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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

May 15, 2000

Jefferson City, Missouri

Volume 7

In the Matter of an Investigation)
for the Purpose of Clarifying and)
Determining Certain Aspects Surrounding) Case No.
the Provisioning of Metropolitan) T0-99-483
Calling Area Service After the Passage)
and Implementation of the)
Telecommunications Act of 1996.)

NANCY M. DIPPELL, Presiding,
SENIOR REGULATORY LAW JUDGE.
SHEILA LUMPE, Chair
M. DIANNE DRAINER, Vice-Chair
COMMISSIONERS.

REPORTED BY:
TRACY L. THORPE, CSR
ASSOCIATED COURT REPORTERS, INC.

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A P P E A R A N C E S

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A P P E A R A N C E S

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1 (EXHIBIT NOS. 1 THROUGH 43 WERE MARKED FOR
2 IDENTIFICATION.)

3 JUDGE DIPPELL: This is Case No. T0-99-483 in
4 the matter of an investigation for the purpose of clarifying
5 and determining certain aspects surrounding the provisioning
6 of metropolitan calling area service after the passage and
7 implementation of the Telecommunications Act of 1996.

8 My name is Nancy Dippell, and I'm a
9 regulatory law judge for the Public Service Commission. And
10 at this time I'd like to go ahead and find out who's
11 present. If we could have entries of appearances beginning
12 with Staff?

13 MR. POSTON: Marc Poston and Julie A. Kardis
14 appearing for the Staff of the Missouri Public Service
15 Commission.

16 JUDGE DIPPELL: Office of the Public Counsel?

17 MR. DANDINO: Michael Dandino, Office of the
18 Public Counsel and for the public.

19 JUDGE DIPPELL: Southwestern Bell?

20 MR. LANE: Paul Lane and Mimi MacDonald,
21 representing Southwestern Bell Telephone Company. Our
22 address is One Bell Center, Room 3520, St. Louis, Missouri,
23 63101.

24 JUDGE DIPPELL: AT&T?

25 MR. DEFORD: Paul DeFord, appearing on behalf

1 of AT&T Communications of the Southwest, Incorporated.

2 JUDGE DIPPELL: Birch Telecom?

3 MR. MIRAKIAN: Pete Mirakian; Spencer Fane
4 Britt and Browne, 1000 Walnut, Suite 1400, Kansas City,
5 Missouri 64106, appearing for Birch Telecom of Missouri,
6 Inc.

7 JUDGE DIPPELL: Cass County Telephone Company,
8 et al.?

9 MR. ENGLAND: Thank you, your Honor. Let the
10 record reflect the appearance of W.R. England and Brian T.
11 McCartney on behalf of the group of the seven small
12 telephone companies known as Cass, et al., in this
13 proceeding. Our mailing address is Post Office Box 456,
14 Jefferson City, Missouri, 65102.

15 JUDGE DIPPELL: GTE?

16 MR. DORITY: Larry DORITY and James Fisher
17 with the firm of Fisher and DORITY, P.C. are appearing on
18 behalf of GTE Midwest, Incorporated.

19 JUDGE DIPPELL: MITG?

20 MR. JOHNSON: Thank you, your Honor. Craig
21 Johnson; Andereck, Evans, Milne, Peace and Johnson on behalf
22 of the Missouri Independent Telephone Group.

23 JUDGE DIPPELL: Intermedia Communications?

24 MR. STEWART: Charles Brent Stewart, the law
25 firm of Stewart and Keevil, LLC, 1001 Cherry Street, Suite

1 302, Columbia, Missouri, 65201, appearing on behalf of
2 Intermedia Communications, Inc.

3 I also, Judge, have with me Scott Sapperstein
4 from Intermedia Communications. He's the senior policy
5 counsel. And on May the 10th we filed a petition for leave
6 for Mr. Sapperstein to appear.

7 JUDGE DIPPELL: Would there be any objections
8 to the petition for Mr. Sapperstein to appear?

9 Then I'll grant leave for that.

10 McLeod?

11 MS. YOUNG: Thank you, Judge. Please let the
12 record reflect Mary Ann Young from William D. Steinmeier,
13 PC, P.O. Box 104595, Jefferson City, Missouri, 65110
14 appearing on behalf of McLeod USA Telecom Services.

15 And also appearing this morning is Bradley
16 Kruse. I filed a petition -- we filed a petition last week
17 for leave for him to appear in this proceeding as well.

18 JUDGE DIPPELL: Is there any objection to
19 Mr. Kruse appearing in this proceeding? Then I'll grant
20 that petition as well.

21 Nextlink?

22 MR. COMLEY: Thank you, Judge Dippell. Mark
23 W. Comley; Newman, Comley, Ruth, appearing on behalf of
24 Nextlink Missouri, Inc.

25 JUDGE DIPPELL: Primary?

1 MR. LUMLEY: Your Honor, Carl Lumley of the
2 Curtis, Oetting law firm appearing on behalf of Primary
3 Network Communications, in addition to Gabriel
4 Communications, Inc., and I also represent participants
5 without intervention, MCI Worldcom Communications, Inc., and
6 MCI Metro Access Transmission Services, LLC. Also
7 representing Gabriel Communications in this proceeding is
8 Carol Keith with the company.

9 JUDGE DIPPELL: Mr. Lumley, you noted earlier
10 before we went on the record that in the order of
11 cross-examination you would just go through Broadspan, and I
12 would not have to call on you for the other parties; is that
13 correct?

14 MR. LUMLEY: Yeah. Either one is fine. In
15 the Gabriel spot or the Broadspan, whichever you prefer, but
16 I don't need two spots. I'm prepared to ask all my
17 questions at one time.

18 JUDGE DIPPELL: Okay. And which name do you
19 prefer I use? Broadspan, Primary, Gabriel? I don't care.

20 MR. LUMLEY: I'll go with Gabriel.

21 JUDGE DIPPELL: Sprint?

22 MS. GARDNER: Linda K. Gardner appearing on
23 behalf of Sprint Communications Company LP; Sprint Spectrum,
24 LP, d/b/a Sprint PCS; and Sprint Missouri, Inc.

25 JUDGE DIPPELL: Did I miss anyone?

1 We've previously marked the exhibits. I'll go
2 get the Commissioners and we can begin with opening
3 statements. Let's go off the record.

4 (Off the record.)

5 JUDGE DIPPELL: Let's begin with opening
6 statements. And we're going to proceed in the order that
7 was proposed in Staff's motion so, AT&T?

8 MR. DEFORD: Thank you, your Honor. Good
9 morning. May it please the Commission. We're here this
10 week to address issues that have arisen concerning CLEC
11 participation in the MCA.

12 Based upon the volume of evidence and
13 testimony in this case, it looks pretty complicated.
14 Actually, it's not. In the end, it's simply about whether
15 incumbent LECs will be required to provide MCA service to
16 their customers in such a way that CLECs can provide true
17 MCA service to their customers.

18 At this point, I guess I should back up a bit
19 and explain the current MCA plan. The MCA plan was created
20 by the Commission in December of 1992. In essence, the MCA
21 is an expanded local calling plan that permits participants
22 and subscribers to make and receive unlimited toll-free
23 calls within and to various tiers that radiate out from the
24 center of the Kansas City, St. Louis and Springfield
25 metropolitan areas.

1 The focus in this case is primarily going to
2 be on St. Louis and Kansas City, because for the most part
3 MCA calling in Springfield is mandatory.

4 I've taken the liberty of appropriating some
5 of Staff's work product, as I see Southwestern Bell has also
6 done, to create some diagrams, which I think you may have
7 before you in a reduced version. The two diagrams set up
8 over here depict the exchanges that are included in the
9 Kansas City and St. Louis MCAs.

10 In both Kansas City and St. Louis customers in
11 the principal zone, tier one and tier two, which are the
12 yellow and green, are required to participate in the MCA and
13 the charges for the plan are included in their rates for
14 basic local service.

15 Those customers are permitted to make and
16 receive calls on a toll-free basis from anyone within the
17 white, yellow and green areas, as well as subscribers in
18 tiers three, four and five. That would take you all the way
19 out to the red or the pink, whichever you prefer.

20 Similarly, subscribers in tiers three and four
21 may make and receive toll-free calls to and from all
22 customers in the principal zone, tier one, tier two, tier
23 three, tier four and subscribers in tier five.

24 The rules are somewhat different in tier five.
25 Subscribers in tier five may make and receive calls from

1 other subscribers in tier five as well as customers in tiers
2 four, three, two, one and the principal zone.

3 That's a quick basic overview of how the MCA
4 plan was intended to work. I think there are potentially
5 some variations and some nuances of what else is allowed and
6 what's not allowed that may be more fully explored in the
7 coming days.

8 Now, turning to the evidence in this case, I
9 think it will be established that some CLECs, including
10 AT&T, attempted to address calling scope issues in the
11 context of arbitrations and interconnection agreements with
12 Southwestern Bell.

13 In the first arbitration between AT&T and
14 Southwestern Bell, AT&T suggested that in light of the
15 fact that all calls within the MCA could be local, the form
16 of intercompany compensation for all calls originating or
17 terminating within the MCA should be reciprocal
18 compensation. And what we suggested, I believe, was bill
19 and keep.

20 Southwestern Bell, on the other hand,
21 suggested that access charges should apply to all calls
22 other than those that originate and terminate within the
23 mandatory MCA exchanges.

24 The Commission rejected both suggestions and
25 decided instead that local reciprocal compensation and local

1 transport should be applied to all traffic between the two
2 companies within the entire MCA. AT&T never believed there
3 was a question of whether CLECs would participate in the
4 MCA. We believed the only question was related to what form
5 of intercompany compensation was appropriate.

6 Based upon the Commission's decision in that
7 arbitration, AT&T thought the issue was settled. AT&T
8 basically continued to think that until it began winning
9 customers in tiers three, four in St. Louis. AT&T almost
10 immediately started receiving complaints from its new
11 customers that those attempting to contact them were having
12 difficulty getting through. Many were getting recorded
13 messages indicating that their call could not be completed
14 as dialed.

15 After a lengthy investigation, AT&T learned
16 that Southwestern Bell had begun imposing toll charges on
17 all calls from its customers in the mandatory MCA to
18 facilities-based CLEC customers in the optional tiers. That
19 discovery led to the rather long and contentious exchange
20 that's brought us here today.

21 Southwestern Bell has offered a solution to
22 the problem that it has, in effect, manufactured.
23 Southwestern Bell's proposed memorandum of understanding
24 would permit CLEC customers to receive calls if the CLEC
25 agrees to pay Southwestern Bell 2.6 cents a minute for all

1 of that traffic.

2 To be blunt, AT&T is not interested in paying
3 any more than is required under the interconnection
4 agreement for traffic our customers are entitled to receive
5 pursuant to the Commission mandated MCA. Until the
6 Commission orders an end to this type of incumbent LEC
7 behavior, there will be no true local competition in
8 Missouri. Thank you.

9 JUDGE DIPPELL: Birch?

10 MR. MIRAKIAN: May it please the
11 Commissioners.

12 Birch Telecom also believes this is a very
13 simple case -- or at least a simple issue. Maybe not simple
14 to resolve, but a simple issue to understand. The question
15 is, in light of a Commission mandated and imposed
16 metropolitan calling area plan, is it right for all LECs,
17 whether ILEC or CLECs, to be able to participate in that
18 plan on the same basis?

19 There are obviously going to be distinctions
20 drawn between competitive pricing of a CLEC versus the rate
21 regulation that applies to ILECs, but the basic premise is
22 that two-way toll-free calling within the MCA should be
23 applied across the board to customers of both CLECs and
24 ILECs. I think the testimony that we've read that's been
25 filed has been pretty clear on that point.

1 I think it's also been relatively clear that
2 the CLECs at least would like to see their participation and
3 their intercompany rates be based on either a default bill
4 and keep basis, or a continuation of negotiated
5 interconnection agreements.

6 That's essentially Birch's position and it's
7 not too difficult to state. We hope that in this week of
8 deliberating we can come to a conclusion that works to allow
9 competition throughout the MCA for both the competitive and
10 the incumbent carriers. Thanks.

11 JUDGE DIPPELL: I apologize for overlooking
12 Intermedia.

13 MR. STEWART: May it please the Commission.

14 I'm here this morning representing Intermedia
15 Communications. I also have with me today Scott
16 Sapperstein, who's the senior policy counsel for Intermedia,
17 and Cheryl Mellon, the director of marketing for integrated
18 local services, both of whom have flown up from Florida to
19 be with us today.

20 Both Scott and Cheryl were intimately involved
21 in responding to the customer crisis that occurred in the
22 spring and summer of '99 in St. Louis which was caused by
23 Southwestern Bell's switch re-translation. Basically, they
24 were going to throw the switch back the other way, which
25 would have precluded customers from making toll-free calls.

1 The crisis that I'm talking about was fully
2 described in our pleading when we sought to intervene in, I
3 believe, November of '99. And both Scott and Cheryl were
4 intimately involved in the subsequent execution of what
5 Mr. DeFord referred to as the memorandum of understanding.

6 As far as I know, Intermedia is unique. We
7 are the only CLEC who has signed this memorandum of
8 understanding with Southwestern Bell. But from Intermedia's
9 perspective it did two things. First, and most importantly,
10 it stopped Bell from throwing the switch back and from
11 blocking those calls from Bell customers to Intermedia
12 customers. And, secondly, it contained a number of
13 provisions whereby Intermedia would pay Bell 2.6 cents per
14 minute of use for the privilege of them not throwing the
15 switch.

16 As outlined in Ms. Mellon's testimony,
17 Intermedia didn't have much choice in signing this
18 memorandum of understanding. This was the only way we could
19 have prevented the service disruptions to our customers and
20 also to Southwestern Bell customers who were attempting to
21 reach Intermedia customers in the outlying tiers.

22 You know, I look back over some of this
23 testimony and it occurs to me that I first started working
24 at the Commission in 1987 at the time when we were dealing
25 with what was called expanded area service, EAS, which was a

1 mandatory flat rate, two-way calling plan.

2 EAS was the Commission's response at that time
3 to growing customer demands that something be done to
4 alleviate the toll calls when the community of interest, the
5 real live community of interest, had expanded beyond those
6 old telephone exchange boundaries, many of which were
7 established prior to the time Franklin Roosevelt was
8 President.

9 It is an ongoing problem and, frankly, we're
10 still facing that today. Aside from the lost toll revenues,
11 aside from the revenue neutrality, aside from whether the
12 2.6 cents per minute is correct, aside from all of these
13 issues you're going to hear about, that's the underlying
14 problem in this case. You have an expanding community of
15 interest, you have customers who want service regardless of
16 who is providing the service, some basic fundamental things.

17 EAS was the Commission's earliest attempt to
18 deal with some of these issues. It was soon followed by a
19 string of cases, and the Commission's ultimate adoption of
20 community optional service. That too had its problems at
21 the time. The Commission struggled to come up with some way
22 once again to meet the customer demand. It's that
23 underlying problem of expanding communities of interest.

24 Finally, the Commission in the early '90s, in
25 further response to further customer demands and further

1 problems with intercompany compensation arrangements and
2 provisioning of these type of calls, they came up with the
3 MCA plan. The MCA plan, frankly, was constructed, as were
4 all the previous plans, in a monopoly environment. You had
5 43 companies to deal with.

6 Well, a lot's changed since 1992. The
7 gymnastics, the presumptions, the assumptions, the economic
8 theories, the ability of the Commission to regulate, for
9 example, Southwestern Bell Telephone's earnings and to set
10 its rates, all of this has changed.

11 If you were -- if you were looking for me, in
12 fact, in 1992, you could find me in what is now Brian
13 Kincade's office. A lot of things have changed since 1992.

14 And I guess I would suggest to the Commission
15 that as you look at the testimony and as you look at some of
16 the proposed solutions that are being put forth today, well,
17 take the MCA plan and tweak it, regardless of all those old
18 presumptions, regardless of all of those old gymnastics we
19 went through and the compromises to come up with that plan.

20 Those are not applicable, like they were then,
21 today. It's kind of like trying to construct a Lexus or
22 even repair a Lexus based on plans and piece parts from a
23 model-T Ford. Things have changed. We now have CLECs. We
24 now have CLEC customers. We now have ISPs. We didn't have
25 that in 1992.

1 Fundamentally, what we have in a way is
2 like -- it's a wall. And it started -- it's not
3 Southwestern Bell that started the wall. The exchange
4 boundaries started the wall. Those old exchange boundaries
5 from the, you know, pre-FDR days.

6 Communities, however, outgrew those exchange
7 boundaries. Communities of interest calling to the school,
8 calling to the work, they were no longer confined to
9 exchanges. And we've attempted over the years to come up
10 with Band-aid solutions and deal with these issues, but all
11 in a monopoly environment.

12 Today Southwestern Bell is no longer rate
13 based rate of return regulated. Today Southwestern Bell
14 does not have to undergo earnings audits. Likewise, the
15 CLECs are here. Some of whom have tried to get into this
16 market, some of whom have tried to provide MCA-type service
17 which has the return call feature, but have not been able to
18 do so.

19 Intermedia, uniquely was able to do so until
20 such time as we realized we had a problem with Southwestern
21 Bell on the return call issue and resulting in the
22 memorandum of understanding. But as far as I know,
23 Intermedia's the only one currently providing that service
24 to those customers.

25 The wall -- you have people on one side of the

1 wall trying to communicate with people on the other side of
2 the wall. Intermedia is paying basically tribute to the
3 passing of that to allow that to continue, at least
4 temporarily.

5 But there's a sense of urgency to the case,
6 because in our memorandum of understanding we're paying this
7 money to Southwestern Bell and it's subject to refund and
8 it's subject to the Commission's decision in this case. But
9 if the Commission does not issue a decision in this case
10 prior to November 5 of this year, Southwestern Bell is
11 entitled to keep all that money. And the question then
12 becomes, Where do we go from here?

13 I think it's time -- high time to quit relying
14 on assumptions that were valid in 1992 but are no longer
15 valid today and it's time to tear down that wall. Thank
16 you.

17 JUDGE DIPPELL: McLeod?

18 MR. KRUSE: Good morning, your Honor. Good
19 morning, Commissioners.

20 Staff Witness Voight indicated in his
21 testimony that five years after Congress debated and passed
22 the Telecommunications Act of 1996 that one supplier in
23 Missouri still controls 97 percent of the market. CLECs
24 thus have, according to this testimony, about 3 percent of
25 market share in Missouri, and as I understand it, this share

1 is significantly below the national average in other states
2 for CLECs.

3 And I would submit that this low percentage is
4 due at least in large part to the type of anti-competitive
5 conduct that we've seen over and over again and that has
6 resulted in us all being in this room today; and namely,
7 Southwestern Bell's refusal to recognize CLECs as
8 participants in the MCA plan.

9 And I'm not going to rehash what Mr. DeFord
10 and others have done so well in describing the MCA set-up
11 itself and the conduct.

12 I think what is more troublesome to a new --
13 or to a CLEC such as McLeod USA, who is just beginning to
14 merge into the Missouri market, is the way the conduct came
15 about itself. In other words, when faced with what it
16 perceived as a competitive problem or a competitive issue,
17 Southwestern Bell didn't come to this Commission, they
18 didn't even give any kind of adequate notice to the other
19 CLECs involved regarding the fact that they were going to
20 engage in screening events of MCA calls.

21 Rather, what they did was unilaterally on
22 their own erect a roadblock for CLECs wishing to offer
23 facilities-based services. And you've already heard AT&T's
24 experience with that, the great deal of customer confusion
25 of having no notice of that caused. You've already heard

1 Intermedia's problem with it.

2 And you'll hear later on and you can see in
3 our testimony that it created problems for us as well. We
4 had no idea when we rolled out our business plan for this
5 market and began planning our investments in Missouri
6 markets, that this type of conduct was going to occur.

7 So as McLeod sits today, we've invested over
8 \$30 million in offering facilities-based services in this
9 state. We've put up switches in Kansas City, St. Louis and
10 Springfield. And in the case of Kansas -- or I'm sorry --
11 in the case of Springfield and St. Louis switches, we're
12 basically ready to move people on the switch, but we don't
13 dare do so because of the MCA situation and the potential
14 customer confusion and the potential loss of customers.

15 I believe the evidence presented in this case
16 overwhelming demonstrates that Southwestern Bell's
17 imposition of MCA screening tactics and their proposed
18 competitive loss surcharge, MOU, violates the spirit of the
19 Commission's order establishing the MCA and it also violates
20 a number of subsequent orders from the Commission approving
21 interconnection agreements and tariffs, which orders
22 recognize that CLECs may participate in the MCA.

23 Furthermore, Southwestern Bell's conduct
24 violates the Federal Telecommunications Act in a number of
25 ways. It violates the dialing parity requirements, it

1 violates the interconnection provisions of Section 251. It
2 creates a barrier to entry for CLECs in violation of Section
3 253. And it violates the reciprocal compensation provisions
4 of Section 252.

5 Southwestern Bell's willingness to act
6 unilaterally and in such blatant disregard for the
7 Commission's authority and in such blatant disregard for the
8 Federal Telecommunications Act creates what I would call a
9 very significant and substantial competitive impairment for
10 CLECs wishing to do business in this state.

11 McLeod Witness Jeff Oberschelp has presented
12 testimony discussing the potential adverse effects of this
13 uncertain competitive environment on McLeod's business
14 plans. Jeff has also outlined the significant investment
15 made by McLeod USA in Missouri. And no doubt other CLECs
16 are in the same position and have made similar investments
17 in being able to provide facilities-based services here.

18 Martin Wissenberg from McLeod USA will
19 demonstrate the barrier to facilities-based compensation --
20 I'm sorry -- facilities-based competition imposed by
21 Southwestern Bell's failure to recognize CLECs as MCA plan
22 participants.

23 And Mr. Wissenberg will also demonstrate in
24 his testimony that the MOU proposed by Southwestern Bell
25 actually is less attractive and provides less revenue to

1 McLeod USA than simply staying as a resale carrier. So it
2 virtually deletes any incentive that we would have to offer
3 facilities-based service.

4 Finally, McLeod Witness Mike Starkey discusses
5 at length the disadvantaged position CLECs are put in by
6 Southwestern Bell's conduct.

7 I strongly believe that the evidence presented
8 demonstrates CLECs should be allowed to participate in the
9 MCA plan with pricing and calling scope flexibility
10 sufficient to enable CLECs to offer attractive, competitive
11 alternatives to those created by ILECs, and that
12 Southwestern Bell should be immediately required to cease
13 and desist from its screening practices.

14 There may be other issues such as the MCA 2
15 that certainly bear further investigation and discussion,
16 but that should not delay CLECs from participating in the
17 MCA plan any longer than they've already been delayed.

18 Lastly, and to tie back to the concern that I
19 originally expressed, I strongly urge this Commission to
20 fashion a remedy, whether it's through sanctions such as
21 Gabriel has recommended, or additional restrictions, that
22 prevents Southwestern Bell from acting as its own vigilante
23 force in taking the law or its twisted version of the law
24 into its own hands.

25 If Southwestern Bell is allowed to do this and

1 engage in this kind of unilateral conduct, it's only going
2 to make the competitive landscape in this state worse for
3 CLECs, and Missouri customers are going to suffer. Thank
4 you.

5 JUDGE DIPPELL: Gabriel?

6 MR. LUMLEY: Good morning. I speak to you
7 this morning on behalf of Gabriel Communications as well as
8 Broadspan, which does business under the name Primary
9 Network Communications, and I also represent the MCI
10 Worldcom participants.

11 Our focus is on the immediate future. We're
12 looking for a solution to the current problems with the MCA.
13 We're asking the Commission to restore the full scope and
14 benefits of the MCA plan to all consumers. We're asking the
15 Commission to preserve the benefits of competition in the
16 provision of MCA service to consumers. And we're asking the
17 Commission to defer consideration of any new MCA plan until
18 the existing plan has been fully restored. And on this last
19 point it seems now in the record that there's no dispute
20 that that should be deferred.

21 We feel the Commission can deal with the past
22 transgressions later, notwithstanding our upset about what's
23 happened. Our focus is on the future and on the ability to
24 serve our customers.

25 To address the future, we need to understand

1 where we've come from and where we are today. If we quickly
2 look back to the original order in 1992 that established the
3 MCA plan, we observe several key and, we believe,
4 indisputable points.

5 Number one, the Commission's express primary
6 goal was to deliver benefits to consumers. It wasn't
7 concern about companies. It was delivering benefits to
8 consumers.

9 The second point is that the MCA plan is the
10 Commission's plan. The Commission specifically did not
11 adopt anyone's particular plan, but rather developed its
12 own.

13 Third, the Commission ordered that MCA be
14 available in specific exchanges, and ordered every local
15 exchange company that provided service in those exchanges to
16 make it available to all customers in those exchanges.
17 Since 1992, preservation of the benefits of the MCA plan has
18 really been taken as a given by the Commission.

19 In 1995 the Commission allowed Cass County to
20 buy several exchanges from GTE that were included in the
21 MCA. Cass County was certified, tariffs approved and
22 service continued. And they're here today in this case as
23 an MCA participant. It wasn't even an issue in the orders.
24 It was taken as a given that this service would continue to
25 be provided, notwithstanding a change in ownership of the

1 exchanges.

2 In 1996, after the passage of the
3 Telecommunications Act and the state legislation enabling
4 local competition, the Commission started to engage in
5 arbitrations and consideration of interconnection
6 agreements.

7 With regard to the Dial U.S./Southwestern Bell
8 agreement, the Commission expressly approved resale of MCA
9 service by CLECs. And the Commission stated that it's an
10 essential part of the telecommunications service that the
11 incumbents had to provide to their competitors.

12 Additionally, in that order the Commission
13 implicitly approved facility-based MCA service by CLECs as a
14 it discussed other issues. The Commission clearly foresaw
15 that this service was coming. In the MCI/AT&T arbitration
16 with Southwestern Bell the Commission again approved resale
17 of MCA service.

18 Further, as has been mentioned this morning,
19 the Commission established reciprocal compensation as the
20 means of intercompany compensation between interconnecting
21 head-to-head competitors throughout the MCA area. And this
22 was based in part on Southwestern Bell's adamant opposition
23 to the bill and keep arrangement. Again, facilities-based
24 MCA service by CLECs was taken as a given, something that
25 was coming down the road.

1 Indeed, as recounted in this case by AT&T
2 Witness Kohly, when Commissioner Drainer asked Southwestern
3 Bell Witness Bailey whether Southwestern Bell was advocating
4 keeping CLECs out of the MCA plan, he responded, and I'm
5 quoting, No, not at all.

6 In 1997, when the Commission found itself
7 forced to terminate COS service, it did so based in part on
8 the continued availability of MCA service to all consumers
9 throughout these exchanges without regard to their local
10 service provider.

11 And since 1996, the Commission has certified
12 numerous CLECs, authorized them to provide all local
13 services including MCA and approved their tariffs including
14 for MCA service.

15 Notwithstanding this history, at present
16 consumers are not currently enjoying in full the benefits of
17 the Commission's MCA plan. The problem arises -- although
18 I'm not saying it's the Commission's fault, because I
19 certainly don't believe it is, but the source of this issue
20 that's in front of you today is that the calling scope in
21 part refers to the calling of customers and in part refers
22 to the calling of MCA subscribers.

23 And what's happened is Southwestern Bell and
24 perhaps other ILECs have taken it upon themselves to
25 continue to interpret the word "customers" as the Commission

1 intended, to mean customers throughout the exchanges
2 regardless of who their provider is, including customers of
3 CLECs, and including the resale providers, but they've
4 chosen to now interpret MCA subscriber as only referring to
5 the subscribers of their MCA service, including as were sold
6 by CLECs, and specifically excluding the subscribers of
7 facilities-based MCA services of CLECs.

8 And you'll see in the testimony there may be
9 an exception with regard to when the number has been ported
10 or not, but we're not really sure whether that's just a
11 matter of technology and some day that's going to go away or
12 if that's a long-term plan.

13 As has been mentioned to you, Southwestern
14 Bell has taken this action without consulting you. They
15 haven't filed any tariff changes. They haven't presented
16 the issue in arbitration. And, as I mentioned, they
17 expressly denied it was an issue during an arbitration. And
18 the interesting thing is in their position statement in this
19 case they still contend that the MCA plan is in the public
20 interest.

21 The result of all this is that Southwestern
22 Bell has been diluting the benefits of the MCA plan in two
23 key ways. First of all, it punishes customers that choose
24 to switch to a competitive local service provider by
25 reducing the number of people that can call them on a

1 toll-free basis in the metropolitan area which, of course,
2 also punishes the competitor.

3 Secondly, it's imposing rate and dialing
4 disparity on its remaining customer by forcing them to dial
5 and pay for a toll call for which should be and previously
6 was before competition a local call to the MCA subscriber of
7 the competitor. The problem's growing worse and worse every
8 day as local competitors struggle to grow and add new
9 subscribers.

10 We're asking the Commission to restore the
11 full benefits of its MCA plan. First and foremost, that
12 means requiring Southwestern Bell and the other ILECs to
13 recognize CLECs and their MCA subscribers as MCA plan
14 participants in full.

15 Now, according to the position statements on
16 file, no one is advocating exclusion of CLECs and their
17 customers from the plan. Everyone seems to recognize the
18 clear anti-competitive impact of allowing the provider of 97
19 or 98 percent of the lines to have a calling plan that
20 provides benefits based on its disparate size of its
21 monopoly created customer base.

22 Rather, the dispute presented to you today
23 concerns the terms and conditions of CLEC participation in
24 the plan. And I submit to you that that means that you can
25 look past all the semantics of whether CLECs are in the plan

1 today or out of the plan today or are we in with
2 interference or are we out because of interference. It
3 doesn't matter. We're looking forward. What's going to
4 happen tomorrow? Are we in or are we out? Everybody says
5 we should be in, and we're fighting about the terms and
6 conditions.

7 On behalf of the CLECs I represent, we're
8 urging the following six actions. Number one, again, first
9 and foremost, restore the plan. Require the ILECs to
10 recognize CLECs and their MCA subscribers as participants in
11 the plan entitled to the full benefits of the plan,
12 including eligibility for toll-free calling by subscribers
13 of other CLECs and ILECs in accordance with the plan as it
14 was conceived.

15 Number two, preserve competitive benefits by
16 allowing CLECs and ILECs to offer greater calling scopes
17 without any impact on other carriers and better prices
18 consistent with the different levels of PSC supervision of
19 CLECs versus ILECs.

20 Number three, allow existing interconnection
21 agreements to run their course and deal with any
22 intercompany compensation issues between competing
23 interconnected carriers if and when they're presented under
24 the Act. It's absolutely essential that parties be able to
25 rely on their contracts and business plans that they've

1 developed in accordance with those contracts.

2 Number four, allow all adjoining LECs to
3 continue to exchange MCA traffic on a bill and keep basis
4 unless and until they mutually -- and I emphasize mutually
5 because there's some misunderstandings in the testimony --
6 unless they mutually agree to another arrangement.

7 Number five, prohibit Southwestern Bell and
8 the other ILECs from imposing any additional charges on
9 CLECs as a consideration of complying with the MCA plan, and
10 deny any and all efforts by the incumbents to collect
11 compensation for their competitive losses.

12 MCA subscribers are entitled to the full
13 benefits of the plan, regardless of the carrier they select.
14 And no carrier is entitled to compensation on a subscriber
15 who elects to choose a new provider.

16 Number six, continue to allow Internet service
17 providers to subscribe to MCA service as is required by the
18 FCC and leave the dispute over the applicability of
19 reciprocal compensation to ISP-bound local traffic to the
20 pending complaint cases that you all are going to be hearing
21 this summer.

22 By taking these six steps, the Commission will
23 restore the full benefits of its MCA plan and it will
24 preserve the benefits of competition for consumers. It's
25 essential to eliminate the obstacles to competition that

1 have been unilaterally erected by the ILECs by their
2 self-serving and fluctuating misinterpretation of the MCA
3 plan and dilution of its benefits to consumers. Thank you.

4 JUDGE DIPPELL: Nextlink?

5 MR. COMLEY: May it please the Commission.
6 Good morning.

7 I stand before you representing Nextlink,
8 Missouri, Inc., in this proceeding investigating the various
9 subjects and aspects of the metropolitan calling areas.

10 Briefly, Nextlink is one of the new competitive local
11 exchange companies that have entered the Missouri
12 marketplace. And it operates primarily, in fact, almost
13 exclusively in the St. Louis metropolitan area.

14 Although it is certificated as both a resale
15 and facilities-based carrier, it's following its business
16 plan and is only offering services as facilities based.
17 Throughout this proceeding, you will notice that it shares
18 much in common with Gabriel Communications, who is
19 represented today by Carl Lumley. And you'll find also that
20 it shares much in common with Ed Cadieux, who is the witness
21 for Gabriel in this case.

22 As well, you will find that Nextlink is in
23 agreement with other CLEC intervenors as to what must be
24 done to the MCA for the future. So I'll not be repeating
25 some of the things that you have heard already, but let me

1 use this opportunity to acquaint you with our witness in
2 this matter.

3 Nextlink will offer the rebuttal testimony of
4 Carol Pomponio as the case progresses. She is the manager
5 of regulatory and external affairs. And in this position
6 she is responsible for developing and implementing
7 Nextlink's regulatory activities in Missouri. She is also
8 responsible for the negotiation, implementation of and
9 compliance with the company's interconnection agreement with
10 Southwestern Bell.

11 Ms. Pomponio has concurred with Mr. Ed
12 Cadieux's direct testimony in this case. She further
13 expresses her disagreement with the Bell witnesses on
14 several points. For instance, she testifies contrary to
15 Bell that CLECs do have the authority to participate in the
16 MCA plan, a matter which should be irrefutable at this stage
17 in the history of the plan and the manner in which the MCA
18 plan has been treated in several interconnection
19 arbitrations before this body, as you've already heard.

20 Second, she addresses Southwestern Bell's
21 declaration that it's entitled to revenue replacement when
22 it losses a subscriber to a CLEC. She finds no
23 justification, as do others, for the surcharge, which has
24 already been mentioned, and points to the interconnection
25 agreements between CLECs and Southwestern Bell as a source

1 for fair compensation for exchange traffic.

2 Nextlink believes the evidence is quite
3 sufficient for the Commission to conclude that Southwestern
4 Bell has acted as least unreasonably, and if indeed it is
5 unlawfully acting with CLECs in the provision of the MCA.
6 The recommendations of Mr. Cadieux, as just outlined by
7 Mr. Lumley, are quite satisfactory in solving this
8 situation. The arguments in Nextlink's brief will
9 concentrate on the merits of that relief. Thank you.

10 JUDGE DIPPELL: Sprint?

11 MS. GARDNER: Thank you. Looking at the order
12 of opening statements, it looks like Sprint is the last CLEC
13 to speak, the last or perhaps only wireless carrier to
14 speak, and the first ILEC to speak. And usually that
15 placement is no accident.

16 We wrestle every day with policy decisions
17 that sometimes pit the interest of one part of our business
18 against the interest of another. But in this case the
19 decision was really very easy.

20 There's nothing inherent about the MCA that
21 should preclude CLEC or wireless participation. To the
22 contrary, some CLECs participate today and it's our position
23 and that of some others that they should be allowed to
24 continue to do so.

25 Sprint Missouri, Inc., does provide MCA

1 service. We're in the Kansas City area in only the optional
2 tiers. We interconnect with CLECs in those optional tiers.
3 And there's at least one CLEC that offers an MCA or an MCA
4 like service, and we've made it work for them because it's
5 the right thing to do.

6 That CLEC chooses whether to offer MCA service
7 or not. That CLEC chooses to set its own outbound local
8 calling scope. And that CLEC sets its own price. Now, to
9 offer that service, Sprint does insist that the CLEC obtain
10 a non-MCA NXX and an MCA NXX just like Sprint the ILEC has
11 to do because that is a fundamental feature of how MCA
12 service is provisioned today.

13 If the Commission wishes to explore other ways
14 to provision or provide MCA service or an MCA-type service
15 such as Staff's MCA 2 proposal, we'll fully participate in
16 that discussion. Frankly, MCA 2 does show some promise, but
17 there's a lot of open issues that have to be addressed in
18 order to do that.

19 There's the issue of revenue neutrality, and
20 I'm not talking about competitive losses, but revenue
21 neutrality. There's rate design, and there's several other
22 rate designs than the simple calculation that you've seen in
23 Staff's testimony. There's issues of number conservation
24 and whether you should go back and look at maybe reclaiming
25 some of those NXXs that have very few customers on them.

1 All of that should be further studied before
2 Sprint could endorse an MCA 2 proposal or something like
3 that. But we're certainly willing to consider another way
4 to do it. And if it's Staff's proposal or some other
5 proposal, we'll certainly consider it.

6 However, we do share the concern that I think
7 Mr. Kruse and Mr. Lumley mentioned about not delaying CLEC
8 entry and resolving the problems of getting CLECs in the
9 existing plan simply because we want to consider some
10 refinements or new options with that. We're very concerned
11 about letting them in and letting CLECs in now.

12 If we want to review or refine the plan,
13 that's fine, we'll participate. But let's take care of the
14 problem today in getting CLECs in and not delay that. Thank
15 you.

16 JUDGE DIPPELL: GTE?

17 MR. DORITY: May it please the Commission.
18 Good morning. I will be brief.

19 GTE Midwest, Incorporated, supports the
20 retention of the MCA plan. The public policy considerations
21 and needs addressed by this Commission in T0-92-306 still
22 consist today.

23 As GTE Witness Dave Evans addresses in his
24 testimony in this matter, CLECs should be allowed to
25 participate pursuant to the same criteria including rates,

1 terms and conditions. Accordingly, if, as a result of this
2 proceeding, the Commission decides that CLECs should be
3 allowed to price MCA offerings at rates different than those
4 prescribed, then the same allowances must be made for the
5 ILECs. Bill and keep is still the appropriate compensation
6 methodology for MCA traffic.

7 The geographic footprint must stay the same.
8 If CLECs are granted expanded outbound calling, as some
9 request, then it may be via a plan under some other new
10 name, but it won't be MCA. In TO-92-306 the Commission
11 created MCA with distinct characteristics that defined
12 geographic scope, price and intercarrier compensation.

13 For those of us who have been involved with
14 this issue for many years, the acronyms and parameters have
15 continued to evolve, whether it be EAS, EMS, COS or MCA,
16 each plan had distinct and well defined parameters. Simply
17 put, if those parameters are changed, we should not label
18 such service MCA. Thank you.

19 JUDGE DIPPELL: Staff?

20 MR. POSTON: Thank you. May it please the
21 Commission.

22 The most important issue in this case is the
23 question that asks whether CLECs are included in the MCA
24 plan and under what terms and conditions CLECs are to
25 provide MCA service. It's hard to imagine a truly

1 competitive market without allowing all competitors an equal
2 opportunity to offer the most significant services in that
3 market.

4 In Missouri's large metro areas, MCA service
5 is an essential part of the customer's local service. And
6 it's an essential service for a company wishing to compete
7 in those areas.

8 Furthermore, it's important that both ILECs
9 and CLECs not only provide MCA service, but that they do so
10 on terms and conditions that do not place either one at a
11 competitive disadvantage.

12 The evidence presented in this case will show
13 that anti-competitive conditions are being placed on CLECs
14 wishing to offer MCA service. To stop this practice, the
15 Staff asks that the Commission declare the 2.6 cents EAS
16 port additive charge or any similar condition unlawful and
17 contrary to the goals of the Act.

18 Earlier this year, FCC Chairman Kinard
19 (phonetic spelling) looked ahead into the year 2000 and
20 suggested that it's time for incumbent carriers to focus
21 their energies on addressing competition in the marketplace,
22 as Congress intended, and not in the hearing room.

23 In Missouri, any competitive loss as
24 experienced by incumbents and CLECs should be addressed by a
25 company in its marketing plan and through improvements in

1 its services and its rates, not by allowing a company to
2 charge its competitors for those losses.

3 When the Commission opened this docket, the
4 Staff studied the current MCA plan to determine if changes
5 needed to be made to the plan in order for CLECs and ILECs
6 in the metro areas to offer MCA service.

7 One problem the Staff identified was the
8 method by which the current MCA plan segregates NXX codes as
9 either MCA code or non-MCA code. This required a single
10 company to use two NXX codes when one code could serve the
11 company's customers.

12 Not only does this plan expend a considerable
13 number of NXX codes, but it does so at a time when number
14 exhaustion is a heightened concern in Missouri. The Staff
15 proposes that the Commission require all companies to
16 recognize all NXX codes as MCA codes to both advance
17 competition and to address the need to conserve numbers.

18 This separation between MCA and non-MCA codes
19 creates further problems, including the confusion that
20 customers encounter when they cannot determine whether a
21 number is MCA or non-MCA or the problems when a customer has
22 to change their telephone number to sign up or to cancel the
23 service. These problems were identified but not resolved in
24 1992 and now is the opportunity to make the appropriate
25 corrections to the MCA plan.

1 As the Staff studied the MCA problems, it put
2 together a proposal to adopt the changes suggested by Staff
3 into a new plan that was dubbed MCA 2. However, until the
4 impact of MCA 2 is identified and quantified, the Staff
5 offers MCA 2 as a tentative proposal to be further explored.

6 For these reasons, the Staff asks that the
7 Commission make the appropriate changes to the MCA as
8 necessary to advance competition and to address the needs of
9 consumers. And most importantly, the Staff asks the
10 Commission order ILECs to recognize the NXX codes of CLECs
11 as MCA codes and for CLECs to recognize the NXX codes of
12 ILECs as MCA codes. Thank you.

13 JUDGE DIPPELL: Public Counsel?

14 MR. DANDINO: Thank you, your Honor. May it
15 please the Commission.

16 It was very heartening to see Mr. Lumley,
17 who's counsel for Gabriel and Broadspan and MCI Worldcom, to
18 emphasize to this Commission that MCA is not about
19 companies, it's about customers. And that is exactly our
20 position.

21 We have to look at the customers. This plan
22 was created for the customers. It isn't a service product
23 of Southwestern Bell. It is a plan that is geographic in
24 nature so that all customers in those geographic areas can
25 participate in the plan without regard to the CLEC and

1 what -- and not only the CLEC of the calling customer, but
2 also the called customer.

3 Customers should receive no less than what the
4 PSC ordered in December of 1992 in creating this plan. The
5 true focus, as I said, is on the customer and to serve the
6 customer. And the PSC found that when it created the MCA,
7 that the creation of the plan was necessary and proper to
8 provide local calling scopes consistent with the three major
9 metropolitan areas community of interest.

10 The PSC declared it to be a matter to promote
11 the interest and the interest of the telephone customers.
12 That hasn't changed today. That is still the basic
13 underlying. And if it is in the public interest to have the
14 MCA plan, it is in the interest to have that MCA plan no
15 matter whose customers the -- whether it's a CLEC customer
16 or an ILEC customer.

17 Public Counsel wants the customers to be
18 available to avail themselves of this vital public service,
19 which is a two-way metropolitan local calling plan at
20 reasonable prices without being caught up in this crossfire
21 of the competing companies.

22 When you start screening MCA, when you start
23 blocking calls, what you're doing is you're creating a
24 telecommunications futilism. We're going back to a medieval
25 time in telephone communications. And as counsel for

1 Intermedia talked about building walls, all we're doing is
2 building walls and building castles around little phitoms of
3 the companies. And this cannot be in the interest of the
4 consumer. This is certainly not in the interest of the
5 public.

6 On behalf of consumers, Public Counsel's
7 looking at two goals, an immediate goal and kind of an
8 ultimate goal. As an immediate goal, our biggest concern in
9 this case has been the potential to lose MCA. I know no
10 party is getting up here and saying, you know, we want to
11 end MCA. Everyone is saying, We want MCA, it ought to
12 continue.

13 But we're afraid that the -- we look to the
14 community optional service plan. In the COS cases, COS was
15 sacrificed for the interest of competition, and we don't
16 want to see that happen again. Public Counsel will not
17 accept any loss or erosion of the benefits now available to
18 MCA customers. That is completely unacceptable,
19 especially if it's done in the interest of promoting
20 competition. The element that we have to look at is
21 protection of the consumer, protection of the public. And
22 that is still vital in this case.

23 Consumers have been asking if competition has
24 been so good, why are they paying more, why are they adding
25 all these extra charges on their bills, why are they

1 confused and frustrated and angry over competition? It's
2 hard to answer that.

3 So for this reason, Public Counsel's number
4 one priority in this case is that the PSC -- whatever it
5 decides in this case, that the immediate effect is not to
6 make the consumers worse off under competition than they are
7 today.

8 The admonition in the hypocritic oath is that
9 in conducting a medical procedure, a physician should first
10 do no harm. The Public Counsel asks this Commission in
11 conducting this regulatory procedure that it first do no
12 harm to consumers.

13 Now, we turn to the ultimate goal. And the
14 ultimate goal, of course, is effective competition where
15 consumers will benefit from competition and the promise of
16 the Telecom Act will avail itself.

17 Eventually that will come, but right now we
18 believe that the residential consumers and the small
19 consumers are in no position to be served by competition.
20 And we don't think that competition coming or competition in
21 the future can protect the consumer today.

22 Public Counsel has come under some criticism
23 for proposing that the MCA be offered as currently
24 configured, especially the rates and calling scope since
25 this seems to benefit the incumbents. But we make this

1 proposal more as a start for a transitional phase. We know
2 what we have, we know what our customers have, we know what
3 our clients have in the present. We don't know what's
4 coming in the future though.

5 And also we don't want to be in a position
6 where the LECs and ILECs come in and say to this Commission,
7 We can't make money on this MCA and it is inconsistent with
8 competition.

9 We just want to have the CLECs getting
10 immediate entry into the MCA and give them equal footing
11 with Southwestern Bell in offering this service without a
12 lot of tinkering with the compensation system and calling
13 scopes and rates.

14 We think that the customers should have this
15 available, and we're concerned what would happen to it if
16 the tinkering starts. But the first thing is to let the
17 CLECs provide the service. We're not saying that they can't
18 provide other expanded calling services, but they're going
19 to have to call it something else. They're going to have
20 to. It cannot be the same thing as MCA.

21 Now, in the public hearings we had some
22 indication that the public wants MCA, wants to continue it,
23 of course. And we've also been contacted by people from
24 Lexington and from Warren County and Innsbrook that want to
25 expand the MCA.

1 But we agree with many of the parties in this
2 case and Staff that to change the scope of the MCA and
3 consider MCA 2, to consider expanding into Lexington or
4 Warrenton counties, that should be left for another day.
5 That should be left for another case. It's important, but I
6 think the consumer's first -- the first thing is we have to
7 make the present MCA system work and it has to work for all
8 customers in the area. Thank you.

9 JUDGE DIPPELL: Southwestern Bell?

10 MR. LANE: Good morning. I'm Paul Lane and
11 along with Mimi MacDonald represent Southwestern Bell
12 Telephone Company in this case.

13 There's certainly some parallels between this
14 case and the COS case that was previously decided by the
15 Commission. The primary parallel involves the two-way
16 calling aspect of both COS and MCA service. It's the
17 two-way nature of the MCA service that creates the issues
18 that have been presented to you in this case.

19 In the COS case you, the Commission, noted
20 that it was difficult to reconcile the two-way aspect of
21 that type of calling with the competitive environment.
22 That's true here as well. In COS it was the IXCs who
23 complained. Here with MCA its CLECs. But in both cases
24 it's the return calling feature of the plan involved that
25 makes the difference. If the MCA were a one-way plan, we

1 wouldn't be here today.

2 No one questions that a CLEC today can
3 establish any kind of outbound calling plan that they wish
4 and they can charge any price for that that the Commission
5 approves. But the CLECs want more than this. They want to
6 require Southwestern Bell primarily and some of the other
7 independent companies secondarily to provide toll-free
8 calling to our own customers when calling their customers.

9 They use it more in a euphemism. They say
10 open up the NXX codes or throw open the switch. But what
11 they really mean is Southwestern Bell has to provide
12 toll-free calling to Southwestern Bell's customers when
13 calling CLEC's customers and those calls would normally be
14 and are toll calls under Southwestern Bell's tariffs.

15 The Commission established the MCA plan in
16 1992 to deal with the desire for expanded local calling. I
17 won't take a lot of time because some of this has been
18 explained, but using St. Louis as an example, the Commission
19 established a mandatory zone that consisted of a principal
20 zone and two tiers and then three optional zones going out.

21 In the mandatory zone it was included as part
22 of their normal basic charge, they received no increase.
23 The optional zones each of the customers had the choice
24 whether to take MCA service, and if they did, they paid an
25 additive for that.

1 The calling scope that one gets in the
2 mandatory zone, meaning the principal zone and tiers one and
3 two, is the right to call anywhere within that zone and the
4 right to call MCA subscribers in tiers three through five.
5 In tiers three through five, the optional zones, if they
6 chose to get it -- it's a complicated calling scope, but in
7 general I think you can say that what they get if they buy
8 that is the right to call all customers on an inward basis
9 whether or not they're MCA subscribers, and all other MCA
10 subscribers on an outbound basis in tiers beyond where they
11 are. That's what you get when you buy your MCA service.

12 And I explain this to you because it shows why
13 Southwestern Bell has the critical interest in this case.
14 We're the only ones that serve the mandatory zones, the
15 principal zone, tier one, tier two, both St. Louis, Kansas
16 City, Springfield. We're the only one.

17 It's the return calling piece that primarily
18 involves the outbound calls. We're the ones that experience
19 the primary brunt of what they want because we're the ones
20 that serve that particular area.

21 When a customer in St. Louis, for example,
22 calls Chesterfield, that's in tier three, the question of
23 whether a toll charge applies -- and they're both
24 Southwestern Bell customers in this example -- depends
25 entirely on whether the Chesterfield customer chooses to

1 subscribe to MCA service. If they do, it's a dialed locally
2 call. If they do not, it's a toll call.

3 What the CLECs are asking in this case is to
4 treat all of their customers in the optional zones as if
5 they were MCA subscribers even though they are not.

6 When the plan was set up, the mandatory zone
7 customers paid nothing more than what they had been paying.
8 The freight was born by those in the optional zone on a
9 revenue neutral basis. When you subscribe to MCA in the
10 optional zones, you pay for two things. You're buying the
11 right to make outbound calls pursuant to the plan and to
12 receive inbound calls primarily from the mandatory zone of
13 the MCA.

14 No one questions that the CLECs, when they
15 come in today, can offer whatever they want in terms of the
16 outbound calling, but the issue is whether we have to give
17 toll-free return calling. We've told CLECs that we're
18 willing to discuss arrangements in which we will provide the
19 toll-free return calling. That's the basis of the
20 Intermedia memorandum of understanding that you've heard
21 about.

22 Contrary to these claims, it is not a request
23 to be compensated for a competitive loss. It's a request to
24 be compensated for continuing to provide service, toll-free
25 calling to our own customers to call theirs. We don't have

1 to provide outbound calling in the optional zones when the
2 customer moves over to the CLECs. No one questions that.
3 We shouldn't have to provide inbound free return calling
4 unless there's some compensation for that.

5 Let me point out, too, that the 2.6 cents a
6 minute proposal in the Intermedia memorandum of
7 understanding is substantially less than what our toll
8 charges would call for. What we would normally charge for
9 toll depends on the distance involved, but generally we're
10 talking about 10 to 32 cents for the initial minute and
11 somewhere between 8 and 19 cents a minutes for each
12 additional minute thereafter.

13 That's actually what we lose when we have to
14 provide a call that was toll on a toll-free basis, but we
15 propose a charge of 2.6 cents a minute that's equal to the
16 originating access charges, which is the least that we would
17 receive if some other carrier carried that call instead of
18 us on a toll basis.

19 Now, what do the CLECs say in this case? They
20 say that that issue of compensation was decided in the AT&T
21 arbitration. That's emphatically not true. The AT&T
22 arbitration settled only the issue of what compensation
23 would be paid to terminate a call in the other company's
24 exchange. It did not -- and the parties expressly agreed in
25 that case that they were not attempting to set each other's

1 local calling scope. Each was free to set whatever local
2 calling scope they wanted to.

3 You can re-read your orders in that case and
4 you'll find nothing in there that told AT&T what it should
5 charge its customers or what its calling scope should be or
6 what Southwestern Bell should charge its customers or what
7 its calling scope would be. Those are both matters that are
8 left for the tariffs of each of the respective parties.

9 Nor did the second AT&T arbitration decide the
10 issue. In that case what Southwestern Bell proposed was an
11 EAS port additive charge of about \$12 a month that would
12 apply when AT&T in that case took a Southwestern Bell MCA
13 customer and signed it up to service and wanted to bring the
14 telephone number along with it so that customer didn't have
15 to change the call. That's fine, they're permitted to do
16 that.

17 What we propose is we would provide toll-free
18 return calling to that ported MCA number if they were
19 willing to pay a flat rated charge. AT&T declined. They
20 said they weren't interested. The reason they weren't
21 interested is because they knew -- and this is still the
22 case -- that we're not able to differentiate from a
23 technological standpoint on a call to an MCA number that's
24 ported versus one that is originally assigned to the
25 customer.

1 In both cases the call will go through toll
2 free. AT&T knew it and they said, We don't want it. And
3 the Commission declined to impose the charge solely on the
4 basis that AT&T wasn't interested in it.

5 There was certainly no ruling from the
6 Commission in that arbitration that involved what charge or
7 what compensation Southwestern Bell should receive if it
8 provided toll-free return calling to a non-ported number,
9 which is what we're dealing with with Intermedia and others.
10 They have their own NXX codes that have been assigned to
11 them, they're not MCA codes and yet they want the return
12 calling. The Commission did not decide that at all in the
13 AT&T arbitration.

14 So where do we go from here? Staff has its
15 MCA 2 plan. It eliminates the return calling feature and
16 thus the need for segregated NXX's, but the plan isn't
17 sufficiently developed yet. They tell you that in their
18 supplemental direct testimony. And I think all parties
19 agree that there's not enough known about how the plan would
20 work for the Commission to adopt it. We certainly don't
21 have any problem with the Commission exploring that if it
22 wants to in some subsequent proceeding.

23 The second choice available to you is to
24 eliminate the MCA plan. We don't recommend that. It's a
25 very popular plan. It has hundreds of thousands of

1 subscribers, and I think eliminating it would cause much too
2 much of an uproar.

3 The Commission could let CLECs participate in
4 the MCA, and I think it's very clear here, despite the
5 claims to the contrary, that the Commission hasn't decided
6 that issue yet. This docket is for that very purpose and
7 that's why it has been established.

8 The original MCA case was established after a
9 lengthy investigation led by a Commission initiated task
10 force which resulted in recommendations that led to
11 hearings, briefings, it involved participation of
12 essentially all of the telecommunication providers in the
13 state at that time.

14 The claim in this case that by approving CLECs
15 to get into the business without any discussion of MCA, by
16 approving tariffs without any analysis of the impact on the
17 current participants in the plan and -- that the Commission
18 somehow permitted CLECs into the plan, permitted them to
19 change the very basic parameters of the plan including
20 calling scope, pricing, intercompany compensation is absurd.

21 The Commission hasn't decided it, that's why
22 it set this docket and that's why I believe the Commission
23 didn't accept the request for interim relief in this case.
24 If the matter was as clear as the opponents contend, I doubt
25 we'd be here today.

1 Back to the point. What should we do if the
2 CLECs are permitted to participate in the plan? There's
3 five points I think that we'd say the Commission ought to
4 look at. The first, as I said, is compensation for the
5 calls.

6 Second point is the calling scope. We believe
7 the Commission should require CLECs, if they permit them to
8 participate, to follow the calling scopes in the plan.
9 CLECs say, well, they'd like to be able to expand the
10 calling scope. And that sounds good from a customer's
11 perspective and if they want to do that on their side of the
12 plan, go for it. But what we do object to is expanding it
13 and calling it MCA service, because it does two things to
14 ILECs and most especially to us.

15 One, is it allows -- potentially allows CLECs
16 to avoid payment of access charges that are required today.
17 If you have a call that's beyond the fifth tier of the MCA
18 in St. Louis, let's say, Washington, Missouri, for example,
19 if AT&T serves that area and they have a toll call that goes
20 into the City of St. Louis, we receive access charges to
21 terminate that call.

22 What we would object to is if AT&T is
23 permitted to expand the local calling scope of the MCA, say
24 Washington, Missouri is now in it and by the way, we're not
25 going to pay you access when they call into St. Louis. And,

1 further, we don't want them to say on that same point, And
2 since we're not paying you access, by the way, when your
3 customers in St. Louis call Washington, Missouri, don't
4 charge them toll either because that's part of our MCA.
5 That's not appropriate, that's not what the MCA plan is set
6 up to do.

7 Third point is the need for segregated NXXs.
8 That is the only way that you can tell who is an MCA
9 subscriber is by utilization of those segregated NXXs.
10 Staff's proposal to eliminate all of it in every way is
11 completely inappropriate. It changes the entire parameters
12 of the plan. It gives people the right to make toll-free
13 calls that are toll today even when they're calling
14 Southwestern Bell's own customers who are non-subscribers to
15 the MCA. That proposal doesn't make sense.

16 Fourth, is that we believe that if the CLECs
17 are permitted to participate, that it should be on a bill
18 and keep basis for all calls within the MCA. That's the
19 form of compensation that's used in the MCA plan today and
20 that's what should be used if the CLECs are permitted in.
21 That's what was used to assure revenue neutrality before and
22 it would be inappropriate now to let CLECs in and give them
23 a financial benefit through reciprocal compensation.

24 Some parties claim that's overriding
25 interconnection agreements. We do not agree with that.

1 What the Commission would be doing if they ordered bill and
2 keep for all calls within in the MCA is saying that's a
3 condition of CLEC's participation in the plan. If you want
4 to participate in the plan, you follow the parameters and
5 one of them is bill and keep for all calls within the MCA.

6 They then have their choice as to whether they
7 want to go under their interconnection agreements and not
8 participate at all in the MCA plan or participate and all
9 calls then would be on a bill and keep basis.

10 Internet has become a big concern in this
11 case, and this still deals with bill and keep. MITG and the
12 other companies are concerned that they'd have to pay
13 reciprocal compensation on MCA calls made to Internet
14 service providers served by CLECs.

15 We don't agree that reciprocal compensation
16 applies to these calls. We believe that they're interstate
17 calls and subject only to bill and keep. But at the very
18 least that's another reason for the Commission to consider
19 the application of bill and keep to all calls within the
20 MCA.

21 We do not say that ISPs should not be able to
22 subscribe to MCA service of some type. They should. I
23 think they're entitled to. But the Commission can decide
24 whether or not to apply reciprocal compensation or say bill
25 and keep. We believe it's interstate, but if you don't for

1 any reason, you should very clearly say it's bill and keep.
2 It would work tremendous financial harm on the companies
3 involved if you don't.

4 Last point is pricing. And that's probably
5 one of the most difficult ones for you to deal with in terms
6 of deciding what to do with the MCA plan. There's two
7 competing concerns here. The one obvious concern or
8 interest that you have is to encourage as much competition
9 as possible and price competition is one of the things that
10 people normally look to.

11 On the other hand, you have to avoid a
12 situation where one party or one group of parties like CLECs
13 are given a competitive advantage over another, particularly
14 when they're operating under a Commission-mandated plan like
15 the MCA. That concern is probably particularly striking in
16 the Public Counsel's testimony here. Obviously they're one
17 party which typically favors competition on an all-out basis
18 at all costs, but they are very concerned here that the MCA
19 plan could fall apart if pricing isn't done on an equal
20 basis.

21 I think you have two choices with regard to
22 pricing. One is to mandate the price and say CLECs
23 operating in a particular ILEC's territory must charge the
24 same as the ILEC does. ILECs could vary the price over time
25 depending on what the Commission finds in either a rate case

1 or under a price cap, but the CLECs that are operating
2 within that territory then would move along with the ILEC in
3 terms of pricing of that service. That's one choice.

4 The second choice is to give all parties equal
5 pricing flexibility up front. That's not what the CLECs
6 say. They want full pricing flexibility for themselves and
7 only limited pricing flexibility for ILECs.

8 But there is a way for you to make pricing
9 competition equal, and that is to declare MCA service
10 competitive under Section 392.361. If you do that, all
11 providers would have equal pricing flexibility. If there's
12 concern on your part that you don't know what would happen
13 with the prices if all parties were given equal pricing
14 flexibility, I'd remind you that under the statute, if
15 competition doesn't play out the way you planned, that you
16 do have the right under that section of the statute to
17 reimpose the other form of regulation if you believe that
18 competition doesn't play out the way that you expect it to.

19 But I think that no matter what, either choice
20 that you make in terms of pricing, that it's important that
21 you do it in a way that's equal and fair for everyone. And
22 with regard to all the conditions that would be imposed upon
23 their participation in the MCA plan, we'd ask that you
24 consider not only customers, not only CLECs, but the
25 interest of the ILECs as well. Thank you.

1 JUDGE DIPPELL: Cass County?

2 MR. ENGLAND: Good morning. I'm Trip England.
3 I represent a group of seven small incumbent local exchange
4 carriers, four of whom serve in the MCAs of the state,
5 St. Louis, Kansas City and Springfield, three of whom do
6 not, two of whom are on the outskirts in the Kansas City
7 area.

8 The one thing that I think you've heard and
9 doesn't appear to be any dispute about in this proceeding is
10 that the MCA plan that you all ordered in 1992 was clearly
11 in the public interest. No one is advocating that you
12 eliminate the MCA plan. No one is here to tell you that
13 competition has evolved in this state or at least evolved in
14 the metropolitan areas such that a mandatory expanded
15 calling plan as MCA can be eliminated.

16 However, competition has created a need to
17 address the plan one more time. And as you do that -- and a
18 couple of people before me have discussed it as well -- I'd
19 like to also remind you some of the history of expanded
20 calling plans in the state.

21 I think it was Brent Stewart who referred you
22 back to 1986 when you had a case, T0-86-8, which sought to
23 investigate EAS or extended area service. I hate to admit
24 it, but I actually go back to the mid 1970's when at that
25 time Commissioner Willard Reine led the Commission in

1 adopting a revised EAS rule at that time, which seemed to
2 survive for approximately 10 years before the '86 docket was
3 created.

4 Then in '87, T0-87-131 was created. And at
5 that time an acronym known as EMS was looked at, extended
6 measured service, and COS, what I call, part one was
7 created. In between the '87 and '92 dockets, there was an
8 ill-fated attempt by the industry to come up with something
9 known as ELCS, and I'm not even sure what those letters
10 stand for now. Just suffice it to say that there was
11 another proposal on the table. It failed.

12 But eventually in '92 in your docket
13 T0-92-306, the Commission developed MCA along with COS part
14 two, and OCA, the out-state calling area plan. Well, COS
15 and OCA are pretty much history. MCA still stands and I
16 submit to you, needs to stand. MCA should remain a mandated
17 service by this Commission.

18 I mentioned this bit of history because I want
19 to impress upon the Commission that it was not easy getting
20 to where we are today. That a great deal of time and effort
21 both by the Commission and the industry got us to the MCA
22 plan we have today.

23 There was a great deal of thought and effort
24 that went into the establishment of the rates, as prior
25 counsel have told you. The rates for MCA service in the

1 mandatory zone are actually part of the local service rate.
2 The rates in the optional tiers, however, are additive
3 rates. They are in addition to the local exchange rates of
4 the various local exchange companies that serve in those
5 tiers.

6 And there was a great deal of thought and
7 effort that went into establishing these rates. And one
8 of the primary drivers was the fact that the Commission
9 wanted to maintain uniformity among the exchanges located in
10 a particular tier. In other words, tier three additives
11 were the same regardless of a local exchange company that
12 provided local exchange service. Tier four rates were also
13 uniform, a little bit more than the tier three, and
14 likewise, tier five.

15 And at the time, the Commission was very much
16 concerned with what was known as looking over the fence
17 concerns. If you did not have uniform additive rates for
18 this service, customers in exchanges, depending on who their
19 LEC was, would complain about the service that their
20 neighbor customer got in the neighboring exchange if it was
21 not the same price, but it was the same service. That
22 created a great deal of criticism, a great deal of heartburn
23 among the customers.

24 So there was a great deal of effort that went
25 into determining these tiered rates and a great emphasis on

1 the fact that they ought to be the same regardless of which
2 local exchange company provided service.

3 There was also a great deal of thought that
4 went into the intercompany compensation issue. The
5 Commission ultimately determined that bill and keep was the
6 appropriate mechanism. And although many, if not all, of my
7 clients got drug kicking and screaming into that
8 arrangement, we now believe it is the best way for handling
9 that traffic both today and tomorrow.

10 The intercompany compensation issue is an
11 important one. Although the end-user customer does not
12 understand the significance of it, it does impact them
13 eventually. Because the intercompany compensation, as you
14 have come to learn through the COS cases, the PTC cases and
15 all of the other generic proceedings that we have,
16 intercompany compensation creates revenues and creates
17 expenses for companies. And depending on how they shake
18 out, that could create the need for rate increases, rate
19 decreases and what have you.

20 So intercompany compensation eventually does
21 have an impact on the end-user customer. And you have to
22 give that a great deal of consideration when you look at
23 expanded area calling plans particularly between different
24 companies.

25 And the Commission did that and they did it on

1 a revenue neutral basis at the time the 1992 case came
2 about. That spawned industry groups after the issuance of
3 that order, and I think it took about a year to work through
4 not just revenue neutral issues, but also dialing issues,
5 all sorts of implementation issues.

6 Again, I mention this history and emphasize a
7 great deal of thought and effort that went into creating MCA
8 to plead with you to be very careful what you do on a
9 going-forward basis in this case. I'm not telling you that
10 changes don't need to be made.

11 Competition has come about since 1992. We now
12 have competitive local exchange carriers and we need to
13 accommodate them. MCA needs to be changed to accommodate
14 competitive local exchange carriers.

15 But I think, as Mr. Dandino said, the first
16 thing you might want to keep in mind is do no harm. Perhaps
17 stated another way, to do the minimum amount necessary to
18 accommodate the competitive local exchange carriers without
19 upsetting the bigger part here.

20 What's our proposal? Well, we join with
21 Public Counsel and we say allow the competitive local
22 exchange carriers to participate in the MCA basis. Give
23 them that option. And if they choose to participate in the
24 MCA, condition it on their agreement that they will do so on
25 the same terms and conditions as the incumbent local

1 exchange carriers.

2 And when I say "same terms and conditions," I
3 mean the same rates to end-users depending on where they're
4 located, same additive rates, same intercompany compensation
5 arrangements, that's the bill and keep, and the same calling
6 scope, which you've heard quite a bit about this morning as
7 well.

8 It's a simple fix, in our opinion, one that
9 needs to be taken, but it's also a fair one. I understand
10 the competitive local exchange carriers' concerns with their
11 inability right now to crack the MCA, but I have no sympathy
12 for them when they say, Let us in, but oh, by the way, we
13 want to have pricing flexibility so we can set whatever rate
14 to the end-user we want, we want some way to establish
15 whatever calling scope we think is appropriate and we want
16 to pick and choose -- although I understand from opening
17 statements from Mr. Cadieux maybe I'm overstating their case
18 here, but it seems to me that they want to pick and choose
19 on intercompany compensation.

20 If it behoves them to maintain a de facto bill
21 and keep, they will, but when the balance of traffic is such
22 that it's advantageous to them to enter into a reciprocal
23 compensation agreement, then they want to do something
24 different.

25 I think all you have to do is offer them the

1 opportunity to participate in the MCA under the same terms
2 and conditions as the incumbent LECs do today and I think
3 that is sufficient. That meets whatever competitive -- true
4 competitive concerns may be raised in this docket.

5 If they want to offer something different,
6 again, we join with Public Counsel. They are certainly free
7 to do so, just call it something other than MCA. And they
8 can expand calling scopes, they can lower prices and they
9 can arrange to terminate that traffic the way they are
10 supposed to under the Telecommunications Act, and that is to
11 come to the carriers and negotiate those arrangements.
12 Thank you.

13 JUDGE DIPPELL: Missouri Independent Telephone
14 Company Group?

15 MR. JOHNSON: Good morning. Thank you. I'll
16 try to be brief. I don't expect to introduce any new
17 thoughts at this stage of the opening statements.

18 My clients include two companies that are
19 currently participants in the MCA. That's MOKAN Dial, which
20 has the Freeman exchange, which is the tier five exchange in
21 the Kansas City MCA, and also Choctaw Telephone Company,
22 which owns the Halltown exchange, which is in the outer tier
23 of the Springfield MCA.

24 I don't want to address the competitive issues
25 the CLECs have with Southwestern Bell as to how they've been

1 allowed or not allowed to provision MCA service. The CLECs
2 aren't coming to my clients and we've not had an opportunity
3 to discuss any such issue.

4 What we're basically proposing to the
5 Commission is what Mr. England just said to you. MCA is the
6 Commission's service. You created it, you kind of have the
7 copyright or the trademark on it, if you will. And we have
8 a lot of concerns with the CLEC's proposal in two regards.

9 One, that they want to be able to offer a
10 different calling scope and call it MCA. That creates
11 problems for us because by the time this traffic comes to us
12 over indirect interconnection agreements, we can't separate
13 an MCA call from an MTS call from a Local Plus call from a
14 MCA-like call, if that's what the CLECs want to call their
15 service.

16 So we think it's very important -- and I'm
17 thinking now from the customer standpoint. I think the most
18 significant attribute of the MCA service to the customers
19 today is that although it's taken some time and some
20 training, they know where they can make a toll call and
21 where they can make a toll-free call.

22 Once you start allowing new companies to offer
23 a service that has different calling scopes and allow them
24 to call that MCA service, then the confidence the customer
25 has that they know where they can and can't call toll free

1 is going to erode. And I think that's something that the
2 CLEC's proposal -- that their position -- it doesn't make
3 sense and it's not a good idea for the customer.

4 With respect to intercompany compensation, we
5 too are asking you that if you're going to allow the CLECs
6 to offer MCA service, that you make them not only offer the
7 same geographic calling scope that the ILECs are required to
8 offer, but also make them use bill and keep.

9 Their proposal to use reciprocal compensation
10 where they want to and bill and keep where they want to
11 creates some concerns for the small companies who are at the
12 tail end of this direct reciprocal compensation type
13 structure.

14 And just to backtrack a minute and give you
15 some of our observations about this indirect interconnection
16 reciprocal compensation situation, I think in retrospect now
17 that we've had since 1996 to look at these, perhaps it would
18 be appropriate for the Commission to re-think approving
19 interconnection agreements that address traffic that's going
20 to other carriers besides the two parties to the
21 interconnection agreement itself.

22 When these interconnection agreements were
23 approved addressing traffic that was going to come to the
24 small companies, basically that meant that we were never
25 going to be in the same situation as Southwestern Bell, GTE

1 and Sprint have been with respect to obtaining
2 interconnection agreements.

3 We've had no requests for interconnection
4 agreements. None of the carriers have come to us. Neither
5 Southwestern Bell nor the CLECs are giving us any reports of
6 traffic that's terminating to us and no one is paying us
7 compensation. On the one hand you have a situation now
8 where in the MCA, some of the MCA traffic compensation is
9 being paid for and in other places it's not.

10 The indirect interconnection scenario can be,
11 and we think is, discriminatory with respect to the
12 telephone companies that aren't parties to it. Can't record
13 traffic, can't measure usage, we can't identify the
14 originating carrier, can't identify the jurisdiction of the
15 call, can't verify if the call is a compensable one or not,
16 can't even determine what the appropriate compensation range
17 is supposed to be.

18 It basically forces us to use a trust me
19 approach. And who are we being -- we're being forced to
20 trust carriers who are engaged in this big competitive fight
21 in downtown St. Louis and Kansas City, and they've got no
22 incentive to be trustworthy. And I think the past has
23 demonstrated they have not been.

24 Although they weren't supposed to send this
25 traffic to us until they had reciprocal compensation

1 arrangements in place and approved, we think they have. And
2 although they were supposed to pay us switched access rates
3 up until the time when they did have those reciprocal
4 compensation arrangements in place, they have not.

5 And to make matters worse, neither
6 Southwestern Bell nor the CLECs, the only parties in a
7 position to give us the records and be the policemen here,
8 haven't sent us anything.

9 And in this day and age of competition when
10 you have -- you don't just have IXCs and ILECs anymore.
11 You've got CLECs, you've got the ISPs, you've got
12 facility-based CLECs, you've got reseller CLECs. And the
13 services have already multiplied. You've got the MCA
14 service, you have whatever the CLECs call their service
15 today, you've got Local Plus service, you've got one-plus
16 saver service.

17 It's not possible in this day and age for us
18 to rely on upstream policemen and trust them to make sure
19 that we are getting the right kinds of records and
20 compensation.

21 So with respect to MCA service, which is the
22 issue of the service that's before you, we're asking you to
23 remember that it's your service. If the CLECs want to offer
24 it, they should be given that option or the right to offer
25 it, but if it's given to them, it should be given to them on

1 the same basis as the ILECs are required to offer MCA
2 service today.

3 And you should not allow them to deviate from
4 the Commission-established calling scopes, and you should
5 not allow them to deviate from the Commission-established
6 compensation arrangements. Because it's those deviations
7 that from my company's standpoint would continue to make the
8 terminating compensation and the compensation problems that
9 are associated with indirect interconnections worse. Thank
10 you.

11 JUDGE DIPPELL: I'm just going to clarify for
12 the record. In the first opening statement Mr. DeFord
13 referred to some maps and charts and they'll probably be
14 referred to later. And I think those are actually found in
15 Staff's direct testimony as Schedules 10-1 and 10-3,
16 metropolitan calling area exchanges and so forth.

17 I think we'll go ahead and take a 10-minute
18 break and then we'll come back and start with our first
19 witness. Go off the record.

20 (Off the record.)

21 JUDGE DIPPELL: I will note that when we get
22 to cross-examination and recross, that I'll call you out
23 according to my list and your abbreviated names and if I
24 skip someone, you need to let me know. That's very possible
25 that that could happen.

1 So let's go ahead then. Staff, would you like
2 to call your first witness?

3 DIRECT EXAMINATION BY MS. KARDIS:

4 Q. Good morning, Bill. Would you please state
5 your full name and business address.

6 A. William L. Voight, Post Office --

7 JUDGE DIPPELL: Okay. I'll go ahead then and
8 swear you in.

9 (Witness sworn.)

10 JUDGE DIPPELL: Go ahead, Ms. Kardis.

11 WILLIAM L. VOIGHT, having been sworn, testified as follows:

12 DIRECT EXAMINATION BY MS. KARDIS:

13 Q. Would you please state your name and business
14 address.

15 A. William L. Voight, Post Office Box 360,
16 Jefferson City, Missouri, 65102.

17 Q. And by whom are you employed and in what
18 capacity?

19 A. I'm assistant manager of telecommunications
20 for the Missouri Public Service Commission.

21 Q. Are you the same William L. Voight that has
22 caused to be prepared and filed in this docket the documents
23 entitled direct, surrebuttal and supplemental direct
24 testimony of William L. Voight that have been marked for
25 purposes of identification as Nos. 1 through 3?

1 A. Yes.

2 Q. With respect to those documents, do you have
3 any changes or corrections that need to be made at this
4 time?

5 A. No.

6 Q. If I were to ask you the questions appearing
7 in your testimony, would your answers here today under oath
8 be the same?

9 A. Yes.

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

12 A. Yes, they are.

13 MS. KARDIS: At this time, I'd like to offer
14 Exhibit Nos. 1 through 3 into evidence, as well as tender
15 this witness for examination.

16 JUDGE DIPPELL: Are there any objections to
17 Exhibit Nos. 1 through 3 being admitted?

18 Then I will receive those into the record.

19 (EXHIBIT NOS. 1 THROUGH 3 WERE RECEIVED INTO
20 EVIDENCE.)

21 JUDGE DIPPELL: And we can begin with
22 cross-examination by Public Counsel. We have no Public
23 Counsel.

24 Let's go off the record for just a moment.

25 (Off the record.)

1 JUDGE DIPPELL: Mr. Dandino, do you have
2 questions for Mr. Voight?

3 MR. DANDINO: Yes, your Honor.

4 CROSS-EXAMINATION BY MR. DANDINO:

5 Q. Mr. Voight, in your testimony you had said
6 that you're now proposing that the MCA 2 proposal Staff has
7 made be -- the Commission postpone consideration of that; is
8 that correct?

9 A. We don't have the data to make a firm
10 recommendation.

11 Q. And you had a meeting with the companies, and
12 I take it it wasn't unanimous on how to deal with some of
13 the issues involved in that; is that right?

14 A. That's right. It's not unanimous on how to
15 deal with all of these issues.

16 Q. Sure. And it's going to take some time to
17 work that out?

18 A. Some time, yes.

19 Q. And because of the Commission's December 1992
20 order in T0-92-306, that establishes the calling scope rates
21 and intercompany compensation methods, right, for MCA?

22 A. Correct.

23 Q. And if the CLECs were allowed to participate
24 in the MCA plan fully under those same terms and conditions,
25 this Commission could order that and it could happen

1 virtually immediately; is that correct?

2 A. That's one thing that could happen
3 immediately. That's already being done with Intermedia's
4 memorandum of understanding, same rates, terms and
5 conditions.

6 Q. If you'd modify the calling scopes --

7 A. It would take longer.

8 Q. -- it would take longer?

9 A. Yeah.

10 Q. And the same if you modified rates and methods
11 of intercompany compensation? It would take longer than
12 just ordering the CLECs to participate under the present
13 order?

14 A. Yes, it would take longer.

15 MR. DANDINO: That's all I have, your Honor.
16 Thank you.

17 JUDGE DIPPELL: AT&T?

18 MR. DEFORD: Thank you, your Honor.

19 CROSS-EXAMINATION BY MR. DEFORD:

20 Q. Following up on something I think Mr. Dandino
21 just asked, with respect to your MCA 2 proposal, have you
22 given any thought or any additional thought, I suppose, as
23 to how you would price the additive or price that service to
24 customers?

25 A. For competitors, they would have complete

1 pricing flexibility for the incumbents under rate of return
2 regulation or price caps. We would advocate pricing
3 flexibility pursuant to the statutes.

4 Q. So that pricing wouldn't be related to trying
5 to develop some sort of a revenue neutral price that would
6 be mandatory for the incumbents?

7 A. I think possibly it could. The revenue
8 neutrality that we have talked about, Mr. DeFord, has to
9 deal with changes in the calling scopes for the -- what we
10 call MCA 2. So if I'm understanding you properly, I think
11 how the incumbents set their prices I think may be tied to
12 that.

13 Q. So would you go back and look at the way the
14 prices were developed in the existing MCA proposal or the
15 MCA plan as it exists?

16 A. Would we go back and look at the way rates
17 were initially established for MCA?

18 Q. Yes. What went into that, if you know?

19 A. What went into that?

20 Q. Yes.

21 A. Well, yes, I think I have some idea what went
22 into that. Those rates were residually priced.

23 Q. And by that you mean they were priced to
24 capture what amount?

25 A. Capture -- they were priced to capture

1 nothing.

2 Q. So the \$70 additive for a business customer in
3 tier five wasn't intended to make up for the lost toll that
4 the incumbent would potentially see?

5 A. That's correct. That appears quite evident
6 from reading the history of that case. Page 22 of
7 Southwestern Bell's reply brief is one example among many
8 where they indicate that the rates for MCA service in the
9 optional areas are residually priced with no regard to cost
10 or revenue recovery, that any such matters, revenue
11 requirements, are to be made up, quote, elsewhere.

12 And whether or not we would take those sorts
13 of things into consideration, the same residual type pricing
14 among the incumbents with MCA 2, I -- I don't know that.

15 Q. Thank you. I have one other history question
16 for you. Can you tell me who the first CLEC to actually
17 operate in Missouri was?

18 A. It was a reseller. The tariffs were approved
19 on December 31st, approximately 10:30 in the morning --

20 Q. Would that --

21 A. -- New Year's Eve. It was Dial U.S., now
22 McLeod.

23 Q. And was Dial U.S. permitted, if you know, to
24 resell MCA service?

25 A. That's my remembrance, yes. I think I may

1 have mentioned some issues surrounding that in my direct
2 testimony. I believe resellers beginning with that case
3 were allowed to resell MCA service.

4 Q. And, if you know, was Dial U.S. required to
5 charge the exact same amount as the incumbent for that MCA
6 service?

7 A. No. The Commission has not established any
8 sort of a price cap, if you will, price floor for resellers
9 or facilities-based competitors with regard to the MCA
10 service.

11 MR. DEFORD: Thank you, Mr. Voight. That's
12 all I have.

13 JUDGE DIPPELL: Intermedia?

14 MR. STEWART: No questions, your Honor.

15 JUDGE DIPPELL: Birch?

16 MR. MIRAKIAN: No questions.

17 JUDGE DIPPELL: McLeod?

18 CROSS-EXAMINATION BY MR. KRUSE:

19 Q. Just one, Mr. Voight. I'm looking at Exhibit
20 No. 3, which is your surrebuttal testimony, over on page 19,
21 specifically line 13. You're discussing the customer
22 calling scope confusion. And the question was, Did
23 Southwestern Bell do as the Commission expected and print
24 the MCA NXXs in its directory so that people would know what
25 was a long distance call and what was a local call?

1 And I believe your answer is, Yes, it did, in
2 the first sentence. And you go on in the next sentence to
3 say, Schedule 4 of my direct testimony was used to show the
4 complete lack of MCA dialing instructions contained within
5 Southwestern Bell's most recent directory.

6 Based on reviewing this again, Mr. Voight,
7 should that first sentence read, No, it did not, because
8 they seem to be internally inconsistent?

9 A. I'm sorry. I didn't hear the last -- they
10 seem to be what?

11 Q. The first sentence beginning with the answer
12 to that question that I just read, the first sentence
13 beginning on page 19, line 13 seems to be at odds with the
14 second sentence. And I'm wondering if that was just sort of
15 a typographical error?

16 A. Well, no, sir, I don't believe. I believe you
17 need to possibly read the third sentence where I talk about
18 the schedule in this testimony, which shows the directories
19 of 1994 and 1995 which do show the NXX code listings, which
20 I'm taking to mean that -- well, at that time they --
21 shortly after the implementation of the MCA, they did show
22 MCA NXX codes so that people could look in their directory
23 and tell what was a local and long distance call.

24 In my direct testimony I show the schedule of
25 their current telephone directory where they no longer do

1 that. So the question, did Bell do as the Commission
2 expected? My answer at that time was -- my answer remains
3 the same, yes, it did.

4 Q. But only initially; is that correct?

5 A. That's correct.

6 Q. And then after that, they didn't do as they
7 were expected?

8 A. That's what -- that's the way it appears to
9 me, Counselor, without having been a party to that case and
10 didn't even work here at that time, that's -- that's how it
11 appears to me.

12 Q. So although they initially did what was
13 expected for maybe a year, since that time with respect to
14 the listing of NXXs in their directories, they haven't
15 complied then with that?

16 A. That's -- yes, that's how I would interpret
17 that.

18 MR. KRUSE: Thank you.

19 That's all I have, your Honor.

20 JUDGE DIPPELL: Gabriel?

21 MR. LUMLEY: Thank you, your Honor.

22 CROSS-EXAMINATION BY MR. LUMLEY:

23 Q. Mr. Voight, I'd like to talk about NXX code
24 segregation with you. Leaving aside the MCA 2 plan or any
25 other such modification of the plan and looking at the plan

1 as it exists today where calling scope in part depends on
2 whether the called party is an MCA subscriber or not, do you
3 currently have an alternative solution to the use of
4 segregated NXXs to distinguish between customers that are
5 MCA subscribers and customers that are not?

6 A. No.

7 Q. Okay. And in your testimony when you propose
8 that CLECs open up ILEC NXXs in conjunction with offering
9 MCA service, are you speaking about all the NXX codes of the
10 ILECs, or are you talking about the NXX codes that they've
11 assigned to their MCA subscribers?

12 A. All of them. Much the same as I'm asking the
13 incumbents to do for the CLECs.

14 Q. All right. And so correct me if I'm wrong,
15 but the ramifications of that proposal would be that
16 notwithstanding -- assuming that the ILEC tariffs talk about
17 the calling scope in terms of MCA subscribers and
18 non-subscribers, CLEC tariffs have the same references.
19 Even if the tariffs had those references, in actuality what
20 would happen is that the CLEC MCA subscriber would not only
21 be able to call ILEC MCA subscribers, but also
22 non-subscribers; is that correct?

23 A. That's correct. It's my understanding, for
24 example, that's what Gabriel is doing already. It was my --
25 as I pointed out in my direct testimony, I believe, I showed

1 where Intermedia was doing that already.

2 Q. And, likewise, the consequence of that
3 proposal would be that really the CLEC would not, as a
4 practical matter, be able to offer a non-MCA service, would
5 they?

6 A. Yes, they would. I think they could still
7 offer basic local service within an exchange.

8 Q. And how would that -- how would they and the
9 other LECs identify the subscriber of that service versus a
10 subscriber to MCA service if we don't segregate?

11 A. Well, the CLEC knows what its own
12 subscriber -- the calling scope of your own subscriber.
13 You're going to know if they subscribe to basic local in
14 just an exchange or for an additional rate they subscribe to
15 a wider calling scope. So for the person that -- the firm
16 providing service to the end-user, I don't think you're
17 going to have any difficulty identifying what their
18 capabilities are.

19 And when you said the other LECs, you lost me
20 a little bit. I wasn't sure if you were talking about other
21 CLECs or the ILECs or -- how would the ILECs know?

22 Q. The other participants in the MCA plan is what
23 I meant. Let me --

24 A. All right. Let's just take an example. I
25 would use Lathrop Telephone Company as a participant in the

1 MCA plan. And what I'm asking the Commission to do is order
2 Lathrop and the other ILECs to recognize the CLEC codes as
3 MCA codes.

4 Q. Okay. Well, let's take an example. Let's say
5 that a customer of Southwestern Bell is currently an MCA
6 subscriber in tier four.

7 A. Okay.

8 Q. And they decide that they'd rather switch to
9 Gabriel's MCA service.

10 A. Okay.

11 Q. Let's assume we've worked out the issues here
12 and Gabriel is a full participant in the MCA plan.

13 A. And you gave -- Gabriel gave them a new
14 telephone number.

15 Q. Right.

16 A. Okay.

17 Q. Okay. And we haven't -- we're not segregating
18 NXX codes for Gabriel, but at the point they change
19 providers, it would be transparent to them in terms of who
20 were they able to call and who was able to call them. Right?
21 Are you with me so far? On a toll-free basis?

22 A. As a Southwestern Bell MCA subscriber in terms
23 of who they can call and who they can be called from, it
24 would be pursuant to that (indicating), the current MCA
25 plan. When they switch to Gabriel, I -- you kind of lost me

1 there. I'm not sure if it would be the exact same --
2 same -- same situation.

3 Q. Well, I mean, at this point -- okay. Let me
4 eliminate that confusion and let's say that when they make
5 the switch, they port their number. So they still have the
6 same NXX that they always had, it's still in the
7 Southwestern Bell system as an MCA NXX code. So when they
8 make that change of providers, in terms of who they can
9 call, who they receive calls from on a toll-free basis, it's
10 transparent to the customer. Would you agree with that?

11 A. Yes. I'll agree with that.

12 Q. Okay.

13 A. Would make it transparent to the customer.

14 Q. Now, if six months, a year later the customer
15 decides for whatever reason -- you know, kids grow up and
16 don't go to local schools anymore or whatever the reason is,
17 that they don't want MCA service from Gabriel anymore but
18 they want to stay with Gabriel, under your proposal, how do
19 the participants in the plan identify such a change if
20 Gabriel doesn't have non-MCA NXX codes?

21 A. Well, the participants in the plan would be
22 able to call them as a local call when they originally went
23 over to you, and they would be able to call them as a local
24 call whenever they made whatever change they did with you,
25 because all of the competitor's NXX codes should be

1 recognized by the incumbents as MCA codes. They wouldn't
2 have to change their phone number to subscribe to a reduced
3 plan. They could --

4 Q. And that kind of gets to my ultimate question,
5 and that is, don't you see that there's a risk here -- I
6 mean, I understand the concerns about NXX usage and trying
7 to conserve them and all that, but until we come up with a
8 solution for distinguishing between the MCA subscriber and
9 the non-subscriber without segregating NXX codes, under your
10 proposal don't you see that there's a risk that the word
11 would get out and customers would say, Well, I can get
12 basically the same thing for a lower price because they
13 can't do anything about it so they'd shift to the lower
14 priced service and still basically get all the benefits of
15 the plan?

16 A. I don't think so. I think the example that
17 I'm talking about -- you're looking at it solely on the
18 inbound side, which is what a lot of this whole confusion is
19 about. People also like to make out going calls, so I don't
20 see how it would be the same service.

21 On the first instance as a subscriber to
22 Gabriel, they have an outbound calling scope which is the
23 entire MCA. The second instance when they want -- they
24 don't want to pay that additive, they want to reduce
25 service, you sell them a service that's only within that

1 local exchange calling scope. Those are certainly not the
2 same thing.

3 Q. Okay. But can't you envision the circumstance
4 where there's a customer who for whatever reason, change in
5 lifestyle, they aren't really concerned about their outbound
6 calling anymore in terms of a large scope, but they are
7 still interested in return calling, and they find out that
8 they really don't have to buy the premium service, if you
9 will, because they can get what they want for the lower
10 price even though it's really not what the service described
11 itself to be?

12 A. Just so I'm clear, is what they want incoming
13 calling only?

14 Q. Well, plus their exchange outbound calling.
15 They're not giving it up totally.

16 A. Well, then I think what we're going to see in
17 this docket in terms of Staff's position and the others who
18 tend to emphasize the importance of inbound calling -- I
19 don't deny that that exists, but I think what we're going to
20 see is Staff has one viewpoint on that, perhaps Southwestern
21 Bell and the incumbents have another and it sounds like
22 possibly you do as well.

23 There's no evidence anywhere in this docket
24 that -- with any sort of data or statistics as to the extent
25 that that exists -- that situation exists, the over

1 reliance, I would call it, on the inbound calling scope. So
2 I think ultimately without any factual basis for it -- you
3 know, the number of people that that would apply to, neither
4 side is -- has any data on that. I don't -- I don't see a
5 problem with it, Counselor.

6 Q. And you don't think that CLECs should have the
7 opportunity to offer non-MCA service just like the ILECs
8 currently have?

9 A. I -- I -- perhaps we have some semantical
10 differences here. I think some of the CLECs are offering
11 non-MCA service today. Undoubtedly they have simply a basic
12 local calling scope at a reduced price.

13 Q. But how do they deliver that if they can't
14 separately identify those customers through NXX segregation
15 from customers that are subscribing to a premium plan, an
16 MCA plan?

17 A. How does the CLEC identify?

18 Q. Well, how does the whole -- how does the whole
19 system identify it?

20 A. Well, one of the reasons we're here today is
21 because the system is not identifying the CLEC subscribers
22 as eligible for the return call feature. That part of the
23 system is broke today.

24 Q. Well, I agree with you, but that's not the
25 question I was asking.

1 A. Okay. Perhaps you should restate it.

2 Q. If a Gabriel subscriber says, I just want your
3 bare bones basic local service, how does Southwestern Bell
4 or Choctaw know that that Gabriel customer is subscribing
5 only to the bare bones service in terms of the calls coming
6 back from their customers within the MCA?

7 A. Under the -- my approach to having the ILECs
8 program all of your codes as MCA codes, how does --

9 Q. How do they know that this subscriber has only
10 picked the bare bones basic plan and is not an MCA
11 subscriber?

12 A. The rate that they're paying -- my approach is
13 the rate that they are paying you is dependent on their
14 outbound calling scope only. And the rate that other people
15 pay their local exchange carrier is dependent on their
16 outbound calling scope only. It has nothing to do with a
17 friends and family approach. You can call only those who
18 subscribe to the same kind of program that I subscribe to.

19 It does away with the segregated NXXs. This
20 business of called party pays, that goes out the window.
21 The calling party pays for the service and they get a
22 calling scope. It's either going to be within their local
23 exchange or all exchanges and NXX codes within the MCA,
24 period.

25 Q. But the end result would be that the

1 customer -- the Gabriel customer that's only paying for bare
2 bones local service would be able to be called by the
3 customers of the other provider on a toll-free basis even
4 though they're not paying anything extra for that privilege?

5 A. Correct.

6 Q. And, likewise, the Southwestern Bell customer
7 in tier four that chooses not to be an MCA subscriber
8 today --

9 A. Okay.

10 Q. -- and then Gabriel enters the marketplace and
11 lands customers and starts doing business, that Southwestern
12 Bell customer would be able to call the Gabriel customer
13 toll free, even though the Southwestern Bell customer's not
14 paying for MCA service?

15 A. If they've not paying for an MCA-wide calling
16 scope, then they can't call outside of their local exchange.
17 So I don't know how they would be able to call your customer
18 toll free.

19 Q. What do you mean when you say that Gabriel has
20 to open up all of Southwestern Bell NXXs? Doesn't that make
21 that call from the Southwestern Bell non-MCA --

22 A. No. I mean, that Gabriel can have a basic
23 local telephone service that is only within the exchange,
24 say Chesterfield, for example. You could -- there's nothing
25 to preclude you from offering that type of service. As I

1 said earlier, I think many of them possibly already are.

2 What I'm advocating is that you -- all of the
3 competitors be required to offer something similar on an
4 MCA-wide area which, as I'll state again, I think all of you
5 already are. There's nothing in our proposal to -- that
6 would preclude the offering of a basic local exchange wide
7 only type calling plan.

8 Q. From an outbound perspective?

9 A. Yes.

10 Q. But without NXX segregation, the companies
11 participating in the MCA plan really wouldn't be able to
12 limit MCA calling to an MCA subscriber anymore, could they?

13 A. That's precisely what I want to get away from
14 because of the insufficient NXX code utilization that I've
15 outlined in my testimony, the confusion over the dialing
16 patterns of that sort of thing, the fact that you have to
17 change your number when you subscribe to it and again change
18 your number when you cancel it, as in your earlier example.

19 It's -- frankly, I think that situation is
20 uneconomic and bad enough with -- just among the incumbents.
21 And Staff wants the Commission to exercise -- give a lot of
22 thought before spreading that same concept to the
23 facilities-based carriers. As I pointed out in my
24 testimony, to do so would require, I believe, a minimum of
25 three additional area codes in the state of Missouri under

1 present circumstances just to accommodate the very thing
2 that you seem to be advocating, Counselor.

3 Q. And when you say "present circumstances," that
4 would --

5 A. Absent thousand block number pooling, that
6 sort of thing --

7 Q. Right.

8 A. -- or number assignment, excuse me.

9 Q. And with a solution like thousand number block
10 pooling, to take a simple example, you could have four or
11 five CLECs, you know, as they're starting with their
12 customer base at least and they could all be using one NXX
13 for -- to designate MCA subscribership and another for
14 non-MCA subscribership?

15 A. I'm not an expert on thousand block number
16 assignment.

17 Q. But you know enough to know that that's
18 correct, don't you?

19 A. I -- I would prefer not to comment on it.
20 I -- I honestly am not an expert. We have other people that
21 are. The thing that concerns me about it all is for those
22 who advocate such approach, I notice they still haven't
23 provided any dates by which this sort of thing is to be
24 accomplished. And I've not seen anything that would address
25 my concerns about applying this to the Orchard Farms and the

1 Lathrops and the Choctaws and so on, etc.

2 MR. LUMLEY: That's all the questions I have.

3 Thank you.

4 JUDGE DIPPELL: Nextlink?

5 MR. COMLEY: No questions. Thank you.

6 JUDGE DIPPELL: Sprint?

7 MS. GARDNER: No questions. Thank you.

8 JUDGE DIPPELL: GTE?

9 MR. DORITY: No questions. Thanks.

10 JUDGE DIPPELL: Southwestern Bell?

11 MR. LANE: Thank you, your Honor.

12 CROSS-EXAMINATION BY MR. LANE:

13 Q. Let me follow-up with a couple questions first
14 to make sure I'm tracking with you, Mr. Voight. Would you
15 agree that in the original MCA case, that when the
16 Commission adopted that, that they established revenue
17 neutrality for all of the ILEC participants in that case?

18 A. Yes.

19 Q. Okay. And I want to follow-up with some
20 questions that Mr. Lumley had asked you. Assume with me for
21 a minute that we're talking about a Southwestern Bell
22 customer in the Chesterfield exchange and that that customer
23 is a non-MCA subscriber.

24 A. Very well.

25 Q. Okay. Would you agree with me that if that

1 customer calls anywhere outside the Chesterfield exchange,
2 that that's a toll call today?

3 A. Yes. MCA three, four and five non-subscribing
4 customers can call all customers in their own local exchange
5 and EAS points, if any. All else is toll, Mr. Lane, yes, I
6 agree with that.

7 Q. All right. And if we have to open up the NXXs
8 for all of the CLECs, is it your contention then that a call
9 from that Chesterfield customer non-subscriber to MCA would
10 call toll free?

11 A. No, Mr. Lane.

12 Q. Okay.

13 A. Only those who subscribe to MCA. There's
14 nothing in what I'm saying that would abandon a basic local
15 service calling scope.

16 Q. Okay. And if you don't have segregated NXXs,
17 how do you implement that? How can that be done?

18 A. I could, I think, point you to how you've done
19 that in Local Plus to determine a calling scope LATA wide.

20 Q. All right. How about if it's a call from the
21 Chesterfield customer to an AT&T customer out in tier five?

22 A. Local call? If the Chesterfield -- your
23 Chesterfield subscriber subscribes to an expanded calling
24 scope --

25 Q. And if he doesn't, it's toll?

1 A. Yes. Correct.

2 Q. But the MCA -- the number that he's calling
3 might be an MCA number or a non-MCA number and Southwestern
4 Bell wouldn't know it at the time the call was placed?

5 A. I'm sorry. Which -- who's making the
6 call? The non-MCA --

7 Q. The Chesterfield --

8 A. -- subscriber or the MCA subscriber?

9 Q. Take both examples for me.

10 A. Okay. I'll go through the first example. As
11 a non-MCA subscriber -- and it would be no different today,
12 Mr. Lane. Your equipment knows what the calling scope of
13 the non-MCA subscriber in Chesterfield is. It's only within
14 the local area. And you don't -- I doubt you even look as
15 to the number being called out in Troy or whatever your
16 example might have been.

17 Q. If Gabriel is permitted to assign an NXX in
18 Chesterfield -- a number out of an NXX in Chesterfield and a
19 number out of the same NXX in Troy, there's no way for
20 Southwestern Bell to know whether that's a call that should
21 be toll or non-toll. Right?

22 A. Well, I didn't realize that you had
23 implemented rate center consolidation between Chesterfield
24 and Troy. How are you assigning the same NXX?

25 Q. So you'd require the same -- NXXs to be

1 established still on an exchange by exchange basis and they
2 could be assigned by both ILECs and CLECs only within the
3 exchange; is that right?

4 A. Well, I don't know where we are with the rate
5 center consolidation concept. It's my understanding that
6 it's -- has occurred so far only in a metropolitan exchange.

7 Q. But your proposal would be that NXXs would be
8 assigned to particular geographic exchanges and couldn't be
9 assigned beyond a single geographic exchange. Right?

10 A. Well, that's the way it's done today, I
11 believe.

12 Q. Okay. And so the benefits of NXX savings
13 wouldn't come to full fruition under your plan, would they?

14 A. Sure they would. I don't know what you mean
15 by "full fruition," but we certainly would not be
16 segregating them for MCA and non-MCA.

17 Q. Okay. Let me go back to the MCA 2 for a
18 minute, just to be clear. Is it fair to say that you've
19 developed some general parameters, but more work has to be
20 done to flush out the plan before it's ready to be adopted
21 by the Commission?

22 A. Yes.

23 Q. Okay. And at this point you're not able to
24 make a recommendation to the Commission to adopt that MCA 2
25 proposal. Right?

1 A. Correct.

2 Q. In the meantime, you propose to permit CLECs
3 to participate in the current MCA. Right?

4 A. Our proposal is for the Commission to order
5 the ILECs to recognize CLEC codes, NXX codes, as MCA codes
6 and vice versa.

7 Q. Okay. Would you agree with me that the
8 Commission has not yet made the determination that CLECs are
9 entitled to be treated as participants in the MCA plan?

10 A. Yes. In spite of the tariffs that they've
11 approved and so on and so forth, I would agree with that.

12 Q. Because the one thing that must be done is
13 you'd have to determine the terms and conditions of what the
14 participation would be. Right?

15 A. Yes, sir.

16 Q. Let's talk about the terms and conditions if
17 the Commission allows CLECs to participate in the MCA. Do
18 you understand ILEC's concerns that CLECs not be allowed to
19 unilaterally change the calling scope of the MCA?

20 A. I have to say I don't think I have a full
21 understanding and appreciation of that.

22 Q. Okay. Let's take an example, if we could.
23 Let's assume that a CLEC wants to expand the calling scope
24 of the St. Louis MCA and to add in Washington, Missouri,
25 which is outside of the fifth tier of the MCA.

1 A. Okay.

2 Q. Would you agree that today if the CLEC serves
3 that area and their customer calls in to downtown St. Louis,
4 that Southwestern Bell in that case would receive
5 terminating access on that call?

6 A. Yes. I would agree with that. And,
7 furthermore, if -- well, I'm sorry. Your -- your example
8 had the competitor serving the customer out in Washington.
9 Right? Washington, Missouri. Yeah. You would get
10 terminating access, yes.

11 Q. Would you agree that there would be a concern
12 on the part of ILECs if CLECs were permitted to add
13 exchanges to the MCA plan and then attempted not to pay
14 access charges on terminating that call?

15 A. Staff would have a concern if access charges
16 applied and they were not being paid, certainly.

17 Q. You're not proposing that CLECs be permitted
18 to add exchanges to the MCA plan and avoid payment of access
19 charges, are you?

20 A. No, sir.

21 Q. Okay. And then on the reverse side, would you
22 agree that today a call from downtown St. Louis out to
23 Washington, Missouri is a toll call for all of Southwestern
24 Bell's customers?

25 A. Yes.

1 Q. Okay. And if a CLEC adds Washington, Missouri
2 to its MCA, that there's a concern that they would then
3 claim that Southwestern Bell would have to provide return
4 calling toll free for all of its customer in St. Louis when
5 calling that CLEC's customers out in Washington. Correct?

6 A. Well, they can certainly make that claim, I
7 suppose.

8 Q. But you're not recommending, are you, that
9 CLECs be permitted to add to the geographic scope of the MCA
10 and then require Southwestern Bell and other ILECs to
11 provide toll-free return calling to that expanded geographic
12 scope, are you?

13 A. No, sir, Mr. Lane. I'm not advocating that or
14 recommending that. I would like to make it clear in what I
15 am recommending, and that's a one-way calling plan. And if
16 AT&T or Gabriel or anyone else wants to go to these --
17 anywhere in this MCA area and provide an outbound calling
18 scope to someone that is greater than this, then I think
19 they should be allowed to do so.

20 But I want to make it clear that the way the
21 tariffs currently stand, and I believe the way the
22 interconnection agreements are written, if they would expand
23 it out to Washington, Missouri in your example, then whoever
24 the ILEC is out there, they would -- that would be subject
25 to terminating switched access on a call from, you know, the

1 CLEC in Chesterfield, for example, out to Washington. Not
2 advocating expanded calling scope that ignores rightful
3 switched access charges.

4 Q. Okay. And to clarify then, in Staff's view,
5 it would be acceptable for a CLEC to file a tariff that
6 provided for a service that provided for expanded local
7 calling to exchanges outside the geographic scope of the
8 MCA, but that wouldn't be part of MCA service and it
9 wouldn't be used to avoid access charges or to require
10 toll-free return calling; is that fair?

11 A. That's exactly correct.

12 Q. Okay. Let's talk about pricing if the CLECs
13 are permitted to participate in the MCA plan. Would you
14 agree that there's a concern on the part of the ILECs that
15 any pricing flexibility for MCA should be equal for both the
16 ILECs and for the CLECs?

17 A. I agree that the ILECs have a concern about
18 competitive pricing flexibility for competitors and what the
19 ILECs might do in response to that.

20 Q. Would you agree that competitive neutrality
21 could be achieved by giving the same degree of pricing
22 flexibility to both CLECs and ILECs for MCA service?

23 A. I think the -- I'd like to -- I'm close to
24 saying yes to that Mis-- yes to that, Mr. Lane.

25 Q. Well, go ahead.

1 A. But the -- I think the statutes contemplate a
2 couple of different things when it comes to pricing for rate
3 of return or price cap traditional incumbent local exchange
4 carriers. I think we have to draw a distinction between
5 those and competitors of any sort.

6 Q. All right. Assume with me that the Commission
7 wants to have equal pricing flexibility for both CLECs and
8 ILECs under an MCA plan. Would you agree that one way to do
9 it is to have all ILECs and CLECs charge the same for the
10 service within a given geographic area?

11 A. That is something Staff's totally opposed to,
12 but the answer -- that would be one way to do it, yes.

13 Q. Okay. And another way to do it to ensure
14 competitive equality would be to give all equal pricing
15 flexibility by declaring MCA service to be a competitive
16 service under Section 392.361. Right?

17 A. I heard that in your opening statement,
18 Mr. Lane, and I'm intrigued by that. I haven't sought
19 counsel on that particular aspect of the statutes. I think
20 that was new to me. In terms of declaring the service as
21 competitive, I'm not sure right now what the ramifications
22 are to the ILECs. I'm not sure how much pricing flexibility
23 would be appropriate.

24 Q. You're in agreement with me that the statutes
25 permit the Commission to declare a particular service to be

1 competitive. Right?

2 A. Well, certainly. I mean, all of the services
3 of competitors are competitive; however, none of the
4 services of the incumbents are competitive. So I don't know
5 if my answer extends to the incumbents or not, because I
6 don't think it's been done before. Transitionally
7 competitive, yes; fully competitive, I don't -- can't recall
8 if we've been there before.

9 Q. Okay. You agree with me that price cap
10 companies can have services declared to be transitionally
11 competitive. Right?

12 A. I think so, yes.

13 Q. Okay. And would you agree also that price cap
14 companies can have services declared to be competitive under
15 the same section of the statute that permits transitional
16 competitive designation?

17 A. Have no reason to doubt that, Mr. Lane. It's
18 just I have no personal experience with that.

19 MR. LANE: Okay. If I may approach, I just
20 want to show him that portion of the statute.

21 BY MR. LANE:

22 Q. Let me show you Section 392.361. Would you
23 agree with me that it permits the Commission to have
24 services classified as competitive or transitionally
25 competitive under this section?

1 A. Yes. I agree with that.

2 Q. Okay. And would you agree with me that under
3 this same section, 392.361, Subsection 7, that the
4 Commission may go back at a later date and reimpose
5 regulation if they find that the competitive classification
6 didn't work out as anticipated?

7 A. Yes. The Commission may reimpose or modify,
8 yes. I agree with that.

9 Q. Okay. And when a service is declared to be
10 competitive under that section of the statute, then price
11 can fluctuate as the company deems appropriate in response
12 to market conditions. Right?

13 A. What I know about -- before we get to
14 competitive classifications for incumbents -- transitionally
15 competitive, my experience has been that the Commission
16 establishes some sort of a price floor below which the price
17 cannot go that was -- historically has been what the
18 Commission has used as discounted cash flow analysis,
19 capital C, capital A, capital B, CAB cost study to establish
20 a floor -- a lower balance floor setting the rate.

21 I don't know if there's any such requirement
22 under a competitively classified service or not. I -- it
23 may very well be that as you say, Mr. Lane, that may be all
24 there is to it, you can adjust rates up and down as you see
25 fit.

1 Q. That's how it's done by CLECs today, is it
2 not?

3 A. Yes. Yes, it is.

4 Q. And interexchange carriers as well?

5 A. Yes. That's correct.

6 Q. Okay. Let me shift over and talk about
7 intercompany compensation if the CLECs are permitted into
8 the MCA plan. It's my understanding that Staff's proposal
9 is to permit CLECs to receive payments under interconnection
10 agreements from Southwestern Bell while using bill and keep
11 arrangements with other incumbent local exchange companies.
12 Is that a fair statement?

13 A. Yes.

14 Q. Okay. Would you agree with me that that
15 subjects Southwestern Bell to different treatment than other
16 ILECs, even though all are operating under the same MCA
17 plan?

18 A. I don't think there's a different treatment
19 there. The other -- I'm not sure what other ILECs you're
20 referring to, but it may very well be they don't have
21 anybody that they're interconnected with directly for the
22 exchange of this traffic. I don't know.

23 Q. Well, calls between Southwestern Bell and
24 ILECs today under the MCA plan are bill and keep. Right?

25 A. Bill and keep, correct.

1 Q. And if calls between Southwestern Bell and
2 CLECs are under reciprocal compensation while calls between
3 CLECs and other ILECs are under bill and keep, doesn't that
4 subject Southwestern Bell to different treatment?

5 A. Well, I think the question would be does it
6 unjustly do so, and I don't think it does. I reiterate my
7 testimony, Mr. Lane. Staff is not opposed to mandatory
8 MCA-wide bill and keep.

9 Q. Okay.

10 A. But we're not really advocating that. Quite
11 frankly, someone else is going to have to carry that
12 football.

13 Q. And the Commission is the one that has to
14 decide that. Right?

15 A. Yes.

16 Q. Okay. And would you agree with me that the
17 Commission could in this case establish as a condition to
18 CLEC participation in the MCA plan, that all calls within
19 the geographic scope of the MCA should be bill and keep?

20 A. I know of no reason why the Commission could
21 not do that.

22 Q. Okay. You've expressed a concern that the
23 2.6 cents minute of use charge proposed in the Intermedia
24 memorandum of understanding could wind of up with CLECs
25 paying more for this than they receive from their own

1 customers for MCA service. Right?

2 A. Yes, I have.

3 Q. Isn't the same thing true under reciprocal
4 compensation arrangements, that the company would wind up --
5 could wind up paying more for reciprocal compensation under
6 the MCA than they receive in payments for the service from
7 their customer?

8 A. Theoretically, that's true. I suppose if the
9 rate were 100 or 150 dollars a month or something, they
10 could. I look at the reciprocal compensation -- there are
11 those in this room who may not agree with all of this, but I
12 look upon it as being generally around one half of a penny
13 per minute. I realize it's distance sensitive. And I'm
14 talking about the AT&T/Southwestern Bell agreement and
15 similar agreements. I think there's quite a difference
16 between that and 2.6 cents per minute. Obviously five
17 times.

18 Q. Okay. And let's use those figures, if you
19 would. You indicated in your testimony that as little as
20 32 minutes of calling a day could wind up eating away the
21 MCA charge the CLEC receives from its customer in payments.
22 If you multiply that times five, you'd get 160 minutes a day
23 and that would eat up all of the money that the ILEC
24 receives from its customer from providing MCA service for
25 calls that are made to a CLEC. Right?

1 A. So we multiplied 5 times 32, 33? I'm sorry,
2 Mr. Lane. I got lost.

3 Q. I was trying to use your example in your
4 testimony. I thought you'd indicated that the money that a
5 CLEC would receive from MCA service would be taken care of
6 and eliminated in payments under 2.6 cents a minute if they
7 had 32 minutes of calling a day?

8 A. That's correct.

9 Q. Okay. And so if the reciprocal compensation
10 rate is half a penny, roughly a fifth of the 2.6 cents a
11 minute, would you agree with me that instead of 32 minutes a
12 day, you'd have 160 minutes a day of calling would eat up --
13 all of the revenues that the ILEC would receive from MCA
14 service would go away in reciprocal compensation payments to
15 the CLEC?

16 A. Yes. That is true. However, the 2.6 cents a
17 minute that I'm referring to is a charge that currently only
18 Southwestern Bell levies on the competitor, and I've not
19 seen anything reciprocal about that. But in your one-half a
20 cent per minute example, that is reciprocal. And I should
21 think that would tend to balance out the situation.

22 Q. And would you agree that Staff would be
23 concerned -- if CLECs were permitted into the MCA plan, that
24 it ought to be under arrangements in which there's not that
25 concern that the reciprocal compensation payments would

1 exceed what the ILECs receive in MCA revenues from their own
2 customers?

3 A. Staff has a -- I understand that the
4 reciprocal compensation is something that has been
5 arbitrated and agreed to in other agreements, but I think
6 certainly as a general statement, we have concerns any time
7 there's a per minute of use charge -- wholesale charge on a
8 flat rate retail service. That's the problem.

9 Q. That's a particular concern if reciprocal
10 compensation payments were determined to be owed for calls
11 to an Internet service provider served by a CLEC. Right?

12 A. Could you repeat the question?

13 Q. Yeah. The concern about payments and
14 reciprocal compensation exceeding the revenues received from
15 a customer comes in full force when you consider calls made
16 to an ISP, Internet service provider, that's served by a
17 CLEC. Right?

18 A. Yes. The -- the Internet service provider
19 presumably is paying a flat rate for that trunk or whatever
20 the facility is from the CLEC. And, sure, the incumbent, in
21 this case Southwestern Bell, would be paying the CLEC half a
22 penny a minute to terminate the call, sure.

23 Q. And would you agree that it would be
24 appropriate for the Commission, if they decide to implement
25 or permit CLECs to participate in the MCA plan, that at the

1 very least they should determine that calls to an Internet
2 service provider served by a CLEC should be treated on a
3 bill and keep basis as opposed to reciprocal compensation?

4 A. There's another docket currently before the
5 Commission involving that issue, and I can't -- I have no
6 opinion on that. I'm just not going to -- I didn't take any
7 position on the Internet situation in my testimony in terms
8 of compensation and I can't do so now.

9 Q. Okay. Now, the other docket that you're
10 referring to involves particular companies and Southwestern
11 Bell. Right?

12 A. Yes. I believe so.

13 Q. But in this case we're setting what the terms
14 and conditions should be for all CLECs to participate in the
15 MCA plan with regard to all ILECs, not just Southwestern
16 Bell. Right?

17 A. That's correct, Mr. Lane.

18 Q. So it's something that -- whether you have a
19 position on it or not, the Commission ought to decide in
20 this case, should it not?

21 A. I believe that the Commission should decide
22 the compensation issues in this case. When it comes to the
23 MCA, Staff is not opposed to a total mandatory bill and keep
24 arrangement on a going-forward basis at least, and although
25 we're not advocating that, we're not opposed to it.

1 Q. Okay. Let me switch over and talk about the
2 Intermedia minute of use charge with you for a minute.

3 JUDGE DIPPELL: Let me interrupt you,
4 Mr. Lane, since you're going to switch gears. I think we'll
5 go ahead and take a break now for lunch and return with you.
6 Come back at 1:30. We can go off record.

7 (Off the record.)

8 JUDGE DIPPELL: Let's go back on the record.
9 Mr. Lane, do you have further questions?

10 MR. LANE: I do. Thank you, your Honor.

11 BY MR. LANE:

12 Q. Let's talk about the 2.6 cents a minute charge
13 to Intermedia, if we could for a moment. You're aware that
14 this charge that ICI agreed to pay is in return for
15 Southwestern Bell providing toll-free return calling to
16 Intermedia's MCA customers. Right?

17 A. I'm aware that's what the MOU says.

18 Q. Okay. And that would be in lieu of
19 Southwestern Bell charging toll to its customers. Right?

20 A. I believe that's what Southwestern Bell's
21 intent of that is.

22 Q. And you claim, do you not, that this
23 arrangement violates the Commission's order in the AT&T
24 arbitration. Right?

25 A. Yes.

1 Q. Would you agree with me that that arbitration
2 order only decided the rights and obligations between
3 Southwestern Bell and AT&T and not between Southwestern Bell
4 and any other carrier?

5 A. I don't think so, Mr. Lane. I believe
6 Intermedia adopted that same agreement.

7 Q. Okay. Would you agree with me that Intermedia
8 didn't adopt that contract until January 25th of 2000, after
9 they'd entered into this memorandum of understanding?

10 A. I'm going to check my testimony.

11 Q. I think on page 40 of your direct, lines 7 and
12 8, maybe 13 and 14 as well.

13 A. I think also have that MOU as a schedule.
14 Okay. So I'm on page 40. I'm sorry, Mr. Lane, what lines?

15 Q. On page 40, I think lines 7 and 8, 13 and 14,
16 in that area.

17 A. Well, I don't believe on page 40 I state at
18 what time Intermedia adopted that agreement.

19 Q. On lines 13 and 14 on page 40 of your direct
20 testimony don't you note that the Intermedia's adoption of
21 the Southwestern Bell/AT&T interconnection agreement was
22 approved on January 25th of 2000?

23 A. I'm sorry. Yes. That's on lines 13 and 14.
24 That the --

25 Q. And would you agree that the memorandum of

1 understanding was entered into prior to that date,
2 Schedule 6, page 5.

3 A. It appears the memorandum of understanding was
4 entered into the 3rd day of December, 1999, which would have
5 been prior to the point in time when the Commission approved
6 the adoption of the IA.

7 Q. But in any event, it's fair to say that the
8 interconnection agreement between Southwestern Bell and AT&T
9 and the arbitration that led to that applies only to those
10 two companies and not to other companies, setting aside for
11 a moment those that may have opted into that contract.
12 Would you agree with that?

13 A. Yes. I can agree with that. I'm a little
14 uncertain why we should set aside adopted agreements, but I
15 agree the arbitration was between AT&T and Southwestern
16 Bell.

17 Q. Okay. And it doesn't bind Southwestern Bell
18 in its negotiations with other CLECs, nor does it bind the
19 CLECs in their negotiations with Southwestern Bell. Right?

20 A. To the extent that Intermedia or anyone else
21 has adopted such agreements, it's my understanding,
22 Mr. Lane, there is no negotiation over that. But to the
23 extent that they don't want to adopt or MFN to something,
24 then certainly the negotiations with one party are not
25 binding on another party.

1 Q. Given that the memorandum of understanding was
2 adopted or was entered into prior to the time that
3 Intermedia opted into the AT&T interconnection agreement,
4 would you agree that Southwestern Bell didn't violate the
5 AT&T arbitration order with that 2.6 cents a minute
6 agreement?

7 A. It would appear that the violation did not
8 occur until January 25th, 2000.

9 Q. And it was a violation then even though
10 Intermedia and Southwestern Bell had both agreed to that
11 charge. Is that your position?

12 A. Yes.

13 Q. Okay. So any time two parties agree to
14 something that's different than the AT&T interconnection
15 agreement, it's a violation of that agreement. Is that
16 where you come out?

17 A. If they've opted into the agreement, yes.

18 Q. Okay.

19 A. I don't -- my concern, Mr. Lane -- and I've
20 forgotten exactly where in my direct testimony -- I think I
21 wrote this last January, I've forgotten exactly where I make
22 the allegation about in violation of the arbitration order.
23 I mean, I concede the timing here, there's apparently a
24 month and a half difference. My main concern though is the
25 practice of Southwestern Bell entering into agreements for

1 the exchange of local traffic and not submitting such
2 agreements to the Commission for its approval pursuant to
3 the Telecommunications Act.

4 Q. Your problem then isn't with the charge
5 itself, it's that it wasn't submitted to the Commission for
6 approval?

7 A. That's a fair statement.

8 Q. Okay. Let's deal with the substance of what
9 occurred in the AT&T arbitration. Would you agree with me
10 that, in fact, what the Commission decided there was what
11 each party should pay to the other for terminating a call
12 defined as local?

13 A. I'm looking at Schedule 8-1 of my direct
14 testimony. The Commission adopted AT&T's proposed wording
15 in that arbitration proceeding. And, Mr. Lane, we can -- I
16 just believe this wording speaks for itself in terms of what
17 my position is. And I'll be happy to read it, if you'd
18 like.

19 I'm looking on Schedule 8-1 of my direct
20 testimony where it says, AT&T's proposed contract language:
21 interconnection should state that, quote, calls originated
22 by AT&T's end-users and terminated to Southwestern Bell's
23 end-users -- Mr. Lane, that means from the time the person
24 picks up and gets a dial tone to the time the terminating
25 telephone rings and everything in between.

1 Q. All right.

2 A. -- vice versa will be classified as local
3 traffic if the call originates and terminates within MCA
4 area that share either mandatory or optional calling scopes.

5 That's my position, that that is subject to
6 reciprocal compensation as entered -- as ordered by the
7 Commission and not 2.6 cents per minute.

8 Q. Okay. What the Commission ordered in that
9 case deals with what one party pays to the other to
10 terminate a call on that other party's network within the
11 MCA. Right?

12 A. And I think carry the call.

13 Q. Okay.

14 A. The transport of the call.

15 Q. It doesn't deal with the charges that either
16 party makes to its own end-user customer to place the call,
17 does it?

18 A. I agree with that, which is why we are asking
19 the Commission to order Southwestern Bell and the incumbents
20 to recognize the NXX codes of competitors as local calling
21 and that it would be a local call to your end-users.

22 Q. Okay. And I understand that's your proposal,
23 but part of what you say in your testimony is that we
24 violated the Commission's order, and obviously we need to
25 explore that.

1 A. Okay.

2 Q. And if it was just your recommendation on a
3 going-forward basis, we disagree, but that's a different
4 issue.

5 Would you agree with me that the parties in
6 the interconnection agreement itself also made clear that
7 however calls were classified as local for purposes of
8 paying terminating compensation, that they were not
9 dictating to each other what each would charge and what each
10 is -- what each would set as its calling scope for its own
11 local customers?

12 A. I think this arbitration order and the
13 Commission's adopting AT&T's wording -- to me it is very
14 clear that what this contemplates is local traffic to both
15 end-users.

16 MR. LANE: Okay. Your Honor, may I approach
17 the witness?

18 JUDGE DIPPELL: Sure.

19 BY MR. LANE:

20 Q. Let me show you, if I may, a copy of the
21 interconnection agreement between Southwestern Bell and
22 AT&T. And Attachment 12 to that contract deals with
23 compensation. And would you agree with me that Section 1.1
24 of that agreement and Section 1.2, that's what incorporates
25 the Commission's decision in the AT&T arbitration with

1 regard to MCA traffic?

2 A. I quickly read 1.2, and that seems to be taken
3 from the arbitration order itself, I believe. And 1.1,
4 Mr. Lane -- I'm sorry. Could you ask that again?

5 Q. Sure. Would you agree with that me in
6 Section 1.1 that the parties, AT&T and Southwestern Bell,
7 stated, The parties agree that notwithstanding the
8 classification of traffic under this agreement, either party
9 is free to define its own local calling areas for purposes
10 of its provision of telecommunications services to its
11 end-users?

12 Would you agree with me that that's a pretty
13 clear indication that the parties were not trying to tell
14 each other how to set their own local calling scopes for
15 their own customers?

16 A. Yes.

17 Q. Okay. Seeing that interconnection agreement
18 now and that language, would you agree with me that
19 Southwestern Bell doesn't violate the AT&T interconnection
20 agreement by purporting to agree with another carrier to
21 charge 2.6 cents a minute in lieu of toll charges for its
22 own customers?

23 A. Yes. My concern, Mr. Lane, is the 2.6 cents a
24 minute between you and Intermedia, etc., more so than the
25 toll charge to your end-users. That's why we're asking the

1 Commission in this case to order that not to be a toll
2 charge.

3 Q. Okay. Let's look at a call from a
4 Southwestern Bell customer in downtown St. Louis to a
5 Chesterfield exchange in tier three. Would you agree that
6 if the Chesterfield customer is not an MCA subscriber, that
7 a toll charge applies when the Southwestern Bell customer in
8 downtown St. Louis places the call?

9 A. Yes.

10 Q. Okay. And, conversely, if that Chesterfield
11 customer does subscribe to MCA service, then a separate NXX
12 is used and the call is passed through as local. Right?

13 A. Yes, sir.

14 Q. Okay. And when you say you want us to
15 recognize all of the NXXs that a CLEC has, what you're
16 saying is that on any call from St. Louis to any CLEC in
17 Chesterfield, that Southwestern Bell shouldn't charge toll
18 regardless of whether the CLEC customer subscribes or
19 doesn't subscribe to the CLEC's version of MCA service.
20 Right?

21 A. Yes. Although I don't think it's clearly
22 established yet what the CLEC's version of MCA service is.
23 But, yes, we're asking that be made a local call.

24 Q. Okay. And would you agree then that
25 Southwestern Bell would lose some toll revenues for calls

1 that previously had been classified as toll under your
2 proposal to treat all NXXs of CLECs as local?

3 A. Well, I don't think so, Mr. Lane. That CLEC
4 customer in Chesterfield that -- I mean, you're stating that
5 they subscribe to some CLEC version of MCA or don't. They
6 were a Bell customer before and they may very well indeed
7 have been an MCA customer. And I don't see that -- it was
8 local before, maybe it will be -- it should be local again.

9 Q. All right. What if it's a situation where the
10 Chesterfield customer was Southwestern Bell's, but was a
11 non-MCA subscriber, moves over to the CLEC service, also is
12 a non-MCA subscriber. Would you agree in that circumstance
13 that Southwestern Bell would lose toll revenues on that
14 call?

15 A. No. They could have another intraLATA PIC
16 other than Southwestern Bell.

17 Q. Would you agree that Southwestern Bell would
18 lose either toll revenue if they were the provider of toll
19 or originating access if another carrier carried the call?

20 A. I agree that that -- at a minimum they would
21 lose originating access, but of course, we all know what the
22 take rates are in zone three and the likelihood of that
23 happening.

24 Q. Same thing moved out to four and five.
25 Correct? And the take rates decrease, do they not?

1 A. Yes, they do.

2 Q. And the 2.6 cents a minute charge, would you
3 agree that doesn't reflect -- lost toll is substantially
4 less than what Southwestern Bell would lose if it carried
5 the toll as a toll call?

6 A. I don't know. That might depend if they
7 subscribe to your Local Plus or not and how many calls they
8 make, but other than that, yes, I'd agree.

9 Q. The MTS toll rates are substantially in excess
10 of 2.6 cents a minute. Right?

11 A. Yes. Mr. Lane, I'm asking for the incumbents
12 to do that for the competitor. I'm also asking for the
13 competitors to do that for the incumbent. It's going to
14 work both ways. I have no reason -- I don't see anything
15 discriminatory about that. I understand you might lose a
16 little bit of access, but the competitors are not going to
17 be allowed to charge the access under that scenario.

18 Q. You don't know what the net effect of that is,
19 do you?

20 A. No, I don't.

21 Q. In your direct testimony you equated the
22 2.6 cents minute of use charge with the EAS port additive
23 that was raised in the second AT&T arbitration. Do you
24 recall that?

25 A. Yes. I do recall that. And I also recall

1 being -- as far as my use of the term "EAS port additive," I
2 recall being corrected, and I forget if it was by Mr. Hughes
3 or Mr. Unruh in their rebuttal. I acknowledge that I may
4 not have used that term in its precise -- I may have used
5 it -- in its precise context. I may have used it more as a
6 common noun rather than a proper noun.

7 Q. Okay. The EAS port additive that was at issue
8 in the second AT&T arbitration is a different animal than
9 the 2.6 cents a minute charge to Intermedia. Correct?

10 A. I believe so. I'm thinking that the EAS port
11 additive as referenced in the -- did you call it second
12 arbitration? That may be the same EAS port additive that
13 was in the, I believe, original Intermedia interconnection
14 agreement. In any regard, that is separate than the
15 2.6 cents memorandum of understanding.

16 Q. In the second AT&T arbitration, T0-98-115, EAS
17 port additive dealt with a Southwestern Bell MCA customer
18 moving over to AT&T's service and retaining the MCA number.
19 Right?

20 A. I'll accept that, yeah. I can't honestly say
21 I know what you all were talking about.

22 Q. All right. Whereas, the Intermedia minute of
23 use agreement pertains to non-ported numbers as well, does
24 it not?

25 A. The MOU? Oh, I don't know if that only

1 pertains to -- you said non-ported numbers as well. I'm not
2 sure that it pertains to ported numbers.

3 Q. Okay. It may apply only to non-ported
4 numbers, in your view?

5 A. That's possible.

6 Q. Okay. In any event, that's different than the
7 ported number issue that was at issue in the second AT&T
8 arbitration. Right?

9 A. The 2.6 cents a minute memorandum of
10 understanding is certainly a different -- it's just
11 different than anything that occurred with regards to the
12 port additive conversations -- EAS port additive
13 conversations.

14 Q. In the second arbitration?

15 A. Yeah. In the second arbitration, yeah.

16 Q. Okay. Let me talk a little bit about the
17 access line issue. In your surrebuttal testimony on page 26
18 you express your disagreement with Southwestern Bell's
19 analysis that it's lost about 225,000 access lines to CLECs.
20 Do you recall that?

21 A. Yes. I -- the thing I recall about that,
22 Mr. Lane, was a lack of explanation on the part of
23 Mr. Hughes as to where he came up with that number.

24 Q. And you're aware, are you not, that the
25 225,000 line figure includes both resold and

1 facilities-based lines?

2 A. I believe that's how Mr. Hughes meant that.

3 Q. Okay. And you cite Ms. Moore's testimony to
4 the effect that there are, in her view, a little bit over
5 115,000 lines that are served by CLECs. Do you recall that?

6 A. I believe so, yes.

7 Q. Okay. And would you agree with me that
8 Ms. Moore's numbers of the total number of access lines
9 served by CLECs doesn't encompass -- or doesn't count all of
10 the CLEC lines in the state?

11 A. I -- no, I don't recall that.

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

13 JUDGE DIPPELL: Yes.

14 BY MR. LANE:

15 Q. Let me show you Schedule 7 from the HC version
16 of Ms. Moore's testimony, and ask if that doesn't purport to
17 state the total number of access lines served by CLECs at
18 115,000 roughly?

19 A. Yes. That's correct. I -- I think I used the
20 same figure in my -- early on in my direct testimony 150,401
21 total access lines is both facilities-based and resold.

22 Q. And would you agree with me that there are
23 about 19 companies that are listed on this exhibit as not
24 providing any access lines at all in Missouri?

25 A. Well, I'm not going to count them, but yeah,

1 there are a number on there that do not have any access
2 lines, certainly.

3 Q. And there's a number of them that you know for
4 a fact are serving customers in St. Louis even though there
5 are -- or in Missouri even though they're listed as having
6 zero. Correct?

7 JUDGE DIPPELL: Let me interrupt just a
8 moment. This is from an HC exhibit. Does this need to be
9 kept confidential, the schedule?

10 MR. LANE: I'm not going to ask to give the
11 specific numbers for the individual carriers, but they'll be
12 reflected in the record.

13 JUDGE DIPPELL: Okay.

14 MR. LANE: But I'll be happy to go in if --

15 JUDGE DIPPELL: I'll just ask counsel that if
16 there's information that needs to be kept confidential, that
17 you'll let me know.

18 Continue.

19 THE WITNESS: Mr. Lane, was your question am I
20 aware of companies who have customers who are not shown on
21 this list?

22 BY MR. LANE:

23 Q. Right.

24 A. Was that your question? I -- I certainly see
25 one company who I believe has customers and it's -- this

1 count is zero.

2 Q. Okay. And there's --

3 A. Well, I don't see any others off the top of my
4 head.

5 Q. Okay. You haven't done an individual
6 examination of each of those companies, have you, yourself?

7 A. No. Not for the purposes of this docket or
8 really any other docket. Those numbers -- those reports
9 that I believe Ms. Moore was relying on, that work is done
10 under my general supervision, but as far as personally
11 verifying the numbers, I've not done that.

12 Q. Those depend on the voluntary reporting of the
13 CLECs as opposed to any required reporting. Is that a fair
14 statement?

15 A. Yes.

16 Q. Okay. And the annual reports filed by those
17 companies if they're filed, they don't provide a listing of
18 the number of access lines that they serve. Is that a fair
19 statement?

20 A. No. I don't think so. I think we expect them
21 to reflect the number of access lines. I think that's why
22 we're seeing so many motions to file that information under
23 seal.

24 Q. Now, you make the statement that you disagree
25 with Southwestern Bell's claims that it has over half as

1 many CLEC access lines in Missouri as the DOJ estimates that
2 Southwestern Bell has in Texas. Do you recall that?

3 A. Could you point me to that?

4 Q. Pages 27 and 28 of your testimony.

5 A. Can you give me a line where I'm disagreeing?

6 Q. It would be the question that begins on
7 page 27, line 25 and continues over through the answer on
8 line 3 of page 28.

9 A. I would be surprised if -- I would be
10 surprised if in Missouri we had over 225,000 CLEC access
11 lines.

12 Q. Okay. And I believe you just made a math
13 error, so I'm going to go through this. Would you agree
14 that a more appropriate estimate of the comparison of
15 Missouri to Texas would be approximately a quarter of the
16 number of lines as the DOJ found in Texas?

17 A. The DOJ found 400,000, approximately, access
18 lines in Texas facilities based -- pure facilities based.

19 Q. Right.

20 A. The --

21 Q. Would you agree with me that the DOJ estimate
22 for total number of lines in Texas would be 500,000
23 approximately, plus -- let me rephrase it.

24 Would you agree that the DOJ's estimate as you
25 lay out on page 27 of your surrebuttal testimony is that

1 Southwestern Bell has about 500,000 resold access lines in
2 Texas plus a DOJ estimate of 350 to 400,000 facilities-based
3 lines?

4 A. I'm sorry, Mr. Lane. I don't know where the
5 500,000 resold lines are coming in.

6 Q. On line 1 on page 27 of your surrebuttal
7 testimony you quote that in its application SBC contends
8 that CLECs serve 1.4 million access lines. Right?

9 A. Right.

10 Q. And you cite the DOJ saying Southwestern Bell
11 surely knows the number of resold lines that they have, but
12 facilities based is unknown?

13 A. Correct.

14 Q. And then you go on in lines 6 to 10 to quote
15 the DOJ's estimate that instead of 920,000 facilities based,
16 they estimate 350 to 400,000. So the difference between the
17 1.4 million and the 920,000 is the number of resold access
18 lines in Texas. Right? And that's roughly 500,000.
19 Correct?

20 A. Yes.

21 Q. Okay. And so if you add the 500,000 resold
22 lines to the DOJ's estimate of facilities-based service,
23 you'd come up with 850 to 900,000. Right?

24 A. Yeah.

25 Q. And would you agree that Southwestern Bell's

1 estimate of 225,000 access lines in Missouri is then about a
2 quarter of what the DOJ would estimate for Texas?

3 A. I'm sorry. Could you restate that?

4 Q. Yes. Would you agree that Southwestern Bell's
5 estimate of 225,000 access lines in Missouri is about a
6 quarter of what the DOJ would estimate that Southwestern
7 Bell serves -- or CLEC served access lines in Texas?

8 A. Yes. But I wasn't comparing it to CLECs
9 access lines in Texas. I was comparing it to CLECs
10 facilities-based access lines in Texas.

11 Q. How many of the 225,000 in Missouri are
12 facilities based?

13 A. And I wasn't saying facilities based. If you
14 read, I said, Mr. Hughes' declaration that Missouri has over
15 half as many CLEC access lines, that would be both
16 facilities and resold, 225,000. Right? The DOJ has
17 determined for facilities based in Texas, that's 400,000.
18 Right? Giving the benefit of the doubt to the higher
19 number. My question is, do I think 225,000 -- that is over
20 half as many as 400,000. That's the question, Mr. Lane.

21 Q. Okay. Let me ask it this way. Do you think
22 it's a reasonable comparison to compare total access lines
23 in Missouri with facilities-based access lines in Texas?

24 A. Well, that's one comparison that's -- that is
25 meaningful to me.

1 Q. Okay.

2 A. I think it's every bit as reasonable as what
3 Mr. Hughes is saying.

4 Q. Would you agree that it would be more
5 reasonable to compare resold plus facilities-based lines in
6 Missouri with resold plus facilities-based lines in Texas?
7 You'd be more on an apples to apples comparison?

8 A. Well, it may be Jonathan apples to McIntosh
9 apples, but yeah.

10 Q. And that comparison would show that
11 Southwestern Bell has about a quarter of what the DOJ
12 estimates in Texas. Right?

13 A. What would be the numbers be?

14 Q. 225,000 divided by 500,000, plus 350 to
15 400,000.

16 A. Yes.

17 Q. Okay. Would you agree that this would
18 probably be best served -- would be best if the Commission
19 had a requirement that all CLECs had to actually mandatorily
20 provide a report to the Commission so that it could be
21 apprised of how many access lines on a facilities basis that
22 each serves?

23 A. I think that figure is so important that, yes,
24 I would agree with you. Not only would I agree with you,
25 Mr. Lane, but I think under penalty to do so should be

1 added -- or under penalty for failure to do so should be
2 added to that.

3 Q. Okay. Last area of questions, and maybe just
4 one. On MCA trunk groups, in your surrebuttal testimony on
5 page 11 you discuss whether MCA traffic should be put on
6 separate trunk groups. My question is, are you proposing
7 that the Commission order that now or that the Commission
8 should examine that in some subsequent docket?

9 A. I'm -- I'd like to preface my answer by
10 stating that just for the record, we're not talking about
11 converting Feature Group C to Feature Group D. I would
12 propose that that be done -- that be looked into in a
13 subsequent proceeding.

14 Q. Okay. And would you agree that it actually is
15 being looked into arising out of the most recent PTC case
16 order?

17 A. I don't know. But I'm happy to hear if it is.

18 MR. LANE: Okay. That's all I have. Thank
19 you.

20 THE WITNESS: Thank you.

21 JUDGE DIPPELL: Cass County?

22 MR. ENGLAND: Thank you.

23 CROSS-EXAMINATION BY MR. ENGLAND:

24 Q. Good afternoon, Mr. Voight.

25 A. Good afternoon, Mr. England.

1 Q. If I understand Staff's position -- one of
2 their positions in this case regarding intercompany
3 compensation, as I understand it, on a go-forward basis --
4 and I'm reading from your-all's position statement. It
5 says, Intercompany compensation should remain the same as it
6 currently exists. Traffic between ILECs should remain bill
7 and keep. Traffic between ILECs and CLECs -- excuse
8 me -- CLECs should continue to be governed by Commission
9 approved interconnection agreements.

10 Are you with me?

11 A. Yes.

12 Q. The question I have is, what if no
13 interconnection agreement exists between an ILEC and a CLEC?
14 What would the intercompany compensation arrangement be?

15 A. Well, first of all, I'm not aware of any -- of
16 any situation where a CLEC and an ILEC are competing within
17 the same exchange head on -- head-to-head competition in
18 which an interconnection agreement does not exist.
19 Therefore, I'm thinking you may be talking about third-party
20 transiting-type traffic.

21 Q. You're thinking correctly. And --

22 A. If the question is, what -- I'm sorry. Go
23 ahead.

24 Q. No. And I may be using -- I guess maybe I'm
25 misunderstanding your use of the word "interconnection

1 agreement." And if you want to refer to it as something
2 else, that's fine with me. But I guess, what do you do in
3 that situation where there is no agreement, we'll say, for
4 the termination of traffic between an ILEC and a CLEC?

5 A. Well, I don't remember who has -- who told me
6 this, there's been so many workshops. But I think there
7 have been a number of data requests sent out among the
8 parties in this docket. In an attempt -- both by ILECs and
9 CLECs, I think, in an attempt to find out to what extent, if
10 any, this traffic was being exchanged as local traffic
11 currently pursuant to what I believe Mr. Cadieux and others
12 sometimes call de facto bill and keep.

13 And if you're asking me what do you do in that
14 situation, I honestly don't have the answer. What -- as
15 I've said in my testimony, what would be ideal, I think, is
16 if the competitive LECs, for example, and the independent
17 LECs, your clients, if they could reach an agreement, that
18 would be ideal.

19 Failing that, I think if there's any -- any
20 question about it, I would recommend that the Commission in
21 this docket declare that traffic as local traffic and make
22 it bill and keep for both parties, both the ILEC and the
23 CLEC.

24 Q. Okay. On a going-forward basis that's what
25 you would recommend coming out of this docket?

1 A. I'd like to see that. And where -- I guess
2 now may be just as good a time as any to bring it up,
3 Mr. England, but I think the Commission may have come close
4 to that in TT-99-428, which was a tariff filing by Alma
5 Telephone Company proposing to charge switched access rates
6 for -- for this CLEC traffic that is transited by usually
7 Southwestern Bell.

8 Q. One of the distinguishing features of that
9 case, would you not agree, was the fact that the local
10 calling scope was mandated by the FCC, not determined by
11 this Commission?

12 A. I can't agree with that fully, Mr. England.
13 The distinguishing feature about that case were the words in
14 the tariff as I've re-printed on page 55 of my direct
15 testimony.

16 I was the first person on Staff to read
17 those -- that tariff wording and it dawned upon me that the
18 folks filing that tariff were really kind of going for
19 broke. If you win that case, you basically win it all. If
20 you lose, you lose it all because the Commission is left
21 with no choice but to accept the tariff as written or to
22 reject the tariff as written.

23 This tariff applied to CLEC traffic as well as
24 to the wireless traffic I think you're referring to. And it
25 makes no distinction among the two.

1 Q. I'm sorry. I probably wasn't clear with my
2 question. One of the distinguishing features of the tariff
3 case that you cite as it pertains to wireless versus CLEC
4 traffic in this case is that the FCC had mandated what the
5 local calling scope was for wireless to wireline, wireline
6 to wireless traffic. Correct?

7 A. That is correct. If I may say, though, I
8 appreciate your reference to the Federal Communications
9 Commission and all the rulings that they've had about
10 wireless traffic originating and terminating within a
11 metropolitan -- I always get this wrong --

12 Q. Trading --

13 A. -- trading area. The tariff, as filed by Alma
14 and other ILECs, did not make that distinction.

15 Q. I guess getting back to an earlier question,
16 when you analogized the Commission's ability to establish a
17 local calling scope in this case to its decision in the Alma
18 case, what distinguishes that for me is that the Commission
19 didn't determine the local calling scope in the Alma case,
20 at least as we're talking about wireless. It was already
21 pre-determined by the FCC.

22 A. Certainly. I couldn't agree more. If you
23 want to discuss this case -- forgive me -- about exclusively
24 in terms of wireless, I understand that fully. But my -- my
25 reading of the -- that case and the Commission's orders --

1 certainly the Commission's orders as well as the tariff
2 wording itself, I -- it's very difficult to distinguish
3 between wireless and land line traffic in that case.

4 Q. Let me get at it this way. Would you agree
5 with me that the Commission is free in this case to
6 establish a local calling scope or determine what that local
7 calling scope will be? There's no pre-determination by the
8 FCC for purposes of this case, is there, as to what is the
9 local calling scope?

10 A. Oh, I would defend that to the ultimate. This
11 state Commission will decide local calling scopes.

12 Q. For land line?

13 A. For land line, yes.

14 Q. Okay. Now, let me get back to -- we talked
15 about what your recommendation would be on a go-forward
16 basis as far as intercompany compensation is concerned
17 between what I will say is a CLEC or what is a CLEC and a
18 third-party ILEC that transits Southwestern Bell's traffic.
19 What is that inter-compensation arrangement today?

20 A. Between CLECs and third-party ILECs?

21 Q. Right. Within the MCA geographic area?

22 A. Well, as I pointed out in my direct testimony,
23 there was -- certainly early on, as can be found in page 52,
24 direct testimony, line 3, T0-96-440; line 17, T0-97-40.

25 There's no question in my mind, Mr. England,

1 that at that point in time the Commission in recognition
2 that interconnection agreements cannot discriminate against
3 a third party not a party to the agreement, there's no
4 question that at that time the Commission believed that
5 switched access should be the appropriate compensation.

6 Q. Okay. I think also at page -- maybe it's 57
7 of your testimony -- excuse me, 48 and 49. I've got the
8 wrong ones. It's the very bottom of 48 and 49. Would you
9 agree with me that today that traffic that we're talking
10 about, CLEC to third-party ILEC, is an interexchange call
11 even though it's within the MCA?

12 A. I'm sorry, Mr. England. The question confuses
13 me. If it goes from one exchange to another exchange, I
14 think, by definition, that's interexchange. And it's not
15 only that way today, but it's been that way forever, so I
16 guess maybe I don't understand --

17 Q. Okay.

18 A. -- your question.

19 Q. And maybe I'm reading more into your testimony
20 on line 22 of page 48 carrying over to the top of page 49.
21 Maybe I'm reading more into that than is actually there.
22 But you talk about Staff not being opposed, per se, to
23 making interexchange calls within the MCA subject to the
24 same bill and keep arrangements.

25 A. Oh, with the interexchange carriers. I'm

1 sorry. I had to go back and look at that question on
2 page -- line 19, page 48. Bear with me, Mr. England, I
3 haven't read this in a while.

4 I think what I'm trying to say there is --
5 letting the long-distance companies in on the MCA I think
6 was what I was trying to say there. Without going back and
7 putting the entire one or two pages there with Q and A's on
8 those two pages -- without going back and doing that, I'm
9 going to have to say that I don't know if bill and keep
10 would work for interexchange carriers only, because
11 obviously they don't terminate any traffic. They wouldn't
12 have the same obligations as the LEC on either end of that
13 call.

14 Q. They would have to contract with a LEC to
15 either originate it or terminate it. Is that what you're
16 saying?

17 A. Yes.

18 Q. Okay. I guess all I was -- and as I said,
19 maybe I'm reading more into than that than is really there
20 or maybe I'm reading it out of context, but it appeared to
21 me that you were acknowledging at least calls today within
22 an MCA are interexchange, which supports the notion that we
23 talked about earlier, that access rates would apply,
24 particularly in the situation where you have a CLEC to
25 third-party LEC call.

1 A. To the extent that one -- the Commission may
2 want to -- scratch that.

3 I think on a going-forward basis, we -- we
4 would advocate that this be -- this third-party transiting
5 traffic be bill and keep. The biggest concern I have about
6 per minute usage charges, reciprocal compensation, for
7 example, would be the traffic originating from the
8 independent third-party LEC in an outer tier and destined to
9 facilities-based CLECs.

10 The -- it seems as though -- especially when
11 you consider the Internet, especially when you consider the
12 folks in the outer tiers, their Internet calls probably are
13 destined for Internet service providers in the mandatory
14 zones, it just -- the thought occurs to me, Mr. England,
15 although I don't have the data, but the traffic could very
16 well be one-sided, the calls originating from the
17 third-party LEC and terminating to the facilities-based
18 CLEC.

19 There would -- the calls would most generally
20 flow in that direction in that the third-party LECs, your
21 clients, under a reciprocal compensation arrangement would
22 end up paying way more to have their calls terminated than
23 what your clients would receive for terminating the CLEC
24 calls.

25 Q. I'm not sure that's what I asked, Mr. Voight.

1 I was asking whether or not you consider today that call
2 from the CLEC to the third-party ILEC an interexchange call
3 and subject to access compensation?

4 A. Yes. I have to say, yes, that is an
5 interexchange call that is subject to switched access
6 compensation. I'm not -- I think it may be possible that
7 the reverse might be true as well. And to the extent that
8 that's the situation that we have today, I would like for
9 the Commission in its order in this docket to declare that
10 that is -- all of that is bill and keep.

11 Q. Okay. Also today, a call from a non-MCA
12 customer to -- we'll say, a non-MCA customer of Southwestern
13 Bell to make it clear, to a customer of a third-party LEC,
14 that would also be an interexchange call subject to access
15 compensation. Correct?

16 A. Yes. There are situations where that -- that
17 exists, yes.

18 Q. Are you aware of any PSC order or any
19 agreement between a CLEC and a third-party LEC or any other
20 rule or authoritative statement issued by this Commission
21 which would alter or eliminate the CLEC's current obligation
22 to pay access on those interexchange calls to third-party
23 LECs that we've just been talking about?

24 A. No. I'm not aware of any such Commission
25 order or any such agreement.

1 Q. And if a CLEC interconnected with Southwestern
2 Bell has, as part of its interconnection agreement, a
3 provision that says it will not send to Southwestern Bell
4 Company local traffic that is destined for the network of a
5 third party unless that CLEC has authority to exchange
6 traffic with that third party, and is nevertheless doing
7 that today, would you say it is in violation of its
8 interconnection agreement?

9 A. It would appear that way, yes. I might also
10 add, Mr. England, that I'm not aware of any incidence in
11 which something other than that has occurred. In other
12 words, I have no first-hand knowledge that any of the CLECs
13 are not abiding by their interconnection agreement.

14 Q. Maybe we'll find out when we have the CLEC
15 witnesses on the witness stand.

16 A. I just wish I could see all the answers to the
17 DRs you all have been sending each other.

18 Q. Let me switch gears on you with respect to
19 your MCA 2 proposal. One of the things that occurred to me,
20 and I think we've discussed with you, is when you -- I like
21 to refer to your proposal as sort of expanding the calling
22 scope.

23 A. Uh-huh. I do too.

24 Q. When you expand the calling scope as you
25 proposed with MCA 2, you're providing essentially the same

1 service outbound to all customers now in the optional tiers,
2 in three, four and five. Correct?

3 A. The same service among the customers located
4 in those tiers as opposed to the same service now as before?

5 Q. No. I'm sorry. Let's say you make -- you
6 make the move to what you've proposed as MCA 2.

7 A. Okay.

8 Q. The calling scope available to customers in
9 tier three would be the same as available to customers in
10 tier four and tier five?

11 A. Yes. That's correct.

12 Q. And one of the concerns I have with that is
13 that the reason for the discrepancy or differential in the
14 rates that exists today between three, four and five no
15 longer exists because they all have the same calling scope.
16 See where I'm heading?

17 A. Oh, I can't -- I see where you're heading. I
18 don't -- you have to keep in mind, I believe, Mr. England,
19 that the original MCA case, T0-92-306, is pretty plain to me
20 that the reason that the Commission ordered that docket was
21 to satisfy the demands for expanded calling that were
22 occurring in the areas that we now know as tier five or
23 their ability to call, for example, to downtown Kansas City.

24 So if -- I think if you go back and look at
25 the Commission's -- I believe it was June 1992 order

1 establishing docket where the Commission six months prior to
2 its Report and Order set the rates for MCA service at very
3 close to what those rates ultimately turned out to be, you
4 will see that -- I believe, that what the Commission
5 originally proposed was an MCA-wide calling scope, very
6 similar if not exactly identical to what we're now calling
7 MCA 2.

8 And the Commission did that with the full
9 recognition that those folks would have, as you describe it,
10 the same calling scope which, yes, they did. But I believe
11 they reasoned that the further out you were from the core
12 metropolitan areas, the more you should pay for the service.

13 And a big reason that they priced it higher
14 out in tier five, even though as initially envisioned by the
15 Commission they would have had the same calling scope, was
16 because it was further from tier five to downtown.

17 You will see -- if you review that case, you
18 will see, for example, charts presented by Staff Witness Gay
19 Smith that showed the airline mileage distances from tier
20 five to downtown, tier four to downtown, tier three to
21 downtown. And I think you'll probably see that that was a
22 big part of the justification for higher rates out in zone
23 five, for example.

24 Q. Well, maybe then you're getting to my next
25 question and that is, as part of your MCA 2 proposal, even

1 though you're giving all of the customers in tiers three,
2 four and five essentially the same calling scope, which they
3 don't have today, you're not recommending that their rate be
4 consolidated or made comparable between those three tiers?

5 A. Not at this time. We honestly do not have
6 any -- we certainly don't have any firm rate recommendations
7 to make to the Commission for that. And we really want to
8 be able to talk to the -- the parties, especially the ILECs,
9 your clients and Southwestern Bell and GTE and Sprint and
10 Mr. Johnson's clients to see how that might work out. We
11 just don't know.

12 Q. But it's another issue that probably needs to
13 be looked at, would you say?

14 A. Yes. Yes.

15 Q. Okay. Another issue with respect to your
16 MCA 2, as I understand, one of the main benefits is the fact
17 that it doesn't require segregated NXXs and doesn't burn as
18 many NXXs as the current MCA plan does. Correct?

19 A. That's correct.

20 Q. And if adopted on a going-forward basis,
21 certainly CLECs would not have to acquire two NXXs to
22 participate in the MCA?

23 A. That's correct.

24 Q. Have you given any thought to reclaiming some
25 of the existing NXXs that may have been issued if you go to

1 an MCA plan?

2 A. We've given thought to that. Do not have a
3 position -- well, perhaps we do have a position on that at
4 this time. At this time we are not recommending that NXX
5 codes be reclaimed.

6 If you look at my direct testimony, I think I
7 mentioned perhaps Lathrop, Orchard Farm, certainly they're
8 using a whole NXX code -- and I don't mean to be picking on
9 those companies, but they just happen to be some of the
10 smaller ones in the MCA.

11 As an example of the inefficient use of MCA
12 NXX codes, I think you'll see where Orchard Farm has -- I
13 can't remember -- one or two hundred numbers being used out
14 of a 10,000 block, and at this time we are not recommending
15 that those be reclaimed. We would like to discuss that with
16 the parties further. There may be some merit. If it gets
17 bad enough to where we have to go to 11- or 15-digit dialing
18 to call across the street, then yeah, maybe we might want to
19 reclaim some of it. I don't think we're at that point yet.

20 Q. But that's another issue that needs to be at
21 least looked at as far as --

22 A. I think it's a good question. It needs to be
23 explored, yes.

24 Q. And then finally I believe you were asked
25 towards the end of your cross-examination by Mr. Lane

1 regarding separate trunking for MCA?

2 A. Uh-huh.

3 Q. And you mentioned that was something else that
4 could be examined in this subsequent phase or docket or
5 whatever?

6 A. Yes. I believe so. And then apparently
7 there's another docket going on where those types of issues
8 are being explored. So I don't -- I don't know where all of
9 that stands.

10 But just speaking for myself at least, I have
11 a good deal of empathy for the small companies who are
12 totally dependent on a tandem to -- that sends them traffic
13 from not telling where and not -- not having a full
14 accounting of where that traffic is coming from and so
15 forth.

16 Q. As a general matter, doesn't it make sense to
17 you if we're going to have a category of traffic that is --
18 we'll say non-compensatory or for which there is going to be
19 no intercompany compensation or payments, doesn't it make
20 some intuitive sense to segregate that and put that on a
21 different trunk group than along with traffic for which you
22 are to be paid?

23 A. It does to me. And I harken back to my days
24 as working in the central office. That's the way I recall
25 it always being done. You know, even going back

1 pre-divestiture and so forth.

2 If there was a toll trunk, you could always
3 count on that being a toll call for -- that was compensated
4 in a certain way that other non-compensable traffic was
5 accounted for. And those trunks were separated. And I
6 think the -- I appreciate Mr. Stowell, I believe it is, who
7 brought that -- those issues out in his testimony. And I
8 think that whole issue should be looked at. But
9 intuitively, to answer your question, yes, I believe that
10 makes sense.

11 Q. Thank you, sir.

12 MR. ENGLAND: No other questions.

13 JUDGE DIPPELL: Thank you. Missouri
14 Independent Telephone Group?

15 MR. JOHNSON: Thank you.

16 CROSS-EXAMINATION BY MR. JOHNSON:

17 Q. Good afternoon.

18 A. Good afternoon, Mr. Johnson.

19 Q. I think we've all heard about how the ILECs
20 compensate each other through MCA, and that's bill and keep.
21 We've had a lot of -- there are presently pending a lot of
22 disputes about how intercompany compensation would work when
23 there's an ILEC on one end of the call and a CLEC on the
24 other end of the call. Are you with me so far?

25 A. Yes.

1 Q. I would imagine that the CLECs hope as
2 competition progresses, that they're going to win more and
3 more customers?

4 A. Yes.

5 Q. And I guess it's possible now for there to be
6 calls within an MCA or metropolitan calling area that both
7 originate from a CLEC and terminate to a CLEC?

8 A. Yes.

9 Q. Possible today, and you would expect that to
10 increase in the future?

11 A. Yes.

12 Q. Okay. How's compensation going to work there?
13 How does intercompany compensation work for a call that
14 originates and terminates on a CLEC -- different CLECs, I'm
15 sorry?

16 A. From CLEC to CLEC?

17 Q. Yeah. Let's suppose there's a call from
18 Gabriel to Intermedia. What compensation's going to flow on
19 that call? Do they both have access tariffs?

20 A. For access traffic, yes. I don't know how --
21 what their compensation arrangements are. As you may
22 recall, Mr. Johnson, harking back to last summer's
23 workshops, we -- all of us worked together and presented
24 a -- I believe it was called a technical report or something
25 in this docket. And there were a great many different

1 interconnection agreements that were outlined in that
2 report. And I -- I just simply don't know the answer to
3 your question.

4 Q. To your knowledge, today are any of the
5 CLECs -- are they directly interconnected with one another?

6 A. Well, I visited some co-location cages. I
7 can't say that I remember any wires being poked through the
8 cage from one to the other, so no, I don't remember. I
9 don't know.

10 Q. In your view, would it be inappropriate for
11 the CLECs to charge one another access for intra-MCA calls?

12 A. I guess my short answer to that question,
13 Mr. Johnson, if two CLECs want to get together and charge
14 each other high per minute rates to terminate each other's
15 calls, I suppose they can do that.

16 Q. Well, if their access tariff applies to the
17 call, would they be required to charge it?

18 A. Well, I'm not aware of any CLECs --
19 facilities-based CLECs access tariffs that I've ever
20 interpreted that way. I mean, it's -- I'm just not aware at
21 all and have no reason to believe that the scenario that
22 you're outlining here exists or ever will exist.

23 Q. Well, are there CLECs that are operating in
24 GTE or Sprint exchanges?

25 A. We certainly have Mark Twain Communications

1 Company operating in northeast Missouri. Certainly have, I
2 believe it's Green Hills operating in a Sprint exchange.
3 So, yes.

4 Q. AT&T's TCG affiliates, are any of them
5 operating in any GTE or Sprint exchanges?

6 A. Whose affiliates? AT&T's?

7 Q. Yeah.

8 A. I'm sorry.

9 Q. Sometimes I get confused. I think of their
10 local affiliate as TCG, but in your testimony you talked
11 about AT&T Local Services, so I assume that's the same
12 thing.

13 A. No. TCG -- TCG and AT&T Local Services, I
14 believe, are two different entities. I think there's two
15 different tariffs. But --

16 Q. Regardless --

17 A. -- if AT&T or any one of its family or member
18 family companies, are they providing service in Sprint or
19 GTE's area? Is that the question?

20 Q. Let me ask it this way. On Amonia Moore's
21 Schedule 7 she lists some of the CLECs that have a
22 significant number of customers.

23 A. Okay.

24 Q. Are any of them, to your knowledge, operating
25 in any exchanges of GTE or Sprint?

1 A. Well, I would -- I mean, the first one -- I
2 would expect Mark Twain Communications Company to be on
3 there, and that's an incumbent GTE area. That's one
4 example. We know that Exop provides service in Sprint
5 Missouri area. There may be some what I would call limited
6 examples.

7 Q. It was my recollection -- has the Commission
8 decided the CLEC access rate case yet?

9 A. No.

10 Q. Okay.

11 A. I mean, all the CLECs have access tariffs. I
12 don't think we're depending on the Commission's order in
13 that docket to, you know -- we're not depending on that
14 order for CLECs to be allowed to charge switched access
15 rates. They're already doing it.

16 Q. Let me get at it this way perhaps. If there's
17 CLEC to CLEC traffic within the MCA, do they have to bring
18 their agreement or arrangement as to how to compensate one
19 another to the Commission for approval?

20 A. I honestly don't know the answer to that
21 question, Mr. Johnson. I really don't know if those types
22 of agreements are required to be submitted to the State
23 Commission for approval or not. I have to say I can't think
24 of any that have done so, if there's anything like that that
25 exists.

1 Q. These facility-based CLECs that Ms. Moore has
2 described in Schedule 7, do they all have switches?

3 A. Well, I think if that's the same schedule that
4 Mr. Lane showed me, some of the figures on there were -- are
5 zero. Maybe that's not the same schedule Mr. Lane showed
6 me. He showed me resellers. I'm sorry, Mr. Johnson. Could
7 you show me the schedule you're talking about?

8 Q. Actually I was looking at what's denoted
9 facilities based. I was only intending to refer you to the
10 companies that had numbers in those columns. And I just --
11 it's my understanding that in order to be a facilities-based
12 CLEC, probably the first thing you had to do was have a
13 switch, but I wasn't sure.

14 A. Well, I think -- that's a very good question.
15 To the best of my knowledge and belief, and many cases it
16 is -- I have direct knowledge about this, to the best of my
17 knowledge and belief, on Ms. Moore's Schedule 7, where it
18 says Facilities Based, if there is a figure in that column,
19 you go out to the left of that and you see the competitive
20 local exchange carrier -- facilities-based competitive local
21 exchange carrier, yes, they do have a switch.

22 Q. Okay.

23 A. The reason I was hedging somewhat,
24 Mr. Johnson, and I apologize for that, but you get into this
25 argument -- it's not really an argument, but a situation

1 where -- with unbundled network elements and unbundled
2 network element platforms. In some circumstances those
3 providers are called facilities-based carriers as well. And
4 I was trying to make sure that that was not the situation
5 here, but I don't believe -- I do not believe it is.

6 Q. Is an unbundled network element based CLEC, is
7 it facility based or not?

8 A. If they take a cable pair leased from the
9 incumbent and terminate that to their switch, then yes,
10 they're facilities based.

11 Q. So as I understand your answer, if a CLEC, as
12 opposed to making its own investment, leases some portion of
13 the incumbent's network through a UNE, they become for
14 purposes of -- our purposes here a facilities based?

15 A. Yes. And I believe not only for our purpose
16 in this docket, but for all dockets that I know of before
17 this Commission and before the Federal Communications
18 Commission. Because your statement, I believe, if I
19 understood you correctly about not making an investment, I
20 would maintain that they do have an investment in their
21 switch and other aspects of their network. Perhaps you
22 meant just outside plant cable pair investment.

23 Q. My next question is, some of the CLECs on this
24 Schedule 7 that do have their own switch, do they also have
25 an IXC affiliate?

1 A. Well, I don't -- I don't know if they all do
2 without checking. I remember Exop is on there. That
3 particular company wanted -- initially at least wanted
4 nothing to do with the long distance business. I don't know
5 if there are others on there like that or not.

6 Q. Does MCI have an IXC affiliate?

7 A. Certainly.

8 Q. Does Intermedia?

9 A. I don't recall offhand.

10 Q. Gabriel?

11 A. I don't recall offhand.

12 Q. AT&T?

13 A. Certainly.

14 Q. Birch?

15 A. I believe so, yes.

16 Q. Do they share the same -- does the IXC in
17 those situations -- do they share the same switch with their
18 CLEC or do they have separate switches or do you know?

19 A. Well, that's an interesting question. I
20 think -- I know of no reason why they would not share the
21 same switch.

22 Q. So if they do share the same switch, they
23 could have both local and toll going through that switch?

24 A. In that regard, they're certainly no different
25 than the incumbent.

1 Q. The CLECs that may be in that position of
2 having an IXC affiliate, do they give their customers a
3 choice of any IXC they want, or do they require them to take
4 the services of their IXC affiliate?

5 A. Well, thank you for asking that question. I'm
6 almost certain, Mr. Johnson, that every CLEC tariff that I
7 have approved -- recommended approval of certainly for the
8 facilities-based providers, I believe they have to offer
9 their customers a choice.

10 I believe also that they were required to file
11 intraLATA dialing parity statements pursuant to some events
12 that occurred at the federal level, had to file those
13 statements here at this Commission.

14 I'll concede to you, though, if you look at
15 the tariffs closely enough they -- I suspect they -- you
16 know, they bundle services together to where they probably
17 make it pretty enticing for the end-user to not only use
18 their local telephone service, but their long distance
19 service as well and their Internet, cable TV and everything
20 else. It's bundled.

21 Q. Has Staff audited the CLECs to see if they
22 are, in fact, offering a choice of toll providers --
23 intraLATA toll providers and interLATA toll providers to
24 their local customers?

25 A. Well, I would expect them to comply with their

1 tariff, but no, we've not actually audited any of them.

2 Q. Do you know whether or not any IXC traffic is
3 being handed off by CLECs to Southwestern Bell for
4 termination to small companies?

5 A. The transiting traffic, is that what we're
6 talking about?

7 Q. Yes, sir. IXC originated traffic.

8 A. I do not know if that situation, in fact, is
9 occurring or it is not occurring. I don't know what the
10 status of that is.

11 Q. Okay.

12 A. I honestly have no reason to believe one way
13 or another on that, Mr. Johnson. I just don't know.

14 Q. For the traffic that the CLECs hand off to
15 Southwestern Bell for termination to the indirect --
16 interconnection to the small companies, such as my clients,
17 do you know who is recording that traffic, whether it's Bell
18 or the CLEC?

19 A. Well, Staff sent out 12 or 13 data requests a
20 number of months ago in this docket, and the overwhelming
21 response was, including -- especially that from your client,
22 Mr. Johnson, was MCA traffic is not recorded. So I don't
23 know who's recording the traffic. My understanding from DR
24 responses from your own client that MCA traffic is not
25 recorded.

1 Q. So are you assuming for purposes of your
2 analysis that every call that originates through the CLEC
3 and terminates to my client's exchange is an MCA call?

4 A. I'm not -- I'm simply asking your question. I
5 thought that that's what your question was.

6 Q. My question is, for traffic that's being
7 handed off by a CLEC to Southwestern Bell and terminates to
8 us --

9 A. Uh-huh.

10 Q. I guess my first question should be, to your
11 knowledge is anybody recording that?

12 A. It depends if in the -- the hand off you're
13 talking about -- if that is being handed off, that's an MCA
14 call or a toll call. Are you -- I mean, I know of no other
15 way to -- to get the call from the CLEC to your client is to
16 either do it as -- pursuant to an MCA call or do it pursuant
17 to a switched access tariff. May I ask you to clarify your
18 question, which example are you talking about?

19 Q. Okay. I thought you had told Mr. England that
20 unless they had a reciprocal compensation arrangement with
21 us, they were supposed to pay access?

22 A. That's right.

23 Q. I want you to assume that we have no such
24 reciprocal compensation arrangements ever. Okay? Now, that
25 would indicate to me that that should have been recorded as

1 an access call?

2 A. Yes.

3 Q. Do you know if, in fact, anybody's recording
4 that at the point where the CLEC hands it off to
5 Southwestern Bell at Southwestern Bell's tandem?

6 A. Well, if the CLEC is charging the
7 interexchange carrier with originating switched access
8 rates, then I would think they would be recording it.

9 Q. Are you saying that the CLECs are handing off
10 all of the traffic that's coming to our exchanges to IXCs?

11 A. I'm saying I do not know the answer to that
12 question.

13 Q. Okay. So you don't know -- you don't know
14 who's recording it, if it's being recorded at all?

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

16 Q. In your direct testimony, Mr. Voight, at
17 page 51 --

18 A. I'm there.

19 Q. -- lines 3 to 4 --

20 A. Uh-huh.

21 Q. -- in that subpart 2 -- and I think the
22 question had to do with compensation arrangements involving
23 third parties within the MCA?

24 A. Right.

25 Q. You talk about interconnection agreements

1 between incumbents and competitors who are directly
2 competing against each other, i.e., within the same
3 exchanges?

4 A. Right.

5 Q. To me that means that you were referring to
6 interconnection agreements between Southwestern Bell and the
7 CLECs that happen to be competing with Bell in Bell's own
8 exchanges?

9 A. That would be one example, of course, yes.
10 And the reason I say it that way, I mean, Sprint and GTE
11 have similar agreements, I think.

12 Q. I want to ask you about indirect reciprocal
13 compensation arrangements. You've proposed that it would be
14 acceptable to Staff to accept indirect -- are you following
15 me?

16 A. No. I'm -- I was about ready to ask you to
17 define an indirect reciprocal compensation agreement. Are
18 we again talking about third-party transitting traffic?

19 Q. Yes. With respect to my clients, if a CLEC
20 does not directly interconnect with us and they get the
21 traffic to us from Bell, I'm considering that an indirect
22 interconnection.

23 A. Okay.

24 Q. In your opinion, does that mean that the CLEC
25 is competing with us in our exchanges?

1 A. No.

2 Q. So you see a difference between a direct
3 interconnection agreement between competitors, you're
4 competing in the same exchanges, and an indirect one that's
5 between a CLEC and an ILEC who are not competing in the
6 ILEC's exchanges?

7 A. Well, I don't mean to quibble, Mr. Johnson,
8 but I don't see how you can call something that does not
9 exist an agreement. I mean, you've stated that there are --
10 I think that there are no such agreements in place.

11 Q. Okay. If there were one, if they would have
12 come to us and gotten a reciprocal compensation arrangement
13 that the Commission approved and it was over an indirect
14 interconnection with us, does that mean that they are now
15 competing in our exchanges just as they would be competing
16 with Bell in Bell's own exchanges where they directly
17 interconnect?

18 A. No.

19 Q. Okay.

20 A. Unless they're taking customers away from your
21 client, you're not competing.

22 Q. Can they take customers away from us and
23 service -- serve those customers over an indirect
24 interconnection?

25 A. Well, if they took a customer away from you

1 while serving in your exchange, I think the -- as far as
2 your client goes, the indirect interconnection agreement is
3 out of the question, isn't it? Before they operate in your
4 client's service area, if we ever get around to having
5 competition in the small LEC areas, there will be
6 interconnection agreements for the exchange of traffic. And
7 I think the answer to your question would be contained
8 within those interconnection agreements.

9 Q. I think my question was -- maybe you don't
10 know. Maybe you've not thought about it. I'm just wanting
11 to know what your expertise is.

12 A. Okay.

13 Q. Can they serve a customer in our exchange over
14 an indirect interconnection agreement, or via an indirect
15 interconnection agreement?

16 A. I -- if I understand your question correctly,
17 they could send a call for you to terminate that was
18 originated from one of their end-users, a CLEC I'm speaking
19 of, presumably transit it through Southwestern Bell and that
20 could happen. I think it may be a stretch to call that
21 serving the customer in your area.

22 Q. So are you saying they couldn't originate a
23 call in our exchanges unless they have the direct
24 interconnection agreement?

25 A. I'm saying they could not originate a call in

1 one of your exchanges unless they not only had an
2 interconnection agreement, but two other items as well, and
3 that would be a certificate of service authority and a
4 tariff.

5 Q. If they have a certificate and they have a
6 tariff, can they serve them through an indirect
7 interconnection with my client? Can they serve a local
8 customer in my client's exchanges?

9 A. I guess I would have to see the details of the
10 indirect interconnection agreement. Again, I'm -- I'm real
11 confused as to something that I've never seen and am not
12 aware that it exists, but I'd just have to see the details
13 of whatever that document might be.

14 Q. Do you believe in an interconnection agreement
15 negotiation with the CLEC, that my client should have the
16 same rights as Southwestern Bell has?

17 A. I'm not sure I'm understanding the question,
18 Mr. Johnson. I believe if your client negotiates an
19 interconnection agreement with a competitor, that yes, they
20 should have the same negotiating rights as anybody else. Do
21 you mean, though, as a third party, not a direct participant
22 in the negotiation should you have the same rights?

23 Q. I mean, if they came to us and directly
24 requested an interconnection and started the negotiation
25 process, do you think we should have the right to negotiate

1 such things as where they're going to interconnect, who's
2 going to do the recording, how the traffic's going to be
3 identified, the originating carrier identification,
4 separation of the call jurisdiction to apply the appropriate
5 compensation rates? Do you think we should have equal
6 rights to Southwestern Bell in those regards in any direct
7 interconnection agreement negotiation?

8 A. Well, I think everyone should have equal
9 rights, yes.

10 Q. Okay. Do you think we should have those same
11 rights in an indirect interconnection agreement negotiation?

12 A. Well, in that instance, you're not a party to
13 the negotiations, so I don't -- I don't believe that --

14 Q. If Gabriel comes to MOKAN Dial and says, I
15 want to negotiate an indirect interconnection agreement with
16 you, then we would be a party, would we not?

17 A. Oh, certainly. I'm sorry. I misunderstood
18 your question.

19 Q. In that situation should we have the same
20 rights to negotiate the same items I just mentioned as any
21 other incumbent LEC would?

22 A. I'm sorry, Mr. Johnson. I understand now.
23 Yes, I do. I understand.

24 Q. In that situation, do you think we should also
25 have the right to negotiate how traffic that's destined for

1 third-party carrier's network should be handled by us and by
2 the CLEC? Does that make sense?

3 A. I think so. You are the third party. Right?
4 I mean, you're negotiating the details of transiting
5 traffic. Right? Isn't that what you're --

6 Q. If Gabriel comes to MOKAN Dial and they
7 negotiate, first of all, about the traffic that's going to
8 transport and terminate to each other that they're going to
9 reciprocal exchange, should they also have equal rights with
10 Southwestern Bell to negotiate how traffic that's going to
11 go to third parties, strangers to the interconnection
12 agreement, is going to be handled?

13 A. Yeah. I think they can -- have a right to
14 negotiate how they're going to originate, terminate and
15 transport traffic, yes. I believe they have the right to
16 negotiate that.

17 Q. We should have equal rights to negotiate how
18 we're going to transit traffic destined for a third party?

19 A. Yeah. I think you have a right to talk about
20 that.

21 MR. JOHNSON: That's all I have.

22 JUDGE DIPPELL: Thank you.

23 Are there questions from the Bench, Chair
24 Lumpe?

25 QUESTIONS BY CHAIR LUMPE:

1 Q. Mr. Voight, could I talk with you a little bit
2 about cost data? As I understood you this morning, you said
3 the rates that have been set in the various tiers were not
4 based on cost, they were residual; is that correct?

5 A. Yes, Chair Lumpe, that is correct. What I
6 told Mr. DeFord in my answer to his question, I was
7 referring to Case T0-92-306, Southwestern Bell's reply
8 brief, November 30th, 1992, page 22. There are numerous
9 references throughout all the material in that case history
10 that the rates for the optional tier MCA subscribers are
11 residually priced.

12 Q. So they're not based on costs. So something
13 else may or may not be subsidizing them; is that --

14 A. That's exactly correct. They're -- not only
15 are they not based on cost, they're not based on any sort of
16 revenue requirement.

17 Q. Would it be appropriate in this case to
18 address basing them on costs?

19 A. Not in my view, Chair Lumpe. I think -- just
20 as with basic local telephone service, I think it is quite
21 appropriate to set rates for the MCA in order to achieve a
22 social goal.

23 Q. Because it's considered local service. Right?

24 A. It is considered -- of all of the people in
25 Missouri who have MCA on their telephone bill, I'll phrase

1 it that way, it is basic local service for 83 percent. And
2 it is -- only 17 percent of the subscribers to MCA service
3 are optional tier subscribers. So for -- as a practical
4 matter, I think it is basic local telephone service, yes.

5 Q. And so basing it on cost would not be
6 appropriate?

7 A. In my view, that would not be appropriate.

8 Q. If we were to go or look at what you call
9 MCA 2 --

10 A. Uh-huh.

11 Q. -- the tier one, is that where the current
12 core and one and two are? Where is the line between one and
13 two?

14 A. The -- if I may stand up, this is the -- and
15 we're using St. Louis as an example. The same could apply
16 to Kansas City. But the -- the lighter area is the
17 principal zone. The yellow area, I do believe, is tier one.
18 And the green area is tier two.

19 Q. And that would now become tier one under your
20 proposed plan?

21 A. Yes. It is -- MCA service is set to be
22 mandatory in this area. Nothing about that changes with the
23 Staff MCA 2 plan, but we -- yes, we would draw the line
24 where it currently exists. It would be mandatory for those
25 today for which it is mandatory, and it would be optional

1 for those which today it is optional.

2 Q. And there are three different rates currently
3 in three, four and five. Right?

4 A. That's correct, Chair Lumpe.

5 Q. And you would create one rate for now for
6 those -- all of that mass together?

7 A. Well, that's one of the things that is being
8 discussed. We don't -- we don't have a position as to how
9 the rate design would be done. There are those who may very
10 well indeed advocate having a single rate for all three
11 outer tiers. I think a good argument could be made for
12 having a different rate as we do today.

13 Q. How would that differ then from today if you
14 had a different rate for tiers three, four and five?

15 A. As well, as far as the rates go, it would not
16 really differ.

17 Q. The difference would be that it's now
18 mandatory?

19 A. No. The difference is in the calling scope.
20 That's the difference.

21 Q. So you may have -- the subscribers may pay
22 different amounts -- additional amounts, but they would be
23 able to call anything out here and anything in here
24 (indicating) --

25 A. Everywhere.

1 Q. -- for that additional --

2 A. Everywhere.

3 Q. So it would sort of be like a mileage zone, is
4 that it? You're in this mileage zone so you pay this, but
5 you could call anywhere?

6 A. That would be one way of looking at it.

7 Q. Okay.

8 A. In the original MCA docket there was -- that
9 comparison, I believe, was frequently made. Someone spoke
10 this morning about looking over the fence. Some exchanges
11 you pay a different rate even within the same exchange
12 depending on the mileage from the central office.

13 Q. Now, the '92 case, as I read it, the
14 justification for drawing the line out here was that that
15 would serve quite a long period of time, make people happy.
16 Is that still the case? Is this still a good border?

17 A. Well, I think I too read some of the -- it was
18 very important to the Commission at that time that they make
19 a plan that was sustainable and had some long run viability.
20 And they asked witnesses if we do this, how long will it
21 last?

22 And, of course, all the witnesses were quite
23 optimistic, so I'm not going to be optimistic -- that
24 optimistic if you do adopt MCA 2, but I will say that having
25 attended the public hearings and of all of the contacts that

1 are made at our agency, there may very well -- may very well
2 indeed be some merit to expanding the borders of the
3 existing MCA plans, but there is nothing in the Staff MCA 2
4 proposal, and indeed I don't believe there's any concrete
5 proposal by any party in this docket, to expand the current
6 borders.

7 Q. So that eight years ago and it's still --
8 there's no great outcry to move these borders further west
9 or east?

10 A. Oh, I think in the Springfield area there's
11 some -- there's a lot of discussion about expanding it
12 southward towards Branson. We were told that -- I believe
13 it's Christian County is now the fastest growing county I
14 guess in the nation. I thought St. Charles County was, but
15 I guess Christian County is.

16 And there's a good deal, I believe, of
17 activity or demand for expanding the MCA perhaps out to
18 Warren County west of St. Louis. Of course, all of that
19 costs money and we just don't know what the cost of it would
20 be at this time.

21 But I don't mean to imply that there's not
22 demand for expanding the existing boundaries, because there
23 are a lot of people who would like to see that done. You
24 heard Mr. Dandino in his opening statement talk about the
25 folks out in I believe he calls it Innsbrook or something

1 out in Warren County. There's quite a bit of demand there
2 to expand the boundaries.

3 Q. We've heard some discussion about -- that this
4 was created in the monopoly era prior to competition, and
5 that this is perhaps another program or a service that was
6 set up in a monopoly area and the difficulty is making it
7 work in a competitive area -- or era.

8 And I think in that monopoly period we could
9 mandate various programs and services and perhaps make them
10 function more simplistically. It seems to become very, very
11 complex in a competitive environment. And I guess that's
12 what we're struggling with.

13 How do we take something that was created in
14 one era and make it work in another? And you get down to
15 the numbers issue, the number conservation issue. The
16 proposal that you have, would it in any way assist in this
17 number conservation issue?

18 A. Yes. I believe so. I believe it would
19 greatly assist in the number conservation issue. I --

20 Q. How would it do that?

21 A. How? I don't think -- I'm not saying that as
22 far as the current docket for the 816 and the 8-- and the
23 314, I do not believe that our MCA 2 plan will have an
24 impact on that docket. I think we've reached a point in
25 both of those area codes -- point of no return, if you will.

1 What MCA 2 would do would be to mitigate that
2 kind of situation from continuing to happen. In other
3 words, we believe that we have to find a way to allow
4 competitive entry into the MCA. We want to do that in a
5 manner that is fair to both the competitors and the
6 incumbents.

7 And if -- it's -- it's hard enough having the
8 segregated -- it's wasteful enough having these segregated
9 NXXs for companies like Orchard Farm and Lathrop and Choctaw
10 and MOKAN Dial, etc.

11 Now, if we expand that same concept to the
12 competitors, there are 18 that we've identified and
13 91 optional MCA exchanges. If we expand that same concept
14 to where they have to have segregated NXX codes every time
15 they want to go into one of these optional exchanges no
16 matter if they only have 15 or 20 customers, I think that's
17 an extreme waste of NXX codes. And if we do that, it will
18 only exacerbate the numbering resource dockets that I think
19 we're going to continually have.

20 Q. Is your plan a one-way plan? It's been called
21 that by some. Is that what it is, a one-way plan? And is
22 that why it would alleviate the number issue?

23 A. Yes. It's a one-way plan. If you subscribe
24 to it, you can call anywhere in the MCA. And by doing that,
25 we would allow the incumbent and competitive telephone

1 companies to no longer have to segregate the NXX codes. I
2 think it is fair to characterize it as a one-way plan.

3 Q. So that anyone -- well, let me look at the
4 mandatory -- what's called the mandatory area now then.
5 Anyone in that area could call anyone in this area as well
6 as their own. So they would have full scope calling at some
7 flat rate price which you haven't determined yet?

8 A. Yes.

9 Q. But we assume it would be higher than what it
10 is today?

11 A. Yes. It would be higher. And the preliminary
12 data is shown in Ms. Moore's supplemental direct testimony.

13 Q. Would it be mandatory for these people to have
14 that scope, or could they become an optional subscriber like
15 these people?

16 A. As we have currently envisioned it to this
17 point, it would stay mandatory just as it is today. But
18 certainly -- I've said from the beginning of this docket
19 that everything should be put on the table for discussion
20 purposes. There's no idea that doesn't warrant some
21 discussion.

22 Q. That's one of the things I was curious about.
23 Can we really mandate a competitive era telephone services?

24 A. Oh, certainly. You have every bit the
25 authority to establish a local calling scope. That's what

1 we're doing here. It is totally -- I appreciate some of the
2 parties' references and comparisons to the community
3 optional service, but I see far more differences here with
4 this local service than I do COS, which was a toll service
5 and required competitors to share sensitive billing data
6 with each other in order for that to work in a competitive
7 environment.

8 Nothing could be further from the truth or
9 from the actuality of what we're talking about here with
10 this local telephone service. It's totally two separate
11 issues. You have every right to mandate a telephone calling
12 scope.

13 Q. Just a couple of more. Did I hear you
14 correctly that CLECs that are providing MCA currently
15 regardless of the interconnection agreements are possibly
16 doing so in violation because we haven't done an order that
17 they may, never mind it's in their interconnection
18 agreement?

19 A. I think that discussion was -- well, I pointed
20 out a couple of Commission orders that indicated that, for
21 example, a call that originated from a facilities-based CLEC
22 and was handed to Southwestern Bell who in turn handed the
23 call off to a third-party independent LEC such as those
24 companies represented by Mr. England and Mr. Johnson, the
25 interconnection agreement between the competitor and Bell

1 expressly stated that those calls would be -- excuse me --
2 the order approving those interconnection agreements, the
3 Commission's order, expressly stated that the CLEC was not
4 to send traffic to the independent LEC in that manner, not
5 as transiting traffic, but it must be switched access.

6 And I think the questions that your -- you may
7 have heard was, Well, even though the Commission's original
8 orders said that and there's not been any clarifying docket
9 since then, are people ignoring that and are they in
10 violation of their interconnection agreement, was the
11 question to me.

12 And there's been a lot of discussion among the
13 parties about that in this docket. And I simply do not know
14 the answer if the CLECs are sending traffic in that manner
15 or not. So I think that may have been what you heard.

16 Q. Is that what the discussion -- is that what
17 you were referencing --

18 A. Yes.

19 Q. -- some sort of third party?

20 A. Yes. And what the Staff would ask the
21 Commission to consider, what we would ask you to do in this
22 docket is to expressly state that this traffic is -- MCA
23 traffic is local in nature just as the Commission declared
24 in 1992, it is local in nature, switched access does not
25 apply even on this transiting traffic, and that it should

1 all be bill and keep.

2 Q. I think you suggested that your proposal needs
3 additional study and comment, etc. Do you believe that
4 there is some urgency, however, to put something in place?
5 And what would you -- what are you recommending in the
6 interim?

7 A. In the interim the Staff is recommending that
8 you issue an order in this docket requiring the incumbents
9 to program all of the competitors' NXX codes as MCA codes
10 and ordering the competitors to do likewise, program the
11 incumbents' NXX codes as MCA codes.

12 That would allow the competitors in the
13 market. And then we would like to proceed with additional
14 workshops and so forth to go forward with our MCA 2 plan,
15 analyzing the revenue impacts of that.

16 The goal of that docket would be to order the
17 incumbents to program all of the other incumbent NXX codes
18 as MCA codes as well. In other words, what I'm saying is,
19 right now we want an interim order, if you will, authorizing
20 the CLECs in the market and then let's have -- if we do
21 MCA 2 or something like that, let's get to the point within
22 a year or so to where we redo the MCA 2 -- or excuse me --
23 redo the current MCA, eliminate these segregated NXX codes
24 and get to a point where everyone is truly equal.

25 Q. You're asking for one thing in the interim,

1 just the recording of the NXXs?

2 A. Yes. The recognized --

3 Q. You're not saying it should be the same scope
4 and it should be the same prices and it should be the same
5 terms and conditions? Just that one thing?

6 A. Correct. Definitely not the same terms and
7 conditions. A competitor should -- what we're advocating is
8 that the competitors have complete pricing flexibility for
9 optional MCA service just as they now have complete pricing
10 flexibility or basic local telephone service and everything
11 else that they offer.

12 And we're asking that the incumbents be
13 allowed an opportunity to respond to those competitive
14 pressures. Give the incumbents pricing flexibility,
15 whatever may be allowed by the statute. Mr. Lane had me
16 read a statute this morning that -- some of the statutes,
17 given an opportunity to work, will allow the incumbents, I
18 believe, to have complete -- or certainly all the pricing
19 flexibility that they need in order to respond to the
20 competitors.

21 And I believe that once that happens,
22 consumers will be better off, because finally at least for
23 some time consumers will actually begin to see some benefits
24 of competition, some benefits and lower price.

25 Q. So there's actually two things, one recording

1 the NXXs, and pricing flexibility?

2 A. Yes.

3 CHAIR LUMPE: Okay. Thank you. That's all I
4 have.

5 JUDGE DIPPELL: Vice-chair Drainer?

6 QUESTIONS BY COMMISSIONER DRAINER:

7 Q. Good afternoon.

8 A. Good afternoon, Vice-chair Drainer.

9 Q. I need to make this simple so I understand.
10 Today if I am a GTE customer in the Troy exchange, which is
11 in tier five, and I have MCA, I can call someone in the De
12 Soto exchange, they would have to also have MCA for it to
13 not be a toll call; is that correct? It's also in tier
14 five.

15 A. De Soto's in tier five?

16 Q. Yes. But you can -- if you're an MCA customer
17 in tier five, you can call other MCA customers?

18 A. Yes. That's correct.

19 Q. All right. So today between Southwestern Bell
20 and GTE, it would be bill and keep, GTE would bill its
21 customer for the tier five MCA which is about \$32 and some
22 change?

23 A. Fifty cents for residential.

24 Q. And Southwestern Bell would not have any
25 compensation other than if it's De Soto MCA customer wanted

1 to call another MCA customer, they also are doing the bill
2 and keep on their end. Correct?

3 A. Yes.

4 Q. Now, your proposal would have the tier five
5 being part of an optional tier two a larger -- if I am in
6 that Troy exchange now and I get your new service, I can
7 call every customer in -- every customer, not just MCA
8 customers?

9 A. That's correct.

10 Q. And if GTE were to charge its customer the
11 same amount, the 32.50, let's say, or something higher as
12 you don't know what that is yet, would there be any
13 compensation to Southwestern Bell for the calls that
14 customer makes to all of the other customers besides the MCA
15 customers?

16 A. No. It would all -- it would continue to be
17 bill and keep.

18 Q. So today if the Troy customer were to call a
19 non-MCA customer, it would have to pay Southwestern Bell
20 access?

21 A. Yes.

22 Q. On yours it would not?

23 A. That's correct.

24 Q. So there would be lost access revenues?

25 A. That's what we're analyzing, yes.

1 Q. Okay. Other than the NXX issue and concern,
2 if a CLEC is in the Troy exchange and it wishes to offer
3 MCA, why can't it work for it to have bill and keep also?
4 Charge his customer \$32.50, call an MCA customer in another
5 exchange and not pay any compensation?

6 A. That could very well work and be done.

7 Q. Other than you see down the road something --
8 you see down the road concerns with the using up of the
9 NXXs?

10 A. Perhaps I misunderstood your question.

11 Q. Well, I guess if that can be done, why -- I
12 have heard in opening statements and through others in
13 testimony that say, keep the same footprint, keep the same
14 price, just let them in. AT&T, I believe, started this
15 with it was imperative we act. And they just wanted to be
16 able to have -- to be a CLEC and be able to offer MCA?

17 A. Right.

18 Q. That's the first thing I heard. Why can't we
19 just do that? Where's the roadblock from this Commission
20 saying MCA is MCA, let's just make everybody have the same
21 game rules there?

22 A. Other than the NXXs being a problem with
23 everyone having the same game rules, we would still have
24 what Staff considers to be confusion over the calling
25 scopes. We would still have a situation to where --

1 Q. Excuse me. Where's the confusion over the
2 calling scope if MCA is kept -- whose confusion? Certainly
3 not the customers.

4 A. Well, I think the customers will pick up the
5 telephone and dial a number that they're not familiar with
6 and hope that it's a local call, but be routed to a
7 recording and told that it's a toll call and they have to
8 dial one first.

9 Q. All right. But if I'm in -- again, I'll just
10 use the Troy exchange as the farthest out -- and I go with
11 an AT&T CLEC and they can offer the MCA as it is today and
12 I've had it before, I'll have it now with them, they told me
13 it's the same thing, it's transparent. Why will I have any
14 confusion? Because I will be dialing just as I used to.
15 Obviously there's going to be more NXXs because there's more
16 competitors, so they're going to learn which ones are MCA.
17 Where's the confusion?

18 A. The confusion comes in when you want to call a
19 telephone number that you are not familiar with. And you
20 don't know if you should dial the number as a local call or
21 as a toll call.

22 Q. Does the customer have that today?

23 A. Yes.

24 Q. Well, then it won't be any more confusing than
25 it is today?

1 A. That's correct.

2 Q. Okay. So that's not a change in the current
3 MCA program. With respect to changing prices, I've heard
4 you state that you believe that we should allow pricing
5 flexibility for an MCA for CLECs?

6 A. Yes.

7 Q. Do you believe there should be a ceiling, that
8 it should be the current MCA charge and they could charge
9 below that but not above it?

10 A. No. I think they should have pricing
11 flexibility just as they do now, although I'll admit they're
12 not included in the MCA.

13 Q. But with MCA -- I'm only thinking of the MCA
14 price. If the MCA price seemed to be in the public interest
15 and they set the price residually and revenue neutrality
16 would be followed up with studies?

17 A. Originally?

18 Q. Originally?

19 A. Yes.

20 Q. Then if it was set with revenue neutrality in
21 mind, why would you not have a ceiling placed on the current
22 MCA?

23 A. For competitors?

24 Q. Yes.

25 A. Well, I think the -- by price ceiling you mean

1 a maximum amount they could charge for --

2 Q. Which would be the current charge. So in the
3 fifth year it would be the \$32.50 at that time.

4 A. If they can get that from Southwest-- MCA in
5 tier five from Southwestern Bell for 32.50, I think the
6 competitor would not -- I think that is a de facto price
7 ceiling for them. I think they would -- if I'm
8 understanding your question correctly, they wouldn't get
9 very many customers if they wanted to charge \$50 for that.

10 Q. Would you have a problem though with the
11 Commission setting a ceiling so that there's -- for
12 competition you were saying the real benefits were for
13 customers to have lower price?

14 A. Uh-huh.

15 Q. Well, wouldn't that be a guarantee or an
16 assurance that this service wasn't being misused and somehow
17 overpriced to a customer that did not know that there had
18 already been a maximum price set?

19 A. Was the question would I recommend that?

20 Q. Would you get heartburn if the price were set
21 as a ceiling of the 32.50, the Commission did not allow any
22 company to charge over the currently set price?

23 A. I wouldn't have any heartburn. I -- from a
24 practical perspective I guess maybe I'm not fully
25 understanding why that might be necessary unless --

1 Q. To guarantee that customers aren't
2 exploited --

3 A. Okay.

4 Q. -- for a service that has been considered
5 essential in the first three tiers in the St. Louis area
6 especially, to guarantee that they've not -- that unknowing
7 customers coming in aren't paying more for a service that's
8 already been set residually.

9 A. That would be fine.

10 Q. You stated that the Commission could do
11 something now and get an order out and allow Staff and the
12 parties to move forward in a study. How long do you think
13 it would take if this Commission were to keep the same
14 footprint pricing and basically just say, let the CLECs --
15 let the CLECs in on bill and keep, but go forward with a
16 technical workshop to see what else needs to be done on
17 things such as the NXXs for some long-term solutions?

18 A. How long would it take to do a long-term
19 solution?

20 Q. Yes.

21 A. I think we could have a concrete proposal
22 within three months.

23 Q. Okay. If there could be a concrete proposal
24 in three months, how come I don't have it now when this case
25 has been going on at least -- according to I think AT&T --

1 too long? And I don't know what the other CLECs would say,
2 but, again, they were wanting relief immediately and --

3 A. We -- Staff tried very hard to get concrete
4 proposals by this point in time. We -- I have to say many
5 of the ILECs -- almost all of them cooperated fully, but we
6 got to a point where what we were asking represented quite a
7 bit of work on their part and they were, in my view, not
8 willing to make a full 100 percent commitment to doing all
9 of this additional work without a Commission order telling
10 them to do that. It was a resource issue, I believe.

11 Q. Okay. And if this Commission were to maintain
12 the status quo for MCA and insist that the CLECs be able to
13 be given the same consideration and be put into this
14 proposal, obviously they couldn't have been in '92, they
15 weren't around?

16 A. They weren't around.

17 Q. But we say they're here now and they too can
18 bill and keep and everyone has to work with them, do you
19 believe that there would have to be a follow-up report, a
20 joint recommendation from all parties on a new price in
21 order for companies to be kept whole and to maintain revenue
22 neutrality?

23 A. Yes. Yes, I do.

24 Q. And the rate we have would probably not work
25 with the considerations that would have to be taken in place

1 even keeping --

2 A. Three tiers?

3 Q. Yes.

4 A. No. There's in all likelihood going to have
5 to be some price increase. We've got some preliminary
6 figures shown in Ms. Moore's testimony. Preliminary figures
7 to us are encouraging. Preliminary figures indicate that we
8 could do an expanded calling MCA 2-type scenario somewhere
9 in the neighborhood of preliminarily \$6 million. Spread out
10 across all of the customers, early indications are that it
11 would -- the rates -- the additional rate increases would be
12 worth it when considering the benefits.

13 Q. Well, I'm sorry, Mr. Voight, but if we were
14 not to make any changes to the tiers with MCA, but because
15 of the CLECs and because of competition, there being the
16 changes that are taking place, do you think there still
17 would have to be change in the rate? If the 32.50 was a
18 ceiling, do you think there would still need to be an
19 updated study to see that that still covers at least enough
20 of the expenses to keep all companies whole without your
21 MCA 2?

22 A. I don't see that -- where there's -- if you
23 allow the competitors into the MCA under the same rates,
24 terms and conditions, I don't see where there's any revenue
25 recovery mechanism that would come into play for that.

1 Q. Okay. And in order to move forward, in order
2 to get competitors into the metropolitan areas, if again the
3 Commission were to just order that the CLECs are to be given
4 the same consideration that the ILECs are giving each other
5 now --

6 A. Uh-huh.

7 Q. -- and that was bill and keep and they would
8 have to be assigned access, if the Commission were to do
9 that, but then to follow-up with -- get a permanent solution
10 and take care of the NXX problem, there are enough NXXs to
11 take care of this first round and kind of grandfather them
12 in. We just wouldn't want to have it multiplying; is that
13 correct?

14 A. Yes. I think so.

15 Q. So we're not in jeopardy using kind of the
16 numbering language for NXXs at this time to let the CLECs
17 in?

18 A. No. I'm not aware that we're in jeopardy like
19 that.

20 Q. Okay. The calling scope, if we're talking
21 about MCA, why would we want to get flexibility for anyone
22 to change the calling scope for MCA? If they want to do
23 something else and call it something else -- it's a
24 competitive world out there. They can file tariffs and if
25 there are no problems, they can do these different programs.

1 Why would we -- did I misunderstand when
2 you -- when Staff's position was that we should allow
3 flexibility in the calling scopes and larger calling scopes
4 for MCA?

5 A. Yeah. We support companies voluntarily, you
6 know, filing tariffs and increasing their local calling
7 scope.

8 Q. But not as MCA, just -- I guess that's what I
9 want to be clear on. You weren't necessarily saying that
10 it's the MCA calling scope being expanded, just they could
11 have different calling scope plans?

12 A. Yes. No. We're not advocating moving the
13 boundaries of MCA as we know it, moving those out or
14 anything like that.

15 Q. Or forcing a company to have, say, bill and
16 keep from Columbia, Missouri to downtown St. Louis?

17 A. No. We're not advocating that. The concern,
18 I think, that was expressed to me by counsel was if the
19 competitors began expanding their calling scopes and calling
20 it MCA, there may be some tendency -- not saying that anyone
21 would do this, but there may be some tendency to try to pass
22 that off as MCA traffic whenever in actuality it should be
23 switched access traffic. That was kind of a red flag, I
24 think, with some of the incumbents.

25 Q. And you agree with that?

1 A. Yeah. That could happen. It would be
2 unethical to do that and undoubtedly violation of not telling
3 what all, but that sort of thing could happen.

4 Q. Well, I guess -- I thought Mr. Dority hit home
5 this morning when he said MCA is MCA; if there were other
6 plans, they should be just called something else. And I
7 guess I'm wondering, do you agree with that?

8 A. We didn't really -- I don't agree or
9 necessarily disagree. It's like I guess --

10 Q. Well, let me stop --

11 A. It's almost like someone has a trade name that
12 they're infringing on, and I wasn't aware that was the case.

13 Q. Let me say the geographic footprint for
14 St. Louis that's behind you right now, that is the MCA
15 geographic footprint? That's the boundaries?

16 A. Yes.

17 Q. And we're here to resolve the issues for CLECs
18 to be able to be a part of that. My question though is, if
19 somebody wants any other type of calling scope and
20 compensation arrangements, it's not MCA. It can be
21 something else; is that correct?

22 A. That's fine, yes. That's correct.

23 Q. But can they extend the boundaries out and use
24 kind of the MCA trademark and demand the same type of
25 compensation?

1 A. No. No. They can't do that.

2 Q. And you don't support that?

3 A. No.

4 COMMISSIONER DRAINER: Okay. Thank you. I
5 have no other questions, and I appreciate how long you've
6 been on the stand.

7 JUDGE DIPPELL: Chair Lumpe, you had another
8 question?

9 FURTHER QUESTIONS BY CHAIR LUMPE:

10 Q. A couple more, Mr. Voight. One of the things
11 that I heard several times at the public hearings was that
12 the NXXs for MCA used to be in the phone book and they're no
13 longer in the phone book so people don't know. And that is
14 some confusion. They don't know which NXXs are MCA anymore.
15 In the '92 order was this discussed at all?

16 A. There were a lot of things discussed about
17 telephone directories in the 1992 case and order.

18 Q. Was it put in the order or was it just assumed
19 it would happen or --

20 A. I don't think they were directly ordered to
21 put the MCA NXX codes in the telephone directory. I think
22 what was occurring at that time is that they were already
23 putting WASP, which was the calling scope at that time,
24 putting those type of NXXs in the directory.

25 And I think that the Commission in 1992

1 believed that the same thing, and I believe probably had
2 expectations, that the same thing would continue with MCA.
3 As I've shown in my testimony, they used to put the MCA NXXs
4 in their telephone directory and Southwestern Bell no longer
5 does so. And I believe that is a source of confusion. Not
6 only for consumers, end-users, but for small businesses in
7 particular.

8 Q. And if you add more competitors who have other
9 NXXs it's even --

10 A. Further compounding the problem.

11 Q. -- more confusing which one is an MCA NXX and
12 which one --

13 A. Yes.

14 Q. And the last one, to kind of follow-up, if we
15 set these rates as a ceiling, would that mean we were also
16 setting the mandatory area as a ceiling and that price could
17 not rise?

18 A. Well, I think it probably would mean that.
19 I've forgotten exactly if the question was optional or --

20 Q. Would that violate the law?

21 A. Well, we're -- we're setting maximum prices
22 for MCA, be it mandatory or optional, I suppose, in order to
23 protect that no one is charged more than what they could get
24 it from their -- Southwestern Bell.

25 Q. That would lock in the local rate in the whole

1 area there and it would lock in the local rate plus the
2 additive in the other area?

3 A. It would mean that -- yes. It would lock in
4 the rate that you couldn't charge any higher than that.

5 CHAIR LUMPE: Okay. Thank you. That's all I
6 have.

7 JUDGE DIPPELL: Did you have anything further,
8 Commission Drainer?

9 COMMISSIONER DRAINER: No.

10 JUDGE DIPPELL: Let's go ahead and take a
11 15-minute break. Come back in just a couple minutes before
12 4:00, and we are going to wrap up at 5:00 today. We can go
13 off record.

14 (Off the record.)

15 JUDGE DIPPELL: Is there recross based on
16 questions from the Bench from Office of the Public Counsel?

17 MR. DANDINO: Yes, your Honor. Thank you.

18 RE CROSS-EXAMINATION BY MR. DANDINO:

19 Q. Chair Lumpe asked you if there was any great
20 outcry for expanding the MCA. When we had the hearings --
21 the Commission had the hearings in the MCA, weren't all of
22 those hearings held within the MCA inner tiers?

23 A. I believe so.

24 Q. Okay. Because one of them was in -- for
25 St. Louis it was in Clayton and Chesterfield; is that

1 correct?

2 A. Yes, sir. Although Chesterfield may be in
3 zone three.

4 Q. Okay. And then Kansas City it was in the
5 downtown Kansas City courthouse, the principal zone, and I
6 guess maybe it was in zone two --

7 A. Well, it was on 12th --

8 Q. -- Lee's Summit?

9 A. -- 12th Street in downtown Kansas City.

10 Q. Sure.

11 A. I believe that would be the principal zone
12 probably. And then I've forgotten exactly where in Jackson
13 County. I can't remember the tier.

14 Q. Lee's Summit, I believe?

15 A. Yes.

16 Q. And then, of course, in Springfield it was in
17 the City Hall and that's in the principal zone. Right?

18 A. Yes.

19 Q. Do you think if the Commission wanted to
20 discuss or hold public hearings and hear public comment
21 about expanding the MCA, they ought to go in the areas
22 adjacent to the outer tier to find out if the people out
23 there want it and what they're willing to pay for it?

24 A. Yes. I believe so.

25 Q. Chair Lumpe also asked if we could even make

1 MCA work in a competitive environment. Do you think we can?

2 A. Oh, I'm firmly convinced, yes, we can.

3 Q. And if we cannot, what would replace this flat
4 rate local calling plan? What's the alternative?

5 A. For expanded -- flat rate expanded?

6 Q. Yeah. If we wouldn't have a flat rate
7 expanded calling plan, local calling plan, what's the
8 alternative the consumers would face?

9 A. The alternative is without having -- at this
10 point in time without having a mandated local calling plan,
11 the alternatives are pretty dire consequences. I don't
12 believe the market is sufficiently developed to where we can
13 depend on that to offer these types of expanded services. I
14 think the consequences -- they would have nothing or very
15 little.

16 The -- Mr. Dandino, the incumbents offer the
17 MCA as a government mandate expanded local calling scope.
18 The incumbents offer that pursuant to a government mandate.
19 The competitors do it out of competitive necessity. And I
20 believe that if that mandate were removed from the
21 incumbents, that we would see a contraction of these type of
22 calling scopes.

23 Q. If a company wanted -- or had price
24 flexibility and wanted to vary their prices either up or
25 down from the current MCA rates -- I was unclear in your

1 response to Vice-chair Drainer. Would you require them to
2 call it something other than the MCA plan?

3 A. Staff hasn't really taken a position on that.
4 I'm -- I understand the Public Counsel and I believe
5 Southwestern Bell and undoubtedly all of the incumbents
6 would just as soon if the competitors are going to offer
7 something that deviates, that they not call it metropolitan
8 calling area or MCA. I understand that's their position and
9 undoubtedly there are good reasons for that. There have been
10 some that have been pointed out today that I had not thought
11 of.

12 So I'm not opposed to forcing them to call it
13 something different. Indeed I believe if you read
14 Mr. Cadieux's surrebuttal testimony, for example, he doesn't
15 seem to have a problem with calling it something different.
16 I'm not aware of any competitor who would have a problem
17 with calling their expanded program something different.

18 MR. DANDINO: Okay. That's all I have. Thank
19 you, your Honor. Thank you, sir.

20 JUDGE DIPPELL: Recross from AT&T?

21 MR. DEFORD: Thank you, your Honor. Just a
22 couple.

23 RECROSS-EXAMINATION BY MR. DEFORD:

24 Q. Mr. Voight, I think based on some questions
25 from the Bench you discussed mandating calling scopes and

1 potentially the Commission mandating the rates for MCA
2 services?

3 A. That was discussed, yes.

4 Q. In your view, if the Commission were to decree
5 that the current MCA rates were mandatory for all providers,
6 would any CLEC have to change rates?

7 A. Yes. To the best of my knowledge and belief,
8 Mr. DeFord, I think we identified way back last January some
9 65,000 facilities-based CLEC access lines in these
10 metropolitan areas. To the best of my belief, it's very
11 likely that rates would be increased for all 65,000 access
12 lines. I believe they would have to increase rates, yes.

13 Q. And because that would be an increase, would
14 you contemplate there would have to be customer notice of
15 that increase?

16 A. Yes. Schedule 7.5 of my direct testimony
17 contains one such customer notification on behalf of
18 Intermedia, who I personally worked very close with on this
19 customer notification. That would, I believe, have to
20 happen.

21 Q. And I guess something else that you'd said
22 earlier kind of confuses me. I think you indicated in
23 response to questions from the Bench and also in response to
24 a question from Mr. Lane, the CLECs weren't included in the
25 MCA. If that's the case, why would any CLEC have to change

1 any rate? Isn't maybe the real explanation that CLECs were
2 included in the MCA and that's why the Commission set a
3 discount rate for Dial U.S. and approved the tariffs that
4 are on file with the Commission today?

5 A. Yes. They certainly from a tariffing
6 perspective and I believe from an interconnection agreement
7 perspective, I believe they've always been included in the
8 MCA. If you look at our -- I believe it's our issue
9 statement or position statement, we give an explanation for
10 that or try to, the tariffing. They are included in the
11 MCA, however, when it comes to receiving calls, return call
12 feature, they're not included in the MCA.

13 MR. DEFORD: Thank you, Mr. Voight. That's
14 all I have.

15 JUDGE DIPPELL: Intermedia?

16 MR. STEWART: No questions, your Honor.

17 JUDGE DIPPELL: Birch?

18 MR. MIRAKIAN: No questions.

19 JUDGE DIPPELL: McLeod?

20 MR. KRUSE: Just a couple, your Honor.

21 RECROSS-EXAMINATION BY MR. KRUSE:

22 Q. Mr. Voight, just to follow-up a little bit
23 with the line of questioning that Mr. DeFord took in regards
24 to your comment earlier on -- and a question from Mr. Lane
25 in which you indicated, I believe, that CLECs were not

1 included in the MCA plan, and I believe Commissioner Drainer
2 followed up with a question on that.

3 I believe the implication that could be drawn
4 from that comment if possibly isolated is that Southwestern
5 Bell acted appropriately in denying CLECs access to the MCA.
6 Do you believe that Southwestern Bell acted appropriately in
7 engaging in screening tactics and in proposing an MOU of
8 2.6 cents?

9 A. Certainly not. I don't believe they acted
10 appropriately in that manner.

11 Q. Okay. In fact, on page 5 of your direct
12 testimony beginning on line 21 -- I'm just going to read a
13 short portion from that paragraph. You indicated that, In
14 examining events precipitating creation of this MCA docket,
15 Staff believes the actions of Southwestern Bell Telephone
16 Company are inconsistent with the intent of the federal and
17 state laws governing telecommunications policy. Further,
18 Staff believes Southwestern Bell Telephone Company is not
19 complying with the orders of the Missouri Public Service
20 Commission in matters pertaining to SWBT's treatment of
21 competitive telephone companies.

22 Do you still stand behind that testimony, and
23 has anything caused you to change that in any way?

24 A. No. Nothing's caused me to change my opinion
25 on that statement. Mr. Lane's questioning, I believe,

1 referred specifically to the Intermedia example. And my
2 statements that the memorandum of understanding -- the
3 timing between that and the interconnection agreement that
4 was adopted, certainly in its totality, Southwestern Bell in
5 offering the memorandum of understanding to all competitors
6 who have adopted the AT&T/Southwestern Bell interconnection
7 agreement. And nothing, in my opinion, along those lines
8 has changed since I wrote these words last January.

9 Q. Okay. With respect to some sentiments that
10 have been expressed along the lines of CLEC entry into the
11 MCA plan and with the exact same terms and conditions as
12 those presented for the ILECs; namely, price, geographic
13 scope, etc., do you believe that would be a good idea?

14 A. I think it's unnecessary to have price
15 controls on competitive companies offering competitive
16 services under any circumstance. The only possible
17 exception is switched access rates, which are not truly
18 competitive.

19 We have, as I've stated, I believe, 83 percent
20 of the people who take advantage of MCA, it's already
21 mandatory, it's part of their basic service. And I think
22 what we're talking about is basic local telephone service as
23 a practical matter. MCA's local in nature and has been
24 deemed to be so for a number of years. And I do not think
25 it's necessary to establish price controls for basic local

1 telephone service.

2 Q. And do you think there would be any benefit to
3 Missouri consumers if CLECs were forced to offer the MCA
4 service under the exact same price terms and geographic
5 scope terms as ILECs?

6 A. I don't think there would be nearly the
7 benefits under that scenario as if the -- there was price
8 competition. There -- the benefits would -- I think they
9 would be hard to find if the competitors were not allowed --
10 or were required to be under the same terms and conditions.

11 Q. In fact, Missouri customers could potentially
12 receive great benefits, couldn't they, if CLECs were given
13 the flexibility to offer different types of MCA service that
14 weren't currently being offered by ILECs? When I say
15 "different types," I mean some flexibility in either calling
16 scope or pricing.

17 A. I think that ben-- that benefits consumers to
18 have flexible choices, flexible pricing.

19 Q. Okay. Commissioner Drainer raised a question
20 regarding allowing CLECs to participate in the MCA plan
21 under the current status quo. And I guess my question would
22 be to you, what do you perceive the current status quo as?
23 Isn't it fair to say that the current status quo would be no
24 price controls for CLECs given the fact that they're
25 non-price cap companies and are, in fact, competitive

1 companies; although the geographic scope might be limited,
2 CLECs would be required to offer geographic calling scope at
3 least that as great as the ILECs; and with respect to
4 intercompany compensation, the -- whatever interconnection
5 agreement existed between the companies would determine
6 that? Isn't that, in fact, the current status quo?

7 A. I didn't interpret the question as such. I
8 interpreted the question as status quo for the ILECs under
9 the same rates, terms and conditions as the ILECs as it's
10 been since 1992.

11 Q. Right.

12 A. But I understand there's another status quo
13 that does have competitive pricing flexibility for CLECs and
14 interconnection agreements that have been negotiated, etc.

15 Q. Right. And, I mean, if you removed the call
16 screening that Southwestern Bell is currently engaging in,
17 basically what you'd have is a situation where a CLEC was
18 tariffed to provide MCA service, they'd be able to do so
19 with price flexibility, maybe possibly some geographic scope
20 flexibility, and under intercompany compensation terms,
21 whatever were called for in the terms of their
22 interconnection agreement; is that correct?

23 A. Yes. That is precisely what occurred with
24 Intermedia prior to last September 1999. That is exactly
25 what was occurring in their situation.

1 Q. Are you aware of any CLEC or any other party
2 to this case that is advocating a greater calling scope over
3 and above that which is in existence now but is somehow
4 suggesting that switched access services shouldn't apply to
5 a CLEC that's providing a greater calling scope?

6 A. No. My reading of the testimonies by the
7 various competitors is that none of them are advocating some
8 sort of a self-styled expanded MCA calling scope beyond the
9 current boundaries for which switched access would not
10 apply. I haven't heard anyone advocate that. And as I
11 recall, one or two of them at least completely denying that
12 that was the kind of thing they were advocating. I haven't
13 heard that.

14 Q. Okay. In other words, CLECs, to your
15 knowledge, aren't trying to use the geographic calling scope
16 as some sort of a sword to gain windfall profits by -- to
17 use the example that was brought up before, of creating a
18 bill and keep situation or maybe a reciprocal comp situation
19 from here to Hannibal or from here to whatever the other
20 city that was used?

21 A. No. I -- I haven't heard anyone advocating
22 any such thing.

23 Q. Okay.

24 A. I have not.

25 MR. KRUSE: Thank you, Mr. Voight. I don't

1 have any further questions.

2 JUDGE DIPPELL: Nextlink?

3 MR. COMLEY: I have no questions for
4 Mr. Voight.

5 JUDGE DIPPELL: Sprint?

6 MR. LUMLEY: You skipped me.

7 JUDGE DIPPELL: Oh, I'm sorry. Gabriel?

8 MR. LUMLEY: Thank you.

9 RECROSS-EXAMINATION BY MR. LUMLEY:

10 Q. Mr. Voight, in response to some questioning
11 from Chair Lumpe you mentioned a figure of 17 percent of MCA
12 customers are optional subscribers. And just so we're
13 clear, that's comparing the optional subscribers to the
14 mandatory subscribers. Correct?

15 A. Yes, sir.

16 Q. And if the Commissioners wanted to see the
17 actual take rates in the various optional exchanges and
18 tiers, that's set out in Ms. Moore's testimony. Correct?

19 A. Yes.

20 Q. And it's actually -- the percentages are
21 substantially higher than 17 percent. Correct?

22 A. Well, that -- yes. What you're talking about
23 in that instance is the penetration rate or the take rate in
24 a particular zone.

25 Q. Right.

1 A. Which is totally different.

2 Q. Right. And it's true, isn't it, that if we go
3 back to the day before competition started and the MCA plan
4 is in effect, wouldn't you agree that the vast majority of
5 traffic within the MCA footprint was MCA traffic?

6 A. The day before competition started?

7 Q. Right.

8 A. Oh, yes. Oh, yes.

9 Q. Okay.

10 A. That's the reason the MCA was created in the
11 first place, to make that local traffic.

12 Q. So if a CLEC comes in and has an
13 interconnection agreement that calls for reciprocal
14 compensation, that's what was either negotiated or
15 established by arbitration for calling within the MCA
16 footprint, if the Commission were in this case to order that
17 for the CLEC to participate in the MCA plan, it would have
18 to go to a bill and keep arrangement, that would
19 substantially override the provisions of that
20 interconnection agreement, wouldn't it?

21 A. I would agree with that.

22 Q. And would you agree that CLECs, to be able to
23 market their services and to persuade people to change
24 providers, in general, have to somehow be able to
25 differentiate their offering from that which the subscriber

1 already takes?

2 A. Yes. I would agree with that.

3 Q. And one way to do that is to say, We have a
4 better price. Correct?

5 A. Yes. I would agree with that.

6 Q. And another way of doing that is to say, You
7 know, we've got the same core service here as your current
8 MCA in terms of who you can call and who you receive calls
9 from, and additionally, for no extra charge, we allow you to
10 call even more people. That's another way that companies
11 can differentiate their service, isn't it?

12 A. Oh, yes.

13 Q. And isn't it true that that's the kind of
14 expansion of the MCA calling plan that Gabriel has talked
15 about in their testimony? Not affecting what other
16 companies have to allow their customers to do, but rather
17 bestowing even further expanded calling to your own
18 customers?

19 A. That's my understanding. That's how I
20 interpreted not only Gabriel, but I think some other CLEC
21 witnesses have indicated something along those lines as
22 well.

23 Q. And that additional calling would either be
24 subject to reciprocal compensation under an interconnection
25 agreement or perhaps subject to an access tariff with regard

1 to the terminating company?

2 A. Well, yes, the short answer. I'm a little --
3 I don't understand if you're not directly connected with --

4 Q. I'm talking about direct connections.

5 A. Oh, sure. Yeah.

6 Q. And the CLEC wouldn't be able to unilaterally
7 change that?

8 A. No. No. Not at all.

9 MR. LUMLEY: That's all I have. Thank you.

10 JUDGE DIPPELL: Sprint?

11 MS. GARDNER: Thank you.

12 RECROSS-EXAMINATION BY MS. GARDNER:

13 Q. Mr. Voight, did I understand your testimony in
14 response to a Bench question to be that you support pricing
15 flexibility for the CLEC and pricing flexibility for the
16 ILEC?

17 A. Yes. You understood that.

18 Q. And the support for pricing flexibility for
19 the ILEC, is that contingent upon adoption of MCA 2, or is
20 that also within the context of the existing MCA?

21 A. It is within the context of the existing MCA
22 because that concept has its roots and foundation in the
23 statute. You're free to petition the Commission for pricing
24 flexibility for anything and --

25 Q. Okay. And within the context of MCA 2, would

1 that pricing flexibility include collapsing the optional
2 tiers into one tier even if another ILEC wanted to keep
3 three separate tiers, in the example of Kansas City?

4 A. Conceivably, yes. There are a lot of details
5 that probably should be considered, but conceivably, yes,
6 that is a possibility.

7 Q. So you might retain a common footprint, but
8 various rates among companies and various rate design among
9 companies?

10 A. That is a possibility. And I readily
11 acknowledge the looking over the fence arguments. I think
12 what I see coming down the road is folks looking over the
13 fence are going to see a neighbor paying a less rate or
14 having a different service and they're going to ask why.

15 And the answer's going to be because there's
16 competition across the fence. And they might say, Well, how
17 do I get some competition? That's what I see happening.

18 Q. We might have that today to the extent that
19 CLECs are in some exchanges and not in other exchanges.
20 Correct?

21 A. Very much so, yes.

22 Q. In response to a question from Commissioner
23 Drainer, I think you had said the preliminary figures for
24 MCA 2 are encouraging?

25 A. Yes. They are.

1 Q. And, in fact, those revenue impact figures,
2 they vary by company, do they not?

3 A. Yes.

4 Q. And they vary by MCA area, do they not?

5 A. You mean St. Louis, Kansas City and
6 Springfield?

7 Q. Yes.

8 A. Yeah. I -- I think Ms. Moore has broken it
9 down that way.

10 Q. Okay. And those figures in Ms. Moore's
11 testimony don't include expanding the footprint to include
12 something like Branson or Innsbrook or Lexington, for
13 example?

14 A. No, Ms. Gardner, they do not.

15 Q. And if you were to include expanding the
16 footprint, for example, to include Lexington, would you
17 anticipate the revenue impact to expand the footprint to be
18 confined to the ILEC that's involved in that exchange, or
19 would you look to, for example, Southwestern Bell's
20 mandatory customers to pick up some of those costs?

21 A. I don't know.

22 Q. And I believe in response to a question from
23 Chair Lumpe, you said one of the benefits of MCA 2 would be
24 it would greatly assist in the number conservation issue; is
25 that correct?

1 A. I don't remember if I said greatly assist. It
2 would certainly mitigate, I believe, some of the -- mitigate
3 the dangerous direction that we're going. I don't want
4 to -- don't want to waste any more NXX codes than what's
5 necessary.

6 Q. And if MCA 2 were adopted or something that
7 broke the reliance on two NXXs codes for MCA service,
8 whether it's MCA 2 or something similar, wouldn't
9 reclamation for low use NXX codes further benefit the number
10 conservation issue?

11 A. Reclaiming them?

12 Q. Yes.

13 A. Oh, yes. Without question that would further
14 benefit number conservation issues.

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

16 JUDGE DIPPELL: GTE?

17 MR. DORITY: Thank you.

18 RECROSS-EXAMINATION BY MR. DORITY:

19 Q. Mr. Voight, following up on a question from
20 Ms. Gardner concerning the pricing issue, in the Staff's
21 statement of position that was filed in this case regarding
22 pricing, Staff makes the statement, ILECs faced with
23 competition should have pricing flexibility to respond to
24 CLEC service offerings. Would you agree with that
25 statement?

1 A. Yes.

2 MR. DORITY: Okay. Thank you. That's all I
3 had.

4 JUDGE DIPPELL: Southwestern Bell?

5 MR. LANE: No questions, your Honor.

6 JUDGE DIPPELL: Cass County?

7 MR. ENGLAND: Thank you.

8 RE CROSS-EXAMINATION BY MR. ENGLAND:

9 Q. Mr. Voight, I think in response to a question
10 regarding prices for MCA, you indicated that if mandated --
11 if the prices were mandated for competitive companies as
12 they are today for the incumbents, that that might result in
13 a rate increase for -- was it 65,000 customers of CLECs who
14 have some sort of MCA-like service today? Was that your
15 testimony?

16 A. Well, my testimony was that if the competitors
17 were allowed into the MCA under the same rates, terms and
18 conditions, that our data as of January shows that there are
19 approximately 65,000 -- and it was access lines, not
20 customers -- that those access lines, however many customers
21 there may be, that would necessitate a notice of rate
22 increase, I believe, for probably all of them.

23 As we've shown in our testimony, that occurred
24 with Intermedia, you've seen the testimony of Mr. Cadieux
25 where Gabriel is offering an MCA wide area calling plan.

1 And I believe in almost all instances pursuant to tariffs
2 the facilities-based competitors are charging less for the
3 price of MCA than the competitors.

4 Now, if you allow them in on the same rates,
5 terms and conditions, it would necessitate a rate increase,
6 clarification of a rate increase.

7 Q. When MCA was first adopted, you recognize that
8 revenue neutrality was permitted and the ILECs at that time
9 increased a number of rates in order to maintain revenue
10 neutrality, did they not?

11 A. They certainly did.

12 Q. And would you agree with me that there were
13 far more customers that experienced a rate increase in 1992
14 as a result of the implementation of MCA than CLEC customers
15 might experience as a result of being required to mirror
16 incumbent rates?

17 A. I have no doubt of that.

18 Q. Thank you, sir.

19 MR. ENGLAND: No other questions.

20 JUDGE DIPPELL: MITG?

21 MR. JOHNSON: No, thank you.

22 JUDGE DIPPELL: Is there redirect?

23 MS. KARDIS: Yes. Thank you.

24 REDIRECT EXAMINATION BY MS. KARDIS:

25 Q. I just have a couple of questions for you,

1 Mr. Voight. Mr. Lane asked a series of questions regarding
2 the pricing of MCA service, and he suggested that ILECs
3 would like to require CLECs to offer MCA at the same rate as
4 the ILECs. Do you remember those questions?

5 A. Yes.

6 Q. Okay. In light of this, why does Staff
7 support pricing flexibility for the CLECs?

8 A. Well, that's what the competitors have been
9 given for their MCA service up to this point. I see no
10 reason to change that. We believe the pricing
11 flexibility -- excuse me -- was your question about CLECs or
12 ILECs?

13 Q. For CLECs.

14 A. CLECs. I think that's ultimately -- will
15 provide the most benefit to the consumers.

16 Q. Okay. And I believe it was Mr. DeFord who
17 asked if you had knowledge of how MCA rates were set in Case
18 T0-92-306. And you answered that the rates were residually
19 priced. How does that comport with Southwestern Bell's
20 position in this case that MCA rates were set to recover
21 lost toll for the return calling portion?

22 A. I believe that that's diametrically opposed to
23 what Southwestern Bell is saying in this case. The
24 Commission established the rates for MCA service in its
25 order establishing docket in June of 1992. It turned out

1 that those rates were only slightly lower than the rates
2 that were ultimately adopted in December of 1992.

3 The importance of that is that the Commission
4 established the rates based on what I would consider to be a
5 social criteria, and they did so many months before they
6 ever saw the data that would account for the revenue impact
7 that Southwestern Bell now says they have.

8 Southwestern Bell's position that when -- that
9 the rates in the optional tier areas were set to pay for
10 toll calling from the metropolitan areas as a return call
11 feature, the portion of that outer tier rate is to recover
12 that lost toll, I have to reject that contention based on
13 the fact the Commission set these rates in a residual manner
14 in the first place without any regard to cost recovery or
15 revenue recovery.

16 Q. Okay. Thank you, Mr. Voight.

17 MS. KARDIS: No other questions.

18 JUDGE DIPPELL: Commissioner Drainer, did you
19 have another question?

20 FURTHER QUESTIONS BY COMMISSIONER DRAINER:

21 Q. I have to ask this. You stated that the
22 Commission in its original order set the rates without any
23 regard to lost revenues. But didn't it follow-up with a
24 revenue neutrality case or task force so that the companies
25 could be revenue neutral?

1 A. Oh, yes.

2 Q. So it wasn't without any regard then for their
3 revenues, was it?

4 A. It -- the -- everyone was made whole. There
5 were all sorts of payments and that sort of thing. It
6 was -- it was -- it was very much with regards to the
7 revenue requirements of all of the companies, but setting
8 the rates of the optional tier was not a part of that.
9 Those were residually set.

10 Q. Well, but in order to maintain the residually
11 set rates, they had to allow the companies to look at their
12 revenue and to charge higher rates for other services?

13 A. Yes.

14 Q. Okay. And then, finally, I have to get you
15 one more time on this pricing flexibility. You say that
16 competition can be good for the consumer. That's if prices
17 go down. Correct?

18 A. Yes.

19 Q. So if there's a price ceiling that nobody can
20 charge over the current rate, but they're allowed to charge
21 under it, that could benefit the consumer?

22 A. Certainly. Yes.

23 Q. And if the consumer has to pay a higher rate,
24 that's not necessarily a good thing for the consumer?

25 A. Not at all.

1 COMMISSIONER DRAINER: Okay. No other
2 questions.

3 JUDGE DIPPELL: Did you have anything further,
4 Chair Lumpe?

5 Is there further recross based on Commissioner
6 Drainer's questions? I'll just ask you as a group.

7 Okay. I'll go down the list.

8 Office of the Public Counsel?

9 MR. DANDINO: No, your Honor.

10 JUDGE DIPPELL: AT&T?

11 MR. DEFORD: No, thank you.

12 JUDGE DIPPELL: Birch?

13 MR. MIRAKIAN: No.

14 JUDGE DIPPELL: Intermedia?

15 MR. STEWART: No questions.

16 JUDGE DIPPELL: McLeod?

17 MR. KRUSE: Just one, your Honor.

18 FURTHER RE CROSS-EXAMINATION BY MR. KRUSE:

19 Q. In response to the question on pricing
20 flexibility, you indicated that you thought that some
21 pricing flexibility might be attractive and that that
22 pricing flexibility should apply to ILECs as well. Is the
23 pricing flexibility with respect to ILECs only if they apply
24 to the Commission upon a showing that Southwestern Bell --
25 or assuming it's Southwestern Bell or whatever ILEC it is --

1 that they have opened up the market and that effective
2 competition exists, or is that merely by virtue of the fact
3 that they are providing MCA and the CLECs are now involved
4 in the MCA?

5 A. I think they can petition the Commission for
6 pricing flexibility pursuant to the statutes. And the one
7 I'm most familiar with is transitionally competitive
8 service. I think they can petition the Commission to have
9 their MCA service declared as fully competitive, which would
10 give them complete pricing flexibility as has been pointed
11 out to me today. So I think you just have to go by the
12 statute.

13 Q. Okay. But you weren't suggesting that short
14 of obtaining that status, that by letting CLECs into the MCA
15 that an ILEC or all ILECs ought to be given complete pricing
16 flexibility?

17 A. I'm sorry. Can you restate?

18 Q. Sure. What you were suggesting though in
19 terms of ILEC pricing flexibility is, if they can go under
20 the terms of the statute and show that they are a
21 competitive company or some form of competitive company; is
22 that correct?

23 A. Service. The service should be declared
24 competitive.

25 Q. Right. And you weren't suggesting that ILECs

1 should be able to have pricing flexibility by the mere fact
2 that CLECs were allowed to participate in the MCA?

3 A. No. I think the showing would have to be
4 greater than that.

5 Q. Okay. I mean, because otherwise couldn't an
6 ILEC with, for example, 97 or 98 percent market share
7 effectively price a CLEC out of the market with respect to
8 MCA service if there wasn't?

9 A. Certainly could if there weren't, I'll call
10 them, proper controls put on, that sort of thing.

11 Q. Thank you, Mr. Voight.

12 MR. KRUSE: I have no further questions, your
13 Honor.

14 JUDGE DIPPELL: Gabriel?

15 MR. LUMLEY: No questions, your Honor.

16 JUDGE DIPPELL: Nextlink?

17 MR. COMLEY: No questions.

18 JUDGE DIPPELL: Sprint?

19 MS. GARDNER: Thank you.

20 FURTHER RE-CROSS-EXAMINATION BY MS. GARDNER:

21 Q. Mr. Voight, with the exception of access
22 services, does the Commission impose any ceiling on CLEC
23 rates today?

24 A. No. With one possible exception, and that is
25 the part of the statute that talks about alternative

1 operator service providers. And that is not the Commission,
2 per se; that is pursuant to statute. That's -- other than
3 switched access and alternative operator service provider
4 type services, those are the only two services that I can
5 think of.

6 Q. And that would be true whether the service was
7 considered a basic service or a non-basic service; is that
8 correct?

9 A. Yes.

10 Q. And optional MCA by statute is considered not
11 a basic local service; is that correct?

12 A. That is correct.

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

14 JUDGE DIPPELL: GTE?

15 MR. DORITY: No questions.

16 JUDGE DIPPELL: Southwestern Bell?

17 MR. LANE: Just a couple. Thank you, your
18 Honor.

19 FURTHER RECROSS-EXAMINATION BY MR. LANE:

20 Q. In response to Commissioner Drainer's
21 question, you talked again about how prices were set when
22 the MCA plan was established. Would you agree that the
23 geographic scope of the mandatory zone remained the same as
24 it had been under the prior wide area service plan?

25 A. Yes, I would agree with that.

1 Q. And would you agree that the rates that were
2 established under the wide area service plan were the same
3 rates that were adopted out of the MCA decision for the
4 mandatory zone?

5 A. Could you say that again?

6 Q. Yeah. The rates for the principal zone, tiers
7 one and tiers two under the wide area service plan were the
8 same rates that were utilized at the end of the day under
9 the MCA plan. Right?

10 A. Yes. That's correct.

11 Q. And would you agree that those customers in
12 the mandatory zone had a substantially increased local
13 calling scope because of the additional exchanges that were
14 added in tiers three, four and five?

15 A. Yes. Without question.

16 Q. Okay. And would you agree that in all of the
17 revenue neutrality calculations, that one of the things that
18 was included was the lost toll that Southwestern Bell would
19 experience from customers in the mandatory zone who had been
20 making toll calls whose calls would now be considered under
21 the MCA plan?

22 A. Well, Mr. Lane, that -- that docket not only
23 considered MCA, but COS and OCA as well. And there was a
24 whole lot of toll that was lost in that great big docket.
25 And you're picking out one little bitty piece of it and

1 saying that we should swap that for 2.6 cents per minute,
2 and I can't accept that.

3 Q. I'm separating out the 2.6 cents a minute for
4 a moment here. There's no question, is there, that the toll
5 prices or the toll revenues that were received under the
6 WASP plan that were not going to be received under the MCA
7 plan, that was one of the factors that the Commission
8 considered in ultimately setting the rates for the optional
9 tiers; is that true?

10 A. I believe so.

11 Q. Okay.

12 A. I -- I -- you know, if you're not going to
13 consider the docket in its entirety, you just want to
14 consider the MCA piece of that, I believe that just the MCA
15 piece represented a significant revenue increase for
16 Southwestern Bell in T0-92-306, because you were the primary
17 toll carrier, Mr. Lane, you and GTE and Sprint and what had
18 been long distance became local.

19 And your own witness in that case, Mr. Taylor,
20 testified that Southwestern Bell was paying out
21 approximately \$8 million a year more to the secondary
22 carriers in access than you were receiving in toll. I
23 believe the records shows that Southwestern Bell stood to
24 gain an additional \$897,000 per month on the MCA alone.

25 Q. Okay. And I'm not going to disagree about the

1 ultimate numbers. The revenue neutrality calculation took
2 into account the loss of toll revenues that Southwestern
3 Bell would experience in calls from the mandatory zone, but
4 it also took into account the expense savings that
5 Southwestern Bell would receive by moving to bill and keep
6 from the current access regime for calls that were made to
7 independent company exchanges under the MCA plan. Right?

8 A. Yes. There was some savings there.

9 Q. Okay. And the net effect of all that was what
10 it was as the Commission entered in and approved finally the
11 MCA rates. Right?

12 A. Yes, it was.

13 Q. All of those factors plus the impact of the
14 OCA plan and of the COS plan were all factored in, were they
15 not?

16 A. Yes, they were.

17 MR. LANE: Okay. That's all I have. Thank
18 you.

19 JUDGE DIPPELL: Cass County?

20 MR. ENGLAND: No, thank you.

21 JUDGE DIPPELL: MITG?

22 MR. JOHNSON: No, thank you.

23 JUDGE DIPPELL: Is there further redirect?

24 MS. KARDIS: No questions. Thank you.

25 JUDGE DIPPELL: Then, Mr. Voight, you may be

1 excused. Thank you.

2 Let's go ahead and begin with Ms. Moore. At
3 least we can get her sworn in and her exhibits admitted.

4 (Witness sworn.)

5 JUDGE DIPPELL: You can go ahead, Staff.

6 MR. POSTON: Thank you.

7 AMONIA L. MOORE, having been sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. POSTON:

9 Q. Would you please state your name and business
10 address for the record.

11 A. My name is Amonia Moore. My business address
12 is 301 West High Street, Jefferson City, Missouri, 65102.

13 Q. And by whom are you employed and in what
14 capacity?

15 A. I'm employed by the Missouri Public Service
16 Commission as a regulatory economist one in the
17 telecommunications department.

18 Q. Are you the same Amonia Moore that has caused
19 to be prepared and filed in this docket exhibits that have
20 been marked 4 and 5?

21 A. Yes.

22 Q. With respect to these documents, do you have
23 any changes or corrections that need to be made at this
24 time?

25 A. No.

1 Q. If I were to ask you the questions appearing
2 in your testimony today, would your answers here today under
3 oath be the same?

4 A. Yes.

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

7 A. Yes.

8 MR. POSTON: At this time I'd like to offer
9 Exhibits 4 and 5 into evidence and tender this witness for
10 cross-examination

11 JUDGE DIPPELL: And that includes the HC?

12 MR. POSTON: HC and NP, correct.

13 JUDGE DIPPELL: Are there any objections to
14 Exhibits 4, 4-HC, 5, and 5-HC coming into the record?

15 Then I'll receive those.

16 (EXHIBIT NOS. 4, 4-HC, 5 AND 5-HC WERE
17 RECEIVED INTO EVIDENCE.)

18 JUDGE DIPPELL: Let's go ahead and stop for
19 the day then since it's getting near 5:00.

20 You tendered the witness; is that correct?

21 MR. POSTON: Yes.

22 JUDGE DIPPELL: Okay. We can go ahead and go
23 off the record.

24 WHEREUPON, the hearing of this case was
25 continued to 8:30 a.m., May 16, 2000.

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