on whether the Commission determines to maintain what's in the arbitrator's report concerning Section 271 obligations, checklist items being in the interconnection agreement. And we've discussed that quite a bit.

I will note for you in SBC's comments that the United States Supreme Court case of Verizon versus Trinko, and there the Supreme Court is talking about the 271 process and how those 271 procedures work. In that case, the Supreme Court notes the FCC described Verizon as having entered into a performance assurance plan as a significant factor in its Section 271 authorization because that provided, quote, a strong financial incentive for postentry compliance with the 271 checklist, closed quote, and prevented backsliding, end

quotes.

And that's from Verizon Communications versus Law Office of Curtis Trinko, 540 U.S. 398, 413 -- 412-13. Obviously, the anti-backsliding provisions, the performance provisions are very important to 271 compliance, and the point we tried to make on behalf of the CLEC Coalition is to the extent these checklist items remain in the interconnection agreements, just as performance for Section 251 provision of UNEs needed to be checked as an anti-backsliding measure, so would performance of provision of loops; for example, if they're provided under a different section of the statute.

The concept is the same, that wholesale performance should be measured, and when it fails, there should be consequences, and that's going to help preserve competition. So that's point there, and obviously it rises, I'd say, on the Commission's decisions on Section 271, and we've discussed those quite a bit. So that's all I have on that one. Thank you.

JUDGE THOMPSON: Thank you, sir. Mr. Zarling.

MR. ZARLING: Not an AT&T issue. Thank you.

JUDGE THOMPSON: Very good. Billing and recording, Mr. Bub.

MR. BUB: Thank you, your Honor. There are two issues here. And the first is an issue that we're

raising with respect to determination that the arbitrator made here and this was in Section Roman Numeral XI, billing clearinghouse recording issues, and arbitrator had a section called billing format. AT&T labeled it as Billing Issue 1.

And from their perspective, they wrote the question as should SBC have the unilateral ability to discontinue industry-standard billing format. And we had a different version of that issue. And our version of the issue was is it appropriate for a 271 agreement to address billing for products and services that are not offered pursuant to Section 251, and are not contained in the 251 agreement.

I think the concern here from AT&T's perspective is that we're using our CABS billing system as a billing system. It's a real large billing system that we use to bill access and we bill various unbundled network, various wholesale products to our CLEC wholesale customers. I think their concern is that we're not going to use that system, the CABS system, to bill things that -- but they're used to the system, they're used to how it works, and they just don't want to change.

And in our testimony, and in our comments here, we're trying to ask the Commission to relook at this because we're not seeking the right to unilaterally discontinue an industry-standard billing format or disrupt

the current billing processes that were used in CABS. CABS is our system, and we want to use it, and where we can use it, we will.

And if a UNE -- particular UNE, whatever it is, is delisted, so it's no longer a UNE, but we may provide it on a -- on a wholesale basis, perhaps under our commercial agreement. If we can bill it through CABS, we're going to bill it through CABS. That's our system.

What we're concerned about is in our wholesale agreement, we may agree or want to agree or offer a different form of pricing structure, maybe instead of per minute charge, maybe we'd like to come up with some kind of volume discount or a sliding scale discount for usage. CABS can't accommodate that.

So our concern here is that this agreement, which is a 251 agreement, is restricting us from offering services that may be billed in unique and creative ways for things that are no longer 251 items. So that's what this issue is about, and we'd ask the Commission relook at that.

then I have one other issue, but before I turn to that, if there are any questions, I can answer them now. Okay.

JUDGE THOMPSON: Please proceed.

MR. BUB: The second is an issue that AT&T raised, and I think Mr. Zarling referred to it as a

comprehensive billing issue, and I think it was their Issue 3. And here, the Commission ruled that their proposal, which was a default billing issue, if the OCN, or CIC, the carried identification code, isn't passed to them on certain types of calls, they want ability to default SBC -- default bill SBC, even though it may have been another carrier that originated the call, perhaps the carrier using SBC Missouri's switch on an unbundled basis.

So just making this up, could be make Birch using our switch to initiate a call to an AT&T end user. And Birch -- and SBC, I think, in their example, may also be using our switch. So their view is that if we can't give him the OCN or the CIC, then we should be responsible to terminate that call. They're asking the Commission to overturn the determination that there's no default billing.

We think their position is inconsistent with the Commission's enhanced record exchange rule for a couple of reasons. One, is the rule is originating responsibility plan and it doesn't commit to fault billing. And second, if there is a problem with records, the rule contemplates the parties work together to determine who that originating responsibility -- who that originating responsible party is so that they can be appropriately billed. And we're certainly willing to do that, and that's what should be done here.

The second inconsistency that we pointed out that I think was cited in the arbitrator's report for rejecting AT&T's proposal was that this is inconsistent with the meet cap guidelines, and those are industry-standard billing guidelines. And under those guidelines, and our practice, is to bill the originating carrier. So in our example, it would be to bill Birch.

The billing folks, like Mr. Reed, our witness, refers to this as the default option. In their testimony, and I think in their comments challenging the arbitrator's decision, here AT&T points to an option that are in the guidelines that allows the billing to be done to the unbundled switch provider.

There, the guidelines say that this option may, M-A-Y, be used. He testified that this means that the parties must agree to it, that it's not the default. It's something they may agree to, but it's something that's not normally used. We don't think this option's appropriate, and we believe the arbitrator's determination on this issue is correct. So that concludes my presentation. If there's any questions, I will answer them.

JUDGE THOMPSON: I don't hear any. Thank you, Mr. Bub. Mr. Magness.

MR. BUB: I appreciate your time.

JUDGE THOMPSON: I appreciate your

preparation.

MR. MAGNESS: Nothing on, this your Honor.

JUDGE THOMPSON: Mr. Zarling.

MR. ZARLING: The first issue, which Mr. Bub raised, one where AT&T prevailed, he said that, well, the issue is, as AT&T phrased it, should SBC have the unilateral ability to discontinue industry-standard billing format. Arbitrator agreed with AT&T's proposed language here, and Mr. Bub, the primary thing I took away from his argument was that SBC should be able to create new billing processes, if they come up with new and novel ways, to bill things that wouldn't necessarily be consistent with the CAB system that we're trying to keep in place.

AT&T's position is basically is that if SBC wants to develop a new system, that's all fine and good, but we shouldn't be required to accept it or adopt it. You know, in the absence of our agreement that something other than CABS will be used, CABS is what should apply. And the arbitrator agreed with us, and we would encourage the Commission to affirm that decision.

The second issue is one where, in fact, AT&T did raise in its comments where we had a problem with a decision on -- by the arbitrator, decision on Comprehensive Billing Issue 3. And that issue is -- well, there's really two issues here, but they're joined together, because they're

related, 3(a) and 3(b).

Should SBC Missouri be required to provide AT&T the OCN -- I think it's operating company number -- or CIC, carrier identification code, CIC and OCN -- as appropriate. A third party's originating carrier is when AT&T is terminating calls of the unbundled switch user of SBC Missouri. And the second issue is should SBC Missouri be billed under default basis when it fails to provide the third party originating carrier OCN or CIC as appropriate to AT&T when AT&T is terminating calls as the unbundled switch user.

The arbitrator went with SBC on this issue, reading the comment -- the report, it seems like the primary basis or rationale for the arbitrator's decision rested on the new Chapter 29, rules and I guess in response to that, the first thing I'd say is it's very important for the Commission to keep in mind that AT&T's proposed language here applies in only one situation.

It's a situation where AT&T is using SBC's unbundled local switch to terminate a call. So we're talking about records that SBC provides AT&T because it's SBC's switch. We can't bill originating carrier because -- we can only bill the originating carrier with the records that SBC provides us, even though we're technically the terminating carrier, we're using SBC's switch, and they produce the records, and we need those records to bill the originating

carrier.

The question of the application of the Commission's rules, I mean, first of all, the Commission's rules are quite clear that the original carrier is supposed to pass CPN, so I guess one could presume that to the extent that other identifying information like OCN or CICs are required, if they're not passed, then the originating -- it wasn't -- it wasn't some other carrier other than SBC that's passing the traffic.

And that's kind of what the issue boils down to is how do we know that some other carrier's traffic that we should be working together with SBC to identify who the originating carrier is when the information we need to determine that it is, in fact, somebody other than SBC is sending us the traffic. It's very fair for us to presume that traffic coming over facilities to an SBC switch is SBC's, unless SBC can point us to some other information.

And then along the lines of the application of the rule, why we raised this issue, also, in spite of all the hard work that the staff and arbitrator did, there was so many things to sift through. On this particular issue, the report refers to SBC as the transiting carrier. In this particular case, SBC is not the transiting carrier. There's a number of different scenarios describing what the originating carrier might be here.

The originating carrier might be someone who uses SBC's switch, so they're also a UNE user. It could be another CLEC with their own switch, or it could be an IXC. But in all instances, the traffic is coming over interconnection facilities that those carriers, and in some cases SBC itself, has established to another SBC switch. The switch that AT&T is using.

It sort of defies logic for SBC to argue, and I think the evidence in this case shows that, you know, they agree. They can tell whose traffic is coming over the trunks into their switches. So SBC knows, even if they don't have the CIC or the OCN, in the data stream, they know whose traffic is coming over those trunks, because carriers put in trunks to SBC switches.

So with that, I think I'll just commend you to our comments. This began on Page 36 of our comments. I think that maybe the arbitrator and staff weren't entirely clear what we were asking for with our language here or what the exact situation was because there is no transiting by SBC, and with AT&T being the terminating carrier using an SBC unbundled switch, we absolutely need SBC to give us the records that demonstrate who the originating carrier was. Thank you. If there's no questions --

JUDGE THOMPSON: Thank you, Mr. Zarling. Okay. Are we ready for numbering? You're looking at me

blankly. I'm still on the right case, right? No one has a numbering issue?

MR. GRYZMALA: I think, your Honor, if I could jump in, I think all that's left is OSS, one item, and the only LEC, I understand, is left to the party's briefs.

JUDGE THOMPSON: OSS?

MR. GRYZMALA: Right, I'm sorry.

JUDGE THOMPSON: Let's hear about OSS.

MR. GRYZMALA: Good afternoon, your Honor. Thank you.

JUDGE THOMPSON: Certainly.

MR. GRYZMALA: We have just one issue relative to OSS. It is what we'll call an offensive issue in the sense that we're asking the Commission to revisit the matter and the ruling of the arbitrator. We would ask that the Commission reject language that had been proposed and that the arbitrator had approved, brought by the CLEC Coalition.

Again, this is only a CLEC Coalition issue, has nothing to do with any other group of CLECs or any other CLECs than the CLEC Coalition. And that language has to do with collaborative forms, that CLECs and ILECs participate in in this case, CLECs and SBC Missouri. We're asking that the Commission reject the CLEC Coalition's language that would allow it to effectively exercise a go/no-go veto power over OSS resolutions and process changes established in a couple

of these collaborative forms.

Probably most important collaborative forms, that being CLEC user form and the changed management form. Discussion on the topic is at Pages 8 to 10 of Section 14 of the arbitrator's report, and our comments address the subject at Pages 239 to 241. Their language, that is, the CLEC Coalition's language, would propose that resolutions and process changes that are established in the user and changed management forms would be valid, quote, when incorporated by amendment into the agreement, or as otherwise mutually agreed in writing by the parties, end of quote.

We do not believe that process changes and resolutions that are generated by a result of the user forum or the changed management forum, so-called CMP forum, should be subject to veto power. They should become self-executing. Collaborative forms have been around for several years, and in large measure, if not principle measure, they were generated by CLECs at the behest of CLECs who had input in drafting the guidelines and coming up with the ground rules by how these forms will operate.

In the OSS world, these are important, and results of these forums are built into the business in the way by which our companies do business. I have very little remaining on the point, except that I would emphasize, yet again, that we're asking this Commission to tell the CLEC

Coalition, no, you don't get a go/no-go vote in the interconnection agreement. What happens at the CLEC processes and forums, if you have a go or no-go vote there, then you should put it on the table there, and let that impact be felt.

We believe that's the theme of this Commission's approach to these collaborative forums. I would commend the Commissioners and the arbitrator to the Missouri Commission's September 10, 2001, written consultation that was submitted to the FCC, known as its document in support of SBC Missouri's Section 271 application. And I will commend to you paragraph -- excuse me, Pages 11 and 12, which go to the heart of this particular subject, and I'll quote it and then I'm done.

We found that Southwestern Bell's changed management process, CMP process, allows Southwestern Bell to notify CLECs of new interfaces and changes to existing OSS interfaces. And that it also provides for the identification and resolution of CLECs' concerns regarding Southwestern Bell's interfaces. The CMP's effectiveness and Southwestern Bell's adherence to it over time were monitored by the Texas Commission, examined by Telcordia, and approved by the FCC.

CLECs played a significant role in the establishing the CMP, and they are afforded ample opportunity to supply input regarding their needs or concerns, including

the ability to halt implementation through a go/no-go vote.

I close by reemphasizing, yet again, that the CLEC Coalition has the opportunity to exercise a go/no-go vote. It's at the forum. It should not be entitled to a go/no-go vote here. The arbitrator ruled incorrectly when determining that as a contractual matter, it could not be obligated. We submit that the CLEC Coalition can be obligated and should be obligated to abide by these, and that these resolutions and process changes would be self-executing.

Thank you, your Honor.

JUDGE THOMPSON: Thank you, Mr. Gryzmala.

MR. MAGNESS: Mr. Magness.

MR. MAGNESS: Thank you, Judge. Not only was the existence of these changed management processes important to this Commission in adopting the 271 authorization for SBC, it was important to the FCC as well. In the whereas clauses, the very first language you read in the M2A, whereas clauses note the existence of wholesale SBC collaborative processes of the development of business-to-business relationships that would maintain local competition's viability and change management process and these sort of notice and discussion procedures were key in those.

We negotiated this interconnection agreement successfully with SBC, we asked them to maintain that

language in the general terms and conditions so we would be assured those collaborative processes would, indeed, continue to exist. They refused. They would not put those things in writing in the contract. That raised a concern.

The arbitrator approved the inclusion of those whereas clauses, and that's, again, part of the general Section 271 dispute before the Commission, but the language that's specifically referenced has to do with those collaborative processes and we're extremely committed to them continuing. The particular language, however, has to do with assuring that there is collaboration in the collaborative process, that SBC is not able to unilaterally determine that certain process changes will be made and over the strong objection of a CLEC, who may have ordered its business differently, implement this project unilaterally through an accessible letter or some other notice procedure.

So this tries to implement in the party's governing contract some binding contract language that gives CLECs some assurance that SBC will not be able to act unilaterally and without true collaboration. And there was a good reason to try to negotiate and arbitrate this language, in that we were seeing resistance by SBC to put it in writing that they would continue collaboration in the first place.

We think the arbitrator did the right thing in adopting this language. It's consistent with what we've seen

in other arbitrations, and we urge that it be maintained in the agreement. Thank you.

JUDGE THOMPSON: Thank you. Mr. Zarling, anything?

MR. ZARLING: Nothing on this issue, your Honor.

JUDGE THOMPSON: Mr. Bub.

MR. BUB: Your Honor, I may be able to shed a little bit of light on your numbering question. That was an issue raised by Sprint in its comments, and what they basically said in their comments was for the reasons argued in its brief and supporting testimony, Sprint contends its language to be adopted for this issue.

We're content to handle this on paper, and we would refer you to our brief where we addressed this issue as well. So I don't think there's any need to further argue it, and I think that was Mr. Leopold's intent as well.

JUDGE THOMPSON: That's fine with me. Anything further from anyone?

MR. BUB: We had one issue that MCI had raised in the line splitting area.

JUDGE THOMPSON: Step on up.

MR. BUB: Okay. In its comments on Page 3, this was MCI's Line Splitting Issue 5, and it had to do with cabling that went between a CLEC and a data CLEC's

collocation cages in one of our offices. And MCI is challenging one of the arbitrator's determinations, and they cite at Page 3 and 4 of their comments an FCC rule, and it's Rule 51.319(a)(1), and they say it supports their position.

And there's two parts -- or two sentences that they quote. First one says that an incumbent LEC shall provide a requesting telecommunication's carrier that obtains an unbundled copper loop from the incumbent LEC with the ability to engage in line splitting arrangements with another competitive LEC using a splitter collocator at the central office where the loop terminates to a distribution frame or it's equivalent.

I would point out with this rule that we do what it says because our loop that we're providing to MCI in this particular case does terminate into a distribution frame. What they're asking for is an additional connection to the main distribution frame. So as far as this rule is concerned, we complied with it.

The second part of the rule they quote is (B), and that says an incumbent LEC must make all necessary network modifications, and they underline the word "all", including providing nondiscriminatory access to operations support systems necessary for preordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements. We comply with that as

well.

We provide loops with no concern expressed that we don't have the appropriate ordering arrangements for loops. We do that. We have been doing it for years. And that's not a problem. Simply stated, this rule that they're citing here doesn't apply, and it's not inconsistent in any way with what the arbitrator did here.

They raise a second concern, and this is at the bottom of Page 4, they say finally, SBC's proposal may be discriminatory to a CLEC, vis-a-vis what SBC is providing to its own data affiliate. This is something that they -- they're not quoting their testimony, so this is something that's new, but I can tell you that if our affiliate, ASI, and another CLEC wanted to engage in line splitting, the same terms and conditions would apply.

They -- in that same paragraph -- say that our proposed CLEC-to-CLEC cabling offering requires a CLEC to buy a minimum of either 24 or 28 DS1 cables regardless of present or anticipated usage. Again, here, they have no citation to their testimony. This is something that they -- doesn't appear that was ever brought up during negotiations, or that the size of the testimony was a problem -- size of the cable was a problem, but you should note that in Missouri, if the CLEC, in this case, MCI, would want to do it, they could provide their own cable, so as far as size is concerned, they

could have just a single DS1 or they could have a DS3, as long as that vendor that they're using is an appropriately licensed and approved vendor to do the work, they can have that cable placed themselves and we wouldn't even be involved. I think that's it.

JUDGE THOMPSON: Thank you, Mr. Bub. Mr. Magness.

MR. MAGNESS: Nothing, your Honor.

JUDGE THOMPSON: Mr. Zarling.

MR. ZARLING: Nothing.

JUDGE THOMPSON: Mr. Gryzmala.

MR. GRYZMALA: No, sir, thank you.

JUDGE THOMPSON: Everyone's done? Mr. Lane.

MR. LANE: No, I don't have anything, your Honor.

JUDGE THOMPSON: Okay. I just thought I'd ask everybody. We've reached a historic moment. Thank you all very much for your very eloquent comments produced in a very short turnaround. I apologize that your interval was reduced by the fact that I took more time than I was supposed to.

The Commission Order will be produce the as close to July 6th as is possible to do. I should tell you that I've just received notification that the July 5th agenda has been cancelled, consequently the first agenda where the Commission will be able to take up and discuss this matter,

then, would be the agenda on the 7th, okay, which is already a day after the date when it was hoped that the Order would be available.

Never fear, I hope to produce a document for the Commissioners to consider over that interval, and so perhaps they would be able to move just as quickly on July 7th as they would have been had we had an agenda on the 5th. Okay? I will certainly keep you posted as to the progress that we make at this end in producing the Commission's Order.

MR. LANE: Judge, I reiterate that if the Commission needs another week, obviously these issues are important to us, and it's more important that they're right for the next three years than they get out within the time frame we set.

JUDGE THOMPSON: I appreciate that, Mr. Lane, and I will let you-all know if it becomes necessary to take you up on that kind offer.

Anything further from anyone at this time? Hearing nothing, the oral argument will be adjourned. Thank you very much. Have a nice and safe holiday weekend.

(THE ORAL ARGUMENT WAS CONCLUDED.)