

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3 In the Matter of Alma)Case No. TT-99-428,
4 Telephone Company's Filing) et al
5 to Revise its Access Service)
6 Tariff, PSC Mo. No. 2)

7 HEARING
8 October 12, 1999
9 Jefferson City, Missouri
10 Volume 2

11 BEFORE:

12 BILL HOPKINS, Presiding,
13 SENIOR REGULATORY LAW JUDGE.
14 SHEILA LUMPE, Chair
15 CONNIE MURRAY,
16 ROBERT G. SCHEMENAUER,
17 HAROLD CRUMPTON
18 M. DIANNE DRAINER, Vice-Chair
19 COMMISSIONERS.

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1 (EXHIBIT NOS. 1 THROUGH 12 WERE MARKED FOR
2 IDENTIFICATION BY THE COURT REPORTER.)

3 JUDGE HOPKINS: My name is Bill Hopkins and
4 this is October the 12th, 1999, Tuesday. This is in
5 the matter of Alma Telephone, Case No. TT-99-428,
6 et al, and covers 428, 429, 430, 431, 432 and 433.
7 And I may be referring to this case as the Alma case,
8 but we all know it covers all of the telephone
9 companies listed in the caption.

10 Please let's start over here and take oral
11 entries of appearances for the record.

12 MS. FISCHER: My name is Jeanne Fischer. I
13 represent Southwestern Bell Wireless. My address --

14 JUDGE HOPKINS: You don't need that. We
15 have that in writing.

16 I just want something on the record showing
17 who is here and who is not here.

18 MS. FISCHER: Okay.

19 MR. DeFORD: My name is Paul S. DeFord
20 representing AT&T Wireless and AT&T.

21 MS. GARDNER: Linda K. Gardner representing
22 Sprint Spectrum, LP, d/b/a Sprint PCS.

23 MR. POSTON: Tom Poston and Julie Kardis for
24 the Staff of the Missouri Public Service Commission.

25 MR. LANE: Paul Lane representing

1 Southwestern Bell Telephone Company.

2 MR. JOHNSON: Craig Johnson. I'm
3 representing Alma Telephone Company and the other five
4 companies who filed the tariffs in this proceeding.

5 MR. ENGLAND: W. R. England representing the
6 Small Telephone Company Group.

7 JUDGE HOPKINS: Thank you.

8 For the record, the Office of Public Counsel
9 is not here right now and someone went to check to see
10 whether they're going to be here or not.

11 We've got a pending motion here that
12 was filed this morning by Mr. Lane on behalf of
13 Southwestern Bell. It's a motion to compel, and
14 Mr. England has advised me that he is ready to answer
15 that on the record.

16 Do you want to do that, sir?

17 MR. ENGLAND: Yes, unless the proponents of
18 the motion would like to go first.

19 JUDGE HOPKINS: Do you want to say something
20 first?

21 MR. LANE: Thank you, your Honor.

22 The motion that we filed lays it out, but we
23 filed a data request with the Small Telephone Company
24 Group on September the 30th. The purpose of the data
25 request was to obtain the results of an audit that had

1 been conducted of Southwestern Bell's CTUSR, or
2 cellular transit and usage summary reports, that were
3 conducted for the period of 1/1/91 to 2/5/98, and then
4 a second audit for the period beyond that date.

5 The CTUSR process was one that was ordered
6 by the Commission in our last wireless tariff case
7 which was TT-97-524, and the purpose of the data
8 request was to obtain the results of the audit because
9 Southwestern Bell had not been given a copy of them.

10 There was no objection filed to our request,
11 and the audit reports themselves were produced on
12 October the 7th, but when we reviewed them, it was
13 apparent that they weren't dated or signed, which is
14 typically done with an audit report. And so we called
15 to find out where the cover letter and any explanation
16 concerning the audit results were and Mr. England
17 advised that those had not been produced but there
18 were two letters that are referenced on page 2 of our
19 motion.

20 The first letter was a December 3, 1998
21 letter from Phyllis Callahan of the Frederick and
22 Wariner consulting firm to Mr. Ken Matzdorff of Cass
23 County Telephone Company, which transmitted the
24 results of the Phase I audit. And then the second
25 letter was a March 12 letter from Ms. Callahan again

1 to Mr. Matzdorff that transmitted and gave apparently
2 opinions and advice concerning the cellular usage
3 report Phase II audit.

4 These letters from Ms. Callahan to
5 Mr. Matzdorff are not privileged in our view.
6 Ms. Callahan is not a lawyer, nor is Mr. Matzdorff.
7 These were simply the results of a typical audit that
8 is conducted routinely in the telephone industry on
9 different items, and in this particular one it's of
10 our cellular CTUSR process that is at issue in this
11 case because the Mid-Missouri Group contends through
12 Mr. Stowell's testimony that the information they get
13 is not adequate for them to bill the wireless carriers
14 that originated the calls.

15 So absent -- there has been no objection
16 filed at all by the Small Telephone Company Group with
17 regard to this filing, and as the court or the
18 Commission is aware, any objections need to be filed
19 within ten days after the data request is served.
20 That's not done in our view.

21 They don't have any objection that's pending
22 and they need to produce it because it's clearly
23 relevant and certainly no objection has been raised to
24 relevance. It doesn't come within any exception for
25 either attorney/client privilege because it's not

1 written by or from -- sent from or to the attorney
2 that is involved in this case and it's not the subject
3 of any work-product claim, because, again, it's not
4 the mental impressions of any attorney that is
5 involved in this case.

6 So it's clearly relevant and they need to
7 produce it and a motion that explains that.

8 Thank you.

9 JUDGE HOPKINS: I have one question. You
10 have in your prayer that you're wanting the cover
11 letters and any other correspondence, it withheld
12 meaning STCG. Are you aware of any other
13 correspondence that STCG withheld from the cellular
14 audit reports?

15 MR. LANE: I'm not aware of it, Judge.
16 Mr. England obviously may know or his clients may
17 know. We did ask for any analysis that was done,
18 findings, conclusions or recommendations. My
19 understanding from Mr. England is that the second
20 letter, the March 12 letter, contains findings,
21 conclusions and recommendations. And so it's within
22 that.

23 If there is anything else, I don't know
24 about it.

25 JUDGE HOPKINS: All right. Thank you.

1 I want to spell some names for the record.

2 Callahan, C-a-l-l-a-h-a-n, Frederick,
3 F-r-e-d-e-r-i-c-k, Wariner, W-a-r-i-n-e-r, Matzdorff,
4 M-a-t-z-d-o-r-f-f.

5 Mr. England, any response?

6 MR. ENGLAND: Yes, sir.

7 And let me, I guess, begin by perhaps
8 explaining a little bit better what these letters are.

9 They were conducted similar to a settlement
10 agreement between my clients and Southwestern Bell
11 Telephone Company, the terms of which we agreed to
12 maintain in confidence. The first part of the audit
13 was to confirm the accuracy of the various settlement
14 amounts for each of the companies. The second part of
15 the audit was to investigate further the Southwestern
16 Bell CTUSR reporting system.

17 Phase I was completed roughly in December
18 1998, and the second phase, at least the report was
19 delivered on March 12, 1999. The cover letters,
20 again, just to clarify the record, were not signed by
21 Ms. Callahan. They were signed by Mr. Wariner,
22 principal of the firm at that time Wariner and
23 Frederick, now Wariner, Geisinger (phonetic sp.) and
24 Associates -- and if you ask me to spell Geisinger,
25 I'm afraid that I can't do that on the spot, but I can

1 provide that later -- a CPA firm that was hired to
2 conduct the audit of Southwestern Bell Telephone
3 Company.

4 The representation that no objection was
5 made is somewhat inaccurate. At the time the audit
6 report was requested on -- I think on September 30th
7 and we provided the reports for Phase I and Phase II
8 on October 7th or 8th, I believe, well within the
9 20-day period of time, we reserved all rights to
10 object to their admission into evidence, particularly
11 on the grounds of relevancy.

12 On Friday of last week I had the
13 telephone conversation with Mr. Bub, who requested
14 the cover letters, and that's when I advised him
15 that I believe the material in the cover letters
16 constituted privileged information, not necessarily
17 attorney/client but work-product information,
18 recommendations regarding courses of action that the
19 group might want to take with respect to negotiations
20 and with respect to potential litigation.

21 The motion to compel was then prepared
22 and sent to me yesterday, October 11th, and perhaps
23 Mr. Lane didn't catch it when he left the office, but
24 I faxed off a written objection confirming the oral
25 objection I had made on Friday prior to five o'clock

1 yesterday afternoon.

2 So I can give you a copy of that
3 correspondence, but we did reiterate our objection as
4 to relevancy to the reports, as well as their cover
5 letters and to privilege with respect to that portion
6 or portions of the cover letters that we believe
7 represent work product.

8 We also believe work product doesn't
9 necessarily have to be mental impressions of the
10 attorney but by other representatives of the parties
11 and not just the attorneys. In this case they are
12 recommendations by a CPA audit firm regarding conduct
13 to be taken in the future.

14 These recommendations regarding this conduct
15 has nothing do with the audit itself. And prior to
16 going on the record today, I indicated to Mr. Lane
17 that we would be willing to produce the cover letters
18 but with what I consider to be the privileged language
19 redacted, and it primarily appears in the second
20 letter or the letter accompanying the second phase of
21 the -- of the report.

22 And I would be happy for you, Judge, to take
23 a look at that letter. I've highlighted what I
24 believe to be the privileged language, and have you
25 make a determination whether or not that should be

1 withheld. But as I indicated to Mr. Bub on Friday, I
2 am not voluntarily producing that, because I believe
3 it comes within the work-product privilege, as well as
4 I still believe there is a relevancy objection.

5 And if for some reason Southwestern Bell
6 wants to use these audit reports or cover letters in
7 this case, I intend to object at that time, because
8 despite what they say, if you read Mr. Stowell's
9 testimony, he does not bring the accuracy of the CTUSR
10 reporting system into controversy in this case.

11 And if you look at two issues that have been
12 identified by the parties, there is no issue with
13 respect to the CTUSR reports.

14 JUDGE HOPKINS: I've got one question, sir.

15 In your copy of your cover letter to Leo Bub
16 written on October the 7th, it says that these reports
17 were performed in accordance with our privileged
18 settlement agreement regarding terminating cellular
19 usage.

20 MR. ENGLAND: That's correct.

21 JUDGE HOPKINS: What was that privileged
22 settlement agreement regarding terminating cellular
23 usage?

24 MR. ENGLAND: Well, I can't reveal that
25 because it's privileged. If you want to go in camera,

1 I'd be happy to discuss that.

2 JUDGE HOPKINS: All right.

3 MR. ENGLAND: And I have -- there were
4 individual agreements among the parties. I happen to
5 have a copy of one of them which I think is
6 generically the same for all of them roughly,
7 certainly with respect to the confidentiality
8 agreement.

9 It also apparently -- I think it was an
10 issue in a prior case before this Commission in
11 two complaint cases involving Chariton Valley and
12 Mid-Missouri Telephone Company, both of which were
13 complaining against Southwestern Bell, TC-98-251 and
14 TC-98-340.

15 So the Commission dealt with that
16 confidentiality agreement at that time and granted
17 Southwestern Bell's motion, in a different setting,
18 but nevertheless granted Southwestern Bell's motion to
19 strike any reference to those agreements as being
20 confidential and outside the scope of that proceeding.

21 JUDGE HOPKINS: Without trying to invade
22 your privilege here, I'm just trying to find out what
23 this settlement agreement, what case was that in
24 again, the --

25 MR. ENGLAND: Well, the settlement agreement

1 was not in any particular case, although it dealt with
2 some pending litigation. But where it became an issue
3 before this Commission was in TC-98-251 --

4 JUDGE HOPKINS: Okay.

5 MR. ENGLAND: -- and TC-98-340.

6 JUDGE HOPKINS: 340 or 240?

7 MR. ENGLAND: I'm sorry. 340.

8 JUDGE HOPKINS: But this privilege
9 settlement agreement, you're saying, did not -- did or
10 did not cover those cases?

11 MR. ENGLAND: It did not pertain to those
12 cases. It was referenced in the testimony of one of
13 the witnesses and became subject to a motion to strike
14 based upon the relevancy and confidential nature of
15 the --

16 JUDGE HOPKINS: I'd like to see that
17 settlement agreement, if I could, with the letter that
18 you're asking me to make a decision on. Cover
19 letters. Plural.

20 MR. JOHNSON: Judge Hopkins?

21 JUDGE HOPKINS: Yes, sir.

22 MR. JOHNSON: If I may, I may have a dog in
23 this fight, too, so I want to get my two cents in
24 here.

25 The settlement agreement was between

1 Southwestern Bell and a whole host of small companies,
2 all of them except for the two that ended up filing a
3 separate complaint. But this audit report that I
4 believe you're -- that Southwestern Bell is requesting
5 was done not only on behest of the Small Telephone
6 Group, but also on most, if not all, of the
7 Mid-Missouri Group members as well, so I think maybe I
8 have the same privileges -- my client have the same
9 privileges with respect to the documents that Bell is
10 asking to be produced, as does the Small Telephone
11 Company Group.

12 And I haven't had a whole lot of time to get
13 involved in the thick of it. But I would just point
14 out a couple of things to you. No. 1, this particular
15 proceeding is about tariffs that my six clients filed,
16 not the Small Telephone Company Group. Southwestern
17 Bell says that this became relevant in this case
18 because of something my witness said in his
19 surrebuttal testimony. But they didn't ask for this
20 document from me. They've apparently asked for it
21 from Mr. England's clients, even though his witness
22 isn't the one that said this.

23 If you look at page 4 of my witness, Mr. Don
24 Stowell's surrebuttal, the only two things he said
25 about the CTUSRs in that surrebuttal is, one, it does

1 not allow us to distinguish interMTA, or metropolitan
2 trading area calls, from intraMTA calls.

3 And also it says, the CTUSRs provided by
4 Southwestern Bell do not distinguish tariff traffic
5 from interconnection agreement traffic. That's the
6 only two statements he made. And I don't think he
7 called into question the CTUSRs or their accuracy.
8 And so I'm not sure that my witness has opened the
9 door that Southwestern Bell suggests has been opened
10 to make this discovery request pertinent to this case.

11 And then for the rest of it, I will probably
12 as best I can try to join in with Mr. England's
13 assertions of why these matters are privileged. And I
14 do have -- I got together last night a copy of the
15 settlement agreement, and I do have a copy of the
16 order granting the motion to strike in the other case.

17 But now, the settlement agreement, as
18 Mr. England said, I'm not sure I can produce to you
19 without violating the confidentiality clause that was
20 suggested by Southwestern Bell and agreed to by my
21 clients.

22 JUDGE HOPKINS: Okay.

23 MR. ENGLAND: If I may -- I'm sorry. If I
24 may finish something up. And I completely missed this
25 given the haste with which this has been brought

1 forward, but if Southwestern Bell is claiming that
2 these reports are responsive to Mr. Stowell's
3 surrebuttal testimony which was filed on October 4, I
4 find that very hard to believe since they sent me a
5 data request on September 30th.

6 Obviously this was a fishing expedition long
7 before Mr. Stowell filed his testimony, and they are
8 trying to bootstrap the relevancy of this argument or
9 this request into this case through subsequent
10 testimony which we still would not agree is relevant.
11 But I think it belies their argument that this data
12 request was somehow relevant to any issue in the
13 proceeding when it was issued.

14 MR. LANE: If I may respond, Judge.

15 Relevance has two aspects: One is something
16 relevant for purposes of discovery. Second, is it
17 relevant, meaning can it be admitted into evidence.
18 We're not at this stage determining whether it's to be
19 admitted into evidence. Mr. England has reserved his
20 rights and I agree with that to argue that it's not to
21 be admitted into evidence.

22 We're talking now about the discovery phase,
23 are we allowed to see the documents? He has not made
24 an objection to the relevance of that. He's produced
25 the audit report itself but won't give the cover

1 letters that give the findings, conclusions and
2 recommendations.

3 The Missouri rules of Civil Procedure,
4 5601B1, make it very clear that you cannot object to
5 discovery on the basis that it would not be -- that
6 the material would not be admitted into evidence. For
7 discovery purposes, the question is, is it reasonably
8 calculated to lead to the discovery of admissible
9 evidence. It's a lower standard than we're talking
10 about for purposes of admitting it into evidence
11 itself.

12 We won't know whether we want to admit it
13 into evidence or what until we see what it is that
14 they say. Now in this case they have claimed on
15 Mr. Stowell's testimony, on page 9 in his surrebuttal,
16 he says, Southwestern Bell Telephone Company has not
17 provided the Mid-Missouri Group members with the
18 information necessary to bill the CLECs and wireless
19 carriers correctly for the traffic.

20 We think that that is counter to what the
21 audit report shows and probably counter to what these
22 cover letters that go with that show, and that's the
23 reason that we want to see it. We think it obviously
24 is relevant to introduce ultimately in the case, but
25 at this point it's clearly likely to lead, reasonably

1 possibly to lead to the discovery of admissible
2 evidence.

3 The only objection that they've made for
4 discovery purposes is that this is privileged
5 information but they've glossed over entirely the fact
6 that it is not a letter from an attorney or to an
7 attorney seeking or giving legal advice. It's not a
8 letter from or to an attorney which contains the
9 mental impressions of the attorney and making
10 recommendations to the client.

11 This is a CPA firm that was hired to do some
12 consulting work and to do an audit, and they're trying
13 to shield the cover letters that give the findings,
14 conclusions and recommendations presumably because
15 those things express an opinion that is inconsistent
16 with the opinion that their own witnesses have
17 expressed, and we think that you ought to look at the
18 letters that have been proposed and that they ought to
19 be produced in this case.

20 JUDGE HOPKINS: All right. Anything further
21 of Mr. Johnson or Mr. England?

22 MR. JOHNSON: Well, your Honor, the only
23 thing I would like to add is my understanding of
24 work-product privilege that extends beyond just those
25 that are attorneys and does cover people who are

1 employed by the attorneys, consulted or employed by
2 the attorneys.

3 I would just ask you that if you do review
4 something in camera, in confidence, that with
5 Southwestern Bell's permission we can describe the
6 confidential nature of the settlement agreement that
7 called for this audit, No. 1, and No. 2, that you look
8 at the paragraphs in the cover letter that Mr. England
9 wants to withhold, but see if you believe that those
10 are privileged.

11 JUDGE HOPKINS: If Southwestern Bell doesn't
12 have any objections to that, I would like to see that
13 settlement agreement and that redacted -- proposed
14 redacted letters.

15 MR. JOHNSON: Well, your Honor, since this
16 is confidential between Bell and our clients, I would
17 suggest that we go in camera and exclude everyone from
18 the room until you decide that no privilege applies.

19 Until then I'm not sure it would be
20 appropriate for me to put on the record or give to you
21 in front of everyone here this confidentiality
22 agreement that goes to the settlement. Without Bell's
23 permission, I don't feel comfortable doing that.

24 MR. LANE: It's my understanding, Judge, is
25 that you want to look at this. We're not making an

1 exhibit in the case and we're not showing it to the
2 rest of the parties. We have no problems with doing
3 that.

4 JUDGE HOPKINS: All right. This will be
5 taken under advisement if you'll let me see this.

6 MR. JOHNSON: This is just the sample of
7 the letter that was a settlement agreement with
8 respect to the outstanding dispute. I think it's on
9 the second paragraph.

10 MR. ENGLAND: Paragraph 6.

11 MR. JOHNSON: This is the one that talks
12 about the confidentiality of it.

13 JUDGE HOPKINS: All right.

14 MR. ENGLAND: And if I may, this was the
15 Phase I letter that we don't have a problem as far as
16 privilege. We still request the relevancy. This is
17 the Phase II letter. Again, down to here, we request
18 on the ground of relevancy but don't claim any
19 privilege. This is what we consider to be the very
20 sensitive four paragraphs here, for your information.

21 JUDGE HOPKINS: All right. Thank you.

22 MR. ENGLAND: And did you want a copy of my
23 correspondence to Mr. Bub yesterday confirming my
24 objection?

25 JUDGE HOPKINS: That would be helpful.

1 Any further preliminary matters?

2 MR. DANDINO: Your Honor, Michael Dandino of
3 the Office of Public Counsel.

4 I'd like to apologize, your Honor, for being
5 late. I do have some exhibits to give to the reporter
6 to be marked.

7 JUDGE HOPKINS: All right, sir.

8 (OFF THE RECORD.)

9 MR. POSTON: Your Honor, I have something to
10 point out.

11 On the list of issues you had mentioned you
12 didn't see Staff on the list. On page 2 of our list
13 of issues, we list the order of witnesses. And we had
14 hoped to present our oral arguments, opening arguments
15 in this order and Staff is in that order. I just
16 wanted to point that out to you.

17 JUDGE HOPKINS: Okay. It just wasn't on the
18 first page with all of the parties.

19 MR. POSTON: Right, right.

20 JUDGE HOPKINS: It would be nice to have the
21 attorneys' names on there too. All right. And you
22 all probably know agenda is being held this morning
23 but I do have to go check with the Commission to see
24 if any of the Commissioners do want to sit in here.
25 Or if there is no further preliminary matters, then

1 we'll go off the record at this time.

2 Thank you.

3 (A RECESS WAS TAKEN.)

4 JUDGE HOPKINS: Okay. Let's go back on the
5 record.

6 Just as a postscript, I guess I should say
7 to the hearing is that we will perhaps frequently
8 refer to MMG, which is Mid-Missouri Group, not
9 technically a party, although we may be referring to
10 it as a shorthand way of referring to all of the
11 applicants here.

12 And in the list of issues. Order of witness
13 and order of cross-examination, the parties advised me
14 they want to go in the order of cross-examination for
15 the first witness to make opening statements; is that
16 correct?

17 MR. LANE: No.

18 MR. POSTON: It was the order of witnesses
19 from the top of the page down.

20 JUDGE HOPKINS: Oh. So you're wanting to go
21 MMG, STCG, OPC, Staff?

22 MR. POSTON: Correct.

23 JUDGE HOPKINS: All right. So you're
24 wanting to go sponsoring party down. So MMG would be
25 first.

1 Do you want to start? Do you have an
2 opening statement?

3 MR. JOHNSON: Yes, your Honor. Thank you
4 very much.

5 If it please the Commission, my name is
6 Craig Johnson. I represent the six phone companies
7 that did file this tariff. The other two members of
8 the Mid-Missouri Group that didn't have other tariff
9 rewrites pending and they thought they would wait
10 until the outcome in this case before they decided
11 whether or not to do something similarly.

12 The tariff that we filed is fairly simple
13 tariff language, but basically says that the access
14 tariff of these companies applies to all traffic that
15 is transmitted to them directly or indirectly until
16 and unless superseded by an improved interconnection
17 agreement pursuant to the 1996 Telecom Act.

18 Now, why did we file this tariff? We filed
19 it for two reasons. Basically we were not getting
20 paid by the wireless carriers who were originating
21 traffic that was transiting to us through primarily
22 Southwestern Bell, and we were not getting paid by the
23 alternate or competitive local exchange companies, the
24 CLECs as they've been referred to in this case.

25 These are new market entrants that have

1 interconnected with Southwestern Bell after the 1996
2 act, and as we read certain of the Commission's
3 directions, interconnection agreements, tariff orders,
4 these new entrants were not supposed to send us
5 traffic until they had an interconnection agreement in
6 place with us and approved by this Commission.

7 I could go back to the details specifically.
8 The first wireless interconnection agreement case that
9 I'm aware of was the one involving Ameritech and
10 Southwestern Bell, and there were -- there were
11 questions from the Commission to Ameritech in that
12 case that specifically told them and Ameritech
13 promised that they would not send traffic to these
14 independent small telephone companies such as my
15 clients without an interconnection agreement.

16 But Ameritech didn't honor that commitment
17 and they're sending us traffic.

18 There are similar provisions in the -- in
19 Southwestern Bell's wireless interconnection tariff,
20 and apparently there are similar provisions in the
21 other interconnection agreements of Southwestern Bell
22 wireless carriers saying that they won't send us this
23 traffic without an agreement, but nevertheless they
24 have.

25 The very first CLEC interconnection

1 agreement with Southwestern Bell that we're aware of
2 was DialUS. Again, there was provisions in that
3 agreement and the Commission focused on this in the
4 hearing where that agreement was approved, specifying
5 that the CLECs were not supposed to send this traffic
6 until they had an interconnection agreement with us.

7 Although both the wireless carriers and the
8 CLECs have interconnected with Southwestern Bell and
9 either voluntarily negotiated with or with the
10 assistance of binding arbitration sponsored by this
11 Commission, all of those entities do have
12 interconnection agreements with Southwestern Bell but
13 they still haven't come to us and gotten
14 interconnection agreements with us.

15 In defense of the wireless carriers, they
16 did approach us in late 1997 to start that process,
17 but they did not want an interconnection agreement
18 with us. They wanted a terminating agreement. They
19 did not want to physically interconnect with us. They
20 didn't -- they didn't understand that we didn't have
21 reciprocal traffic, that we had no traffic that we
22 were responsible for that came out of our exchange and
23 went to their customers, and they would not agree to
24 come and request physical interconnection which we
25 were suggesting to them would trigger all of the

1 things that reciprocal compensation was supposed to
2 cover.

3 But even though they made the attempt and we
4 didn't come to any agreement, nevertheless, they still
5 kept sending us this traffic. They haven't filed a
6 request to arbitrate or do anything else. They've
7 just been content to let this traffic come to us.

8 So we felt like after two or three years of
9 this happening, that the only way we could trigger the
10 issue again, get it back in front of the Commission
11 the fact that we're not getting paid is this tariff
12 proceeding. And to the extent we're successful in
13 doing that, well, I guess we'll get what we ask for.
14 But we -- we apparently have gotten some attention.

15 But here is where we, the small companies,
16 basically are now. Bell has been terminating this
17 wireless-originated traffic two ways: via
18 interconnection agreement or via tariff. For the
19 traffic that has come to us via tariff, from 1991
20 through February 5th of 1998, we settled that. We
21 hope we got paid everything we're due, but that was
22 water under the bridge.

23 Since February 1st of 1998 we've
24 been getting these cellular terminating usage
25 summary reports or CTUSRs. But these reports

1 don't distinguish traffic that comes to us
2 pursuant to tariff, Bell's tariff or pursuant to an
3 interconnection agreement.

4 So one of the problems that we have is we
5 don't know to what traffic that we're getting -- does
6 the indemnity obligation of the Commission imposed on
7 the tariff proceeding and to the extent that some of
8 the interconnection agreements with Southwestern Bell
9 has imposed an indemnity obligation, we can't discern
10 which traffic is subject to that indemnity obligation
11 and which is not.

12 Also, the CTUSRs, if you'll look at them,
13 all that we get is a report that says, here is how
14 many minutes terminated and this exchange and here is
15 the originating cellular carrier. It doesn't let us
16 distinguish interMTA calls, for which access is
17 universally agreed to be applicable, from intraMTA
18 calls, which is where the dispute in this case is.

19 The interconnection agreement traffic that
20 we're getting from Southwestern Bell, and I know there
21 has been an agreement with GTE and maybe one with
22 Sprint as well, but primarily we're focusing on the
23 traffic that is coming to us from Southwestern Bell
24 for purposes of this case. But the interconnection
25 agreement traffic that comes to us is the traffic we

1 weren't supposed to get at all until there was an
2 agreement negotiated with that originating cellular
3 carrier and us.

4 But the same problems with the CTUSR that
5 I just mentioned also apply to the interconnection
6 agreement traffic, because Bell just gives us a
7 summary of all terminating center traffic regardless
8 of whether it was transited to us via tariff or via
9 interconnection agreement.

10 With respect to CLEC traffic, we're not
11 getting any information at all. We've not got any
12 agreements from the CLECs. We haven't had any
13 requests to interconnect with the CLECs.

14 Southwestern Bell just recently gave us some
15 limited information, but when we asked Southwestern
16 Bell, this traffic that you're reporting to us is
17 traffic that the CLECs originating and terminating
18 to our exchange, is this information the CLEC is
19 reporting to you or is this information that you,
20 Southwestern Bell, are recording when they connect
21 with you and that you know independently what the
22 CLECs reports say is coming to us.

23 And Bell has said, this is just the CLECs
24 reporting to us. We don't record that information.
25 We don't record what goes to you. I'm not sure I

1 believe that and I intend to get into that in a little
2 bit in cross-examination with Southwestern Bell's
3 witness.

4 But that's where we stand right now. And
5 the fundamental point of disagreement between the
6 parties is whether a direct physical interconnection
7 is required. That's the reason why the wireless
8 carriers didn't come across with interconnection
9 agreements or didn't come across with requests to
10 arbitrate the attempts at interconnection. The basic
11 reason is they were getting free termination anyway so
12 they didn't need to.

13 But the reason the point of contention then
14 and the point of contention now in the prefiled
15 testimony is that they think that we have an
16 obligation to negotiate an agreement where we don't
17 directly interconnect.

18 And in our testimony and this is -- a lot
19 of this testimony is interpretation of law, so we're
20 getting in the area of legal -- applying the law to
21 this set of the facts, but we have pointed out to
22 you that when you look at TeleCom Act, Section 251,
23 when the Telecom Act talks about interconnection
24 agreements, there is very specific language that
25 talks about when the requesting carrier wants to

1 interconnect with the incumbent LEC at a point in the
2 incumbent LEC's facilities.

3 That's a direct physical interconnection.

4 When you look at reciprocal compensation,
5 the statute very clearly says, you establish
6 reciprocal compensation to exchange or mutually
7 exchange transport and termination. Now, when you
8 look at the FCC's definition of transport for purposes
9 of reciprocal compensation, the FCC's own rule says,
10 this is where two carriers directly interconnect.

11 And I will suggest to you that when you look
12 at the Act, you look at the law and you look at the
13 situation where, if I hold hands with Mr. Lane, I'm
14 interconnecting with Bell but I'm not interconnecting
15 with all of the other carriers that are holding hands
16 with him, that when you look at the reasons why you
17 have business relationships and billing relationships
18 and you exchange the information records necessary to
19 make compensation work, the Act and common sense and
20 the experience in the industry is that those
21 relationships are structured around the direct
22 physical interconnection.

23 If we had a direct physical interconnection,
24 we would have an opportunity to establish what is
25 going to be local, what the reciprocal rates are

1 going to be what the costs of the facilities are that
2 are involved in the interconnection, discuss the
3 facilities costs, the compensation costs, traffic
4 signaling, traffic measurement, all of the sorts of
5 things that are supposed to be done in a negotiation,
6 all of the things that have already been done by the
7 CLECs and the wireless carriers when they directly
8 connected with Bell and had a direct physical
9 interconnection agreement negotiated with Bell, those
10 are things that we're entitled to as well.

11 And until they do that it's our view that
12 access applies, because until they do that, they're
13 getting this traffic to us over an interexchange
14 carrier, and when you go back and look at the FCC's
15 discussion of reciprocal compensation, it's a lot of
16 discussion there.

17 It's not always as clear as you'd like
18 it to be, where they say access is intended when
19 three carriers collaborate, reciprocal compensation is
20 intended where two carriers collaborate, and it's our
21 point until they come and connect with us, we're still
22 in a three-carrier environment and access applies.

23 Thank you.

24 JUDGE HOPKINS: Thank you.

25 Next opening statement of STCG, Mr. England.

1 MR. ENGLAND: Thank you, Judge.

2 Good morning. May it please the Commission.

3 As you know, I represent the Small Telephone
4 Company Group. We've intervened in this case. While
5 we don't have any tariffs at issue, we do support the
6 tariff filing of the Alma, et al, companies.

7 One of the reasons we didn't file a tariff,
8 at least initially was, we believed that our tariff
9 applied, our access tariff that is, applied to all
10 traffic that was terminated to us via a third party.

11 Let me be more specific: We believe that
12 our access tariff applies when a wireless carrier
13 sends traffic to a third party who in turn sends it to
14 us for termination.

15 Now, that third party can be an LEC, and in
16 most cases that will be Southwestern Bell Telephone
17 Company and in some limited cases it might be the
18 other PTCs, Sprint and GTE, or it could be an
19 interexchange carrier such as AT&T or MCI.

20 We believed our access tariff applied in
21 that situation, in that indirect interconnection
22 situation that Mr. Johnson was talking to you about.
23 And the reason we believed it applied is because the
24 carrier with whom we directly connect, whether that is
25 Southwestern Bell or the interexchange carrier, the

1 only arrangement we have with them to connect today is
2 access. With Southwestern Bell it's the joint
3 provision of access; with AT&T and other exchange
4 carriers it's the intrastate access tariff or exchange
5 access.

6 Now, we did have an agreement with
7 Southwestern Bell in the PTC plan, but that goes away
8 if hasn't already for some of the companies on the
9 20th of this month. The only arrangement that we have
10 with Southwestern Bell to interconnect our facilities
11 is the joint provision of access as set forth in our
12 intrastate access tariffs and Southwestern Bell's
13 access tariffs.

14 And that we believe governs the termination
15 of this traffic.

16 Now, we do know that the Telecommunications
17 Act has told us that we have a responsibility, as a
18 matter of fact, all telecommunication carriers have a
19 responsibility to interconnect directly or indirectly.
20 The problem is, nobody in my opinion -- and I can't
21 find it anywhere -- has defined how we go about
22 connecting indirectly, and more importantly, what type
23 of compensation applies, what type of arrangements
24 apply in that situation.

25 The Telecommunications Act does not offer

1 any guidance on how carriers can indirectly
2 interconnect with another carrier's facilities, and
3 more importantly, does not begin to address the
4 compensation mechanisms that would apply in such an
5 indirect interconnection.

6 The Act also requires local exchange
7 companies to establish reciprocal compensation for the
8 transport and telecommunication -- excuse me -- the
9 transport and termination of telecommunications. And
10 this is where the wireless carriers and to some degree
11 the competitive local exchange carriers are coming
12 out.

13 They're saying, well, you've got a duty to
14 indirectly connect with us, and as long as we're
15 within a local calling scope and for the wireless
16 folks, they define local and the FCC has a major
17 trading area, an MTA, and that's a much larger area
18 than just a landline exchange or series of exchanges
19 that you might define as a local calling zone.

20 But the wireless carriers -- let me pick on
21 them for a minute -- say that as long as we originate
22 traffic and terminate it within that MTA, regardless
23 of whether we're interconnected with you directly or
24 indirectly, we're entitled to local reciprocal
25 compensation pursuant to the Act. Well, again, the

1 Act doesn't tell us how to apply local reciprocal
2 compensation.

3 But the FCC, pursuant to the Act's
4 directive, has given us some guidance, and the one
5 thing that the FCC has done that I think is critical
6 to understand is, it has maintained a distinction
7 between access on the one hand and reciprocal
8 compensation for transport and termination of traffic
9 on the other hand, and recognizes that both exist, and
10 that there are situations in which access applies and
11 there are situations in which reciprocal compensation
12 applies.

13 Let me read to you what the FCC said with
14 respect to these two concepts, because I think it's
15 very pertinent to this case and really squares with
16 the fact situation that we're talking about. It's at
17 paragraph 1034 of their August '96 interconnection
18 order.

19 The FCC said as follows: Access charges
20 were developed to address the situation in which
21 three carriers, typically the originating LEC, the IXC
22 and the terminating LEC, collaborate to complete a
23 long-distance call. As a general matter, in the
24 access charge regime, the long-distance caller pays
25 long-distance charges to the IXC and the IXC must pay

1 both LECs for originating and terminating access
2 service.

3 Now, by contrast, reciprocal compensation
4 for transport and termination of calls is intended for
5 a situation in which two carriers collaborate to
6 complete a local call. In this case, the local caller
7 pays charges to the originating carrier, and the
8 originating carrier must compensate the terminating
9 carrier for completing the call.

10 I skip down a paragraph and the FCC
11 concludes, we find that reciprocal compensation
12 provisions of Section 251B5 for transport and
13 termination of traffic do not apply to the transport
14 or termination of interstate or -- and I emphasize --
15 intrastate interexchange traffic, end quote.

16 We are dealing in this case with the
17 situation in which three carriers collaborate to
18 complete a call. And let me bring it down to some
19 examples.

20 Sprint PCS, who has a presence, let's say,
21 in the St. Louis market area or in the downtown
22 St. Louis area, to be even more specific, sends a call
23 to BPS Telephone Company, which is in the same MTA and
24 in the same LATA down here in the southeast part of
25 the state. That call is delivered to Southwestern

1 Bell somewhere in St. Louis. It trans at Southwestern
2 Bell's facilities and is ultimately handed over to the
3 BPS Telephone Company for completion to its customers
4 in one of those three exchanges.

5 Three parties: Sprint, Southwestern Bell,
6 BPS, have collaborated in completing that call. Now,
7 you've told us and there is an approved tariff that
8 says Bell is only offering a transiting service and
9 they're not responsible for paying us termination
10 compensation. We understand that. We don't
11 necessarily like it, but we've learned to live with
12 it.

13 But what you didn't tell us in that case was
14 that we couldn't charge the originating carrier, the
15 wireless carrier, access charges for that termination
16 service that we provide down our exchanges. And
17 that's what we seek to do in this case.

18 Let me turn the situation around a little
19 bit, the same -- the same theme, a little bit
20 different. What if Sprint PCS contracts with AT&T to
21 pick up that call in St. Louis and transport it to
22 BPS? I don't think anyone disagrees that AT&T will
23 report that minute as an interexchange minute, not as
24 a wireless minute, as an interexchange minute and pay
25 us our terminating access for those calls. So if

1 AT&T, MCI, any other interexchange carrier carries
2 that call from Sprint PCS down to BPS, we get access
3 on it.

4 The only time we don't seem to is when
5 Southwestern Bell carries it. And the function that
6 Southwestern Bell is providing is no different than
7 the function that an interexchange carrier is
8 providing and it's still three carriers. And we know
9 we can't charge Southwestern Bell for that, but we
10 ought to be able to charge the wireless carrier for
11 that. I think that's what you told us in that
12 wireless interconnection tariff case.

13 Another reason why local reciprocal
14 compensation doesn't apply, and this is where -- this
15 is the heart of the dispute we have with Sprint PCS
16 before the Federal Communications Commission.

17 Another reason it doesn't apply is because
18 there is no reciprocal compensation. Let's reverse
19 the call. Somebody in BPS wants to call a Sprint PCS
20 subscriber in St. Louis. In order to do that, our BPS
21 customer must dial one plus or dial around. It is an
22 interexchange call. That call is not carried by BPS
23 Telephone Company, because as you recall, BPS's
24 intraLATA dialing parity plan positioned them as
25 solely an exchange access provider.

1 All traffic interexchange leaving BPS is
2 carried by an interexchange carrier. So when that BPS
3 customer dials one plus to get that Sprint PCS
4 customer in St. Louis, that call is picked up by their
5 one-plus provider, if that's MCI, if that is BPS long
6 distance, an affiliate but separate company, if that
7 is Sprint, whoever is offering one-plus interexchange
8 service in BPS will carry that call, terminate it to
9 Sprint PCS and they will pay Sprint compensation.

10 Now, not all interexchange carriers I'm told
11 may be paying Sprint compensation to terminate that
12 call, but we believe that is their obligation. And if
13 Sprint PCS isn't getting paid for that call, their
14 beef is with the interexchange carrier, not with BPS.
15 BPS is the local exchange company providing only local
16 service. When it transmits a call or its customer
17 dials one plus or dials around to get to the St. Louis
18 area, it's no longer BPS's call. BPS has no
19 obligation to pay Sprint PCS reciprocal compensation.
20 If they did, here is what would happen.

21 If you're going to make BPS responsible for
22 that call, BPS ought to be able to strip that call
23 from the one-plus carrier and have the ability to
24 route it the way it thinks is appropriate in the most
25 efficient fashion, and it ought to be able to bill its

1 end-user customer for that call so it will have the
2 necessary monies to pay the transiting carrier and to
3 pay the terminating carrier.

4 Now, the problem you have with this is BPS
5 isn't in the toll business, so it's going to have to
6 file a certificate for interexchange authority to
7 carry those kinds of calls. BPS doesn't have a
8 tariff. It's going to have to tariff that, and most
9 importantly, when you allow BPS to strip that call,
10 have you just violated the customer's choice?

11 The customer is going to call you and say,
12 hey, I thought AT-- well, that's not a good example.
13 I thought MCI was going to handle all of my intraLATA
14 one-plus calling and now BPS is pulling it off and
15 billing me for it. I think I've got a better deal
16 with MCI, and BPS is saying we've got to because we've
17 got to get the revenue from you in order to pay the
18 intermediate carrier and the terminating carrier.

19 I don't think that's the way the FCC
20 intended for this thing to shake out, and I certainly
21 don't think that's the way you-all intended for it to
22 shake out. There is no reciprocal compensation going
23 from our exchanges where we are simply exchange access
24 providers back to St. Louis or back to Kansas City or
25 back to Springfield, depending upon the area you're

1 located in.

2 That's the problem here. There is no
3 reciprocal traffic. Reciprocal compensation just does
4 not work in a three-way arrangement. And we think the
5 FCC was pretty clear when it said access charges are
6 supposed to apply in a scheme where three carriers
7 collaborate to complete a call.

8 Thank you.

9 JUDGE HOPKINS: Thank you, Mr. England.

10 Now for the Office of Public Counsel,
11 Mr. Dandino?

12 MR. DANDINO: Thank you, your Honor.

13 May it please the Commission, Public Counsel
14 usually doesn't get involved in the wireless access
15 issues, but we thought this time we did want to weigh
16 in just to make comments on some public policy
17 considerations we'd like the Commission to look at.

18 Many times in this room and in our
19 discussions in cases we talk about subsidies and what
20 services are being subsidized and by whom. And many
21 services that have been favored by consumers have
22 ended because of -- in the interest of trying to
23 eliminate some subsidies.

24 Well, if someone is not paying for the use
25 of a network, they're being subsidized. And I think

1 that it is incumbent upon this Commission to make sure
2 that every carrier, and you can direct that against
3 every customer therefore, does contribute to the joint
4 and common costs of -- of the network. And we think
5 that's important. We don't want the wireless carriers
6 to not pay their fair share.

7 Now, also looking at why the access tariff,
8 and the one thing we want to look at is, obviously
9 there is a gap in the compensation arrangement, or in
10 other words, we wouldn't be here. And we think that
11 it would be a wise just public policy action for the
12 Commission to adopt this access, because if you boil
13 everything down and there is no provision covering
14 this type of traffic, nothing specific about it, there
15 could be a way for someone to deny any liability for
16 compensation.

17 I kind of look at it in terms of in a
18 municipality, they post a sign, 20 miles an hour
19 unless otherwise provided or otherwise posted. That's
20 the first thing is that here is an access charge
21 unless otherwise exempted by some provision, like a
22 reciprocal compensation agreement or interconnection
23 agreement or an arbitration.

24 We think this would be an appropriate way of
25 handling this. Most important, I think, this whole

1 case is important, that it presents to this Commission
2 some of the issues that are key for the future of the
3 telecommunications industry in Missouri that must be
4 resolved in conjunction with the FCC.

5 Thank you.

6 JUDGE HOPKINS: Thank you, Mr. Dandino.

7 Staff, Mr. Poston?

8 MR. POSTON: Thank you, your Honor.

9 May it please the Commission, this case
10 involves questions and issues that are primarily
11 legal.

12 The first issue listed in the issue list
13 constructed by the parties asks the question: Is
14 the tariff proposed by Mid-Missouri Group lawful as
15 applied to wireless or CLEC traffic?

16 My first response to that question is that
17 it should be changed to read, is the tariff proposed
18 by the Mid-Missouri Group lawful as applied to
19 wireless and CLEC traffic. The tariff does not
20 distinguish between different types of traffic. In
21 fact, it clearly states that it applies to all traffic
22 regardless of type or origin, directly or indirectly.

23 As written, it would apply to both inter
24 and intraMTA traffic, wireless and CLEC traffic.
25 This broad language is contrary to the FCC's

1 interconnection order and is not consistent with the
2 findings of the Cole County Circuit Court and the
3 findings of this Commission in past cases, as the
4 Mid-Missouri Group would like this Commission to
5 believe.

6 There are several defects in the positions
7 offered in support of the proposed tariff. The first
8 flaw is the Mid-Missouri Group's interpretation of the
9 FCC's interconnection order. There is no ambiguity in
10 the FCC's order where it states, and I quote, traffic
11 to or from a CMRS network that originates and
12 terminates within the same MTA is subject to transport
13 and termination rates rather than interstate and
14 intrastate access charges.

15 Please note that it doesn't say only cases
16 of direct interconnection. I'll repeat. It says
17 traffic to or from a CMRS network that originates and
18 terminates within the same MTA is subject to transport
19 and termination rates rather than interstate and
20 intrastate access charges.

21 Yet the proposed tariff will apply access
22 charges to intraMTA wireless traffic, contrary to the
23 FCC order.

24 The Mid-Missouri Group cannot deny, nor has
25 it tried to deny that the proposed tariff language

1 will apply to both inter and intraMTA traffic.
2 Different types of traffic are not distinguished in
3 the proposed tariff. This application of access
4 charges is contrary to the FCC's order, and this alone
5 would be reason enough to reject the tariff.

6 The Mid-Missouri Group also makes the claim
7 that the decision of the Cole County Circuit Court in
8 CV190-178 supports their tariff. This interpretation
9 of Judge Brown's decision is misleading. One, the
10 circuit court never determined whether secondary
11 carriers could apply their access tariffs to wireless
12 traffic. What the court held is that the Commission's
13 decision did not foreclose an application of access
14 rates to interMTA traffic.

15 The court did not consider the lawfulness of
16 applying access tariffs to wireless traffic intra or
17 interMTA. It simply interpreted the Commission's
18 decision and its limitations.

19 Secondly, the court's decision is addressing
20 interMTA wireless traffic, and it says nothing
21 regarding the lawfulness of applying access rates to
22 intraMTA wireless traffic. Therefore, this case does
23 not apply.

24 Mr. Stowell states in his surrebuttal
25 testimony that it was not the Mid-Missouri Group's

1 intent to have access tariffs applying to all
2 qualifying MCA traffic. That statement is contrary to
3 the language of the tariff that is to be applied to
4 all traffic, regardless of type or origin. If the
5 language of the tariff includes a type of traffic that
6 should not be covered, this is the clear indication
7 that the tariff is squat.

8 The Mid-Missouri Group company should not be
9 allowed to apply their switched access rates to MCA or
10 EAS traffic, and Mr. Stowell's statement concerning
11 the intent of the tariff is an acknowledgement that
12 this traffic should be exempted.

13 Yet the tariff before the Commission today
14 would apply to any existing MCA and EAS traffic. What
15 should the Commission do? As written, the tariff
16 should be rejected for many reasons, including those I
17 just stated. Staff, however, is not opposed to the
18 Mid-Missouri Group companies having tariffs that
19 address a termination of intraMTA wireless traffic.

20 Accordingly, Staff Witness Anthony Clark
21 offers several alternatives that this Commission can
22 consider. The first alternative is to reject the
23 tariffs and allow the Mid-Missouri Group to file
24 revised tariffs with rates for termination of intraMTA
25 wireless traffic consistent with Mr. Clark's

1 testimony.

2 Second, the Staff proposes that generic
3 default rates be established, and Mr. Clark offers
4 four different options for setting the default rates.
5 These options are all within the Commission's power to
6 authorize, and they offer a sensible approach of
7 resolving the underlying problem that prompted this
8 proposed tariff.

9 And regarding the issue of CLEC traffic,
10 Staff recommends that these issues be addressed after
11 the resolution of the MCA case.

12 Thank you.

13 JUDGE HOPKINS: Thank you, Mr. Poston.

14 AT&T, Mr. DeFord?

15 MR. DeFORD: Thank you, your Honor.

16 May it please the Commission, I'm here today
17 representing AT&T Wireless Service and AT&T. In many
18 respects, this is an unusual case, and for that reason
19 I think I'm going to make a rather unusual suggestion.
20 I think if pressed nearly all of the parties would
21 agree that there are few, if any, factual disputes at
22 issue. Practically all of the testimony is devoted to
23 what amounts to legal argument.

24 I would suggest that since none of the
25 witnesses including my own, and I didn't know I was

1 going to do this so I apologize, are truly legal
2 experts. I would suggest that you should take what
3 transpires here over the next couple of days for what
4 it's worth. I think your real focus should probably
5 be on the post-hearing briefs and that, I think, is
6 where you'll see the legal issues fully analyzed and
7 represented.

8 The key legal issue, of course, as I think
9 Mr. Johnson and Mr. England and those who preceded me
10 have indicated, is whether the proposed tariff is
11 lawful as applied to wireless and CLEC traffic.

12 We believe it's not. We think the '96 Act
13 and the FCC regulations have mandated cost-based
14 reciprocal compensation for all local traffic. We
15 believe that local traffic for CLECs should be treated
16 and defined the same for ILECs the same as it is for
17 CLECs.

18 Wireless providers are a different animal
19 entirely. For pricing and interconnection purposes,
20 all calls within an MTA are classified as local calls.
21 We believe the Commission and the ILECs should price
22 termination of this traffic appropriately and,
23 frankly, we don't think that terminating access is in
24 any respect appropriate.

25 With that, I hope we can keep this short and

1 be out of here well before the two days that we've
2 scheduled.

3 JUDGE HOPKINS: Thank you, Mr. DeFord.

4 Sprint PCS, Ms. Gardner?

5 MS. GARDNER: Thank you.

6 In this case I represent Sprint PCS, one of
7 those wireless carriers that Mr. England picked on in
8 his opening statements.

9 This case is not nearly as complicated
10 or far-reaching as the small ILECs would have you
11 believe. It's really very simple.

12 Should this tariff be approved? Is this
13 tariff lawful?

14 The answer isn't grounded in what the small
15 ILECs wish it to be or believe it to be or desire it
16 to be, but in the law in the FCC orders and rules
17 interpreting the law. On this I agree with Staff and
18 agree with Mr. DeFord. This is largely, if not
19 completely, a legal issue. And most witnesses, as
20 Mr. DeFord said, offer nothing but legal opinions by
21 nonlawyers.

22 The FCC has made this determination for us a
23 simple one. And as Mr. England quoted from the first
24 report and order, so can I, as Mr. Poston did.

25 And this is at paragraph 1036 and it's also

1 elsewhere as well. Accordingly traffic to or from the
2 CMRS network that originates and terminates within the
3 same MTA is subject to transport and termination rates
4 under Section 251B5 rather than interstate and
5 intrastate access charges.

6 If this tariff was limited in scope to
7 interMTA or between MTA calling, I'm not sure we'd be
8 here today, but it's not. In fact, it appears very
9 broad, and it's clearly intended to apply to intraMTA,
10 within the same MTA calling, which the FCC has said
11 it's not subject to access charges under -- under
12 their rules.

13 But it also isn't about companies refusing
14 to pay for termination of traffic. Sprint PCS Witness
15 Propst will testify that Sprint PCS has repeatedly
16 indicated a willingness to enter into a reciprocal
17 compensation agreement that would provide, among
18 others things, the Mid-Missouri Group company
19 appropriate compensation for the termination of
20 wireless originating traffic. These efforts have not
21 been successful with most of the companies in this
22 case.

23 We continue to stand willing to enter into
24 appropriate local reciprocal compensation rates. Now,
25 whether BPS has traffic that terminates to us, Sprint

1 PCS or not, that is a business decision of theirs.

2 And as you heard Mr. England, that was their business
3 plan, how to get that traffic to us.

4 Instead, the witnesses for MMG and STCG seem
5 to draw a distinction between direct physical
6 interconnection and indirect connection. On this we
7 agree with Mr. England, whether Sprint -- if there is
8 an obligation under Section 251A to interconnect
9 directly and indirectly.

10 Whether Sprint PCS directly connects through
11 its own facilities or pays another carrier to
12 transport that traffic for us, the traffic remains
13 ours, and we have every right under the law to
14 interconnect in that indirect fashion.

15 Bell's currently approved wireless
16 interconnection tariff offers only a transiting factor
17 -- function. Bell's interconnection agreements offer
18 only a transiting function. The traffic remains ours.
19 Paying Bell to transport the traffic for us does not
20 make Bell an IXC subject to access charges, nor does
21 it remove this traffic from what is considered local
22 traffic for purposes of wireless -- wireless traffic.

23 We see no ambiguity on this. But we
24 understand that STCG and MMG members do. Given that
25 impasse, Sprint PCS filed an informal complaint with

1 the FCC posing the very questions that seem to be
2 asserted here.

3 Where intraMTA traffic is exchanged between
4 a LEC and a CMRS carrier or a CMRS carrier and LEC
5 through a third-party network, what are the
6 compensation obligations of the parties? Do local
7 reciprocal compensation charges apply or do access
8 charges apply? Does the status of the third party
9 through which the traffic is exchanged determine the
10 compensation obligations?

11 Those are the questions that we have posed
12 to the FCC.

13 And if there is any doubt on what the law
14 means, we would expect the FCC to clarify, to provide
15 the guidance that the Commission believed necessary in
16 TT-97-254 where the Commission said the parties have
17 not cited to any FCC order or rule which addresses the
18 question, the question of third-party carrier, nor
19 have the parties provided the Commission with legal
20 support for the proposition that it has jurisdiction
21 to initially decide the issue in the absence of an FCC
22 directive to the matter. We're trying to get that FCC
23 directive.

24 We see no doubt, however. We think the law
25 is very clear that access charges cannot be applied to

1 intraMTA local wireless traffic. The tariff must be
2 rejected. Compensation should be established through
3 a reciprocal compensation agreement at the rates
4 allowed under the law, not a unilateral, noncost-based
5 tariff filing.

6 Thank you.

7 JUDGE HOPKINS: Thank you, Ms. Gardner.

8 Southwestern Bell Telephone, Mr. Lane?

9 MR. LANE: Thank you, your Honor.

10 My name is Paul Lane and I represent
11 Southwestern Bell Telephone Company in this case.
12 Initially we didn't think we were a major participant
13 in the case. We believe that the tariff that was
14 filed by the Mid-Missouri Group companies was directed
15 towards the wireless carriers and towards the CLECs.

16 But we intervened because we were concerned
17 that the breadth of the language was such that it
18 could be interpreted to apply to us. If you look at
19 the tariff, it says it applies to all traffic
20 regardless of type or origin transmitted to or from
21 the facilities, the telephone company, by any other
22 carrier directly or indirectly.

23 Our concern was, it appears to apply to us
24 because we're a direct interconnect company, and we'd
25 be responsible for the wireless and CLEC traffic, so

1 we filed rebuttal testimony to make that clear. And
2 we thought it was unintentional on the part of the
3 Mid-Missouri Group companies that the tariff applied
4 to us or appeared to, because it would be running
5 contrary to all of decisions that this Commission has
6 recently made. If it was intended to apply to us, it
7 would be contrary to the PTC plan case, it would be
8 contrary to the CLEC interconnection agreements, and
9 it would be contrary to our wireless tariff case with
10 the Commission.

11 But as the surrebuttal testimony was filed,
12 it became apparent that at least as to the MMG
13 companies, that they appear to want to hold
14 Southwestern Bell liable for all of the traffic that
15 terminates over our network in a transiting fashion.

16 Mr. Stowell's rebuttal testimony on page 17
17 says that in their view the result would be that all
18 carriers on whose facilities traffic terminating from
19 other carriers would look to the carrier directly
20 physically interconnecting with them for compensation
21 unless they voluntarily agree to a termination
22 agreement with an indirectly interconnected carrier.
23 So it appears that they want Southwestern Bell when we
24 serve the transiting function to be responsible for
25 all of that traffic.

1 And when I say transiting function, there is
2 often three carriers that are involved in a call: you
3 have an originating company whose company places the
4 call, you have a terminating company that is the one
5 whose customer is called, and then the company in the
6 middle is the transiting company that carries it from
7 the network of the originating carrier to the network
8 of the terminating carrier.

9 The primary problem with the tariff as they
10 proposed it is that it's extremely overbroad. It
11 should be revised to make it clear that it only
12 applies to the originating carrier and not to the
13 transiting carrier.

14 This very issue was tried in the PTC case,
15 where the Mid-Missouri Group and the Small Telephone
16 Company group advanced the concept of what they called
17 the residual billing scheme, which meant that the
18 carrier that presented the traffic to them for
19 termination was liable for all of the minutes that
20 were given, regardless of who originated the call.

21 The Commission in the PTC plan case in
22 June rejected that very thing. It found that that
23 proposal was fundamentally inequitable because it
24 would require the transiting carrier, Southwestern
25 Bell, to be responsible for traffic for which

1 compensation was not due, including MCA traffic,
2 interstate intraLATA LEC traffic, Feature Group A
3 traffic and other transiting traffic.

4 The Commission also rejected it in the
5 PTC case because there had been insufficient
6 evidence that they were being underpaid and this
7 would guarantee overpayment. Both of those things
8 that were true in June are still true today as applied
9 to the transiting carrier. If this tariff by its
10 terms would apply to MCA traffic, it would apply to
11 Feature Group A traffic, appears to apply to all
12 CLEC-originating traffic and to interstate intraLATA
13 LEC-originated traffic.

14 It should be rejected on that basis, still
15 fundamentally inequitable.

16 In addition, there is still no evidence that
17 the carriers are being substantially underpaid for
18 this traffic. The only evidence that we see in the
19 case is in Mr. Stowell's surrebuttal testimony where
20 he says that they're not being paid by AT&T some 3 to
21 \$600 a month. That's all we've seen in terms of the
22 claim of underpayment.

23 In addition to making it clear that the
24 tariff should only be permitted to apply to the
25 originating carrier of a call, what else should the

1 Commission do?

2 Well, there is still two types of traffic to
3 talk about: CLEC traffic and wireless-originated
4 traffic. With regard to CLEC-originated traffic, I
5 don't think there is any need for you to do anything
6 at this stage. CLEC traffic can be either intraLATA
7 toll traffic or possibly local traffic.

8 If it is to the extent that the CLEC
9 originates intraLATA toll traffic, their tariff
10 already applies to that and calls for access to be
11 charged not to the transiting carrier, Southwestern
12 Bell, if we're involved in it, but directly to the
13 CLEC, just as interexchange calls are handled today.
14 And that should be done and there is no need to have a
15 tariff change for that.

16 I don't know whether there is any CLEC local
17 traffic. No CLEC operates directly in any of the
18 Mid-Missouri Group company exchanges, so there is none
19 in that respect. The only possible local traffic is
20 within an MCA that is originated by a CLEC might come
21 through our network and terminate to one of the
22 Mid-Missouri Group companies.

23 Only MoKan Dial and Choctow of the companies
24 that have filed companies are even involved in an MCA,
25 and there has been no determination by this Commission

1 whether that traffic is local or whether it's
2 interexchange. That decision, I think, is pending
3 before the Commission in the MCA docket that has been
4 established, and I think it's appropriately dealt with
5 there and not here. So I would reject the tariff and
6 not encourage them to file it.

7 But if either the CLEC or the Mid-Missouri
8 Group companies aren't satisfied to wait until the
9 MCA docket is decided, then for that traffic on CLEC
10 traffic, they could engage in interconnection
11 negotiations and bring any agreement to the Commission
12 or bring it to the Commission for arbitration.

13 The last area of traffic is wireless
14 traffic. The issue of Southwestern Bell's
15 responsibility for wireless traffic was addressed in
16 TT-97-524, which was decided in December of 1997.

17 In that case the Commission clearly approved
18 a Southwestern Bell tariff that allowed us to offer a
19 transiting function only. And it contemplated that
20 there would be interconnection negotiations and
21 agreements reached between wireless carriers and with
22 the independent companies like the Mid-Missouri Group.
23 We would be only secondarily liable and only if
24 certain conditions were met.

25 But in this case Mid-Missouri Group,

1 apparently unlike the Small Telephone Company Group,
2 seeks to hold us responsible for wireless-originated
3 traffic at the rate of \$.06 to \$.12 a minute,
4 depending upon which company is involved.

5 We recover typically less than \$.01 a
6 minute on that traffic for the transiting function
7 from the wireless carriers, and it's designed only to
8 cover our costs to provide the transiting function.
9 We don't collect any monies from them to pay for the
10 terminating function that they want to apply.

11 I think the Commission ought to look in this
12 case to see whether the carriers have made -- whether
13 the Mid-Missouri Group companies have made the efforts
14 that you looked for them to make in the wireless
15 tariff case with the wireless carriers. You encourage
16 them to bill the carriers for the calls, you encourage
17 them to undertake good faith efforts to collect. They
18 haven't done either one.

19 We've provided CTUSRs to them since February
20 of 1998. My understanding from the facts in this case
21 is that no bills were sent out by any MMG Company to
22 any wireless carrier until April, July, August of
23 1999, just in connection with this tariff case.

24 They haven't made any efforts to collect
25 those monies. And when they've been asked by the

1 wireless carriers to interconnect with them, they're
2 very careful to say, I don't want to interconnect with
3 you, I don't want to follow what the Commission said
4 about indirect connection. If you want an
5 interconnection agreement with me, you have to
6 physically interconnect with me.

7 And that's what they've consistently said to
8 the wireless carriers and that's what they've
9 consistently said in their testimony today. That's
10 directly contrary to what the Commission was
11 attempting to accomplish in our wireless tariff, where
12 it acknowledged that we would serve as a transiting
13 carrier and wanted to bring in those wireless carriers
14 and the Mid-Missouri companies to negotiate
15 agreements.

16 It's apparent why they want to do this, why
17 they don't want to reach an interconnection agreement
18 with the wireless carriers, because they would no
19 longer be able to try to hold us responsible for the
20 call. And the Commission made that clear in the
21 wireless tariff case. And that's why they don't want
22 to reach the agreements with these carriers today.

23 They now tell you that the
24 Telecommunications Act doesn't permit them to request
25 interconnection agreements with the wireless carriers

1 on an indirect basis, but they've cited no FCC
2 decision. They've cited no State Commission decision
3 which has found that to be true, and I'm not aware of
4 any which finds that to be true.

5 And it's not what the wireless carriers
6 say. They all agree universally that yes, the
7 Commission does have jurisdiction over this to handle
8 interconnection agreements on an indirect basis and
9 they're willing to enter into them and the Commission
10 can arbitrate it if agreements aren't reached.

11 It's strange that the companies who
12 presumably want to be paid for terminating the traffic
13 don't want to and are trying to find reasons why the
14 Commission -- they don't have to have interconnection
15 negotiations and why they don't have to bring the
16 matter to the Commission. That should tell you what
17 their motivation is in this case, and that is to
18 collect access charges and nothing else.

19 Let's assume for a minute that they're
20 right, that the Telecom Act itself doesn't directly
21 address indirect interconnections with them. I don't
22 agree with that, but let's assume that it's true.

23 Does that mean that this Commission is
24 still without jurisdiction to handle compensation
25 arrangements between wireless carriers and CLECs? And

1 the answer to that is clearly no.

2 Wireless carriers have been operated since
3 1984, long before the 1996 Act was passed, and the FCC
4 has consistently said from 1986 onward that the State
5 Commissions have the authority to handle compensation
6 arrangements between wireless-originated traffic and
7 LECs for termination, and they've said that
8 consistently.

9 And the one thing they said beyond that is
10 don't apply access to it. You have the jurisdiction,
11 you can handle compensation, but you can't apply
12 access charges to it. So even if they were right,
13 that the Telecom Act doesn't apply to it, the '96
14 Act, you still have the jurisdiction to handle
15 interconnection negotiations between wireless carriers
16 and between the Mid-Missouri Group companies.

17 What should you do here? I think you should
18 reject the tariff, but if you want to go farther,
19 obviously that's your choice. I think you should make
20 it clear that they can't hold the transiting carrier
21 responsible for any traffic. You should make it clear
22 that you do have the authority to handle arbitration
23 if necessary between the wireless carriers that
24 originate calls and the Mid-Missouri Group companies.

25 You could also consider, like Staff has

1 proposed, recommending a wireless tariff that you
2 would approve. And there is two ways to look at that.
3 You could try to peg a rate that you think would
4 result from interconnection negotiations and approve
5 that or you could set a rate either above or below
6 what you think the interconnection agreements might
7 result in in order to encourage one side or the other
8 to come in and actually get involved and do those
9 negotiations.

10 But what you shouldn't do in this case is to
11 approve a tariff that attempts to reverse all of this
12 Commission's decisions concerning transiting traffic
13 on the PTC plan case, in our wireless tariff case and
14 from all of the CLEC and interconnection agreements
15 that we have.

16 Thank you.

17 JUDGE HOPKINS: Thank you, Mr. Lane.

18 Southwestern Bell wireless, Ms. Fischer?

19 MS. FISCHER: Thank you, your Honor.

20 May it please the Commission, at the risk of
21 sounding redundant, the issue raised by the MMG
22 Company's proposed revision to their access tariffs is
23 a legal issue.

24 From my perspective as a representative of a
25 wireless carrier, this issue is, is it permissible

1 under the Federal Telecommunications Act for local
2 exchange carriers to apply their access tariffs to all
3 traffic exchanged with a wireless carrier? And the
4 answer simply and clearly is no.

5 The FCC has addressed this very question.
6 Interpreting the Federal Act, Section 251B5, the FCC
7 determined that local exchange carriers have the duty
8 to establish reciprocal compensation arrangements with
9 respect to local traffic originated by or terminating
10 to any telecommunications carrier, and that includes
11 wireless carriers.

12 The FCC said further that the metropolitan
13 trading area or MTA is the local service area for
14 wireless traffic for purposes of reciprocal
15 compensation.

16 Finally, the FCC exclusively concluded that
17 traffic between an incumbent local exchange carrier
18 and a wireless network that originates and terminates
19 within the same MTA is subject to a reciprocal
20 compensation arrangement and not subject to interstate
21 or intrastate access charges.

22 So clearly under Federal law, the tariff
23 change filed by the MMG companies is unlawful and must
24 be rejected.

25 Thank you.

1 JUDGE HOPKINS: Thank you, ma'am.

2 All right. The MMG case in chief, first
3 witness please. Mr. Stowell?

4 (Witness sworn/affirmed.)

5 DONALD STOWELL testified as follows:

6 JUDGE HOPKINS: Mr. Stowell, please be
7 seated and spell your first and last name for the
8 reporter.

9 Donald, D-o-n-a-l-d, last name Stowell,
10 S-t-o-w-e-l-l.

11 JUDGE HOPKINS: Mr. Johnson, you may
12 proceed.

13 DIRECT EXAMINATION BY MR. JOHNSON:

14 Q. Would you state the name you just spelled
15 for the record, please?

16 A. Donald Stowell.

17 Q. And give us your address, Mr. Stowell.

18 A. 112 South Broadway, Louisburg, Kansas.

19 Q. And are you testifying on behalf of the six
20 MMG companies that have filed tariffs that have been
21 consolidated in this case?

22 A. Yes, I am.

23 Q. Are you the same Don Stowell who has caused
24 to be prepared and filed questions and answers which
25 are your direct testimony which I believe has been

1 marked as Exhibit No. 1, as well as your surrebuttal
2 testimony which has been marked as Exhibit No. 2?

3 A. Yes.

4 Q. And do we have changes to make on Exhibit
5 No. 2?

6 A. Yes, I believe we do.

7 Q. Would you point that out to us, please?
8 What page is that on?

9 A. I believe it's at page 5, line 1.

10 Q. And would you tell us what the change is?

11 A. Strike the last part of that sentence.
12 After the end quote, local stays, and then the comma
13 and then the rest of it. There is a period after
14 that, and then only Southwest-- SWBT, comma, the
15 wireless should be stricken.

16 Q. Okay.

17 JUDGE HOPKINS: All right. Just a minute.
18 That is page 5?

19 MR. JOHNSON: Page 5, line 1 of the
20 surrebuttal.

21 JUDGE HOPKINS: The surrebuttal.

22 MR. JOHNSON: I'm sorry. Surrebuttal.
23 Exhibit No. 2.

24 JUDGE HOPKINS: That's Exhibit No. 2,
25 page 5, line 1.

1 MR. JOHNSON: Yes, sir. Strike the words
2 only SWBT, the wireless.

3 BY MR. JOHNSON:

4 Q. With that change, Mr. Stowell, if I were to
5 ask you the same questions that are contained in
6 Exhibit 1 and 2 as currently are there, would your
7 answers be the same?

8 A. Yes.

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

11 A. Yes, they are.

12 Q. Your Honor, I would offer Exhibits 1 and
13 2 and tender the witness for any cross-examination.

14 JUDGE HOPKINS: Okay.

15 Any objections to Exhibits 1 and 2, Donald
16 Stowell direct and Donald Stowell surrebuttal? Any
17 objection to either one of those being entered into
18 evidence?

19 (No response.)

20 JUDGE HOPKINS: Hearing no objection, I'll
21 receive them both into evidence.

22 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO
23 EVIDENCE.)

24 JUDGE HOPKINS: Cross-examination?

25 STCG? Let's skip down to Staff. We'll go

1 back to STCG.

2 MR. DANDINO: I believe -- I think Public
3 Counsel was in there too.

4 JUDGE HOPKINS: Sorry.

5 MR. DANDINO: After Small Telephone Group.

6 JUDGE HOPKINS: Oh, I'm sorry. Staff was
7 after.

8 MR. DANDINO: Excuse me.

9 JUDGE HOPKINS: Do you want to go ahead with
10 your cross?

11 MS. KARDIS: Thank you, your Honor.

12 CROSS-EXAMINATION BY MS. KARDIS:

13 Q. Good morning, Mr. Stowell.

14 A. Good morning.

15 Q. I have several questions for you today. In
16 response to Mr. Clark's proposal to establish generic
17 reciprocal compensation rates, isn't it true that you
18 state on page 20 of your surrebuttal testimony that if
19 such rates were tariffed, there is no indication the
20 CLECs or wireless carriers would pay them?

21 A. Yes.

22 Q. Okay. Now, if you would please turn to the
23 letter from Aerial Communications which you attached
24 to the back of your surrebuttal testimony.

25 Would you please begin reading aloud on the

1 second line on the third paragraph, starting with "the
2 payment mechanism," and read through the words
3 "termination rates" on line 6 of that third paragraph.

4 A. The payment mechanism could be either
5 through a tariff or terminating local CMRS traffic
6 filed by MoKan Dial Inc. and approved by the State
7 Public Utility Commission or through a reciprocal
8 compensation contract. If MoKan Dial Inc. has a
9 tariff for terminating local CMRS telecommunications
10 traffic on file with the PUC, please provide Aerial
11 with a copy of the applicable termination rates.

12 I'm sorry. Is that as far as you --

13 Q. Yes. That's far enough. But isn't it also
14 true that Aerial Communications states in the same
15 letter that unless an applicable PUC-approved local
16 termination tariff exists for MoKan Dial, Aerial does
17 not intend to pay the transport and termination
18 charges? That would be the last sentence on the first
19 page.

20 A. Yes, that's -- they state that, yes.

21 Q. Okay. So isn't it true, Mr. Stowell, that
22 this letter from Aerial Communications is at least one
23 indication that wireless carriers would, in fact, pay
24 tariff rates if such rates were established?

25 A. Would you state that again?

1 Q. Isn't it true that this letter is one
2 indication at least that wireless carriers would, in
3 fact, pay tariffed rates if such rates were
4 established?

5 A. That's -- that's what they indicate.

6 Q. Okay. Thank you.

7 Also in response to Mr. Clark's proposal to
8 establish generic compensation rates, isn't it true
9 that you state on page 20 of your surrebuttal
10 testimony that you would be concerned that the rate
11 differentiation would create an arbitrage situation?

12 A. Yes, that's what we state.

13 Q. Okay. Aren't there other situations already
14 existing today where the opportunities for arbitrage
15 would exist?

16 A. There possibly are in -- in our particular
17 case, in our connection with the metro calling area,
18 yes. That's not necessarily true for all of the
19 parties that have filed tariffs, but it and some other
20 situations could possibly be there, yes.

21 Q. Thank you. Next I'd like to direct your
22 attention to page 4 of your direct testimony. Would
23 you please read the proposed tariff language starting
24 at line 17?

25 A. Applicability of this tariff. The

1 provisions of this tariff apply to all traffic
2 regardless of type or origin transmitted to or from
3 the facilities of the telephone company by any other
4 carrier directly or indirectly until and unless
5 superseded by an agreement approved pursuant to the
6 provisions of 47 USC 252 as may be amended.

7 Q. Okay. Isn't it true that you state on
8 page 18 of your surrebuttal testimony that it was not
9 your intent to have access tariffs apply to qualifying
10 MCA traffic?

11 A. Yes. And I might just explain to you that
12 all of the participants in MCA at the -- the go-down
13 of that order, that plan that was ordered by the
14 Commission, were also ordered to tariff MCA, and that
15 part of the calling scope in my opinion is covered in
16 our MCA tariff file.

17 Q. But won't the tariff language as proposed do
18 precisely that if approved by the Commission, apply to
19 qualifying MCA traffic?

20 A. Not in my opinion. That was not our intent
21 and it would not. The issue now is that there are
22 other players that are, in fact, sending traffic that
23 I'm terminating and receiving no compensation for,
24 even though there are other parties that may be being
25 compensated, and, in fact, I believe are being

1 compensated, whether you call it transiting or
2 whatever. There is compensation going on and we're
3 not a recipient of any of that.

4 MS. KARDIS: No further questions. Thank
5 you.

6 JUDGE HOPKINS: Okay.

7 STCG?

8 MR. ENGLAND: I apologize. I meant to tell
9 Mr. Johnson to tell you that I have no questions of
10 this witness.

11 JUDGE HOPKINS: Okay.

12 MR. ENGLAND: Thank you.

13 JUDGE HOPKINS: OPC?

14 MR. DANDINO: I have no questions, your
15 Honor. Thank you.

16 JUDGE HOPKINS: Southwestern Bell Telephone.

17 MR. LANE: Thank you, your Honor.

18 CROSS-EXAMINATION BY MR. LANE:

19 Q. Good morning, Mr. Stowell.

20 A. Good morning.

21 Q. Are you familiar with the terms originating
22 carrier, transiting carrier and terminating carrier?

23 A. Yes.

24 Q. Okay. And for purposes of my questions,
25 would you assume that an originating carrier is a

1 company whose customer places a call, that a
2 terminating carrier is the company serving the
3 customer called and the transiting carrier is the
4 company that connects the networks of the originating
5 carrier and the terminating carrier?

6 Would you assume that?

7 A. I'll try.

8 Q. Okay. Does your proposed tariff require the
9 originating carrier, the transiting carrier or both to
10 pay access charges on traffic to which the tariff
11 applies?

12 A. The originating carrier.

13 Q. Your tariff is not intended to assess any
14 access charges to a transiting carrier under any
15 circumstances; is that your statement?

16 A. You're asking, I think, a different question
17 than you did originally. You said under any
18 circumstances?

19 Q. For purposes of the traffic that is covered
20 by your tariff, is it your intent to assess access
21 charges to the originating carrier, the transiting
22 carrier or both?

23 A. To the originating carrier.

24 Q. And not to the transiting carrier?

25 A. Right.

1 Q. Okay. Would you agree with me that the
2 language of your tariff is inconsistent with that
3 intent?

4 A. No, I don't know that I would agree.
5 There -- there may be some question just to exactly
6 what it does apply to, but I think that --

7 Q. Let's look at a wireless call that
8 originates from a Sprint PCS customer. It's handed to
9 Southwestern Bell for transiting and it terminates in
10 a Mid-Missouri Group companies' exchange.

11 Is it your intent to require Southwestern
12 Bell to pay access charges under this tariff for that
13 call?

14 A. That was not our intent, and I think the
15 only issue then would become whether there would be
16 any, you know, subject to any litigation if we could
17 not collect from that originating carrier, whether --
18 then it becomes a question of whether there is any
19 indemnification or not.

20 Q. Would you agree with me that under the
21 situation I hypothesized, a Sprint PCS customer
22 calling a Mid-Missouri company exchange and
23 Southwestern Bell transiting the traffic, that
24 Southwestern Bell is directly interconnected to the
25 Mid-Missouri Group exchange?

1 A. Yes.

2 Q. And where would we look in the tariff
3 then -- strike that.

4 Would you agree with me that your tariff
5 language says that it applies to any carrier that is
6 directly connected to a Mid-Missouri Group exchange?

7 A. Yes, I believe that's the language.

8 Q. And where is it excluded then that if the
9 carrier that directly interconnects is not the company
10 who is the originating carrier, where does your tariff
11 exclude the originating carrier from that
12 responsibility?

13 A. Where does it exclude the originating
14 carrier?

15 Q. Yes, sir.

16 A. I'm not -- I'm not sure I'm understanding
17 your question.

18 Q. Let me go back.

19 We're dealing with the Sprint PCS originated
20 call transited by Southwestern Bell.

21 A. Okay.

22 Q. It terminates in, let's say, MoKan Dial's
23 exchange.

24 Southwestern Bell in that example would be
25 directly connected with MoKan Dial. Right?

1 A. Over jointly provided facilities that we've
2 been connected with for years.

3 Q. And as a directly interconnecting carrier
4 would the tariff apply to Southwestern Bell and make
5 it responsible for all traffic regardless of type or
6 origin that is transmitted to MoKan Dial by any other
7 carrier directly or indirectly?

8 A. Well, as I stated earlier, I think you could
9 maybe make that assumption absent the proper record to
10 be able to bill the originating carrier, which is part
11 of the situation we're in today, where there is
12 traffic that comes that we don't have the proper
13 records.

14 And that, in fact, is the biggest problem
15 that we face. We have traffic that terminates to us
16 that we have no way of identifying. And I'm not
17 saying that we're not getting cellular terminating
18 usage records. We're not getting paid for them.

19 And they're -- in an effort to try to
20 clarify that we do not have an interconnection
21 agreement, we do not have jointly provided facilities
22 with them and we get paid from interexchange carriers,
23 IXCs, if you will, for traffic that terminates to us,
24 and this is a method of clarifying that these carriers
25 are subject to access charges in that same regard.

1 Q. Would you agree that it would be appropriate
2 for the tariff to be modified to make it clear that it
3 applies only to the originating carrier and not to the
4 transit carrier?

5 A. I -- I could possibly agree to that
6 statement. I can understand where there might be some
7 confusion --

8 Q. All right.

9 A. -- or questions about what it actually
10 applies to, just in the case of the MCA issue. But
11 that is tariffed.

12 Q. Well, let me go through all of the types of
13 traffic so it was clear to me. Let's assume that we
14 have an LEC-originated interstate intraLATA call that
15 transits Southwestern Bell's network and terminates to
16 a Mid-Missouri Group company's exchange and that call
17 is originated by an LEC other than Southwestern Bell.

18 Would you agree that your tariff is not
19 intended to and does not apply to that traffic?

20 A. In today's -- the way we do business today?
21 Is that asking me, if that call was made today?

22 Q. Yes, sir.

23 A. An LEC-originated call that comes through
24 your tandem and terminates to me?

25 Q. Interstate, intraLATA toll call originated

1 by an LEC other than Southwestern Bell.

2 A. I'm sorry. Interstate intraLATA.

3 Today that traffic pursuant to FCC orders is
4 called bill-and-keep. We made a good-faith effort at
5 divestiture to issue CABS bills and, in fact, send the
6 access bills to Southwestern Bell and they were sent
7 back with a letter saying we don't intend to pay these
8 pursuant to the FCC orders and it's bill-and-keep.
9 And that was how we handled that -- that traffic.

10 But the issue now or the fact today is with
11 dialing parity, that call could come to us, that
12 interstate intraLATA call today would be carried by
13 some IXC or by Southwestern Bell. And to that extent,
14 it would be my opinion that access will begin to apply
15 to those. It didn't prior to this dialing parity.
16 But I think it --

17 Q. All right. Let me try again, Mr. Stowell.
18 My question is, on an interstate intraLATA call
19 originated by an LEC other than Southwestern Bell,
20 that transits Southwestern Bell's network and
21 terminates to one of the Mid-Missouri Group companies
22 who has filed a tariff in this proceeding, are you
23 seeking to hold Southwestern Bell as the transiting
24 carrier responsible to pay you --

25 A. No.

1 Q. -- anything on those calls?

2 A. No.

3 Q. Okay. And I believe you indicated on MCA
4 traffic that it is not your intent to charge the
5 originating carrier, assuming that it is Southwestern
6 Bell or another company covered by the MCA plan,
7 access charges on those MCA-originated calls; is that
8 correct?

9 MR. JOHNSON: Your Honor, I object to this
10 question. It's irrelevant because he's asking the man
11 to assume what compensation would apply to an
12 interstate call when we're talking about in this case
13 an intrastate tariff.

14 So I think the scenario is irrelevant that
15 he paints in his question.

16 MR. LANE: I moved past it. I'm on MCA.

17 JUDGE HOPKINS: You what?

18 MR. LANE: That question has been asked and
19 answered. I'm asking about MCA. It's not an
20 interstate call. I'm asking about MCA traffic.

21 JUDGE HOPKINS: All right. I'll overrule
22 your objection, Mr. Johnson.

23 Go ahead.

24 THE WITNESS: And I would answer your MCA
25 question to the extent that they were -- the proper

1 language and legal participants. In MCA and in
2 tariffed MCA, that's -- that's an issue that is in
3 another docket too.

4 BY MR. LANE:

5 Q. How about CLEC-originated local traffic that
6 transits Southwestern Bell's network? Are you seeking
7 to hold Southwestern Bell as the transiting carrier
8 responsible under this tariff that you've proposed?

9 A. No. As we proposed the tariff, no.

10 Q. Is it fair to say then that the -- are you
11 familiar with the PTC plan case that this Commission
12 decided?

13 A. Fairly -- fairly much so.

14 Q. And you're familiar with the residual
15 billing proposal that the MMG group advanced in that
16 case?

17 A. Yes.

18 Q. Is it fair to say then that this tariff that
19 you've applied now is not intended to advance a
20 residual billing concept and make it applicable to a
21 transiting carrier?

22 A. Yes, we've -- we filed this tariff, as I
23 said, to clarify what our tariff applies to in light
24 of the fact that we are receiving traffic over our
25 piece of the network and we're terminating it and

1 other parties are receiving compensation for that and
2 we are not.

3 Q. Okay. The purpose of your tariff and the
4 intent of it is to apply only to wireless carriers and
5 CLECs that originate calls that ultimately terminate
6 in a Mid-Missouri Group company's exchange?

7 A. That's -- that might be a little -- a little
8 too narrow, because the issue is what is out there
9 today and what is out there tomorrow might be two
10 different things. I mean, there could be some other
11 technology. But basically I would agree with your
12 statement.

13 Q. As of today for all of the traffic that is
14 terminated in a Mid-Missouri Group company exchange
15 today, the only traffic that this tariff is intended
16 to apply to is CLEC- or wireless-originated traffic,
17 and it applies only to the originating CLEC or
18 wireless company; is that fair?

19 A. Our tariff today applies to all access and
20 not -- not necessarily just a CLEC or just a wireless.
21 That tariff applies to message toll access that is
22 charged on message toll. So we simply clarified that
23 it applies to all of that type of traffic that -- that
24 we terminate, travels across our part of the network.

25 Q. And maybe I'm confused, but my understanding

1 from what you're testifying to is that the tariff
2 revision that you're proposing in this proceeding is
3 designed to apply to wireless carriers and CLECs only;
4 is that correct?

5 The purpose of the revision is to apply your
6 tariff to those carriers?

7 A. To clarify what that tariff does apply to,
8 yes.

9 Q. And that's the companies to whom it applies.
10 Right?

11 A. Yes.

12 Q. Let me ask you about CLEC-originated toll
13 traffic. Would you agree with me that your tariff
14 today already applies to CLEC-originated toll traffic
15 that transits Southwestern Bell's network and
16 terminates in a Mid-Missouri Group company's exchange?

17 A. If -- if that traffic exists, yes, I will
18 agree with that.

19 Q. Okay. And it clearly will exist with the
20 termination of the PTC plan, will it not?

21 A. Yes, I would -- to the extent that there
22 would be a CLEC in a position to generate that toll,
23 yes. The reason I'm hesitating is I keep living in my
24 own little world with the MCA issue though.

25 Q. Okay.

1 A. That --

2 Q. Let's separate out MCA for a minute.

3 A. My attorney continually tells me to do that.

4 Q. Separating out MCA issues and concerning
5 ourselves only with a CLEC-originated toll call that
6 terminates to a Mid-Missouri Group exchange, neither
7 one of which is within an MCA, your access tariff
8 today already applies to that traffic, does it not?

9 MR. ENGLAND: Your Honor, I don't know if
10 this is an objection or a request to clarify the
11 question, but to the extent that he's assuming that a
12 CLEC can originate toll, I don't know if he means it's
13 a call originated from a CLEC customer that is carried
14 by another toll provider or whether the CLEC is also
15 certificated to pay toll. And I think it might make a
16 difference to the question and the answer, and I would
17 object to it on the basis that it's vague and needs to
18 be made more clear to exactly what scenario he's
19 trying to ask about.

20 JUDGE HOPKINS: That sounds like two
21 questions. If you want to ask both of them, ask both
22 of them.

23 BY MR. LANE:

24 Q. I want to ask you about CLEC-originated
25 toll, a facilities-based CLEC who offers to carry

1 intraLATA toll to its customers, for its customers.

2 A. Okay.

3 Q. Not involving an MCA.

4 Would you agree that your current access
5 tariff already applies to that traffic that originates
6 from a CLEC, transits Southwestern Bell's network and
7 terminates in a Mid-Missouri Group company's exchange?

8 A. Yes. To the extent that I can identify that
9 traffic, yes.

10 Q. Can you agree with me that your current
11 access tariff contemplates that you will charge not
12 Southwestern Bell as the transit carrier but the CLEC
13 as the originating company access?

14 A. On that same call that you've just
15 described?

16 Q. Yes, sir.

17 A. Yes.

18 Q. And we don't need this tariff revision to
19 apply to that CLEC-originated toll then, do we?

20 A. No. Provided you can identify that CLEC
21 toll.

22 Q. Well, the identification is separate, isn't
23 it, from whether your tariff applies or doesn't apply?

24 A. Well, the ability to bill or not bill
25 depends on whether or not I have the records that tell

1 me that -- which calls are there.

2 Q. Your ability to --

3 A. Yeah.

4 Q. -- implement your tariff is affected by
5 whether you get all of the necessary information, but
6 the applicability of the tariff is the same. Right?

7 A. Yes.

8 Q. And you don't need this tariff that you're
9 proposing here to apply to CLEC-originated toll, do
10 you?

11 A. No.

12 Q. Now I want to talk about CLEC-originated
13 calls that are within an MCA area. And would you
14 agree with me that there is only two of the
15 Mid-Missouri Group companies that have exchanges that
16 are within any of the MCAs that are approved by the
17 Commission?

18 A. Yes, I believe that's true.

19 Q. And that would be MoKan Dial up in the
20 Kansas City MCA and Choctow in the Springfield MCA.
21 Right?

22 A. Correct.

23 Q. With regard to the other companies in the
24 Mid-Missouri Group that have filed this tariff, none
25 of them are involved in MCA traffic, are they?

1 A. No, I do not believe they are.

2 Q. Now, with regard to then Choctow and MoKan
3 Dial, it's possible, is it not, that a CLEC operating
4 within the MCA area could -- customers could originate
5 a call and it ultimately could be destined for
6 termination to either MoKan Dial or to Choctow
7 respectively?

8 A. Correct.

9 Q. Okay. And is your tariff intended here to
10 apply to the CLEC who originates that call within the
11 MCA and has it terminated to either MoKan Dial or
12 Choctow?

13 A. I believe it would to the extent that it's
14 my opinion today that the CLEC is not part of that
15 MCA. Everyone agrees with that. But that's another
16 issue.

17 Q. And would you agree with me that that issue
18 about whether they're entitled to be part of the MCA
19 and what compensation ought to apply is being
20 addressed in a separate docket that is now pending
21 before the Commission?

22 A. Correct.

23 Q. Okay. Would you agree that it's better for
24 the Commission to resolve it in that case in which all
25 of the CLECs, the ones that participate are

1 participating and all of the incumbents that want to
2 participate are participating rather than in this
3 tariff proceeding?

4 A. Are you asking if it's better to wait until
5 then and have them approve my tariff in that docket?

6 Q. Yes.

7 A. Or to determine the issue as to whether the
8 CLECs are part of MCA or not in that docket?

9 Q. To determine the issue?

10 A. And the issue you're referring is my tariff
11 approval?

12 Q. No. Whether and what -- what compensation
13 should apply to a CLEC-originated call that terminates
14 to a Mid-Missouri Group company within an MCA.

15 A. Today it is my position that if they have
16 not tariffed MCA, those calls are terminating access
17 calls.

18 Q. Do you have any objection --

19 A. And I need -- I need that clarification in
20 my tariff in order to be compensated for it, because
21 as you well know, primarily Southwestern Bell is a
22 transiting company and is getting usage-sensitive
23 compensation for that and I'm not getting any piece of
24 that. And all I'm trying to clarify is that I'm doing
25 a function in that too and I need to be compensated.

1 Q. And Southwestern Bell's payment is for the
2 transiting function only, not any payment -- they're
3 not being paid by any CLEC to cover the costs of
4 terminating in your exchanges; is that correct?

5 A. You're asking me what your transit agreement
6 covers? I would think that might be better answered
7 by you. But it's -- that's what I am told, that
8 your -- and that, I think, is your position, but you'd
9 have to speak to that.

10 Q. You don't have any evidence or facts that
11 Southwestern Bell is collecting money from CLECs
12 intended to pay you to terminate the calls within an
13 MCA, either Choctow or MoKan Dial, do you?

14 A. As far as -- other than some comments made
15 by CLECs and wireless, that is, they seem to feel that
16 they've paid you to send that call across there and I
17 should be getting my money from you.

18 Q. Okay. Do you have any evidence that
19 Southwestern Bell is collecting monies from either
20 CLECs or wireless carriers that are sufficient to
21 cover the \$.06- to \$.12-per-minute rate that your
22 companies would like to charge?

23 A. I don't have any evidence to that. But then
24 I wasn't made a party to those interconnection
25 agreements either. And nobody asked me if the CLEC or

1 the wireless carrier had an agreement with me before
2 you entered into an agreement to transit that traffic
3 on their behalf.

4 Q. Didn't the Mid-Missouri Group participate in
5 the first docket involving a CLEC, DialUS, in terms of
6 having that interconnection agreement approved by the
7 Commission?

8 A. Subject to check, I believe we tried to
9 intervene and -- and we were told that that didn't
10 affect us. I believe I'm correct.

11 MR. LANE: Your Honor, if I may approach the
12 witness.

13 JUDGE HOPKINS: Yes.

14 (OFF THE RECORD.)

15 BY MR. LANE:

16 Q. Mr. Stowell, I'd like to show you the
17 September 6, 1996 report and order issued by the
18 Commission in Case No. TO-96-440 concerning the
19 interconnection agreement between Southwestern Bell
20 and DialUS, and with specific reference to page 7, ask
21 if you agree that the Commission agreed in that order
22 the issue of traffic that originated from the CLEC and
23 terminated in another company's exchange, like Choctow
24 in this particular case?

25 A. And by addressing it are you talking about

1 the highlighted portion here?

2 Q. Yes, sir.

3 A. I see where the Commission finds that the
4 provision protects other LECs and removes the
5 potential for discrimination from the agreement. The
6 agreement therefore does not discriminate against
7 Choctaw. But I would -- I would also say that there
8 were -- I'm not sure that that's -- convinced that
9 that's not the case today, because there was supposed
10 to also be in some incentives to enter into
11 interconnection agreements and we haven't seen that --
12 that happen either.

13 MR. LANE: Your Honor, I would like to
14 offer -- or ask I guess first the Commission to take
15 official notice of the report and order dated
16 September 6th of 1996 in Case No. TO-96-440.
17 Alternatively I can have it marked as an exhibit and
18 offer it if that's what you prefer. I've got copies,
19 either way.

20 JUDGE HOPKINS: We can take official notice
21 of our own records, although for my own benefit, can I
22 have a copy?

23 MR. LANE: Sure.

24 BY MR. LANE:

25 Q. Would you agree, Mr. Stowell, that in that

1 case the Commission approved a transiting arrangement
2 in which Southwestern Bell's role would be limited to
3 transited traffic for CLECs and that the Commission
4 anticipated that interconnection agreements would be
5 negotiated between the CLECs and any independent
6 companies like the Mid-Missouri Group?

7 A. I am not that familiar with the entire
8 thing, but I think you are correct.

9 Q. That's your general understanding?

10 A. That's my general understanding.

11 Q. Do you agree with me that the Mid-Missouri
12 Group participated in Docket TT-97-524 which pertained
13 to Southwestern Bell's wireless interconnection
14 tariff?

15 A. Yes.

16 Q. And would you agree with me that in that
17 case the Commission's decision approved an arrangement
18 in which Southwestern Bell would serve only a
19 transiting function for those calls?

20 A. Yes, I believe that's correct.

21 Q. And would you agree with me that in that
22 order the Commission also found that there was a
23 possibility that Southwestern Bell could be held
24 secondarily liable to independent companies like the
25 Mid-Missouri Group if the wireless companies

1 ultimately didn't pay for the traffic?

2 A. I believe that's correct.

3 Q. And there were certain conditions that the
4 Commission indicated attached to that secondary
5 liability?

6 A. I believe you're correct, yes.

7 Q. And one of those conditions was that the
8 independent companies, including the Mid-Missouri
9 Group companies, would actually bill for the tariff,
10 bill the wireless carriers for the termination of the
11 calls. Right?

12 A. Yes.

13 Q. And would you agree with me that the
14 Commission also required Southwestern Bell to provide
15 what are called CTUSR reports to the small companies
16 in Mid-Missouri that would advise them of the traffic
17 that was originated by wireless carriers and
18 terminated to those exchanges?

19 A. Yes.

20 Q. And those CTUSR reports have been received
21 since prior to February of '98 by the Mid-Missouri
22 Group companies, have they not?

23 A. Prior to? I believe -- I believe I saw a
24 sample of -- of what they were going to look like.
25 But I think prior to the February -- I'm not sure that

1 I would agree to that.

2 Q. All right.

3 A. But from February forward from the
4 effectiveness of Southwestern Bell's tariff mod-- or
5 tariff filing, yes.

6 Q. Did any Mid-Missouri Group company issue any
7 bills to any wireless carriers any time during 1998?

8 A. I -- I couldn't speak for them -- for all of
9 them. I can speak for MoKan and for Choctow. I
10 believe Choctow did, subject to check. I believe they
11 did in 1998.

12 Q. When did MoKan issue its first bill to a
13 wireless carrier using the CTUSR reports?

14 A. I would have to -- it has not been that
15 terribly long. I'd have to go back and check. One
16 of -- one of the issues there was the fact that we had
17 a settlement as you're well aware that was discussed
18 earlier this morning, that that covered anything prior
19 to that February date.

20 Q. That is something that only covered prior to
21 April 5th of 1998. Right?

22 A. Right.

23 Q. And post-February 5th of 1998, the new
24 Southwestern Bell wireless interconnection tariff was
25 to apply. Right?

1 A. Right. But in that process of -- of that
2 prior settlement, there was also some issues in there
3 that if we were not comfortable with that settlement,
4 that there were some issues there that would -- with
5 the audit process and such, and some held on waiting
6 to see, you know, what -- what the process of -- was
7 going to -- was going to determine as far as so that
8 they could rely on these numbers or not.

9 And part of that issue too, and I think I
10 state that on page 5 which is -- of my surrebuttal is
11 the only reference that I think I made to that. This
12 issue of interMTA and intraMTA and trying to get some
13 clarification as to, is this all interMTA cellular
14 terminating traffic and access applies to it, or is it
15 a mix or what is it?

16 And quite frankly, some of the calling off
17 of those reports, those numbers are relatively small
18 and accumulated some of that and -- for billing
19 purposes and billed it in one long -- if you would.

20 Q. It's fair to say, isn't it, that the
21 majority of the Mid-Missouri Group companies didn't
22 issue any bills for this CTUSR generated -- based on
23 CTUSR-generated records to the wireless carriers until
24 April through August of this year, isn't it?

25 A. Subject to checking with them, you know, I

1 can only speak for myself.

2 Q. And from your company's perspective, MoKan
3 Dial, have you billed every wireless carrier who has
4 been the subject of the CTUSR report?

5 A. Yes, I have.

6 Q. Okay. And did you bill all of them
7 beginning in March of 1998?

8 A. No.

9 Q. You waited several months before you started
10 billing any of the carriers --

11 A. Yes.

12 Q. -- isn't that right?

13 A. Yes. We do have a few other things going
14 on.

15 Q. Now, you had indicated in your testimony
16 that you didn't know from CTUSR reports whether the
17 traffic was being terminated pursuant to Southwestern
18 Bell's interconnection tariff or pursuant to wireless
19 interconnection agreements. Do you recall that
20 testimony?

21 A. Yes.

22 Q. Okay. Would you agree with me that whenever
23 Southwestern Bell enters into an interconnection
24 agreement with a wireless company and that agreement
25 has been approved by the Commission, that your company

1 has been notified by Southwestern Bell of that?

2 A. We are -- yes, I believe so.

3 Q. And so after you're notified that the
4 interconnection agreement has been approved and is in
5 place, then you know for that carrier from the CTUSR
6 report that the traffic is being terminated pursuant
7 to the interconnection agreement and not the wireless
8 interconnection tariff. Right?

9 A. I don't know that I could make that
10 assumption. These -- these reports as I recall are --
11 should -- should reflect to the best of Southwestern
12 Bell's ability to provide that, any terminating
13 wireless traffic from that carrier.

14 Q. Yeah. And the CTUSR reports identify the
15 particular carrier, the number of minutes and the
16 exchange to which it's terminated. Right?

17 A. Yes.

18 Q. When a carrier -- when a wireless carrier
19 enters into an interconnection agreement with
20 Southwestern Bell, that agreement applies and not the
21 wireless interconnection tariff. Correct?

22 A. If -- if that is what -- if you say so, yes.

23 Q. And those are publicly filed with the
24 Commission, are they not, the wireless interconnection
25 agreements?

1 A. Yes, I believe so.

2 Q. And your company is notified when that
3 agreement has been filed with the Commission for
4 approval, is it not?

5 A. We receive copies usually of those -- those
6 filings, yes.

7 Q. And have you asked Southwestern Bell whether
8 it's correct that any traffic that is terminated by a
9 particular carrier after wireless interconnection
10 agreement has been approved is being terminated
11 pursuant to that agreement?

12 A. I don't recall that conversation, no.

13 Q. I mean, if you wanted to know whether it was
14 being terminated pursuant to the wireless
15 interconnection tariff or the wireless interconnection
16 agreement, couldn't you have just asked?

17 A. I guess we could have. I don't know whether
18 Southwestern Bell would have responded or not. But we
19 could have asked, yes.

20 Q. Would you agree with me that the
21 Mid-Missouri Group companies have refused to enter
22 into interconnection negotiations with wireless
23 carriers unless the wireless carriers agree to
24 directly interconnect their facilities with those of
25 the applicable Mid-Missouri Group company?

1 A. I believe that has been our response to most
2 of them, based on the fact that it's not necessarily
3 reciprocal compensation. Several of them state that
4 the traffic is de minimus and they think a
5 bill-and-keep is -- is the agreement that we should
6 enter into, and then we get into the issue of, well,
7 when you talk about reciprocal, if I don't originate
8 any traffic to that wireless carrier, there is no
9 reciprocal. It's in one direction.

10 MR. LANE: Judge, may I have a couple of
11 exhibits marked?

12 JUDGE HOPKINS: Sure.

13 (EXHIBIT NOS. 13 AND 14 WERE MARKED FOR
14 IDENTIFICATION BY THE COURT REPORTER.)
15 BY MR. LANE:

16 Q. Mr. Stowell, I've handed you a copy of a
17 letter that appears to be from you to Steven Crane
18 that's been marked as Exhibit 13 in this case.

19 Do you recognize that as a copy of a letter
20 that you send to Mr. Crane?

21 A. Yes.

22 Q. And Mr. Crane is with Aerial Communications?

23 A. Yes.

24 Q. And would you agree with me that in your
25 letter here you make it clear that you'll enter

1 into interconnection negotiations only if Aerial
2 Communications will directly interconnect with your
3 company?

4 A. Yes.

5 Q. Would you also take a look at Exhibit 14
6 which is a copy of a letter that has been given to me
7 by Mr. Johnson in a discovery request that appears to
8 be from David Jones to Mr. Crane. Do you see that?

9 A. Yes.

10 Q. Would you agree with me that that letter
11 itself also makes clear that Mid-Missouri won't
12 negotiate with Aerial Communications unless Aerial
13 agrees to directly interconnect its facilities?

14 A. Yes.

15 MR. LANE: At this time, your Honor, I'd
16 offer Exhibits 13 and 14.

17 JUDGE HOPKINS: Any objections to Exhibit
18 No. 13 which is the Stowell to Crane letter?

19 And I'm not certain that I see a date on
20 that letter. But it is faxed from MoKan, Craig
21 Johnson, on the 13th of September, so I'm assuming it
22 was written either that day or prior to that day.

23 Any objection to that, No. 13?

24 MR. JOHNSON: No, your Honor.

25 JUDGE HOPKINS: Hearing no objection, I will

1 allow that into evidence.

2 (EXHIBIT NO. 13 WAS RECEIVED INTO EVIDENCE.)

3 JUDGE HOPKINS: How about the Jones to Crane
4 letter that is dated 13th of September, Mid-Missouri
5 Telephone to Aerial Communications?

6 MR. JOHNSON: No objection, your Honor.

7 JUDGE HOPKINS: No objection being heard, I
8 will enter that into evidence.

9 (EXHIBIT NO. 14 WAS RECEIVED INTO EVIDENCE.)

10 BY MR. LANE:

11 Q. With regard to Exhibit 13, do you recall the
12 date that was sent, Mr. Stowell?

13 A. I'm not quite sure it was September 13.

14 Q. Would you agree with me that all of the
15 Mid-Missouri Group companies to your knowledge have
16 consistently taken the position that they won't
17 negotiate an interconnection agreement with a wireless
18 provider unless the wireless provider agrees to
19 directly interconnect their facilities?

20 A. That has been our position, that we would
21 require a direct interconnection.

22 Q. And as I understand your testimony, you're
23 not clear whether your companies have the right to
24 request interconnection negotiations with an
25 indirectly connected company like a wireless provider?

1 A. Would you state that again? You're saying
2 that I'm not --

3 Q. Is it your company's position that under the
4 Telecommunications Act, your company doesn't have the
5 right to request interconnection negotiations with an
6 indirectly connected wireless carrier?

7 A. Yes, I believe it's our -- our
8 interpretation that in order to have an
9 interconnection agreement -- and you have to
10 understand that the most of the time they want to talk
11 about reciprocal compensation. And --

12 Q. We'll try to get into some of the details of
13 it, but I want to make sure I understand.

14 Your position is that the Telecommunications
15 Act doesn't permit you to request interconnection
16 negotiations with an indirectly connected wireless
17 carrier. Right?

18 A. I believe that's a true statement.

19 Q. And it's also your view that then you can't
20 bring a matter to the Commission for arbitration if
21 you're not entitled in the first instance to request
22 interconnection negotiations. Right?

23 A. I believe the request comes from the
24 other -- from the other one. And -- and that's --
25 that's one of the issues that we're trying to

1 clarify here is that even though you refer to the fact
2 that we -- we see when you enter into an
3 interconnection agreement, there are not all -- I
4 don't think all instances we know who that carrier may
5 be interconnected with and what traffic they may be
6 sending, and short of them saying we are going to send
7 traffic to you and we need to enter into an
8 interconnection agreement, I don't know that we
9 necessarily need to go out and try to enter into one
10 with them.

11 I think we already have fulfilled our
12 obligation as we stated in our testimony, that for
13 most -- most instances, the Mid-Missouri Group is --
14 is directly connected with the Southwestern Bell
15 tandem, and -- and therefore, we have the business
16 relationship over those jointly provided facilities,
17 and what goes on up above there, we don't necessarily
18 know that.

19 Q. MoKan Dial and to your knowledge no other
20 Mid-Missouri Group company has requested
21 interconnection negotiations with any wireless
22 carrier. Correct?

23 A. MoKan has not, no.

24 Q. And are you aware of any Mid-Missouri Group
25 company that has requested interconnection

1 negotiations with a wireless carrier?

2 A. Indirect or --

3 Q. With an indirectly connected wireless
4 carrier.

5 A. No.

6 Q. That's true for MoKan Dial as well?

7 A. Yes.

8 Q. And are you aware of any decision by a State
9 Commission that has found that MoKan Dial and any
10 other Mid-Missouri company is not committed to request
11 interconnection negotiations with an indirectly
12 connected wireless carrier under the
13 Telecommunications Act?

14 A. No.

15 Q. Are you aware of any FCC decision in which
16 the FCC has said that an incumbent telephone company
17 that is indirectly connected with a wireless provider
18 is not permitted to request interconnection
19 negotiations with that wireless provider?

20 A. No.

21 Q. And you haven't brought the matter to either
22 the FCC or to this Commission for resolution, have
23 you?

24 A. No, and I don't believe -- the wireless have
25 not either. They could have asked for arbitration and

1 they haven't done so, because there is no incentive
2 when they can dump the traffic to the tandem and I
3 terminate it and can't identify it.

4 Q. Nor is there any incentive for you to
5 negotiate if you can collect access from Southwestern
6 Bell or the other transit carriers. Right?

7 A. For traffic that terminates on my switch?

8 Q. Yes.

9 A. Probably not. Not until such time as we
10 have a connection agreement.

11 Q. And you don't have the incentive to enter
12 into an interconnection agreement with a wireless
13 provider that is indirectly connected because that
14 would deprive you of the ability to collect access
15 from Southwestern Bell or another transit carrier.
16 Right?

17 A. I think the issue becomes, when they talk
18 about these interconnection agreements, they want to
19 talk about reciprocal or bill-and-keep or what have
20 you, and I don't send any traffic to them.

21 Q. My question to you was, would you agree with
22 me that your company doesn't have the incentive to
23 enter into interconnection negotiations with an
24 indirectly connected wireless provider because that
25 would deprive you of the ability to try to hold

1 Southwestern Bell responsible for the traffic. Right?

2 A. I don't know that I would totally agree with
3 that.

4 Q. Would you agree with me that the Commission
5 found exactly that in the wireless interconnection
6 tariff case TT-97-524?

7 A. Found that?

8 Q. That your companies wouldn't have the
9 incentive to enter into interconnection negotiations
10 with indirectly connected wireless providers if they
11 could hold Southwestern Bell liable for -- as the
12 transit carrier for the traffic?

13 A. I believe I recall reading that in the
14 transcript, yes.

15 Q. Would you agree with me that wireless
16 carriers have been operating in Missouri since
17 approximately 1984?

18 A. I -- I don't have absolute knowledge of
19 that, but I'll take your word for it and agree with
20 you.

21 Q. And no question in your mind that wireless
22 carriers have been operating in Missouri prior to the
23 Telecommunications Act in 1996 being passed. Right?

24 A. Yeah, I would agree with that.

25 Q. And would you agree with me that the FCC has

1 made clear on several occasions that State commissions
2 prior to the '96 Act had the authority to review and
3 approve compensation arrangements between wireless
4 providers and incumbent local telephone companies?

5 A. I believe.

6 Q. And would you agree with me then that the
7 Commission still has that authority whether or not
8 they have it under the Telecommunications Act of 1996?

9 A. I believe that's correct.

10 Q. Last area, Mr. Stowell, on page 6 of your
11 surrebuttal you claim that only a direct physical
12 interconnection has the ingredients necessary for
13 compensation to be structured.

14 Do you see that?

15 A. Yes.

16 Q. Would you agree with me that all of the
17 Mid-Missouri Group companies concur in the Oregon
18 Farmer access tariff?

19 A. I believe that's correct.

20 Q. And would you agree with me that that Oregon
21 Farmer's tariff provides for meet point billing when
22 two or more local exchange companies combine to
23 provide access to an interexchange carrier?

24 A. I believe that's correct.

25 Q. For example, a call from Kansas City to an

1 Orchard Farm customer in St. Louis might be carried
2 by, let's say, AT&T as the interexchange carrier,
3 handed off to Southwestern Bell and carried in turn to
4 Orchard Farm to the customer called by the Kansas City
5 customer. Right?

6 A. Correct.

7 Q. And in that particular example, then,
8 Orchard Farm would bill AT&T, the interexchange
9 carrier, directly for that call. Right?

10 A. Orchard Farm terminated the call?

11 Q. Yes, sir.

12 A. They would bill them, meet point bill them
13 terminating access.

14 Q. And the "them" would be AT&T?

15 A. Yes. Based on a report that would come from
16 Southwestern Bell. And -- from the tandem, and I
17 believe you said that would be Southwestern Bell that
18 said that AT&T sent a message for X amount of minutes
19 that terminated to their switch.

20 Q. And in that example, is Orchard Farm
21 directly or indirectly connected to AT&T?

22 A. Indirectly.

23 Q. And would you agree with me that despite the
24 lack of direct physical interconnection with AT&T,
25 that you're able to bill and collect access charges

1 from the originating provider, AT&T?

2 A. Yes.

3 MR. LANE: That's all I have. Thank you
4 very much.

5 Oh, I'm sorry. Your Honor, I just want to
6 make sure we're covered a couple of things.

7 I'd like the Commission to take official
8 notice of the report and order in Case No. TO-99-254
9 which was issued on June 10th of this year. That's
10 the PTC plan case. And also the report and order
11 issued December 23rd of 1997 in Case No. TT-97-524,
12 which is Southwestern Bell's wireless interconnection
13 tariff.

14 JUDGE HOPKINS: Do you have a copy of that
15 first one?

16 MR. LANE: Yes.

17 JUDGE HOPKINS: I've got the 524.

18 All right. The Commission will take
19 official notice of TO-99-254 and TT-97-524. That's on
20 the record.

21 Mr. DeFord, AT&T?

22 MR. DeFORD: Thank you, your Honor.

23 CROSS-EXAMINATION BY MR. DeFORD:

24 Q. Good morning, Mr. Stowell.

25 A. Good morning.

1 Q. Mr. Stowell, are all of the companies that
2 you are representing here today ready, willing and
3 able to negotiate, and I suppose if necessary
4 arbitrate interconnection agreements with all of the
5 wireless providers and CLECs doing business in
6 Missouri?

7 A. I -- I can't necessarily speak for all of
8 the rest of them. But for myself and I believe for
9 most of the group, yes, if that was necessary.

10 Q. Mr. Stowell, are you familiar with what I
11 think is commonly referred to as the rural exemption
12 Section 251F of the Act?

13 A. Um, yes.

14 Q. Do you know if any of those companies would
15 claim that exemption if they were asked to negotiate
16 and arbitrate with a CLEC or wireless provider?

17 A. Do I know if any of the others would?

18 Q. Yes.

19 A. No, I don't know.

20 Q. Would your company?

21 A. I don't -- I don't believe so.

22 Q. Are all of the Mid-Missouri companies that
23 you represent here today prepared to perform TELRIC
24 studies, forward-looking cost studies?

25 A. I -- I really don't know.

1 Q. Well, is your company capable of performing
2 such a study?

3 A. I would probably have -- have a consultant
4 do it if I had to.

5 Q. And you're prepared to incur that expense if
6 you were asked to arbitrate or negotiate?

7 A. If that's -- if that was what we needed to
8 do, yeah.

9 Q. And would you agree with me that in general
10 the rates on an interconnection agreement would have
11 to be cost-based, forward-looking costs?

12 A. Yes.

13 Q. Or we could use the FCC default proxy; is
14 that correct?

15 A. I believe that's an option, yeah.

16 Q. Would you agree with me that those rates
17 would likely be far below your terminating access
18 rates?

19 A. It's probably a true statement.

20 Q. I think you've indicated that the
21 Mid-Missouri companies all have a preference to
22 directly interconnect with each LEC and wireless
23 entity; is that correct?

24 A. Well, I think you have to understand why we
25 take that position based on our interpretation of the

1 Act. Because of the position that the wireless
2 carriers take, that they want reciprocal compensation,
3 and I don't originate any traffic to those wireless
4 carriers. So there is no reciprocal, and they want to
5 classify things as local. And as I understand the
6 Act, if you have a direct connection, then you and I,
7 if you will, can determine what is local and thus come
8 to an agreement as to what compensation would be.

9 Q. Let me ask you this: Do you believe it
10 would be economically feasible for both parties to
11 interconnect in that matter? Do you think it would be
12 economically feasible for your company to actually
13 have a direct interconnection with each wireless
14 provider that is doing business in the state?

15 A. I think that would be a business decision
16 that the carrier would have to make. I have
17 facilities and investment in those facilities out
18 there today.

19 Q. I guess maybe I'm not asking it -- how much
20 do you believe it would cost your company to directly
21 interconnect with each wireless provider that is in
22 business in the state? Would it cost you nothing?

23 A. Oh, I'm sure there would be some -- some
24 cost, but they would have to tell me how many trunks
25 they needed, you know, and what the size of that

1 interconnection would have to be. So I can't honestly
2 answer that today. But we have fiber connectivity
3 with Sprint who is our -- today is our PTC and until
4 the 20th of this month, anyway.

5 Q. I guess would it be fair to say then that
6 the majority, if not all, of the expense associated
7 with a direct interconnection would fall to the
8 wireless provider and the CLEC?

9 A. It's -- you could probably say that, yes.

10 Q. And if, for example, a CLEC did go to that
11 trouble and expense, I guess would you be concerned to
12 see that CLEC enter your service territory and compete
13 for local customers?

14 A. Would I be concerned?

15 Q. Well, would you welcome them in with open
16 arms?

17 A. I don't know that I would welcome them with
18 open arms, but -- but if they chose to come, yes, this
19 would be their prerogative.

20 Q. If a CLEC were to purchase unbundled network
21 elements to directly interconnect you, would that
22 satisfy at least your view of what constitutes direct
23 interconnection?

24 A. I don't believe so. I believe they'd order
25 access the same as any other carrier would order

1 access.

2 Q. Are you aware that the Commission has
3 indicated, I think at least with respect to the
4 collection of originating and terminating access, that
5 where a CLEC purchases unbundled network elements,
6 that those facilities are treated as if they were
7 owned by the CLEC?

8 A. I believe you're correct.

9 Q. So that could be an indication that the
10 Commission might view the purchase of unbundled
11 network elements as a direct form of interconnection?

12 A. I believe that's probably true.

13 Q. Let me shift gears a little bit on here.

14 With respect to local traffic, what is
15 your compensation arrangements that you have in place
16 with -- I think you mentioned Southwestern Bell and
17 potentially the other PTCs currently?

18 A. With respect to?

19 Q. Local traffic.

20 A. And would you define local?

21 Q. Nontoll.

22 A. MCA?

23 Q. MCA would be an example, I suppose. EAS, I
24 suppose, would be another example.

25 A. Bill-and-keep.

1 Q. And would you propose a different
2 compensation arrangement for the exchange of that same
3 traffic with CLECs or wireless providers?

4 A. If they were directly connected to me? I
5 think that's when we would negotiate what the
6 compensation would be, if we agreed to define that as
7 local.

8 Q. Would you ask for something different than
9 what you're doing with Southwestern Bell and the other
10 PTCs?

11 A. I don't know that I can answer that. You're
12 asking me to make a decision based on something in the
13 future.

14 Q. I think you told Mr. Lane that the
15 Mid-Missouri Group hasn't requested interconnection or
16 reciprocal compensation from wireless carriers or
17 CLECs; is that correct?

18 A. To the best of my knowledge, I believe
19 that's correct.

20 Q. And I think you indicate in your surrebuttal
21 testimony that the reason for that is because you've
22 already got mechanisms in place to handle the traffic
23 of Mid-Missouri Group customers?

24 A. Correct.

25 Q. And that mechanism is currently handing off

1 the traffic to PTCs or IXC's, and I suppose after the
2 20th it would be all IXC's?

3 A. Handing it off?

4 Q. Delivering it to them.

5 A. Yes.

6 Q. So the Mid-Missouri Group company's only
7 obligation and duty is to bill and collect originating
8 and terminating access?

9 A. Yes. And provide local service to the
10 customer, but we didn't reference to that, yes.

11 Q. Right. Returning to reciprocal
12 compensation, I want to make sure that I understand
13 what your position is.

14 You don't believe reciprocal compensation is
15 mandatory unless there is a direct interconnection; is
16 that correct?

17 A. That's -- yes, I believe that's correct,
18 without going into a lot of detail. But, yes. There
19 has been a lot of testimony here and surrebuttal as to
20 how you interpret that and how I interpret it and how
21 attorneys interpret it, and I don't -- I don't know --
22 I honestly don't know who is correct. That's why
23 we're here.

24 Q. But your position is based really on how
25 you've analyzed and construed select statutory

1 provisions and FCC orders?

2 A. Yes, yes.

3 Q. Can you identify any other jurisdiction that
4 has accepted a proposal like yours?

5 A. I don't know that I can.

6 Q. Would you be surprised if there were no
7 other jurisdictions that have accepted this type of
8 proposal?

9 A. I don't know whether I'd be surprised or
10 not. I can't answer that.

11 Q. The Mid-Missouri companies have basically
12 made a business decision not to terminate traffic to
13 anything -- to any entity other than IXCs or I guess
14 PTCs. Right?

15 A. I think there might be a few exceptions
16 where they, you know, they have formed a subsidiary or
17 whatever and gotten into the toll business. But for
18 the most part, correct.

19 Q. So an affiliate maybe?

20 A. Yes. Yes.

21 Q. But they would be an IXC. Right?

22 A. Yes.

23 Q. So the bottom line of your position is
24 basically that the CLECs and wireless providers would
25 be more inclined to pay terminating access than to

1 incur the costs of going through the process of
2 negotiating and arbitrating a case to conclusion?

3 A. Would you state that again? Are you asking
4 me -- please --

5 Q. The rationale of your business decision is
6 basically that you believe that the wireless providers
7 and CLECs will be more inclined to pay terminating
8 access than they would to incur the costs of
9 negotiating and arbitrating a case with each ILEC in
10 the state?

11 A. I -- I really can't speak for what, you
12 know, what their business decision would be. I see
13 what their business decision is today, that --

14 Q. But your position, the reason for your
15 decision?

16 A. Okay. I thought you were asking me to voice
17 an opinion on their position.

18 Q. No. Was that an accurate statement with
19 respect to your business decision to propose charging
20 terminating access?

21 A. You have me totally confused. Would you
22 state the question again, please?

23 Q. Sure.

24 A. I thought you were asking me to give my
25 opinion on how the CLECs and wireless would feel.

1 Q. No. What I was asking is, your business
2 decision to propose charging terminating access is
3 based upon your belief that the wireless providers and
4 CLECs would be more inclined to just pay that rather
5 than go through the process and incur the expense of
6 negotiating and arbitrating with every ILEC in the
7 state?

8 A. I don't know that it's necessarily based on
9 that. It's based on my management decision and most
10 of the group that -- and our interpretation of what --
11 what the Act says, that it's in our best interest to
12 do business in that manner, to be directly connected
13 and/or short of that to charge access.

14 MR. DeFORD: Thank you, Mr. Stowell. I
15 think that's all I have.

16 THE WITNESS: Thank you.

17 JUDGE HOPKINS: Ms. Fischer?

18 CROSS-EXAMINATION BY MS. FISCHER:

19 Q. Good morning, Mr. Stowell.

20 A. Good morning.

21 Q. When did your company, MoKan Dial, first
22 bill Southwestern Bell wireless, send its first bill
23 to Southwestern Bell wireless?

24 A. I'm -- I want to say in the August -- July
25 to August time frame of this -- of this year, of '99.

1 Q. Okay. Thank you.

2 A. Whatever that date is, that's the date I
3 billed all of them that are included on that report.

4 (EXHIBIT NO. 15 WAS MARKED FOR
5 IDENTIFICATION BY THE COURT REPORTER.)

6 BY MS. FISCHER:

7 Q. Could you identify this exhibit, please?

8 A. You want me to identify it?

9 Q. Yes, please.

10 A. It's on Chariton Valley Telephone Company's
11 letterhead and it's addressed to Southwestern Bell
12 Wireless.

13 Q. And would you agree that it's a transmittal
14 letter transmitting a bill? You can see in the first
15 line --

16 A. Yes.

17 Q. Would you read the first line?

18 A. The reference is bill for terminating access
19 charges September 5, '97 through September 4, '99.

20 Q. Well, actually that would be July?

21 A. I'm sorry.

22 Q. July of --

23 A. What I meant to say is 7-5 of '97.

24 Q. Okay.

25 A. To 7-4 of '99.

1 Q. And is there a date on this letter? I don't
2 see a date on it.

3 A. No, I'm sorry. I don't either.

4 Q. But it would be safe to assume that it was
5 sent out after July 4, '99 since it's transmitting a
6 bill?

7 A. Yes.

8 Q. Okay.

9 MS. FISCHER: Your Honor, I move to have
10 this admitted into evidence as Exhibit No. 15.

11 JUDGE HOPKINS: Any objection to Exhibit
12 No. 15, the bill to Southwestern Bell wireless?

13 MS. GARDNER: I assure your Honor I'm not
14 going to object, but I would like to see a copy of it.

15 JUDGE HOPKINS: Any objections?

16 (No response.)

17 JUDGE HOPKINS: I will receive it into
18 evidence as Exhibit No. 15.

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

20 MS. FISCHER: And, Mr. Stowell, I have no
21 further questions.

22 JUDGE HOPKINS: We will reconvene at 1 p.m.
23 Thank you.

24 (THE NOON RECESS WAS TAKEN.)

25 JUDGE HOPKINS: Back on the record.

1 Mr. Stowell, you're still on the stand under
2 oath.

3 Ms. Gardner?

4 MS. GARDNER: Thank you.

5 CROSS-EXAMINATION BY MS. GARDNER:

6 Q. Good afternoon, Mr. Stowell.

7 A. Good afternoon.

8 Q. I'm going to skip around a little bit on you
9 because some of my questions have been asked.

10 The access rate that -- the change to your
11 access tariff, that would be to apply the same access
12 rates that you apply on interexchange toll traffic; is
13 that correct?

14 A. Correct.

15 Q. And when were those access rates last set?

16 A. I believe at the implementation of the PTC
17 plan.

18 Q. So in the late '80s?

19 A. '88. I was trying to think if there were
20 any changes to them since then, and I don't recall
21 what they were.

22 Q. Okay. And at the time that they were set, I
23 take it they weren't filed based on a forward-looking
24 economic cost study consistent with 47 CFR 51.505 or
25 51.507?

1 A. No, they were not.

2 Q. Was there any cost study that was filed at
3 the time they were set?

4 A. To the best of my recollection, they --
5 those were based on '88 -- on a 1988 cost. And then
6 there were -- there were some formulas applied based
7 on -- on what you were getting out of the pool, and
8 you took your revenue requirement and your minutes and
9 you came up with an access charge.

10 That's the best of my recollection.

11 Q. So is it fair to characterize it as more of
12 a revenue replacement based on the revenue that you
13 received from the pool than based on cost?

14 A. On actual costs, that may be a better --
15 yeah.

16 Q. Okay. The bills that you rendered -- MoKan
17 Dial rendered to wireless carriers or some of the
18 wireless carriers, were those calculated based on
19 these access rates or based on some other rates?

20 A. I'm sorry. The first part of that I didn't
21 catch.

22 Q. The bills that were rendered to the wireless
23 carriers, you rendered in July and August of this
24 year, were those based on access rates? Is that --

25 A. Yes.

1 Q. -- how you calculated them?

2 A. Yes, on terminating the access charges.

3 Q. Do you know when the access rates were last

4 set for the other Mid-Missouri Group companies in this

5 case?

6 A. Unless some specific one may have had

7 another tariff filing, I believe it would have been

8 the same time frame.

9 Q. Do you know whether any of them were filed

10 consistent with a forward-looking economic cost study

11 in the system?

12 A. I do not, no.

13 Q. Is MoKan Dial a party to any approved

14 interconnection agreement currently?

15 A. Define interconnection agreement.

16 Q. Well, the interconnection agreement filed

17 consistent -- let's see. Try an agreement approved

18 pursuant to the provision of 47 USC 252. Are you a

19 party to any agreement --

20 A. No.

21 Q. -- that's been approved?

22 Do you know whether any of the other

23 Mid-Missouri Group companies have any of those type of

24 agreements?

25 A. No, I don't. I don't believe they do, but

1 I'm not certain.

2 Q. Okay. If you go to page 4 of your direct
3 testimony -- and that's what contains the paragraph
4 that you're intending to add to your tariff at the
5 bottom.

6 A. Yes.

7 Q. Okay. And I want to look at the words
8 "transmitted to or from the facilities of the
9 telephone company."

10 Is it your intention that if a MoKan Dial
11 end-user customer places a call to a Sprint PCS
12 customer, that Sprint PCS is responsible for access
13 under this language?

14 A. That -- some of that gets a little -- a
15 little confusing when you -- that -- I believe that
16 would be our intent, but in actuality today in your
17 own -- excuse me -- your own company, today
18 Southwestern Bell may originate a toll call to my
19 exchange but since you're my PTC and, in fact, transit
20 that through your tandem and you terminate it, I bill
21 access to you.

22 Q. "You" being whom?

23 A. MoKan, being the end office.

24 Q. Okay. And who would you bill access to?
25 I'm sorry. I didn't follow.

1 A. I would end up through my access bill -- the
2 terminating part of my access bill, I would very --
3 very likely bill the access to you. But that's --

4 Q. And you mean Sprint PCS or Sprint Inc. or
5 whom?

6 A. No. I am the end office. I am in MoKan.

7 Q. Let me start over.

8 If there is a customer within MoKan Dial's
9 exchange who picks up the phone and places a call that
10 terminates to Sprint PCS, so it's transmitted from the
11 facilities of the telephone company --

12 A. As a one-plus direct dial toll call?

13 Q. I'm not making any distinction. It's
14 transmitted from the facilities of the telephone
15 company as your tariff says it.

16 Are you intending to apply access rates to
17 Sprint PCS when Sprint PCS terminates the call that
18 was placed by MoKan Dial's end-user customer?

19 A. Today?

20 Q. Under the terms of your access tariff, what
21 you're proposing. What is your intention?

22 A. Well, today that would be -- if that was a
23 one-plus toll call to that Sprint PCS number, today
24 that would be billed to Sprint -- what -- what you
25 call yourself, Sprint United, who is my PTC.

1 If it was an intraLATA call?

2 Q. Would you bill Sprint PCS for that access?

3 A. I think Sprint United would bill Sprint
4 PCS in that instance. That's what gets a little
5 confusing, when you just try to say this is the way
6 this PC traffic goes.

7 Q. Well, I'm trying to figure out what you're
8 intending when you say transmitted to or from the
9 facilities of the telephone company in the proposed
10 tariff language. And I'm trying to figure out what
11 you mean from the facilities of the telephone
12 company --

13 A. Originating access and terminating access.

14 Q. Okay. And you are or you are not intending
15 to bill Sprint PCS, the company that has the customer
16 that you're terminating the traffic to the access
17 charges under this language?

18 A. No, we are not.

19 Q. Do you have direct physical connection with
20 every LEC in the MCA?

21 A. No.

22 Q. Give me an example of an LEC that you do not
23 have a direct physical connection with in the MCA.

24 A. Southwestern Bell.

25 Q. Give me an example of an exchange.

1 A. Pick one in Kansas City.

2 Q. Okay. Pick one.

3 A. Overland Park, which is on the other side of
4 the line. I don't do that, but Kansas City, Missouri.

5 Q. Lees Summit maybe?

6 A. And the reason I don't with Southwestern
7 Bell is because I directly connect to Sprint United in
8 Warrensburg.

9 Q. Okay. How do you complete a call from a
10 customer in your exchange to an MCA customer of
11 Southwestern Bell?

12 A. The customer, if they're an MCA subscriber,
13 the customer dials -- today dials a seven-digit local
14 call. I put it on the combined trunk group and send
15 it to the Warrensburg tandem and Warrensburg -- I
16 honestly -- and you'd have to tell me what you do with
17 it after I send it to you.

18 But I'm quite sure that you put it on a
19 Southwestern Bell trunk group, because I do know that
20 when Southwestern Bell's toll cable gets cut, MCI
21 doesn't work but my toll does.

22 Q. But you have a transiting company in between
23 there. You don't have direct physical connection with
24 Southwestern Bell?

25 A. Right.

1 Q. Southwestern Bell carries that traffic?
2 A. Yes. Over joint -- jointly provided
3 facilities.
4 Q. Do you consider Southwestern Bell an IXC in
5 that arrangement?
6 A. There are probably scenarios where you could
7 say that, yes.
8 Q. But they don't pay access under that
9 scenario, the bill-and-keep?
10 A. For MCA?
11 Q. For MCA.
12 A. Yes.
13 Q. Okay. Do you use the same facilities to
14 originate and terminate those calls as you do nonMCA
15 traffic?
16 A. Do my customers use that same facility?
17 Yes.
18 Q. Okay. So you don't have a separate local
19 loop for MCA versus nonMCA traffic?
20 A. No. We have a separate prefix.
21 Q. But you don't have a separate loop?
22 A. A local loop?
23 Q. Right.
24 A. No.
25 Q. And use the same end-office switch?

1 A. Yes.

2 Q. And is that also true with respect to local
3 traffic versus toll traffic, use the same local loop
4 to originate and terminate those calls?

5 A. Yes.

6 Q. The same end-office switch to originate and
7 terminate those calls?

8 A. Yes.

9 Q. Now, as I read your proposed tariff
10 language, the trigger to stop paying access under your
11 proposal is approval of an agreement pursuant to the
12 provisions of 47 USC 252; is that correct?

13 A. Yes.

14 Q. Okay. So a request to negotiate is not
15 sufficient to get out from underneath the application
16 of this tariff in your mind?

17 A. A request to negotiate?

18 Q. Yes.

19 A. It says until and unless superseded by an
20 agreement approved.

21 Q. So a request to negotiate is not sufficient,
22 the signing of a contract is not sufficient, the
23 filing of the agreement with the Commission is not
24 sufficient. The only thing that is sufficient is once
25 they've approved it?

1 A. Yes.

2 Q. You reference in several places in your
3 testimony the Cole County Circuit Court decision. Is
4 that the February 23, 1999 Tom Brown decision in
5 CV198-178CC, CV198-261CC entitled findings of fact,
6 conclusions of law and judgment?

7 A. Are you in my direct now or my --

8 Q. Yes, I was in your direct.

9 A. Yes. I believe we're referring to the Judge
10 Brown --

11 MS. GARDNER: Judge, I have copies here
12 or I would ask that you take official notice of that.
13 It should be in the Commission records because the
14 Commission was a party to this proceeding.

15 JUDGE HOPKINS: I think I've already taken
16 official notice of that, but if I haven't --

17 MS. GARDNER: You took official notice of
18 the report and order that led up to that opinion.

19 JUDGE HOPKINS: I'm sorry. What was that
20 number?

21 TT-97-524 is the report and order that you
22 took official notice of. What I want to include in
23 the official notice is the circuit court's decision.

24 JUDGE HOPKINS: Yes, I will take official
25 notice of that.

1 Do you have extra copies of those?

2 MR. LANE: Yes, I do have some copies. How
3 many would you like?

4 JUDGE HOPKINS: Six. I've got one. Make it
5 five.

6 BY MS. GARDNER:

7 Q. In your surrebuttal testimony on page 14,
8 you go through several paragraphs of the FCC's report
9 and order.

10 Did you read all of those paragraphs in
11 total?

12 A. Did you say will I or did I?

13 Q. Did you, in preparing your testimony?

14 A. Yes.

15 Q. There are several where you cited -- and, in
16 fact, on 1043 you emphasize unless it is carried by an
17 IXC.

18 Do you see that under your reference in
19 paragraph 1043?

20 A. Yes.

21 Q. Is it your contention that Southwestern Bell
22 was an IXC when they performed a transiting function?

23 A. I believe once the -- that the determination
24 of the PTC plan, that could be said, yes.

25 Q. Let me show you the rest of paragraph 1043.

144

1 I'm sorry. Excuse me.

2 Let me ask you to read two of the sentences
3 that you didn't cite, the first two sentences down to
4 there.

5 A. Starting here?

6 Q. No. Starting here.

7 A. As noticed above, CMRS providers licensed
8 herein are established under Federal Rules and in many
9 cases are larger than the local exchange service areas
10 that State Commissions have established for incumbent
11 LEC's local service areas.

12 Q. The next sentence too.

13 A. We reiterate that traffic between an
14 incumbent LEC and a CMRS network that originates and
15 terminates within the same MTA, defined based on the
16 party's location at beginning of the call, is subject
17 to the transport and termination reached under
18 Section 251B5 rather than interstate or intrastate
19 access charges.

20 Is that enough?

21 Q. Yes. Thank you.

22 MS. GARDNER: Thank you. That's all I have.

23 JUDGE HOPKINS: Questions from the Bench?

24 Chair Lumpe?

25 CHAIR LUMPE: No questions. Thank you.

1 JUDGE HOPKINS: Vice Chair Drainer?

2 QUESTIONS BY VICE CHAIR DRAINER:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. I just had a couple of questions. Based on
6 your testimony in your surrebuttal, I was wanting to
7 know if you had done a final calculation of what you
8 believe the Mid-Missouri Group's dollar losses are and
9 not receiving access at this time?

10 A. The total of -- of the Mid-Missouri Group?
11 I don't know that I have that -- that total number.

12 Q. Do you have any ballpark of what you
13 believe?

14 A. I -- I don't. I think the only comment that
15 I might make is that as I read through a lot of this,
16 where they say that it's de minimis or -- and I think
17 some used, you know, possibly 5,000 minutes or
18 something.

19 When I look at -- in my particular case at
20 the MCA traffic, which has taken for the most part my
21 intraLATA toll, those 5,000 minutes a month are
22 approximately an eighth of my toll -- intraLATA
23 terminating toll traffic.

24 Q. Okay. Then --

25 A. So for my -- excuse me. For my small

1 company it's -- it may be de minimis to some, but its
2 revenue to me.

3 Q. Okay. Then I want to clarify. So even
4 though -- and I believe AT&T said it was relatively
5 small. What you're saying is for a company like AT&T
6 or even Southwestern Bell, what they would consider
7 relatively small could be significant for a company of
8 your size?

9 A. Correct.

10 Q. So we're not really comparing apples and
11 apples, are we?

12 A. No.

13 Q. And finally, I want to be clear. Do you
14 believe that the wireless companies are basically
15 getting a free ride in terminating into small
16 telephone companies' exchanges?

17 A. Yes, ma'am. As it stands today, I believe
18 they are.

19 Q. There was a statement about the Mid-Missouri
20 Group -- about Mid-Missouri has its own wireless
21 company and that it too would be getting a free ride.
22 Would you dispute that statement?

23 A. To -- to the best of my knowledge, yes, I
24 would. As I understand how Mid-Missouri terminates
25 their traffic, their cellular traffic is through their

1 cellular companies, as I understand it, is handed off
2 to IX-- to AT&T. They contract with AT&T to terminate
3 their traffic.

4 So in that regard, that AT&T traffic would
5 hit Southwestern Bell's tandem in Kansas City, they
6 would pass it on down to Sprint, who is my PTC in
7 Warrensburg, I would terminate that call, I would
8 receive an IXC summary record that says AT&T sent
9 X amount of messages that amounted to this many
10 minutes and -- to my office, and I would put that on
11 my access bill to AT&T.

12 So I would, in fact, bill AT&T access on
13 that. So they are not -- and I can't tell you because
14 I'm not privileged to the interconnection agreement or
15 what type of an agreement Mid-Missouri Cellular and
16 AT&T have.

17 Q. But they may be compensating AT&T then for
18 that possibly?

19 A. They very well could be.

20 VICE CHAIR DRAINER: Okay. Thank you. I
21 appreciate your answer.

22 THE WITNESS: Thank you.

23 JUDGE HOPKINS: I have no questions.

24 Any further questions from Bench?

25 Just a minute.

1 QUESTIONS BY JUDGE HOPKINS:

2 Q. Mr. Stowell, here on page 20 of your
3 surrebuttal, lines 3 to 14, you talk about the rate
4 differentiation that would cause an arbitrage
5 situation.

6 Would you explain that to me?

7 A. You did say from line 3 down, that whole --
8 that's where you started?

9 Q. Explain how that would create a rate
10 differentiation, and then explain if that happened and
11 how that would create an arbitrage situation.

12 A. What I was trying to explain, that if we had
13 this agreement with -- with a CLEC at some rate less
14 than access, that they might very well then could
15 connect to someone else, to another CLEC, if you will,
16 and dump that traffic through there, and to that
17 extent that was where I was going with that.

18 Q. A lot of questions have been asked of you
19 about the kinds of traffic that would be covered by
20 this tariff.

21 Are there any kinds of traffic that you can
22 think of that would not be covered by the tariff?

23 A. As it stands today, it was not our intent to
24 have this applied to -- to MCA traffic. I know that
25 was a lot of the concern with some of the testimony,

1 that looked as though it was going to apply to MCA
2 traffic.

3 And MCA is tariffed under the Commission
4 order in our local tariff, albeit there was -- there
5 was never really anything done, I don't think, to our
6 access tariff, and perhaps that needs to be done to
7 clarify that MCA is no longer covered under this
8 tariff but is covered under our local tariff or
9 something to that effect.

10 JUDGE HOPKINS: Okay.

11 Any recross based on questions from the
12 Bench?

13 STCG?

14 MR. ENGLAND: No. Thank you.

15 JUDGE HOPKINS: Staff?

16 MS. KARDIS: No thanks.

17 JUDGE HOPKINS: OPC?

18 MR. DANDINO: No questions, your Honor.

19 JUDGE HOPKINS: Southwestern Bell?

20 MR. LANE: No questions, your Honor.

21 JUDGE HOPKINS: AT&T?

22 MR. DeFORD: I think just one, your Honor.

23 Thank you.

24 RE CROSS-EXAMINATION BY MR. DeFORD:

25 Q. Mr. Stowell, you were talking with

1 Commissioner Drainer about 5,000 minutes not being a
2 de minimis amount to your company; is that correct?

3 A. Yes.

4 Q. And I think maybe in your testimony -- I
5 don't recall whether it was your direct or your
6 surrebuttal -- you quantified that to be somewhere
7 between 3 and \$600 a month to your company; is that
8 right?

9 A. I believe we were -- I believe that figure
10 was referring to the total that had billed to all of
11 the carriers.

12 Q. Would that revenue figure sound about right
13 to you, somewhere between 3 and \$600 a month?

14 A. For all of the cellular terminating minutes
15 that we have knowledge of and billed to that, yes.

16 Q. Assuming we followed your scenario and went
17 through arbitration with all of the cellular providers
18 and your company, and we didn't have cost studies, so
19 we ended up with the FCC defaults, I think the FCC
20 default is somewhere less than a half a cent a minute;
21 is that right?

22 A. Subject to check, I believe you're correct.

23 Q. So wouldn't that 3 to \$600 turn into about
24 \$25 a month?

25 A. If you did the math I'll take your word for

1 it, yes.

2 Q. Would that be de minimis?

3 A. Possibly could be today, but who knows what
4 tomorrow would be?

5 Q. How much would it cost you to track that
6 usage and render that bill?

7 A. I couldn't tell you that today.

8 Q. Be about maybe \$10,000 to render a bill to a
9 customer, something like that?

10 A. Possibly.

11 MR. DeFORD: Thank you. That's all I have.

12 JUDGE HOPKINS: Southwestern Bell Wireless?

13 MS. FISCHER: No questions.

14 JUDGE HOPKINS: Sprint?

15 MR. LANE: No questions.

16 JUDGE HOPKINS: Redirect by MMG?

17 MR. JOHNSON: Thank you, your Honor.

18 REDIRECT EXAMINATION BY MR. JOHNSON:

19 Q. I just want to go back to a few things,
20 Mr. Stowell.

21 First of all, Ms. Gardner had you read a
22 couple of sentences out of paragraph 1043 of the FCC
23 decision, and I wanted to reread that sentence to you
24 and ask you a question.

25 Traffic between an incumbent LEC, does the

1 word -- how many incumbent LECs does the word "an"
2 signify to you?

3 A. One.

4 Q. Now continue, and a CMRS network. How many
5 CMRS providers does the word "a" imply to you?

6 A. One.

7 Q. Well, let me ask you this question about in
8 1992 when the MCA service was first rolled out, were
9 there any changes made to the Oregon Farmers and hence
10 your access tariffs to specify that MCA traffic was
11 not going to be charged access anymore?

12 A. I don't believe there were. We -- we
13 tariffed MCA in our local tariff.

14 Q. But to your knowledge did anyone complain in
15 1992 that there wasn't any special addition made to
16 the access tariff to specify that it wasn't applying
17 to MCA?

18 A. Not to my knowledge.

19 Q. Mr. Lane asked you some questions about the
20 timing in which the Mid-Missouri Group companies got
21 the bill to the wireless providers out.

22 Do you recall those questions?

23 A. Yes.

24 Q. And as I recall, a decision handed by the
25 Commission in their case was dated February of 19 --

1 no -- it was December of 1997?

2 A. Yes.

3 Q. Were there other things that happened after
4 December of 1997 that took place prior to rendering
5 those bills?

6 A. Yes. There -- until we came to an agreement
7 on -- on the settlements, I believe there was an
8 appeal that went on, and I was trying to recall
9 when -- when that was -- was completed.

10 But there was -- were several issues that
11 went on that drug that on out. And until that was
12 completed, we didn't know we were.

13 Q. So is it fair to say that you waited until
14 after the legal proceedings were completely over
15 before rendering the bills?

16 A. Yes.

17 Q. Let me ask you this question in response to
18 some of the questions that Mr. Lane asked you. Let's
19 suppose that a Southwestern Bell customer in downtown
20 Kansas City makes a one-plus call that's going to go
21 to one of your customers in Freeman. As I understand
22 it, that would -- before that hits your terminating
23 facilities, Southwestern Bell is going to hand that
24 off to Sprint?

25 A. Correct.

1 Q. Today under the PTC plan, who pays you the
2 terminating access? Is it Southwestern Bell the
3 originating carrier or Sprint the transit carrier?

4 A. Sprint.

5 Q. So would you agree that in today's world
6 there are some situations where the originating
7 carrier pays terminating access and there are some
8 situations where the transit carrier pays them?

9 A. Yes.

10 MR. JOHNSON: That's all I have, your Honor.

11 JUDGE HOPKINS: All right. May this witness
12 be excused?

13 THE WITNESS: Thank you, your Honor.

14 MR. LANE: Your Honor, we have that motion
15 to compel pending, and if it's granted, then we may
16 want to cross-examine Mr. Stowell on that. He's the
17 person we need to talk to about that.

18 MR. JOHNSON: It's too late.

19 MR. LANE: No, it's not too late. We're
20 waiting on that motion. It's under advisement.

21 MR. JOHNSON: Your Honor, I have him trouble
22 with him cross-examining this witness based on a
23 document he didn't even get from me.

24 JUDGE HOPKINS: Okay.

25 MR. LANE: I cross-examine on a lot of

1 documents that I didn't get from him. That's not an
2 objection.

3 MR. ENGLAND: I've got a problem with
4 the order of cross-examination. Mr. Lane has the
5 opportunity to cross-examine this witness, and
6 if he felt like he needed to do additional
7 cross-examination, he should have told you at that
8 time that he had additional cross based upon those
9 reports.

10 MR. LANE: I told you when I --

11 MR. ENGLAND: I mean, redirect -- and you
12 just asked should the witness -- may the witness be
13 excused. The answer is yes. The examination of this
14 witness is concluded.

15 MR. LANE: It is not concluded, your Honor.
16 I made clear when I gave that to you that we needed a
17 decision on it because we wanted to ask the very first
18 witness on it. You've taken it under advisement.

19 Until this matter is decided, we can't
20 possibly cross-examine him until we know -- see the
21 document. I can't possibly cross-examine him with a
22 document that I haven't yet seen, because the decision
23 hasn't been made.

24 JUDGE HOPKINS: Well, all right. That
25 motion is under advisement and I will excuse this

1 witness. You may step down.

2 Okay. STCG case in chief. Mr. Schoonmaker.

3 (Witness sworn/affirmed.)

4 ROBERT C. SCHOONMAKER testified as follows:

5 JUDGE HOPKINS: Please be seated.

6 Spell your first and last name for the
7 reporter.

8 THE WITNESS: My first name is Robert,
9 R-o-b-e-r-t. My last name is Schoonmaker,
10 S-c-h-o-o-n-m-a-k-e-r.

11 JUDGE HOPKINS: Thank you.

12 Direct examination by Mr. England. You may
13 proceed.

14 MR. ENGLAND: Thank you, your Honor.

15 DIRECT EXAMINATION BY MR. ENGLAND:

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

18 A. My name is Robert C. Schoonmaker.

19 Q. And by whom are you employed and in what
20 capacity?

21 A. I'm the vice-president of the GVNW
22 Consulting, Incorporated.

23 Q. And your business address, please?

24 A. My business address is 2270 La Montana Way,
25 Colorado springs, Colorado, 80198.

1 Q. Mr. Schoonmaker, did you cause to be
2 prepared and submitted in this case prepared
3 surrebuttal testimony that has been marked for
4 purposes of identification as Exhibit No. 3?

5 A. I did.

6 Q. Are there any changes or corrections that
7 you need to make to that testimony at this time?

8 A. A few corrections.

9 Do you want me to go ahead with those?

10 Q. Please proceed.

11 A. Okay. On the affidavit page in paragraph 2,
12 the word "direct" needs to be replaced by the word
13 "surrebuttal."

14 On page 1, the title on line 1, the word
15 "direct" needs to be replaced with "surrebuttal."

16 On page 13 on line 8, I would insert after
17 the word "complaint," the beginning of the line the
18 words "at the FCC."

19 And on Schedule RCS-1, there is an asterisk
20 after No. 7, Fidelity Telephone Company that should be
21 removed.

22 And that completes the corrections.

23 Q. If I were to ask you the questions today
24 that appear in your surrebuttal testimony, would your
25 answers with the corrections that you've noted be the

1 same today under oath?

2 A. Yes, they would.

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

5 A. They are.

6 Q. With respect to the schedules attached to
7 your testimony, were those prepared by you or under
8 your supervision?

9 A. In regards to Schedule 1, yes.

10 In regards to Schedule 2, they obviously
11 weren't, but they are copies of the correspondence
12 that took place that I've attached.

13 Q. And you have been involved with some of the
14 negotiations with Sprint PCS that gave rise to that
15 correspondence; is that correct?

16 A. That's correct.

17 Q. Is the information contained in those two
18 schedules true and correct to the best of your
19 knowledge, information and belief?

20 A. It is.

21 MR. ENGLAND: Thank you, sir. I have no
22 other questions of the witness and would tender him
23 for cross-examination and would offer Exhibit 3.

24 JUDGE HOPKINS: All right. Exhibit No. 3,
25 the surrebuttal of Schoonmaker.

1 THE WITNESS: That's correct.

2 JUDGE HOPKINS: Any objection to that being
3 entered into evidence?

4 (No response.)

5 JUDGE HOPKINS: Hearing no objections, I'll
6 enter that into evidence.

7 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

8 JUDGE HOPKINS: Cross-examination, MMG?

9 MR. JOHNSON: No, thank you, your Honor.

10 JUDGE HOPKINS: Staff?

11 MS. KARDIS: No questions.

12 JUDGE HOPKINS: OPC?

13 MR. DANDINO: No questions, your Honor.

14 JUDGE HOPKINS: Southwestern Bell Telephone?

15 MR. LANE: Thank you, your Honor.

16 CROSS-EXAMINATION BY MR. LANE:

17 Q. Good afternoon, Mr. Schoonmaker.

18 A. Good afternoon, Mr. Lane. We meet again.

19 Q. It's always a pleasure.

20 On page 8 of your surrebuttal testimony, you
21 discuss whether a wireless traffic should be blocked
22 by the transiting carrier, in this case Southwestern
23 Bell.

24 Do you see that?

25 A. I see the question and the answer you're

160

1 referring to.

2 Q. Okay. And would you agree with me that the
3 position that you state is that you do not advocate
4 blocking?

5 A. If the traffic is being delivered under
6 the auspices of the access tariff, I agree that
7 there should be nobody blocking. If -- if the traffic
8 is not being delivered under the auspices of the
9 access tariff, there is no legal agreement between
10 Southwestern Bell and the STCG companies for the
11 delivery of any such traffic, because we have no
12 interconnection agreements, and I essentially say
13 the traffic should not be delivered but that should
14 not be considered blocking because there is no
15 interconnection agreement.

16 Q. From the calling customer's perspective, is
17 there any difference between blocking and a lack of
18 interconnection?

19 A. Probably not. But from a legal standing
20 there is, which your company emphasizes frequently.

21 Q. Is it fair to say in your testimony you
22 express the view that the '96 Telecom Act provisions
23 concerning transport and termination and reciprocal
24 compensation don't apply when two LECs are involved in
25 terminating the call?

1 And I might clarify that question a little
2 bit for you.

3 A. That would help.

4 Q. When a call is originated by one carrier and
5 two or more LECs are involved in the termination of
6 that call, then is it your view that the '96 Act
7 provisions concerning transport and termination under
8 reciprocal compensation don't apply?

9 A. The way that the FCC has defined those
10 terms, they do not seem to apply to that kind of
11 circumstance where there is an indirect connection.
12 That's theoretically an indirect interconnection.

13 Q. Is it fair to say that it's your view that
14 an independent local exchange company does not have
15 the authority under the Act to request interconnection
16 or to seek arbitration with an indirectly
17 interconnected wireless carrier?

18 A. I think the Act is silent on that issue,
19 and, therefore, I suppose that a LEC could request
20 that. There is certainly nothing in the Act that
21 requires a wireless carrier to respond to that request
22 for negotiations. Some of them might voluntarily.

23 Q. And if the wireless carrier chooses not to
24 respond voluntarily, is it your view that the
25 Commission doesn't have the authority to conduct an

1 arbitration and to decide the terms of that indirect
2 interconnection under the '96 Act?

3 A. I don't see anything in the '96 Act that
4 gives the Commission that authority. If the -- I
5 mean, the requirement to negotiate is placed on
6 incumbent local exchange carriers under 251C. If
7 another carrier requests an incumbent local exchange
8 carrier to negotiate, they then have the
9 responsibility to negotiate in good faith, as well as
10 the incumbent.

11 But there is nothing that says that if the
12 incumbent LEC asks a wireless carrier to negotiate --
13 there is no provision in the Act that says that the
14 wireless carrier has to negotiate.

15 Q. Are you aware of any court or any FCC
16 opinion which states that as a matter of
17 interpretation under the '96 Act?

18 A. I'm not aware of -- of any court opinion or
19 FCC order that addresses that.

20 Q. Would you agree that it's a matter of
21 uncertainty whether the State Commission has the
22 authority to handle interconnection negotiations and
23 arbitrations when requested by the incumbent LEC to an
24 indirectly connected wireless carrier?

25 A. Well, I see nothing in the Act that speaks

1 to that issue at all. So to me, I think it's not
2 terribly uncertain. There doesn't seem to be any
3 provision for the Commission to do that now.

4 Q. Could you take a look --

5 A. Can a court have a different opinion than I
6 do and read something into it? Sometimes they do.

7 Q. Take a look, if you would, at page 14 of
8 your surrebuttal, line 16 and 17.

9 A. Okay.

10 Q. On the first two lines you indicate that
11 Section 251A requires both direct and indirect
12 connection, but that there is a good deal of
13 uncertainty about the nature of indirect
14 interconnection.

15 In light of that statement, has any of the
16 Small Telephone Company Group companies attempted to
17 initiate interconnection negotiations with any
18 wireless carrier?

19 A. Not at this point in time. We've been
20 fairly busy on some other issues before the
21 Commission.

22 Q. You're familiar with the time frames that
23 are involved with interconnection negotiations that
24 may result in arbitration under the Telecom Act, are
25 you not?

1 A. Generally. It's been some time since I've
2 reviewed the specifics of them.

3 Q. Okay. Would you agree with me generally
4 that the Act provides that a party after requesting
5 interconnection can seek arbitration at any point
6 between the 135th and 160th day after the request for
7 interconnection negotiations was made?

8 A. I know there is a specific time period.
9 Without reviewing the Act, I don't know whether it
10 was the 135th or the 160th day is the precise ones or
11 not. I know it's generally out in that neighborhood,
12 but . . .

13 Q. Okay. And would you also agree with me
14 that the Act provides that the Commission, if it's
15 presented with a petition for arbitration, is to have
16 the matter resolved 9 months after the initial request
17 for interconnection was made?

18 A. That sounds about right.

19 Q. And so had the Mid-Missouri Group -- excuse
20 me -- had any company in the Small Telephone Company
21 Group attempted to request interconnection with any
22 wireless provider, beginning in February of 1998, when
23 Southwestern Bell's wireless tariff went into effect,
24 the matter would have been presented to the Commission
25 and a determination could have been made as to the

1 scope of their authority 9 months from that date.

2 Right?

3 MR. ENGLAND: Objection. That assumes facts
4 that are not in evidence. It assumes that the case
5 would have been arbitrated, and this witness clearly
6 disputes whether or not we could have pushed it to
7 arbitration.

8 JUDGE HOPKINS: Are you asking your question
9 as a hypothetical, Mr. Lane?

10 MR. LANE: Yes, your Honor.

11 JUDGE HOPKINS: Okay. As a hypothetical,
12 then I'm going to overrule your objection,
13 Mr. England, and you need to -- do you need that
14 question repeated, Mr. Schoonmaker?

15 THE WITNESS: No, I think I remember enough
16 of it.

17 In regards to the hypothetical, I have no
18 idea whether it would have gone to arbitration by this
19 point in time or not, because, No. 1, my recollection
20 of Section 252 is that it wouldn't apply to this
21 particular circumstance anyway.

22 Had the Commission decided that it would
23 take it under the auspices of Section 252, I don't
24 know what the response of the wireless carrier would
25 have been and whether it would have gone to court in

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1 regards to whether the Commission, in fact, had that
2 authority or not, and if it had gone to court, what
3 would have been done about it and whether we would
4 have concluded arbitration or anything else at this
5 point in time.

6 BY MR. LANE:

7 Q. Wouldn't we be much farther along the path
8 of knowing whether your interpretation is correct had
9 you attempted to initiate interconnection negotiations
10 and brought the matter to the Commission?

11 A. We might be.

12 Q. Okay. If you would, take a look at
13 page 19 of your surrebuttal testimony. And in
14 there you dispute Southwestern Bell's witnesses --
15 Ms. Hollingsworth's testimony that the standard
16 industry practice under which the originating carrier
17 is responsible for compensating other carriers is not
18 the tandem company.

19 Do you see that question and your response
20 to that?

21 A. I do.

22 Q. You claim that for Feature Group D, that the
23 carrier terminating the call is responsible for
24 payment? Do you see that?

25 A. Yes.

1 Q. And I want to clarify that. Assume with me
2 if you would that there is a call from a Kansas City
3 customer of Southwestern Bell who is attempting to
4 place a call to a local exchange customer of Orchard
5 Farms Telephone Company outside of St. Louis, and
6 assume for the purposes of this question that the
7 Southwestern Bell customer in Kansas City has chosen
8 AT&T as his other presubscribed interexchange carrier,
9 so that AT&T carries the call ultimately to
10 Southwestern Bell where it's then transited over to
11 Orchard Farms for termination.

12 A. Okay.

13 Q. Do you have the factual pattern down?

14 A. I think in that example I do.

15 Q. Okay. And would you agree with me that
16 that's not an uncommon occurrence to have a call
17 carried by an interexchange carrier and then two or
18 more LECs are involved in the termination of that
19 call?

20 A. That happens frequently.

21 Q. And would Orchard Farm, for example -- it
22 happens all of the time because they don't have a
23 tandem facility themselves. Right?

24 A. That's correct. Sometimes there is more
25 than one interexchange carrier that carries the call

1 too.

2 Q. And of the independent companies in
3 Missouri, would you agree that the majority of those
4 don't have their own tandem, so that they receive
5 terminating interexchange calls that require the
6 involvement of two or more LECs?

7 A. Probably the majority do, that's correct.

8 Q. And would you agree that under the -- well,
9 strike that.

10 You're familiar with the Orchard Farm access
11 tariff, are you not?

12 A. The Oregon Farmer's access tariff?

13 Q. Excuse me -- the Oregon Farmer's. Thank
14 you.

15 A. Yes, I am.

16 Q. Okay. And would you agree with me that
17 almost all of the Small Telephone Company Group
18 companies concur in that Oregon Farmer's tariff?

19 A. Yes.

20 Q. And would you agree with me that that Oregon
21 farmers tariff contemplates a meet-point billing
22 arrangement on calls like I described from Kansas City
23 to an Orchard Farm customer in St. Louis?

24 A. Yes.

25 Q. And under that billing arrangement, Orchard

1 Farm bills directly to AT&T, the interexchange
2 carrier, and not to Southwestern Bell access for
3 terminating that call?

4 A. It's true in that specific example.

5 Q. And also, Southwestern Bell in that example
6 directly bills to AT&T, the interexchange carrier.
7 Correct?

8 A. That's correct.

9 MR. LANE: That's all I have. Thank you.

10 JUDGE HOPKINS: AT&T?

11 MR. DeFORD: No questions. Thank you.

12 JUDGE HOPKINS: Southwestern Wireless?

13 MS. FISCHER: No questions.

14 JUDGE HOPKINS: Sprint?

15 MS. GARDNER: Thank you.

16 CROSS-EXAMINATION BY MS. GARDNER:

17 Q. I just have a couple, Mr. Schoonmaker.
18 Would you turn to page 14 of your testimony,
19 please --

20 A. Yes, I'm there.

21 Q. -- lines 7 through 13 discussing the
22 informal complaint filed by Sprint PCS.

23 Are you aware that that six-month deadline
24 has been tolled by the FCC?

25 A. Has been what?

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1 Q. Tolled.

2 A. Tolled? T-o-l-l-e-d?

3 Q. Yes.

4 A. No, I'm not, and I'm not aware of what that
5 means.

6 Q. I'll show you a letter. It means the
7 six months of stops being counted.

8 JUDGE HOPKINS: It didn't have anything to
9 do with the phone call, Mr. Schoonmaker.

10 BY MS. GARDNER:

11 Q. Does that suggest to you that the six months
12 is held in abeyance while there is some decisions
13 going on?

14 MR. ENGLAND: Excuse me. Before we do any
15 more cross, I have a problem with the witness reading
16 from a letter that is not part of the record.

17 MS. GARDNER: His testimony indicates --

18 MR. ENGLAND: And secondly, as I mentioned
19 to counsel off the record, it appears to be a request
20 by Sprint PCS for their informal complaint to be kept
21 alive on the docket there.

22 I'm party to that case, or counsel for
23 parties that are Respondents of that case, and have
24 never been served with that request from Sprint's
25 counsel, and I've never seen this letter in response,

1 so I have a real problem with cross-examining from a
2 document, one, that isn't part of this record and,
3 two, doesn't appear to have a foundation to be put
4 into this record.

5 MS. GARDNER: And I'm not intending to put
6 the letter in this record. Mr. Schoonmaker makes a
7 statement about his belief of what the status of the
8 FCC in the formal complaint is, and I'm merely
9 suggesting that he's wrong.

10 And he can agree or disagree with this
11 letter or tell me he doesn't know what the letter
12 means or tell me he doesn't know.

13 JUDGE HOPKINS: All right. Mr. England, I'm
14 going to overrule your objection and you can ask the
15 question that you just stated.

16 BY MS. GARDNER:

17 Q. Mr. Schoonmaker, do you -- I can't remember
18 how I stated it. It's --

19 A. Well, don't be bound by --

20 Q. Does this letter change the position that
21 you state on page 14 at all?

22 Do you know whether the complaint is dead as
23 you state or do you --

24 A. I -- I do not know, since Mr. England
25 indicated, he's counsel in this case, and I would

1 assume that anything that would cause the case to be
2 lengthened should be served on the counsel that is
3 participating.

4 I don't know how to respond to this -- this
5 letter. I don't know whether it's -- I mean, it says
6 it's from the FCC. I don't know the names of the
7 people. I just -- well, I don't know.

8 It really doesn't change my opinion, because
9 everything that we've seen formally from -- from our
10 side of the case, we're not aware that that took
11 place. If it did, I don't know what the FCC practice
12 is, but I would think that normally people that are
13 parties to the case would know that such an action had
14 taken place.

15 Q. But you don't know what the status of the
16 FCC informal complaint is at this point. Is that your
17 position?

18 A. As far as I know, the six months is past and
19 Sprint hasn't filed a formal complaint. And my
20 understanding of FCC practice, that would mean
21 normally that it's dead.

22 Q. But do you know that at this point?

23 A. That's -- that's what you know. I can't
24 really comment on the letter that you have and whether
25 it's accurate or correct or what the status of the --

1 Q. Would you agree that the informal complaint
2 at the FCC poses many of the questions that are raised
3 here today about indirect connection and what the
4 effect is on the FCC rules?

5 A. Well, it poses some other issues that are
6 here. The context is what's different and the
7 emphasis in that complaint is primarily on the issue
8 of whether the traffic that is originating from the
9 local exchange carriers end users being, in fact,
10 originated by other carriers and terminating with
11 Sprint, is the other carrier's traffic under his
12 tariffs it's carried or whether it's the end user's
13 traffic or the -- in the end-user LEC's traffic, in
14 spite of the fact that these other carriers, in fact,
15 carry the traffic.

16 Q. And the reverse is also contemplated in the
17 FCC complaint, is it not, wireless originated traffic
18 that transits the third party and terminates to an
19 LEC?

20 A. I don't think that is an issue that is in
21 dispute. I think the parties were in agreement as to
22 that that traffic was the responsibility of the CMRS
23 provider.

24 Q. And you don't think there is a dispute about
25 compensation in that situation?

1 A. There clearly is a dispute between us and
2 Sprint PCS as to what the compensation should be, but
3 I don't -- my recollection is that that's not
4 specifically part of the informal complaint.

5 Q. On page 18 of your testimony, lines 5 and
6 six and 7, Mid-Missouri Cellular delivers all of its
7 toll traffic through the facilities of an
8 interexchange carrier.

9 What does it do with its local traffic?

10 A. When I was using toll in that context, I was
11 referring to traffic that would be dialed on a
12 one-plus basis and it goes outside of the local
13 calling area.

14 My understanding is that the local calling
15 area that Mid-Missouri Cellular defines for its
16 customers is a relatively small area, and that
17 probably only includes its specific cellular serving
18 area and traffic that it terminates on its own, with
19 the possible exception of some traffic into
20 Southwestern Bell's Sedalia exchange.

21 And beyond that, certainly in Kansas City
22 and other parts of the state, that traffic is
23 delivered to an interexchange carrier and it is not
24 terminated by Mid-Missouri Cellular. It's terminated
25 by that interexchange carrier.

1 So they are not in a situation that
2 Mr. Kohley implied, in that they're delivering traffic
3 all over the MTA and not paying the terminating
4 compensation for it.

5 Q. And that is one-plus dial traffic that
6 Mid-Missouri Cellular considers to be toll traffic; is
7 that correct?

8 A. That would be my presumption; but I'm not
9 exactly sure of the dialing patterns they use.

10 MS. GARDNER: Thank you. That's all that I
11 have.

12 JUDGE HOPKINS: May this witness be excused?

13 MR. ENGLAND: I have some redirect.

14 JUDGE HOPKINS: Beg your pardon.

15 REDIRECT EXAMINATION BY MR. ENGLAND:

16 Q. Mr. Schoonmaker, following up on some recent
17 questions by Ms. Gardner regarding the FCC complaints,
18 are you familiar with the answer that was filed in
19 that case on behalf of the Small Local Exchange
20 Companies of Missouri?

21 A. The original answer?

22 Q. Yes, sir.

23 A. It was filed back in September of 1998. I
24 have a copy of it. I read it at the time it was
25 filed.

1 Q. Well, if you know, do you recall if we, that
2 is, the Respondents in that case, have also requested
3 the FCC's jurisdiction to decide some of the issues or
4 if not some, all of the issues posed by Sprint PCS?

5 A. Yes. And they've been questioned on a
6 couple of grounds. One is the question of whether
7 that properly was taken to the FCC or should have
8 been dealt with in the State jurisdiction where
9 Section 252 of the Act requires that issues related
10 to interconnection contracts be dealt with.

11 And secondly, there has been questions
12 raised about the appropriateness of a complaint to
13 deal with issues that are not unique to the
14 Respondents and Sprint PCS, but rather are national
15 issues related to policy questions relating to the
16 proper definition of traffic and so forth.

17 Q. Do you know if Sprint PCS pursued any of its
18 issues here before this Commission in some sort of
19 complaint or other proceeding?

20 A. Not that I'm aware of. And I'm quite sure
21 that I would have been had they done so.

22 Q. Let me switch gears on you and ask you a
23 couple of questions regarding -- I think it was a
24 hypothetical or an example that Mr. Lane asked you
25 about the Southwestern Bell customer in Kansas City,

1 Missouri places a one-plus call via AT&T to an
2 end-user customer served by Orchard Farm outside of
3 St. Louis.

4 Do you recall that?

5 A. I do.

6 Q. Now, let me ask you a question. What if
7 that Southwestern Bell customer in Kansas City was
8 served by a long-distance reseller, one who did not
9 have facilities to carry long-distance traffic but
10 contracted with AT&T to carry their traffic?

11 Are you familiar with such an arrangement?

12 A. Yes.

13 Q. If that were to happen, who would be
14 responsible for paying terminating access to both
15 Southwestern Bell Telephone Company in St. Louis and
16 Oregon Farmers in Oregon Farm?

17 MR. LANE: Orchard Farm?

18 MR. ENGLAND: You started it.

19 MR. LANE: It happens.

20 BY MR. ENGLAND:

21 Q. That is correct, Orchard Farm. Excuse me.

22 A. My understanding is that AT&T is who is the
23 carrier in the example that would have delivered the
24 traffic to Southwestern Bell at its tandem would be
25 the one that would be responsible to pay that

1 terminating compensation.

2 Q. Would AT&T have any relationship with the
3 end-user customer in Kansas City that placed the call?

4 A. Probably not.

5 Q. Who would bill that customer and collect the
6 toll revenue for that toll call?

7 A. The toll resale carrier, whomever they are.

8 Q. Would that be an example of a situation
9 where the originating carrier is not responsible for
10 paying all of the carriers who participate in
11 completing the call?

12 A. Yes, they would.

13 Q. And let me take that example one more step.
14 For purposes of applying access charges under
15 anybody's scenario, is Southwestern Bell, the LEC,
16 serving that customer in Kansas City considered the
17 responsible carrier for payment of terminating
18 compensation of any kind on that call?

19 A. On the call from Kansas City to Orchard
20 Farm?

21 Q. Correct.

22 A. Um, at this point in time, I can't think of
23 a -- of a circumstance where they would be
24 responsible.

25 Q. And I'm thinking particularly where that

1 call is actually carried by either a reseller or AT&T.

2 A. Right. Or anybody else. Southwestern Bell
3 can't carry it because it's an interLATA call.

4 Q. So simply because they happen to serve the
5 local exchange that serves that end-user customer in
6 Kansas City doesn't necessarily make them responsible
7 for all interexchange calls emanating from that
8 exchange. Correct?

9 A. That's correct.

10 MR. ENGLAND: Thank you, sir. No other
11 questions.

12 I'm done with the witness.

13 JUDGE HOPKINS: All right. Thank you.

14 OPC case, Barbara Meisenheimer.

15 (Witness affirmed/sworn.)

16 JUDGE HOPKINS: Please be seated.

17 Spell your first and last name for the court
18 reporter.

19 BARBARA A. MEISENHEIMER testified as follows:

20 THE WITNESS: Barbara, B-a-r-b-a-r-a,
21 Meisenheimer, M-e-i-s-e-n-h-e-i-m-e-r.

22 JUDGE HOPKINS: Mr. Dandino, go ahead.

23 MR. DANDINO: Thank you, your Honor.

24 DIRECT EXAMINATION BY MR. DANDINO:

25 Q. Please state your name and position for the

1 record.

2 A. My name is Barbara Meisenheimer. I am Chief
3 Utility Economist with the Office of Public Counsel.

4 Q. And are you the same Barbara A. Meisenheimer
5 that caused to be filed in this case Exhibit 4 which
6 is the surrebuttal testimony?

7 A. Yes, I am.

8 Q. Okay. And do you have any corrections to
9 your testimony?

10 A. Yes, I do.

11 Q. Okay. Would you please indicate by page and
12 line number?

13 A. Page 2, line 12, in the middle of the -- of
14 line 12, the new sentence should read, "the tariff
15 should clarify."

16 Q. So you're adding the word "should"?

17 A. Yes.

18 Q. Do you have any other corrections?

19 A. No.

20 Q. As corrected, is your testimony there in
21 Exhibit 4 true and correct to your best knowledge,
22 information and belief?

23 A. Yes, it is.

24 Q. And if I asked you those questions that are
25 contained in Exhibit 4 today, would you give the same

1 answers?

2 A. Yes, I would.

3 MR. DANDINO: Your Honor, at this time I'd
4 offer Exhibit 4.

5 JUDGE HOPKINS: Any objection to Exhibit
6 No. 4, Barbara Meisenheimer's surrebuttal testimony,
7 being entered into evidence?

8 (No response.)

9 JUDGE HOPKINS: No objection being heard, I
10 will receive it into evidence.

11 (EXHIBIT NO. 4 WAS RECEIVED INTO EVIDENCE.)

12 MR. DANDINO: I tender the witness for
13 cross-examination, your Honor.

14 JUDGE HOPKINS: Thank you, Mr. Dandino.

15 MMG?

16 MR. JOHNSON: No questions, your Honor.

17 JUDGE HOPKINS: STCG?

18 MR. ENGLAND: Yes, sir. Thank you.

19 CROSS-EXAMINATION BY MR. ENGLAND:

20 Q. Good afternoon, Ms. Meisenheimer.

21 A. Good afternoon.

22 Q. At page 5 of your testimony, lines 17
23 through 18, you discuss -- and I'm just kind of
24 paraphrasing -- that MMG ILEC has the duty to
25 establish reciprocal compensation, et cetera, and you

1 cite some FCC -- excuse me -- Telecommunications Act
2 provisions I believe?

3 A. Yes.

4 Q. Do you see that?

5 A. My question, Ms. Meisenheimer, is, is it
6 OPC's opinion that reciprocal compensation applies in
7 situations where the originating and terminating
8 carriers are not directly interconnected?

9 A. I think that there is -- that there will be
10 some legal debate over that. I think in the FCC's
11 order, it's not entirely clear. There are indications
12 that it could be interpreted either way, whether it
13 must be a direct interconnection or an indirect
14 interconnection through facilities provided by
15 alternative carriers.

16 Q. Is your answer, then, it's open to debate?
17 I mean, you don't have a definitive answer one way or
18 the other?

19 A. Yes, I think it's still open to debate.

20 Q. And now I'd like to take you through maybe
21 some specific examples to explore the nature of
22 reciprocal compensation or reciprocal traffic.

23 First, would you please assume an
24 indirect interconnection between Sprint PCS located
25 in St. Louis, Southwestern Bell as the transit carrier

1 between Sprint PCS, and finally BPS, the terminating
2 carrier in the Bernie, Parman and Steel exchanges in
3 southwest Missouri.

4 A. Okay.

5 Q. Under the interconnection agreement
6 currently in effect between Sprint PCS and
7 Southwestern Bell, would you agree with me that Sprint
8 is obligated to pay BPS for wireless traffic
9 terminated to BPS?

10 A. I'm not thoroughly familiar with the
11 interconnection agreement or what it says. I know
12 that there are a number of interconnection agreements
13 where Southwestern Bell has included a requirement
14 that the connecting carrier make arrangements with
15 other parties to which traffic has been terminated.

16 Q. And I guess assume for purposes of my
17 question that the generic language that you're
18 familiar with is applicable in the Sprint PCS
19 circumstance.

20 If that is the case and Sprint --

21 A. There might have been testimony to that
22 effect.

23 Q. That Sprint PCS would be obligated to pay
24 terminating compensation to the terminating carrier.
25 Correct?

1 A. Okay.

2 Q. I mean, you're not aware of any situation,
3 not just this proceeding but given Southwestern Bell's
4 position in other cases over the last couple of years,
5 where it has assumed responsibility for traffic
6 originated by another carrier, are you?

7 A. I can't -- I can't think of any.

8 Q. Okay. Under the -- under the wireless
9 interconnection tariff that Southwestern Bell
10 currently has in place, it's clear that Southwestern
11 Bell is only performing a transiting function and,
12 again, given my example, if BPS or -- or if Sprint PCS
13 were to terminate that call to BPS via the wireless
14 interconnection tariff, it would be responsible for
15 compensating BPS for terminating that call. Correct?

16 A. Yes.

17 Q. So when it's wireless to landline with the
18 indirect interconnection, the wireless carrier has
19 either assumed or been given the responsibility of
20 terminating or -- excuse me -- paying the terminating
21 carrier. Correct?

22 A. Once -- I'm not thoroughly familiar with
23 each and every interconnection agreement, but I think
24 that that's -- that is true as a general statement.

25 Q. Okay. Now, let's reverse the calling. And

1 the call now is going from a landline customer in BPS
2 via Southwestern Bell and terminating to Sprint PCS.

3 If that BPS subscriber dials one plus the
4 area code and the Sprint PCS customer's number to
5 reach them in St. Louis, would you agree with me that
6 Southwestern Bell would have carried that call prior
7 to July 22nd of this year?

8 A. Yes.

9 Q. Okay. And again, prior to July 22, '99 of
10 this year, that Southwestern Bell would have been
11 responsible for paying terminating compensation to
12 Sprint PCS for that one-plus call?

13 A. Once -- once again, I'm not thoroughly
14 familiar with the -- with the interconnection
15 agreements or the tariffs of wireless carriers, but
16 I -- I don't have any reason to assume that they
17 wouldn't get access.

18 Q. This call wouldn't have had anything to do
19 with wireless carriers. It would have been made
20 pursuant to Southwestern Bell's intraLATA toll tariff,
21 would it not? The one-plus call from BPS to Sprint
22 PCS in St. Louis, would it --

23 MR. LANE: Judge, I'm going to object at
24 this point. The witness has testified that she's not
25 familiar with the interconnection agreement. We're

1 engaging in speculation. The proper foundation just
2 hasn't been laid for this line of questioning.

3 MR. ENGLAND: This has nothing to do with
4 interconnection. It has to do with Southwestern
5 Bell's toll tariffs prior to July 22nd of this year,
6 when they were the primary toll carrier for BPS
7 Telephone Company.

8 It's a landline call from a BPS customer,
9 one plus to the St. Louis area.

10 MR. LANE: It concerns the interconnection
11 agreements between Southwestern Bell and Sprint PCS.
12 This witness has testified that she's not familiar
13 with that interconnection agreement. The proper
14 foundation hasn't been laid for this line of
15 questioning.

16 THE WITNESS: If I was being asked whether
17 BPS receives it.

18 JUDGE HOPKINS: I'm going to sustain that
19 objection, Mr. England.

20 BY MR. ENGLAND:

21 Q. Okay. For purposes of my example, assume
22 that the one-plus call being made from BPS's customer
23 to the Sprint PCS in St. Louis prior to July 22nd is
24 being made pursuant to Bell's intraLATA toll tariff,
25 intrastate intraLATA toll tariff. Can you do that?

1 Well, let me -- okay. Apparently you can't.

2 JUDGE HOPKINS: I'm sorry. I didn't hear
3 the answer.

4 MR. ENGLAND: She didn't, but I got a real
5 quizzical look.

6 JUDGE HOPKINS: Okay. I can't put that on
7 the record. What was your answer to the question,
8 Ms. Meisenheimer, yes or no? We can't put that look
9 in the record.

10 THE WITNESS: I'm not sure.

11 BY MR. ENGLAND:

12 Q. Well, let me back up and ask a more general
13 question. You were involved in the PTC case, were you
14 not?

15 A. Yes.

16 Q. How were toll calls made from secondary
17 carriers to customers in other exchanges, generally
18 speaking?

19 A. Generally speaking, for landline local
20 exchange carriers, the secondary carrier's customer's
21 call would be carried by the PTC and the PTC would pay
22 originating access to the secondary carrier. They
23 would terminate that call perhaps to their own
24 network, perhaps to the network of another carrier.
25 And if it were a landline carrier, they would pay

1 terminating access --

2 Q. Okay.

3 A. -- for that call.

4 Q. Okay. I get -- or I gather from your answer
5 you're having a problem drawing the analogy to where
6 the terminating call or the call terminates to a
7 wireless customer as opposed to a landline customer;
8 is that correct?

9 A. Yes.

10 Q. Okay. Why do you draw a distinction?

11 A. Um, I'm generally familiar with the access
12 rates, the compensation of the access rates for the
13 local exchange carriers --

14 Q. Would you --

15 A. -- in the state.

16 Q. Would you agree with me in concept that the
17 wireless carrier is entitled to some compensation for
18 terminating that call?

19 A. Yes.

20 Q. Okay. Would you agree with me in concept
21 that when the PTC established their rates, their toll
22 rates -- excuse me -- that the general theory was for
23 those toll rates to recover their cost of providing
24 the service, which would include costs of access at
25 the originating end, as well as cost of access at the

1 terminating end?

2 A. Yes.

3 Q. So when Southwestern Bell Telephone Company
4 carries that one-plus call from BPS to Sprint PCS, it
5 bills the BPS customer for that call, does it not, or
6 at least through its agent BPS, it may bill the call
7 to the BPS customer?

8 A. Yes.

9 Q. It received the toll revenue for that call?

10 A. Yes.

11 Q. Okay. And the toll revenue they received
12 from that call presumably was supposed to recover
13 their cost of originating access to BPS. Correct?

14 A. Bell's toll rates?

15 Q. Yes.

16 A. Would cover the costs of providing the
17 service which would include originating and
18 terminating access.

19 Q. Okay. Originating to BPS in our example?

20 A. Along with other carriers that they
21 originated traffic for.

22 Q. Okay. And terminating to -- whether it was
23 Southwestern Bell or another carrier, terminating
24 access?

25 A. Yes.

1 Q. Let me get back to my example.

2 Do you see any obligation on the part of BPS
3 to pay Sprint PCS for the one-plus call its customer
4 made to Sprint PCS in St. Louis?

5 A. I'm --

6 MS. GARDNER: I'm sorry. I'm going to
7 object. This tariff is clearly about Alma, Peace
8 Valley, Chariton or whatever the six companies that
9 filed the tariff and the application of access charges
10 when a call originates on the wireless and terminates
11 to the ILEC.

12 MR. ENGLAND: It has to do with local
13 reciprocal compensation. That is what the wireless
14 carriers are telling us must be applied in this
15 situation. And I'm trying to discuss with this
16 witness whether or not there is reciprocity of traffic
17 and, therefore, whether there can be reciprocal
18 compensation.

19 JUDGE HOPKINS: All right. I'm going to
20 allow the question.

21 THE WITNESS: Um, under -- under the PTC
22 plan -- under the PTC plan, the cost of access was a
23 cost of doing business for the IXC, and, therefore, it
24 would have been -- the PTC would have been responsible
25 for paying that -- the termination of the traffic.

1 BY MR. ENGLAND:

2 Q. Okay. I guess my question is, do you see
3 under any circumstance given the existence of the PTC
4 plan prior to July 22nd of this year where BPS would
5 be responsible for that one-plus call from their
6 customer to a Sprint PCS customer in St. Louis?

7 And when I say responsibility,
8 responsibility for paying some sort of terminating
9 compensation to Sprint PCS.

10 A. Um, absent -- and to clarify the question,
11 would that be absent a request for negotiations for
12 some type of --

13 (OFF THE RECORD.)

14 WHEREUPON, the hearing was adjourned until
15 9:00 a.m. on Wednesday, October 13th, 1999.

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