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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
  
Hearing  
  
January 15, 2002  
Jefferson City, Missouri  
Volume 3

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

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

REPORTED BY:  
  
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ASSOCIATED COURT REPORTERS

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

2 JUDGE RUTH: Good morning. We are here for  
3 day two in the case of TO-2002-222, an arbitration between  
4 WorldCom and Southwestern Bell.

5 When we concluded the hearing yesterday, some  
6 of the Commissioners had indicated an interest in hearing  
7 counsel give some oral argument on a few issues, and that's  
8 where we're going to begin now. After the oral argument on  
9 that issue, we have some more housekeeping matters that we  
10 may take up.

11 But let's go ahead and begin with that oral  
12 argument, and WorldCom, would you like to go first?

13 MR. LUMLEY: Thank you, your Honor. Good  
14 morning. I'll try and address the questions in the order  
15 they were posed.

16 The first group of questions that Commissioner  
17 Murray raised, as I understood it, was led off with the  
18 intent of can we find some issues to eliminate, and I've  
19 tried to answer the questions from that perspective.

20 The first one had to do with whether M2A  
21 provisions can only be adopted in accordance with  
22 Attachment 26, and the answer to that, at least for purposes  
23 of this case, is yes, because we're not disputing the need  
24 to comply with Attachment 26. I think Southwestern Bell  
25 confirmed that we've complied with that in their opening

1 statement and so did Staff in their statement in their  
2 pleading.

3                   And I believe that that reflects that Issue 39  
4 really should be considered as withdrawn because we don't  
5 really have a dispute about this. I think that issue really  
6 came about as a result of maybe a misunderstanding between  
7 WorldCom and Southwestern Bell in terms of what it was we  
8 were trying to accomplish.

9                   Likewise, I think essentially Issue 40 can be  
10 considered withdrawn because we're not maintaining that  
11 sections that we haven't adopted out of the M2A should  
12 somehow be considered M2A sections nonetheless or something  
13 like that.

14                   In particular, I think that bears upon  
15 Attachment 7, 8 and 9, and I think in the exchange of the  
16 case Southwestern Bell and WorldCom have come to understand  
17 that we're both saying the same thing. I think we were  
18 saying it different ways originally.

19                   But while we have agreed on the language of  
20 Attachment 7, 8 and 9, that's because we proposed that  
21 language and Southwestern Bell agreed to it, not because we  
22 forced that on them by adopting those as M2A sections.

23                   There is some proposed language that  
24 Southwestern Bell has in Issue 40 that we didn't think was  
25 necessary, and I suppose that might keep Issue 40 alive with

1 respect to whether or not that additional text is required,  
2 but I don't know that there's really a substantive issue  
3 there.

4           The next question was whether or not any items  
5 identified as legitimately related in Attachment 26 are not  
6 legitimately related. I think that's how the question was  
7 posed, and that's really not at issue. We're not trying to  
8 contend that somehow Attachment 26 should be revised or  
9 reinterpreted.

10           The next question was if, and I think I got  
11 this right, if there was a ruling about opting into the 438  
12 results, would that mean that other M2A UNE provisions had  
13 to be adopted as well. And I would submit that this is not  
14 an issue either because we're not -- we're not contending  
15 that we're opting into the 438 results and, therefore,  
16 forcing that on Southwestern Bell.

17           Instead, we're saying that in large part the  
18 M2A rates, including the anticipated changes in those rates  
19 in the 438 case, are the most appropriate rates, and that's  
20 our position which Southwestern Bell is then free to  
21 contradict and that puts it in your hands for a decision as  
22 opposed to us saying, no, we must have those rates, they  
23 don't have the right to oppose us and we're absolutely  
24 entitled to it.

25           But I would submit that you can reduce the

1 scope of this case significantly by deciding that the loop  
2 and switching rates should be reconsidered in a generic case  
3 together with any other UNE rates that Southwestern Bell  
4 wants to reconsider.

5                   And I think we have to take a step back  
6 because the discussion about the transcripts yesterday kind  
7 of let the tail start wagging the dog in terms of how we got  
8 here. Issues 10 and 11 on the detail only concern loop and  
9 switching rates and WorldCom's proposal to have those rates  
10 be reconsidered because of a couple of different reasons,  
11 but including the discussion yesterday about changes in the  
12 forward-looking network.

13                   And Southwestern Bell responds to those issues  
14 by saying, well, if you're going to reconsider those rates,  
15 you should reconsider a substantial group of other rates.

16                   So if you resolve Issues 10 and 11 by saying  
17 we agree that loop and switching rates should be  
18 reconsidered, this is not the appropriate format in which to  
19 do that. You've basically disposed of the issues, and both  
20 parties will be free in that generic case to go over these  
21 cost studies in depth as to loop and switching rates and the  
22 rates that Southwestern Bell wants reconsidered in  
23 conjunction with that.

24                   And that gets back to the point that in the  
25 meantime we're submitting that the rates should be the M2A

1 rates because those are the most appropriate rates, not  
2 because we're entitled to adopt them and Southwestern Bell  
3 can't contest that, but because we submit that they're the  
4 most appropriate rates under the circumstances, and then  
5 there's a couple caveats to that in the issue list.

6                   We still think that switching rates could be  
7 restated to a flat rate basis. We think the DUF rate should  
8 be eliminated, the local account maintenance rate should be  
9 eliminated and the directory, the DAL should be on  
10 cost-based rates. So that's Issues 11, 12, 47 and 50.

11                   And again, if the Commission decides that the  
12 M2A rates are the most appropriate rates at this time,  
13 subject to a generic case, then the 438 results would be  
14 incorporated because they are part of the M2A rates.

15                   The next question was how Attachment 26  
16 applies, and I think it was more just trying to have a  
17 functional understanding of that attachment, and basically  
18 the way it works is that if a CLEC comes forward and says, I  
19 want a particular section of the M2A; Southwestern Bell, you  
20 must give it to me under Section 252(i), you don't have any  
21 choice, then that document says, well, if you're doing that,  
22 we're going to look at this spreadsheet or checklist, if you  
23 will, and there may be other things that you have to take  
24 with that or you can't make us give it to you. You may be  
25 able to negotiate it with us, but you can't make us give it

1 to you.

2                   And from our perspective in the testimony I  
3 think Mr. Schneider addresses Attachment 26 for us in his  
4 direct testimony, pages 7 to 10, and in his rebuttal  
5 testimony, pages 2 to 7.

6                   And then there was sort of a subpart to that  
7 question as I understood it about rates, and I think  
8 I've already addressed that, but just to reiterate, that  
9 we're not contending that we're adopting the M2A rates.  
10 We're proposing them as the most appropriate rates under the  
11 circumstances with a request to have a generic  
12 reconsideration of loop and switching rates, recognizing  
13 that such a case would be open for Southwestern Bell to seek  
14 reconsideration of other UNE rates as well.

15                   And then we have the few specific line items  
16 that I just mentioned in terms of the DUF and local account  
17 maintenance and the DAL that are on the issue list as  
18 separate items.

19                   The next question was trying to identify any  
20 substantive distinction between deferring a decision in this  
21 case and setting rates based on cost with the ability to opt  
22 into the 438 results.

23                   And again what we're saying is we want you to  
24 decide that the M2A rates are the most appropriate  
25 cost-based rates that we have at the moment, and that result



1 would include the result in case 438 when it comes, and that  
2 we would defer reconsideration of loop and switching rates  
3 and other rates to a generic case that would allow a true  
4 and full consideration of the cost studies and the  
5 significant adjustments that we anticipate based on  
6 experience we would be proposing to those cost studies.

7           And I think the next question was really just  
8 a restatement of that, so hopefully I've addressed that. We  
9 did file our pleading this morning responding to Staff's  
10 filing last Friday, and I think we're essentially in  
11 agreement with Staff.

12           I think one clarification that I would make is  
13 one I've already mentioned, that we're not contending that  
14 we adopted Attachments 7 through 9 as part of the M2A, but  
15 rather that Southwestern Bell and WorldCom have agreed on  
16 those sections. And I think that's a minor clarification in  
17 the grand scheme of things with respect to Staff's filing.

18           With regard to arbitration timing, I believe  
19 that was the next question, and I don't want to belabor the  
20 point, but it was made from the stand and we would ask the  
21 Commission to keep it in mind, that it's not our experience  
22 around the country that other commissions place themselves  
23 under the kind of time crunch that you've placed yourselves  
24 under.

25           Other states take more time with regard to

1 setting rates, looking at costs. There was discussion about  
2 an FCC order and an excerpt was read into the record  
3 yesterday by Mr. Turner where it was clear the FCC  
4 anticipates that state commissions would take the time they  
5 need to address the complicated issues of cost studies and  
6 rates.

7                   You know, we were hopeful to get more time  
8 between the parties before the case had to proceed, but that  
9 didn't happen in this state. It has happened in other  
10 states where the parties have been able to agree to have  
11 more time to deal with these issues.

12                   But in my mind, the critical aspect of all  
13 this is that the Commission should not be in the position of  
14 having to decide these kind of important questions by  
15 default because it would just basically reward Southwestern  
16 Bell for withholding highly confidential cost studies until  
17 the very end of the process.

18                   They didn't give us access to these highly  
19 confidential studies when we requested these negotiations  
20 back in June. They didn't give them to us when they filed  
21 their response at the outset of the case. We got them in  
22 the middle of December, right before the holidays, and you  
23 have to give these things to an outside expert. The  
24 Protective Order doesn't allow the employees of the company  
25 to look at highly confidential information.

1                   And we ran into some problems with the weather  
2 in Atlanta as well that delayed delivery to our expert  
3 witness. As he testified, he basically got them one day  
4 before his rebuttal testimony was due and, in contrast,  
5 spent months and months and months with the same kinds of  
6 studies in the 438 case and in other proceedings.

7                   And until they give us the studies, we don't  
8 know which ones they intend to rely on. That's why we  
9 believe a generic case is more appropriate for the  
10 Commission to reexamine the fundamental issues of whether or  
11 not loop rates need to be revised, whether or not switching  
12 rates need to be revised. And again, we concede that in  
13 such proceedings Southwestern Bell should have the right to  
14 seek reconsideration of other rates.

15                  The last question I believe came from Judge  
16 Ruth in terms of the transcript issue again, and I certainly  
17 understand the confusion about this and hopefully I can  
18 clarify it once and for all. I believe this is what we  
19 tried to explain yesterday, both myself in arguments and I  
20 think Mr. Turner touched on it in his testimony from the  
21 stand.

22                  The question was posed which issues could you  
23 have enough information to decide if the 438 transcripts  
24 were allowed in that you don't have now, and my answer to  
25 that really is none. Our proposal to submit the transcripts

1 was not because we thought it was absolutely necessary for  
2 you to have it to make your decision. We believe that  
3 Mr. Turner's testimony that has been provided is enough for  
4 you to reach the same decision in this case as you reach in  
5 the 438 case.

6                   Our request to put these transcripts in was to  
7 just give you more information so that you were better  
8 equipped to reach the same decision in both cases. Again,  
9 if you defer to a generic rate case, you'll decide 438 first  
10 and this won't be an issue. This really just comes in sort  
11 of the back door of, if you're going to make a substantive  
12 decision on these UNE rates, then Southwestern Bell has put  
13 the same cost studies in here, we've got our same response,  
14 Mr. Turner's testimony, the same response we filed in that  
15 case, in the 438 case.

16                   So we believe you have enough to make the same  
17 decision. We just think that you're better equipped to make  
18 it in the 438 case because you have the absolute complete  
19 record to do that. We also believe that if you are going to  
20 deal with those issues in this case, you would be better  
21 equipped if you had that cross-examination in the form of  
22 the transcripts.

23                   And we certainly believe that within the time  
24 frame of this case it would not be possible for us to  
25 duplicate that cross-examination. As you know, the case

1 took a week to try.

2 I think where the confusion comes is then we  
3 have the other cost studies, the 28 other studies that are  
4 not at issue in case 438, and that's where we're telling you  
5 that you don't have enough information to resolve the  
6 question at all. Those are the ones that we're telling you  
7 that the studies came in at the end of this process. We've  
8 not had a chance to have expert analysis of it and have that  
9 expert submit the recommendations.

10 Certainly, I mean, as soon as we knew that the  
11 438 cost studies were being resubmitted, we just attached  
12 the testimony of Mr. Turner. He had already spent months  
13 analyzing it, and he's got 140 pages of testimony discussing  
14 his specific concerns with it and he's got a schedule of  
15 rates that he thinks should result from adjusting those  
16 studies. I think that's where the confusion comes is these  
17 two sets of cost studies.

18 So hopefully I've responded to all the  
19 questions. If somebody feels like I've left something  
20 unanswered, I'd be happy to address that.

21 JUDGE RUTH: I believe Commissioner Murray has  
22 a question.

23 COMMISSIONER MURRAY: I'd just like a quick  
24 follow-up because I do want to hear from the others before  
25 we have to go to agenda at 9:30. But is WorldCom attempting

1 to adopt any of the provisions of the M2A related to UNES?

2 MR. LUMLEY: No.

3 COMMISSIONER MURRAY: None at all? You're not  
4 wanting to do exactly the same thing that the M2A does or  
5 any provisions related to UNES?

6 MR. LUMLEY: That's a different question. We  
7 are proposing many things that are the same and, in fact,  
8 have reached agreement with Southwestern Bell on three of  
9 the attachments that they will be the same and have reached  
10 agreement with Southwestern Bell that in many respects  
11 Attachment 6 and 10 will be the same because the issue list  
12 sets forth the specific areas of disagreement where either  
13 they or we have proposed changes to the language.

14 So we are proposing in large part the same  
15 results, but we're not saying that we have a right to adopt  
16 it and, therefore, Southwestern Bell does not have a right  
17 to contest our position. Instead, we're saying we believe  
18 that this is the most appropriate result, and then they have  
19 their response.

20 COMMISSIONER MURRAY: Okay. So by saying that  
21 you're not adopting provisions even though some of them may  
22 be identical to what's in the M2A, you're just trying to  
23 take yourself out of the requirements in the M2A that all  
24 legitimately related provisions have to attach; is that  
25 right?

1                   MR. LUMLEY: No, your Honor. What we tried to  
2 accomplish was we had a very discrete set of concerns, set  
3 of 12 issues, but we recognized that we don't have the right  
4 to say we'll take the -- we're adopting the M2A,  
5 Southwestern Bell, you must give it to us, you must give us  
6 Attachment 6, but we're going to change Section 9.2.4.3. We  
7 can't do that.

8                   Now, we could -- so to address our concern we  
9 had two choices. One was we could completely rewrite  
10 Attachment 6 and include our revisions to that particular  
11 section, or we could say, look, let's be focused on what's  
12 really in dispute. In large part Attachment 6 works for  
13 both parties. This is the section that we need to change or  
14 this is the group of sections that we need changed.

15                  And I think Southwestern Bell has recognized  
16 the efficiencies of that as well. One of their concerns is  
17 they don't want somebody else coming along saying, okay,  
18 well, now WorldCom has basically got the modified M2A.

19                  That's not the case. As we both agreed,  
20 Attachment 7, 8 and 9, we've agreed to use exactly the same  
21 language out of the M2A, but we both also have agreed that  
22 they're not M2A provisions.

23                  It's just what we have agreed upon, and it's  
24 just the most efficient way of addressing it so we get  
25 focused on the particular issues at hand as opposed to

1 completely rewriting from scratch sections that aren't in  
2 dispute.

3 COMMISSIONER MURRAY: Thank you.

4 JUDGE RUTH: Thank you. And Southwestern  
5 Bell?

6 MR. LANE: Your Honor, this morning I handed  
7 out Southwestern Bell's response to the Order Directing  
8 Filing in this case. I put it on your computer. I want to  
9 make sure you all have it.

10 JUDGE RUTH: Yes.

11 MR. LANE: Okay. I put copies up there for  
12 all of the Commissioners.

13 JUDGE RUTH: I have mine. I did not pass them  
14 out to the Commissioners.

15 MR. LANE: Okay. As I understood the first  
16 question that Commissioner Murray had asked, it was, of the  
17 unresolved issues, what would remain if, I understood it to  
18 be if the Commission ordered that the requirements of  
19 Attachment 26 be followed.

20 And as I indicated in our opening statement,  
21 WorldCom is not required to opt into the M2A but is  
22 permitted to do so, but it must take all of UNE provisions,  
23 Attachment 6 through 10, if it wants any of those  
24 provisions, and now I think we've heard from WorldCom that  
25 they agree with that position.



1                   And if WorldCom is seeking to take any UNE  
2 provisions such as rates, then Attachment 26 requires all of  
3 the UNE terms and conditions to be accepted. We don't  
4 believe -- well, alternatively, if WorldCom is not seeking  
5 to selectively opt into portions of the M2A, what we have in  
6 this case is simply a failure of proof. They haven't  
7 provided any evidence of cost-based rate as required by the  
8 act and as required by the FCC's TELRIC rules.

9                   Under those circumstances, the Commission has,  
10 we think, two choices. One is to accept our cost studies  
11 for which no specific adjustments have been proposed and  
12 order those in the case and resolve, if you want, all of the  
13 UNE issues that are out there. If you choose that  
14 alternative, I'll tell you what will happen. WorldCom will  
15 take the M2A.

16                  The other alternative is to tell WorldCom you  
17 have a failure of proof here. You haven't done anything on  
18 the rate side. We're going to direct you to take  
19 Attachments 6 through 10 of the M2A. Either way, I think  
20 you're going to get to the same result.

21                  Either way you go, the number of issues to be  
22 resolved would drop dramatically because as you look through  
23 the issues list in this case you'll see that most of the  
24 issues revolve around Attachment 6 primarily and  
25 Attachment 10.

1 I indicated in my opening that if the  
2 Commission were to direct WorldCom to take Attachment 6  
3 through 10 of the M2A, that these issues would go away, and  
4 those would be Issues 1 through 23, 25 through 28, 30  
5 through 39, 45 and 46 and 48 through 50.

6 The only issues that would be remaining would  
7 be those on general terms and conditions and on  
8 Attachment 18 with regard to directory listing information.  
9 I think there would be maybe nine issues remaining for the  
10 Commission to decide if it tells WorldCom, You haven't met  
11 your burden in this case to present anything, I'm not going  
12 to rule on Southwestern Bell's cost studies, I'm going to  
13 tell you to go ahead and take the M2A as it exists.

14 The second question I understood to involve  
15 whether there were any legitimately related provisions  
16 identified in the M2A, Attachment 26, that really aren't  
17 legitimately related. Obviously from our perspective I  
18 would say the answer to that is no. Those things were  
19 formed together as a group and they're intended to be taken  
20 as a group. That was the intent all along.

21 I think WorldCom has confirmed that they're  
22 not contending that legitimately related provisions as set  
23 forth in Attachment 26 are not so. The M2A is our  
24 contractual offer that can be accepted by CLECs, and it has  
25 to be taken as that and can't be varied from.

1           The third question, as I understood it, is  
2 whether WorldCom would be permitted to opt into 438 rates,  
3 and as the Commission is aware, that 438 docket is a spinoff  
4 from the 271 case, TO-99-227.

5           In that case, Southwestern Bell agreed for  
6 purposes of trying to get into the long distance market that  
7 it was amenable to having a subsequent proceeding in Docket  
8 438 what would set, quote, permanent rates for rates that  
9 were -- certain rates that were set as interim in the M2A.

10           Those rates then come back and form part of  
11 the M2A, and those carriers that have opted into it get the  
12 benefit of the new permanent rates, and any true-up that  
13 Southwestern Bell receives is limited to six months back  
14 from the date the Commission decides the case.

15           And that was something the Commission required  
16 and we reluctantly agreed to because many of the interim  
17 rates that are in the M2A that are at issue in the 438 case  
18 are set at zero. So the carriers that opted into the M2A  
19 today are getting those rates at zero today, and when the  
20 Commission sets positive rates for those elements, then the  
21 true-up will be limited back in time to six months.

22           In our view, the only way for WorldCom to get  
23 the benefit of the 438 case is to take the M2A. They take  
24 the M2A, they get the benefits of a subsequent decision in  
25 438 and it relates back. And when the Commission issues the

1 decision, they may or may not get some free rates in the  
2 interim like some of the other carriers are.

3           If WorldCom doesn't want to take the M2A, then  
4 they have a failure of proof in this case. They haven't  
5 come forward with their evidence of what the rates are --  
6 excuse me -- what the costs are and shown them to be  
7 compliant with TELRIC with regard to the 438 rates.

8           I want to make clear that the only evidence in  
9 the record from a cost study perspective on the 438 rates is  
10 that of Southwestern Bell. We've put in all of the  
11 information. We've brought forward all of the witnesses to  
12 support that. WorldCom has not.

13           I also need to correct one thing, I think,  
14 that Mr. Lumley said. There is not evidence in the record  
15 in this case that permits the Commission to make the  
16 adjustments here that WorldCom and other CLECs are proposing  
17 in the 438 case. They've attached only the nonproprietary  
18 version of their testimony. It doesn't contain the specific  
19 adjustments that are in all of the confidential attachments  
20 that weren't attached to their testimony here.

21           So if they want to opt into the 438 rates, the  
22 way to do that is for them to opt into the M2A. Again, that  
23 relates back to the first point that I think the  
24 Commission's choice in this case is either to adopt  
25 Southwestern Bell's cost studies, tell WorldCom that's what

1 you get. If they do that, you know and I know what will  
2 happen. They'll take the M2A rates. Or alternatively, if  
3 you don't want to resolve all the specific UNE issues, you  
4 can tell them, You haven't met your burden. Take the M2A  
5 Attachment 6 through 10 in their entirety. That way they'll  
6 get 438.

7                   The fourth question was I thought from  
8 Commissioner Gaw, how does Attachment 26 apply, and I've  
9 laid out in our response here that I filed this morning and  
10 it's consistent with what we've said in the opening  
11 statement. I'll do it real briefly.

12                   I will say this. It appears on this point  
13 that there is agreement between WorldCom and Southwestern  
14 Bell that Attachment 26 has to be taken in its -- has to be  
15 taken according to its terms, and as I think Mr. Lumley  
16 indicated, Attachment 6 through 10 are on page 2 of  
17 Attachment 26 clearly all related to each other and you have  
18 to take all of those as a group.

19                   Mr. Lumley concedes that to be the case, and  
20 that all of the issues then if they don't opt into that, all  
21 of those are at issue. That's why you see the number of  
22 issues in this case that relate to UNE provisions, because  
23 while the parties have agreed on some of the provisions, we  
24 haven't agreed on all of them.

25                   I agree with Mr. Lumley, as I said in the

1 opening statement, with regard to Attachment 7 through 9,  
2 those were open to negotiation between the parties. They  
3 did negotiate. We did agree that we would follow  
4 Attachment 7 through 9 from the M2A. That was a voluntary  
5 agreement. It was not an opt-in provision because they're  
6 not entitled to opt in to Attachment 7 through 9.

7           I think the only disagreement that I have may  
8 be with Staff, and I'll say their filing on this was  
9 confusing to me. It may be that they'll get up and explain  
10 something different. I thought that what Staff was  
11 saying is that, yes, you have to take Attachment 6 through  
12 10 and they haven't done it, but now that they haven't done  
13 it they can still go out affirmatively and select any  
14 provision they want from there and not be bound by the  
15 legitimately related terms and conditions.

16           If that was their filing, if that's what it  
17 said, that doesn't make sense, and it's real clearly  
18 inconsistent with the terms of the M2A itself.

19           I'll say this. The Commission, I believe, is  
20 aware that the M2A was patterned after the T2A, the Texas  
21 271 agreement, and with regard to Attachment 26, the  
22 Missouri M2A provisions are nearly identical to those of the  
23 T2A. There's obviously a few changes such as it says  
24 Missouri instead of Texas here. But substantively with  
25 regard to Attachment 25, with regard to the UNE section,

1 they are substantially and identically the same in their  
2 purpose and effect.

3                   When the T2A was adopted -- and this is all  
4 contained in Mr. Roman Smith's testimony in this case, if  
5 the Commissioners want to review it, on pages 23 through 25  
6 primarily.

7                   He describes the fact that these legitimately  
8 related terms and conditions in Attachment 26 was a hot  
9 issue in Texas during the course of the development of the  
10 T2A, and the Commissioners down in Texas made it abundantly  
11 clear on two separate quotes, and the ALJ quote came  
12 straight from the case down in Texas that it was intended  
13 that all of the UNE provisions must be taken as a whole in  
14 their entirety and not on a piece part basis.

15                   So the M2A follows that, and I think what  
16 happened in Texas is instructive on that point and makes it  
17 perfectly clear that Attachment 6 through 10 are as a group  
18 and must be taken as a group. If the carrier doesn't want  
19 to do that, then they have to negotiate and ultimately  
20 arbitrate, if there's no agreement, each of the provisions  
21 concerning UNES that are in Attachments 6 through 10.

22                   There's no ability to reset rate elements  
23 under the M2A. That's our offer. We made it. From our  
24 perspective obviously it's a very fair offer. We've reduced  
25 rates substantially in the course of that. We agreed to

1 take the 97-40 rates and put them into the M2A even though  
2 we had an appeal pending where we were arguing that those  
3 rates were too low, lower than TELRIC required, and argued  
4 that we hadn't had an opportunity to even explain our  
5 position to the Commission and to try to make our case that  
6 some of the adjustments that the Staff had proposed  
7 shouldn't be adopted.

8               Nevertheless, for purposes of the M2A we said  
9 we're willing to make the deal, and we ultimately lowered  
10 the rates even farther, as I described in my opening  
11 statement and as the Commission has reflected in it's regard  
12 back in the TO-99-227 case.

13              The Issue 5 or Question 5, is deferring to the  
14 438 case any different than allowing them to opt into the  
15 438 case? I don't think so. Neither one is a path that's  
16 open, in my view, that the way for WorldCom to get to the  
17 438 rates is for them to opt into the M2A.

18              If they choose not to do that, then it's  
19 incumbent upon them to come forward and make their  
20 affirmative presentation in this case for the Commission to  
21 set rates in accordance with what they think is appropriate.

22              Six is related to the timing of the decision.  
23 It's our view that you do need to decide it within nine  
24 months. You do have a record that you're going to proceed  
25 in this case, and the record is the cost studies and the



1 testimony that Southwestern Bell has proffered in support of  
2 those cost studies and rates.

3           The fact that WorldCom chose not to submit  
4 cost studies of its own or to propose adjustments to  
5 Southwestern Bell's cost studies is not a reason for the  
6 Commission to delay.

7           WorldCom's a very large corporation. They  
8 have equal resources to that of Southwestern Bell, and  
9 they're equally subject to the act and they shouldn't be  
10 treated different from us in terms of their requirements  
11 under the act to come forward and produce whatever cost  
12 studies they believe are appropriate or specific adjustments  
13 to our cost studies if they think that's appropriate.

14           There's been some question about -- I disagree  
15 pretty strongly with Mr. Lumley's characterization that  
16 Southwestern Bell withheld cost studies, et cetera, from  
17 them. That's not the case.

18           In the course of negotiations, WorldCom never  
19 asked for cost studies from Southwestern Bell. If they had,  
20 we would have had to give them to them because the FCC has  
21 said that it's bad faith in an order -- I can't remember the  
22 exact words. It's bad faith if you don't give in the course  
23 of negotiations cost studies if the carrier requests them.

24           So if they had requested it we'd have given it  
25 to them. They didn't. They didn't request anything until

1 December 6th. They sent an interrogatory, or Data Request  
2 we call them here, for that. Obviously that was well after  
3 the negotiations started in June and it was well after the  
4 case was filed by WorldCom or the Petition for Arbitration  
5 on November 5th or 6th.

6                   If they had wanted to do something with regard  
7 to our cost studies instead of producing their own, they had  
8 ample opportunity to do so. Again, they're a large  
9 corporation. They have resources. They have equal  
10 requirements under the act to come forward and make  
11 proposals that are consistent with the act.

12                   The last question was from Judge Ruth. Does  
13 the Commission have enough information to decide if the  
14 record from the 438 case is let in?

15                   Obviously as we indicated in our response to  
16 the proposal yesterday, we don't think that's appropriate or  
17 legal. You need to make your decision based on the record  
18 of this case. If the Commission disagrees with that, it  
19 still doesn't resolve all of the UNE rate issues because the  
20 438 dealt with only a subset of the rates in the M2A, those  
21 that have interim rates.

22                   What I'll call the big ones, the ones that  
23 involve the UNE platform, loop switching, transport, most  
24 transport, et cetera, those were all decided in 97-40.  
25 Those were permanent rates for purposes of the M2A, and

1 those are not at issue in the 438 case. So it wouldn't give  
2 the Commission enough information to do anything different  
3 with regard to those rates than adopt the cost studies that  
4 Southwestern Bell has proposed.

5                   One last point, I guess. We're not proposing  
6 that there be any other docket. We think the M2A rates are  
7 available to the carriers, and it doesn't do us any good as  
8 a practical matter in having another proceeding if those  
9 rates remain available to the other CLECs.

10                   We believe our costs have gone up. We believe  
11 our costs are substantially higher than what's reflected in  
12 the M2A, but we think we have a duty to live with that rate  
13 unless the Commission can find some way to make a new case  
14 binding on all of the parties to the M2A and binding on  
15 every other CLEC that comes down the line, and I don't see  
16 how you do that.

17                   Then it doesn't make sense for us because we  
18 can't ultimately get higher rates as a result of it. It  
19 could only go down. We think our costs have gone up and we  
20 think it doesn't make sense to go down that path,  
21 particularly now when the TELRIC standard itself is under  
22 review by the Supreme Court and, if the Eighth Circuit  
23 decision stands, will have a substantial impact on how rates  
24 are calculated here.

25                   I hope I've answered the questions, but if

1 not, I'm certainly happy to.

2 JUDGE RUTH: I think we may have a few  
3 questions.

4 COMMISSIONER GAW: Mr. Lane, if you would --  
5 and I very much appreciate the parties' explanation this  
6 morning, by the way. It's helpful to shed a little light at  
7 this point in the proceeding.

8 Would you touch on just a moment, because I've  
9 heard both of you talk about this distinction between  
10 adopting or opting into the M2A and WorldCom's assertion  
11 that this is not what they're proposing, what they're  
12 proposing is to negotiate a new agreement or have it  
13 arbitrated here at this point, but that their proposal is  
14 for this new agreement that these provisions be basically  
15 the same or the same as what is in the M2A.

16 I understand the differences in the positions.  
17 If you would, from Southwestern Bell's point, help me to  
18 understand whether or not your position in regard to whether  
19 or not that position of WorldCom is -- what the weaknesses  
20 are of that position from Southwestern Bell's point?

21 MR. LANE: As I indicated --

22 COMMISSIONER GAW: I may go back and ask  
23 WorldCom later, but I'd like to hear from you.

24 MR. LANE: I think we're in agreement that  
25 Attachment 6 through 10 must be taken as a group under the

1 M2A and that failing to do that as they have -- choosing not  
2 to do that as they have chosen here means that all of the  
3 issues that concern UNEs that are in Attachment 6 through 10  
4 are at issue and have to be either negotiated or arbitrated  
5 if there's no agreement.

6                   We're in agreement that we did reach consensus  
7 that Attachment 7 through 9 would be followed, and neither  
8 side sought any different terms or provisions. So those are  
9 negotiated agreements now or negotiated provisions, not an  
10 opted-in provision.

11                   With regard to Attachment 6 and 10, WorldCom's  
12 position is, as I understand it, they say I know that we  
13 have to either negotiate or arbitrate all these provisions,  
14 but my proposal in the case is, with a few exceptions, that  
15 I like the terms and conditions of the M2A, and so I'm  
16 proposing those in this case.

17                   And our response to that is that they can do  
18 that in many cases but not all, that for non-price terms and  
19 conditions -- I'm going to separate that and talk about  
20 price separately, but for non-price terms and conditions,  
21 they can propose but their proposals have to be lawful.

22                   And when they propose to incorporate in this  
23 separate interconnection agreement terms and provisions that  
24 were voluntarily given in the M2A that can't legally be  
25 imposed on Southwestern Bell, that's not appropriate.

1                   We've spelled those out in the DPL and in the  
2 testimony, but one of the chief ones of those is the  
3 requirement to do combinations for elements that aren't  
4 currently combined in Southwestern Bell's network. We think  
5 the law is absolutely clear, Staff agrees on this, that  
6 that's not required and the Commission can't impose that.  
7 So proposals along that line are inappropriate.

8                   There's other provisions in the M2A, and a lot  
9 of these are in Attachment 6, Section 14, and they list a  
10 number of items where we've made commitments that, even if  
11 the TELRIC standard is overturned, that we will continue to  
12 provide rates for some period of time, I think it's until  
13 March of 2003 for residential cus-- for business customers  
14 and March of 2004 for residential customers, but even if the  
15 TELRIC standard changes, we'll still live with the rates  
16 there.

17                   We've made other commitments that if the FCC  
18 or courts determine that unbundled network elements are no  
19 longer such and shouldn't be treated as such, that we'll  
20 continue to give them for that same period of time.

21                   Those are voluntary things on our part that  
22 were designed to give CLECs an opportunity to compete and  
23 resolve issues, but they couldn't be mandated on us by the  
24 Commission. The Commission can't tell us, You're going to  
25 give up your legal rights and you're going to give something

1 that's no longer a UNE and you're going to continue to  
2 provide service under the TELRIC rates even if the FCC and  
3 the courts overturn TELRIC. I think everybody would agree  
4 those kind of provisions can't be imposed on us.

5               There's several others like that, the  
6 requirement that we provide enhanced extended loop, that's  
7 another provision in Section 14 of Attachments 6. Those  
8 kind of things can't be forced on us, and they can't -- I  
9 guess can they propose something? I guess you can propose  
10 something unlawful, but the Commission can't adopt it.

11              With regard to pricing terms from the M2A, I  
12 think there's a special requirement under the act. It's  
13 real clear that prices have to be set based on cost, and at  
14 this point in time the FCC's TELRIC cost standard is what  
15 applies, and it's incumbent on the parties, including  
16 WorldCom, to come forward with their proposals for what they  
17 think costs are.

18              We have. They haven't disputed on the whole,  
19 certainly for switching and loops the ones that they appear  
20 to be most concerned about, they haven't come forward with  
21 affirmative specific numerical adjustments to those cost  
22 studies, and there's nothing in the record to adopt except  
23 what we've proposed in this case.

24              So that's our view with regard to their  
25 ability. Yeah, they can propose a lot of the same non-price

1 terms with the exception that it has to be lawful.

2                   And let me add on that, I guess, just to be  
3 clear, that for those things that are lawful, there's still  
4 some things in there that we voluntarily gave, and when the  
5 Commission evaluates those particular UNE non-price issues,  
6 you shouldn't consider us bound by the M2A and it shouldn't  
7 be, well, that provision is in the M2A so we're going to  
8 automatically make Bell do it. You've got to evaluate it  
9 anew because it's a disputed item and you've got to evaluate  
10 both parties' positions on it.

11                   I think that's where Staff falls off a little  
12 bit. A couple points they say, well, it's in the M2A, you  
13 get it, and I don't think that's the proper analysis to go  
14 through, but for pricing --

15                   COMMISSIONER GAW: May I ask you on that  
16 point, do you believe that that is the case regardless of  
17 whether or not the particular provision that may be referred  
18 to in the M2A was specifically tied to other provisions in  
19 the M2A under the legitimately related clause?

20                   In other words, is that even a relevant factor  
21 in whether or not the Commission -- you believe the  
22 Commission can just pick out some provision from the M2A and  
23 put it into a new arbitration?

24                   MR. LANE: Let me make sure I understand the  
25 question.



1                   COMMISSIONER GAW: Yeah. It may not have been  
2 clear.

3                   MR. LANE: I think so. You're saying for  
4 non-price terms and conditions, is the -- can the Commission  
5 consider the fact that it's in the M2A in weighing whether  
6 to add the same or different provision in this  
7 interconnection agreement with WorldCom?

8                   COMMISSIONER GAW: In part, and whether or not  
9 the legitimately related, quote/unquote, provision that is  
10 in the M2A for certain things that are tied together is even  
11 relevant in your opinion in that argument that you just  
12 made.

13                  MR. LANE: Okay. I believe the Commission can  
14 consider the fact that it's in the M2A in deciding whether  
15 or not it's a good idea to have it in a separate  
16 interconnection agreement, as long as the Commission doesn't  
17 do it in a binding fashion to say, Well, it's in there,  
18 you're stuck with it.

19                  In your evaluation I think you can say, Well,  
20 I understand it's in the M2A, and to me it seems appropriate  
21 because X, Y and Z. If it's a factor that you're  
22 considering among other factors, I think that's okay.

23                  COMMISSIONER GAW: In other words, you're  
24 saying that it is not enough to just say it's in the M2A and  
25 therefore it's going to be in this agreement?

1 MR. LANE: Right.

2 COMMISSIONER GAW: You have to go through an  
3 analysis of it --

4 MR. LANE: Right.

5 COMMISSIONER GAW: -- with the other factors  
6 that are appropriate in the arbitration?

7 MR. LANE: You're not going to be able to  
8 divorce from your mind that it's in the M2A. I'm not saying  
9 you can't think about it, but I don't think that's the  
10 determinative factor.

11 COMMISSIONER GAW: You don't think that's  
12 enough, it's not sufficient by itself?

13 MR. LANE: I don't think so.

14 COMMISSIONER GAW: I understand. I'm looking  
15 for your argument.

16 MR. LANE: Right. Right.

17 COMMISSIONER GAW: I interrupted you, I  
18 believe, if you remember where you were.

19 MR. LANE: No. Have I not answered something  
20 yet?

21 COMMISSIONER GAW: I don't think so. I don't  
22 think so, and I think I'm causing too much time to go by.  
23 So I'm going to stop asking you questions.

24 JUDGE RUTH: I had a quick question, then. I  
25 was looking at some of the pleadings that Southwestern Bell

1 filed back on November 30th, the Motion to Dismiss and  
2 Southwestern Bell's response to the Petition for  
3 Arbitration, and you talk quite a bit about opposition to  
4 virtual opt-in, and that's the term I think that was used in  
5 a Texas case, and cherry picking.

6                   And it sounds to me like that's not an issue,  
7 then, on the ones that it turns out you-all renegotiated on  
8 your own. Is it an issue elsewhere on some of the other  
9 issues still or has the focus changed?

10                   MR. LANE: I think probably the focus has  
11 changed. I know that we understood by what WorldCom filed  
12 in its Petition for Arbitration that they were seeking to  
13 take discrete provisions of Attachments 6 and 10 and claim  
14 they had the right to do that under the M2A. That was our  
15 understanding, and we had that understanding in part because  
16 WorldCom had argued that point strongly down to the Texas  
17 Commission in connection with the Commission's adoption of  
18 the T2A down there.

19                   So with that history in mind, and it's  
20 reflected again in Mr. Smith's direct testimony, I believe,  
21 on pages 23 through 29, including some cites from WorldCom,  
22 that made us believe and reading the petition made us  
23 believe that their petition was that they could take  
24 individual provisions of Attachment 6 on an opt-in basis.

25                   And so we -- it is now apparent by what

1 WorldCom has filed and what Mr. Lumley indicated today that  
2 they're not making that contention.

3 JUDGE RUTH: Thank you very much. Staff, I  
4 want to give you an opportunity to also respond.

5 MR. BATES: Thank you. Thank you, your Honor  
6 and Commissioners. I realize you're operating under a time  
7 constraint here as far as agenda. I may not finish my  
8 argument before you have to leave. Is that acceptable?

9 JUDGE RUTH: Just a minute. Off the record.

10 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

11 JUDGE RUTH: The Commissioners want to give  
12 you the option of either starting now and then stopping at  
13 9:30 and continuing when they come back or just doing your  
14 entire argument when they come back. In other words, if you  
15 don't want to have to stop in the middle of your argument,  
16 then we need to just postpone.

17 MR. BATES: I suppose in the best interest of  
18 time I should just begin now and I can pick up thereafter.

19 JUDGE RUTH: That's what we'll do. I will  
20 watch the clock and interrupt you in about seven minutes.

21 MR. BATES: That's fine. I'd like to begin  
22 with the question of how many issues might be eliminated  
23 pursuant to Attachment 26, the legitimately related  
24 sections, and Staff is aware that it's already presented its  
25 arguments on the legitimately related sections in its filing

1 of last Friday, the 11th, and so I'm not going to belabor  
2 the Commission by reciting all those in their entirety, but  
3 Staff would like to draw the Commission's attention to some  
4 of the details.

5               First of all, after reviewing the testimony  
6 and listening to Southwestern Bell's position as presented  
7 thus far in the hearing, it appears to us that Southwestern  
8 Bell is not necessarily always consistent in its own  
9 interpretation of Attachment 26 or at least it provides  
10 enough confusion to Staff to warrant some additional  
11 discussion.

12              For instance, Mr. Smith in his prefiled  
13 testimony discusses sectional adoptions of the M2A, and  
14 Mr. Hughes in his prefiled testimony states that a CLEC has  
15 the right to opt into only portions of the M2A but then  
16 states that WorldCom cannot opt into only those unique  
17 provisions it finds acceptable.

18              Therefore, Staff has some clarifying questions  
19 it will be asking Southwestern Bell witnesses as to  
20 Attachment 26 and the legitimately related provisions.

21              Staff will defer to the parties to determine  
22 what issues would be eliminated if the legitimately related  
23 sections were applied consistently with Southwestern Bell's  
24 interpretation, and this is because the parties themselves  
25 have developed a list of issues and because of that the

1 Staff believes they are in a much better position to  
2 eliminate those issues than anyone else at this time.

3               Furthermore, Staff would like to point out to  
4 the Commission that in his opening statement Mr. Lane stated  
5 that in case TO-2001-455, the previous arbitration between  
6 Southwestern Bell and AT&T of a few months ago, Southwestern  
7 Bell had concerns with the Commission's decision to order  
8 the M2A for all issues in dispute, including appendix UNE  
9 pricing that were already covered by the M2A.

10              Staff's position in that case was the same as  
11 in this case, namely that individual recommendations on each  
12 issue in the DPL and M2A rates for pricing. Although Staff  
13 has not had an opportunity to review the transcript in 455  
14 since Mr. Lane's remark, Staff does not recall any concerns  
15 or even discussions on Attachment 26 and the legitimately  
16 related sections in this proceeding.

17              Furthermore, questions from the Bench for most  
18 witnesses included a discussion of the implications of  
19 ordering the M2A for all issues already covered by the M2A,  
20 and again Staff does not recall any concerns expressed over  
21 such an order and resulting implications with Attachment 26.

22              Regarding the question of the distinction  
23 between deferring a decision in this case until a decision  
24 has been reached in TO-2001-438, Staff does have some  
25 concerns with allowing WorldCom to opt into 438 pricing once

1 the decision is rendered.

2           By the wording in Attachment 26 and Staff's  
3 interpretation of that language, allowing WorldCom to opt  
4 into 438 rates could in effect require the legitimately  
5 related provisions of the M2A to kick in as WorldCom could  
6 be MFNing into pricing portions of that agreement.

7           Staff's recommendation would be that the  
8 Commission apply the M2A for pricing. This would include  
9 making all rates currently noted as interim in the M2A as  
10 interim for this proceeding. This recommendation is  
11 consistent with the recommendation and the final outcome of  
12 TO-2001-455. The parties in that case agreed to modify  
13 rates pending the outcome of Cases TO-2001-438, 439 and 440.

14           In this case, at least with the decision of  
15 438, which seems to be the main case at issue, Staff does  
16 not believe that timing will be much of a concern. For  
17 instance, assuming the Commission orders Staff's  
18 recommendation to allow Staff to review a final draft of the  
19 interconnection agreement, the remaining schedule could be  
20 something as follows: First of all, a Commission decision  
21 by March 1st, 2002; secondly, the parties file a final draft  
22 for Staff review on or about April 15th, 2002; thirdly,  
23 Staff completes its review and files a status report with  
24 the Commission on or about May first of 2002; and finally, a  
25 Commission decision would be issued on or before June 1st,

1 2002, in anticipation of a proposed hearing date of early  
2 June for Phase 2 of Case 440.

3               Concerning Staff's recommendation for a  
4 generic proceeding, Staff did not anticipate the decision  
5 from the generic docket would apply to this case unless the  
6 interconnection agreement contained provisions for such  
7 amendments.

8               However, all parties to Case 455 as well as  
9 this case, including Staff and Southwestern Bell, have  
10 raised concerns as to the cost studies and pricing in the  
11 M2A. So Staff made the recommendation to open a generic  
12 docket to look at all rates. A decision out of the generic  
13 docket could be used in lieu of the M2A or as a benchmark  
14 for Commission decisions in other pricing cases involving  
15 future arbitrations.

16              As to the timing of arbitrations, the FCC's  
17 First Report and Order in paragraph 22 states that, quote,  
18 this order sets minimum uniform national rules but also  
19 relies heavily on states to apply these rules and to  
20 exercise their own discretion in implementing a  
21 pro-competitive regime in their local telephone markets.

22              On those issues where the need to create --  
23 excuse me. On those issues where the need to create a  
24 factual record distinct to a state or to balance unique  
25 local considerations is material, we ask the states to



1 develop their own rules that are consistent with general  
2 guidance contained herein. The states will do so in  
3 rulemakings and in arbitrating interconnection agreements.

4 JUDGE RUTH: Mr. Bates, are you at a good  
5 stopping place?

6 MR. BATES: I think so.

7 JUDGE RUTH: Why don't we go ahead and go off  
8 the record for about five minutes. We'll make that ten  
9 minutes. We'll start back up at 9:40.

10 (A BREAK WAS TAKEN.)

11 JUDGE RUTH: We've had a short break. We're  
12 back on the record now.

13 I wanted to address a couple preliminary  
14 matters. The first thing, anyone who has any cell phones  
15 out in the audience, I do appreciate if you put them on  
16 vibrate or turn them off so they don't ring, and I will  
17 probably forget to remind you the rest of the week, so try  
18 to remember yourselves to turn those off.

19 And then I received a copy of a filing  
20 Southwestern Bell made this morning in response to the Order  
21 Directing Filing issued by the Commission on the 9th, and  
22 then I also received WorldCom's reply to Staff's  
23 January 11th filing.

24 Were there any other motions filed this  
25 morning? Do the parties anticipate anything else being

1 filed this morning or today?

2 (No response.)

3 All right. Then I believe we are ready to  
4 move on to Southwestern Bell's witness James Smallwood; is  
5 that correct, Mr. Lane?

6 MR. LANE: Yes, your Honor.

7 (Witness sworn.)

8 JUDGE RUTH: Okay. Thank you. Please be  
9 seated.

10 MR. LUMLEY: Your Honor, do we have any  
11 determination about the witness release program yet?

12 JUDGE RUTH: At this point the witnesses may  
13 not be released. I appreciate your asking, and we will  
14 address it again after lunch, but at this point, sorry.

15 MR. LUMLEY: I just happened to notice  
16 Mr. Turner in the back of the room. I know he's anxious to  
17 catch a flight.

18 MR. LANE: As is Dr. Avera.

19 JUDGE RUTH: Can you tell me what time their  
20 flights are and I will pass that information along?

21 MR. LUMLEY: He's okay. He rescheduled 'til  
22 this evening.

23 JUDGE RUTH: I'm sorry.

24 MR. LANE: Dr. Avera's flight is at  
25 four o'clock out of St. Louis. So with airport security and

1 all that, if we could know by noon, that would be very  
2 helpful.

3 JUDGE RUTH: Let's go off the record. I'm  
4 going to send a reminder e-mail.

5 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

6 JUDGE RUTH: Mr. Lane, proceed.

7 MR. LANE: I'm sorry. Have you already sworn  
8 in the witness?

9 JUDGE RUTH: Yes, I did.

10 JAMES SMALLWOOD testified as follows:

11 DIRECT EXAMINATION BY MR. LANE:

12 Q. Could you state your name for the record,  
13 please.

14 A. My name is James R. Smallwood.

15 Q. And by whom are you employed?

16 A. I'm employed by SBC Telecommunications,  
17 Incorporated.

18 Q. And Mr. Smallwood, did you prepare direct  
19 testimony in this case that has been marked as Exhibit 10  
20 nonproprietary and Exhibit 10 highly confidential?

21 A. Yes, I did.

22 Q. And do you have any changes to that testimony?

23 A. No, I do not.

24 Q. And did you also prepare rebuttal testimony  
25 that's been marked as Exhibit 11 in this case?

1 A. Yes, I did.

2 Q. Do you have any changes to that testimony?

3 A. No, I do not.

4 Q. If I were to ask you the questions that are  
5 contained in Exhibits 10NP, 10HC and 11 today, would your  
6 answers be the same?

7 A. Yes, they would.

8 Q. And are they true and correct to the best of  
9 your knowledge and belief?

10 A. Yes, they are.

11 MR. LANE: Your Honor, at this time we would  
12 offer Exhibits 10NP, 10HC and 11 and tender Mr. Smallwood  
13 for cross.

14 JUDGE RUTH: Exhibit 10NP and 10HC,  
15 Mr. Smallwood's direct testimony, have been offered. Are  
16 there any objections to these documents?

17 (No response.)

18 Seeing no objections, Exhibit 10NP and 10HC  
19 are received.

20 (EXHIBIT NOS. 10 AND 10HC WERE RECEIVED INTO  
21 EVIDENCE.)

22 JUDGE RUTH: Mr. Smallwood's rebuttal  
23 testimony has been marked Exhibit 11 and has been offered.  
24 Are there any objections?

25 (No response.)

1                   Seeing no objections, Exhibit 11 is also  
2 received into the record.

3                   (EXHIBIT NO. 11 WAS RECEIVED INTO EVIDENCE.)

4                   JUDGE RUTH: WorldCom?

5 CROSS-EXAMINATION BY MR. LUMLEY:

6           Q.       Good morning.

7           A.       Good morning, Mr. Lumley.

8           Q.       Looking first at your direct testimony, on  
9 page 2 you indicate you previously testified before this  
10 Commission. Did that include the Southwestern Bell/AT&T  
11 arbitration in 2001 known as the 455 case?

12          A.       Yes.

13          Q.       And then a few lines down you indicate you're  
14 introducing Southwestern Bell's cost studies for loop and  
15 subloop rate elements, and I just -- the word introduce, I  
16 just want to make sure I understand. These are the same  
17 studies that were submitted in the 455 case; is that  
18 correct?

19          A.       There's a slight variation in the loop study.

20          Q.       What is that variation?

21          A.       This study that's submitted in this proceeding  
22 does not contain xDSL-capable loops. Other than that, the  
23 studies are the same.

24          Q.       Okay. You indicate that these studies were  
25 completed in April of 2001?

1           A.       Yes.

2           Q.       And they were first provided to WorldCom as  
3 highly confidential attachments to this direct testimony; is  
4 that correct?

5           A.       The results and the written portion of the  
6 cost study was provided as an attachment to my direct  
7 testimony, yes.

8           Q.       That would have been in the middle of  
9 December?

10          A.       December 18th.

11          Q.       Okay. And then subsequently materials were  
12 provided on a highly confidential basis in discovery?

13          A.       Yes.

14          Q.       How long did it take -- well, let me ask it a  
15 different way. Over what period of time were the studies  
16 conducted before they were concluded in April of 2001? When  
17 did that work commence?

18          A.       I think that the -- many of the inputs were  
19 gathered at the end of the year 2000. There was actually a  
20 loop study being conducted pursuant to the Commission's  
21 order in Covad docket --

22          Q.       322?

23          A.       Yeah, 322, I believe, and that study was  
24 filed. Many of those same inputs were then used in the  
25 study filed in AT&T 455.

1           Q.       On page 3, lines 14 and 15, you refer to this  
2 Commission having established current UNE loop rates after  
3 an extensive investigation. Do you see that?

4           A.       Yes.

5           Q.       And then at pages 9 to 11 you get into a  
6 little more detail. You would agree with me, wouldn't you,  
7 that that investigation ran over the course of about a year?

8           A.       I don't think it was quite a year. I think  
9 that the investigation started in January of '97, late  
10 January of '97, and the cost study that the Commission  
11 approved in T0-97-40 was submitted in June of '97. So about  
12 six months.

13          Q.       Don't you indicate on page 9 that you  
14 originally filed the loop cost studies in 1996?

15          A.       Yes. But the investigation that the  
16 Commission ordered in the first order out of that proceeding  
17 after those studies were filed, the Commission ordered an  
18 investigation to be initiated, and that investigation  
19 started in January.

20          Q.       Okay. But there was several months of  
21 proceedings before that January order came out?

22          A.       That's true. I believe the studies were --  
23 loop studies were first filed in September/October of 1996.

24          Q.       At page 5, at the bottom you talk about the  
25 configuration of the DLC system.

1           A.       Yes.

2           Q.       Are you indicating there that your cost study  
3 assumes a UDLIC configuration? Is that another way of saying  
4 that?

5           A.       I think elsewhere in my testimony I stated  
6 that more succinctly, but yes, the cost study assumes the  
7 use of the same digital loop carrier system that's used in  
8 Project Pronto deployment.

9                    The only difference would be in an 8db study  
10 for a two-wire analog loop, that digital loop carrier system  
11 would be configured for voice-only service. Whereas, the  
12 deployment contemplated under Project Pronto has a mixture  
13 of voice and DSL, and in the study we assumed a UDLIC  
14 configuration.

15          Q.       At page 6, you indicate that after identifying  
16 the forward-looking design for the UNE being studied, the  
17 next step is to look at the capital investments; is that  
18 correct?

19          A.       Yes.

20          Q.       And then at page 7 you indicate that those  
21 investments are developed based on vendor prices?

22          A.       That's correct.

23          Q.       And then I don't think you really specifically  
24 mention this, but in relation to your answer at the bottom  
25 of the page, does the study assume or do the studies assume



1 a single pair NID?

2 A. I'm sorry. To where are you referring?

3 Q. It doesn't really relate to a specific  
4 statement that you made. I think it's something that really  
5 has gone unstated. So my question is whether or not these  
6 studies assume a single pair NID, is that one of the  
7 assumptions?

8 A. Yes, the modeling in the study assumed the use  
9 of a single pair NID.

10 Q. And a multiple pair assumption would reduce  
11 the cost?

12 A. On an incremental basis, I believe if you take  
13 the unit investment, and I haven't looked at that in a  
14 while, but it would be slightly less, yes.

15 Q. And these studies do not include any of the  
16 modifications that the Commission ordered to Southwestern  
17 Bell loop studies in the 97-40 case, is that correct, and  
18 the 98-115 case?

19 A. These cost studies were conducted pursuant to  
20 what we believe our true costs are. So the Commission  
21 mandated adjustments in TO-97-40 were not incorporated.

22 Q. At page 18 you confirm that the vendor  
23 contract prices that you pay play a significant role in  
24 determining loop costs, lines 3 to 4?

25 A. Yes. Obviously the vendor prices underlie the

1 investment, so they're going to play an important role in  
2 determining the overall cost of a loop. There are many  
3 other factors that play into that as well.

4 Q. Looking at your rebuttal testimony at page 3,  
5 lines 21 and 22, you make the statement that any and all  
6 economies of scale accruing to SBC as a result of its merger  
7 were incorporated. I want to focus on your choice of words  
8 there of any and all. Did you mean to suggest that there  
9 were none, that no economies of scale were achieved?

10 A. Well, economies of scale is a -- it's a  
11 difficult concept to measure. There's no exact quantitative  
12 way to identify any economies of scale accruing to SBC as a  
13 result of the merger.

14 I think I've stated in my testimony  
15 Southwestern Bell Telephone Corporation in 1995-96 time  
16 frame in which Mr. Turner argued that the data from 97-40  
17 were based was already a significantly large  
18 telecommunications carrier, and economies of scale  
19 generally, I think as the term is being used by Mr. Turner  
20 and by myself, refer to the contractual arrangements that  
21 they're able to negotiate with vendors. So there were  
22 economies of scale incorporated into these early studies.

23 To the extent that we've gathered procurement  
24 data post merger with Pacific Bell, SNET and Ameritech have  
25 renegotiated contracts, and many contracts have been

1 renegotiated in that time frame, the economies of scale  
2 achieved by the merger, to the extent that they're in there,  
3 and I can't quantify that, they're reflected in those vendor  
4 prices and are incorporated into the cost study.

5           Q.       I'd still like to pin you down a little bit,  
6 and I understand you're telling me that you can't quantify  
7 it, but do you mean to suggest that there weren't any, that  
8 it was possible that there weren't any economies of scale  
9 achieved?

10                   I mean, what I'm getting at is, you could have  
11 made the statement that all economies of scale were  
12 incorporated, but instead you chose to state any and all,  
13 which implies that you had some concern that there weren't  
14 any, and I'm trying to get to the bottom of that.

15           A.       I don't think that I have concerns that there  
16 weren't any economies of scale, but again I can't identify  
17 that. The fact is that in the telecommunications industry  
18 many material prices move in opposite directions. Many  
19 inputs into a cost study will increase over time. Some will  
20 decrease over time. Part of the decreases that are achieved  
21 are a function of technological development, manufacturing  
22 technique improvements in producing telecommunications  
23 equipment.

24                   And so what portion of a reduction in a  
25 contract price is attributable to technological development

1 or manufacturing improvements and what portion of that is  
2 attributable to economies of scale is, I think, impossible  
3 for anyone to identify.

4 Q. You don't dispute the statements of your  
5 company that Mr. Turner recites in his testimony that were  
6 made at the time of the merger, do you, in terms of what the  
7 benefits would be?

8 A. No.

9 MR. LUMLEY: That's all my questions, your  
10 Honor.

11 JUDGE RUTH: Okay. Mr. Bates, do you have  
12 questions?

13 MR. BATES: No questions, your Honor.

14 JUDGE RUTH: Mr. Smallwood, at this point  
15 there are no questions from the Bench, but it's possible you  
16 will be recalled later today, hopefully, for questions from  
17 the Bench.

18 THE WITNESS: Okay.

19 JUDGE RUTH: Mr. Lane, do you have redirect?

20 MR. LANE: Just a couple, your Honor.

21 REDIRECT EXAMINATION BY MR. LANE:

22 Q. Mr. Smallwood, you were asked some questions  
23 by Mr. Lumley concerning economies of scale and indicated in  
24 response to one of his questions that over time some prices  
25 go up and some prices go down. Do you recall that answer?

1           A.       Yes.

2           Q.       And you indicated that prices which go down  
3 may reflect economies of scale. Do you recall that?

4           A.       Yes.

5           Q.       Is it also possible that costs have increased  
6 but they increase less than they otherwise would have as a  
7 result of economies of scale?

8           A.       Yes. Like any other firm in any market, costs  
9 increase over time and generally labor costs increase over  
10 time, and I think I have in my written testimony tried to  
11 explain the idea that economies of scale may result in an  
12 increase at a decreasing rate, and that is to say that a  
13 producer of telecommunications equipment, a vendor, a Lucent  
14 or a Nortell, their labor costs, like other firms, increase  
15 over time. Other costs for them increase over time.  
16 There's general inflation in the economy overall.

17                   And they may choose to negotiate a contract  
18 with SBC where they don't pass on all of their cost  
19 increases giving preferential treatment to one of their  
20 larger customers that are generally associated with  
21 economies of scale, but that would not necessarily entail an  
22 outright decrease in the contract price but only a price  
23 increase that is lesser than the overall cost increases that  
24 that manufacturer or vendor has experienced.

25                   MR. LANE: Thank you. That's all I have, your

1 Honor.

2 JUDGE RUTH: Okay. Mr. Smallwood, you may  
3 step down, but like I said, please remain available.

4 THE WITNESS: Okay. Thank you, your Honor.

5 JUDGE RUTH: Southwestern Bell, would you call  
6 your next witness.

7 MR. LANE: Mr. Hughes.

8 (Witness sworn.)

9 JUDGE RUTH: Thank you. Please be seated.

10 Mr. Lane, proceed.

11 MR. LANE: Thank you, your Honor.

12 THOMAS HUGHES testified as follows:

13 DIRECT EXAMINATION BY MR. LANE:

14 Q. Could you state your name for the record,  
15 please.

16 A. My name is Thomas F. Hughes.

17 Q. And by whom are you employed?

18 A. I'm employed by Southwestern Bell Telephone  
19 LP, doing business as Southwestern Bell Telephone Company.

20 Q. And Mr. Hughes, did you prepare prefiled  
21 testimony that's been marked as Exhibit 12, your direct  
22 testimony?

23 A. Yes, I did.

24 Q. Do you have any changes to make to that  
25 testimony?

1           A.       I do. I have a couple of changes.

2           Q.       What is your first one?

3           A.       The first one is on numerically numbered  
4 page 2 at line 10. The answer currently says, I am employed  
5 by Southwestern Bell Telephone Company. That should now  
6 read, I am employed by Southwestern Bell Telephone LP, doing  
7 business as Southwestern Bell Telephone Company.

8           Q.       And what is your next change?

9           A.       My next change is on page 9, at line 5. The  
10 second to last word is "in". That should be replaced with  
11 "at". So the sentence would read, Southwestern Bell  
12 considers all UNE rates to be at issue.

13          Q.       Is that the extent of your changes in your  
14 prefiled direct testimony?

15          A.       I have one more, and then I have one on my  
16 schedule as well. My next change is on page 11 at line 10.  
17 There's a sentence that currently reads, As indicated  
18 previously, the sum of the rates. The word "the" before the  
19 word "sum" should be stricken.

20          Q.       What is your change in your schedule?

21          A.       On Hughes Schedule 2, on page 10 of 11, two  
22 lines under the line that is numbered 761, there is a rate  
23 proposed for establishment charge, and I inadvertently put  
24 that out to five decimal places, and it should be 36719.44.  
25 The last -- the 408 should be stricken.

1                   Those are all the changes to my direct.

2           Q.       And did you also prepare rebuttal testimony in  
3 this case that's been marked as Exhibit 13?

4           A.       I did.

5           Q.       Do you have any changes to your rebuttal  
6 testimony?

7           A.       I have two changes, one to Schedule 1 and one  
8 to Schedule 2. Schedule 1, the same changes we made to the  
9 establishment charge, it should be 36719.44. And on  
10 Schedule 2 -- I'm sorry. That was on page 10 of 11 in  
11 Hughes Rebuttal Schedule 1.

12                   And in Hughes Rebuttal Schedule 2, page 10 of  
13 11, at line 714, the same change would be made. The  
14 proposed rate for the nonrecurring charge is 36719.44.

15          Q.       Is that the extent of changes to your rebuttal  
16 testimony, Exhibit 13?

17          A.       Yes, it is.

18          Q.       With those changes in mind, if I were to ask  
19 you questions that are contained in Exhibits 12 and 13  
20 today, would your answers be the same?

21          A.       Yes, they would.

22          Q.       Are they true and correct to the best of your  
23 knowledge and belief?

24          A.       Yes, they are.

25                   MR. LANE: Your Honor, at this time we'd offer



1 Exhibits 12 and 13 and tender Mr. Hughes for  
2 cross-examination.

3 JUDGE RUTH: Okay. Exhibits 12 and 13,  
4 Mr. Hughes' direct and rebuttal testimony, are there any  
5 objections to these documents?

6 (No response.)

7 Seeing no objections, they are received into  
8 the record.

9 (EXHIBIT NOS. 12 AND 13 WERE RECEIVED INTO  
10 EVIDENCE.)

11 JUDGE RUTH: And WorldCom, are you ready for  
12 cross?

13 CROSS-EXAMINATION BY MR. MORRIS:

14 Q. Good morning, Mr. Hughes.

15 A. Good morning, Mr. Morris.

16 Q. How are you doing?

17 A. Good. How are you today?

18 Q. Fine.

19 On page 6 of your direct testimony, starting  
20 on line 2, you testified that the M2A contains provisions  
21 that go beyond what can be required under the act. The  
22 sentence goes on from there. Do you see that?

23 A. Unfortunately, I do not.

24 Q. Maybe my pagination is --

25 A. What question?

1           Q.       The question actually on my copy starts at the  
2 bottom of page 5. Starts, Is that a reasonable result from  
3 a policy perspective?

4           A.       Okay.

5           Q.       In your response --

6           A.       I see that.

7           Q.       Okay. And do you see the next sentence down  
8 says, Further, many of the rates in the M2A are below what  
9 SWBT considers permissible under a proper application of  
10 TELRIC?

11          A.       Yes, I do.

12          Q.       I'd like to hand you a copy of the FCC's Order  
13 in Southwestern Bell's Missouri 271 application. Have you  
14 read a highlighted portion from paragraph 52 of that Order.

15          A.       Okay. Read the underlined sentence?

16          Q.       Yes, please.

17          A.       I've been handed what appears to be a copy of  
18 the FCC's Order in Docket CC -- excuse me -- CC Docket  
19 No. 01-194, and paragraph 52, I'm going to read a section  
20 into the record, and that section is pertaining to the  
21 pricing of unbundled network elements recurring charges.

22                   Paragraph 52, the underlying section that I've  
23 been asked to read into the record is, As discussed below,  
24 we find that Southwestern Bell's voluntarily reduced rates  
25 in Missouri fall within a range -- excuse me -- fall within

1 a reasonable range of what TELRIC-based ratemaking would  
2 produce based on a comparison between Southwestern Bell  
3 Telephone Company's rates in Missouri and Southwestern Bell  
4 Telephone Company's previously approved rates in Texas.

5 Q. Thank you. Again, on page 7 of my copy, the  
6 question is, WorldCom seeks to arbitrate certain UNE prices  
7 such as loops and switching?

8 A. Okay.

9 Q. Part of your response notes that SWBT notes  
10 that the Commission determined it would not adopt Kansas and  
11 Texas UNE rates in the AT&T arbitration.

12 A. Okay.

13 Q. Shorthanded. WorldCom is not asking this  
14 Commission to take Kansas or Texas rates in this proceeding,  
15 is it?

16 A. It is not specifically. I think in your  
17 petition, though, Mr. Morris, you made reference to other  
18 states, and at that point we weren't sure exactly what your  
19 position was going to be regarding the rates that you were  
20 seeking in this particular case.

21 Q. Okay. On page 11 of your direct testimony,  
22 the question is, In its Petition for Arbitration WorldCom  
23 claims that it's unprofitable for it to compete in Missouri.  
24 You then cite the Commission's 271 proceeding. You'd agree  
25 with me that profitability is not one of the 14-point

1 checklist items, correct?

2           A.       It is not one of the 14-point checklist items.

3           Q.       On page 12 of your direct testimony, you  
4 created a matrix or table comparing res and bus rates, UNE-P  
5 rates for different cities in Missouri?

6           A.       That's correct.

7           Q.       What I'd like to do is go through some of  
8 those with you. Let's start with Kansas City, which is the  
9 first entry on your table.

10          A.       Okay.

11          Q.       For residential rates, that rate also  
12 includes -- first of all, the rate's \$35.12 for SWBT  
13 residential customer in Kansas City, correct?

14          A.       That is correct.

15          Q.       And that rate includes optional MCA service;  
16 is that correct?

17          A.       That is not correct.

18          Q.       That's not correct?

19          A.       No. The only one of these five cities that  
20 I've listed that includes optional MCA is St. Charles.

21          Q.       How much is that optional MCA for St. Charles?

22          A.       For St. Charles, the optional MCA rate is  
23 \$12.35 for residential customer and 24.80 for business  
24 customers.

25          Q.       Thank you. With regard to the last column,

1 let's start with Kansas City. The SWBT UNE-P rates, you  
2 list a total of \$17.65. What comprises that figure?

3 A. That is the loop, the port and minutes of use  
4 for switching assumed at 1,700 minutes.

5 Q. Okay. In that loop, port and switching rates  
6 are the existing M2A rates; is that correct?

7 A. That is correct. They're based upon the M2A  
8 rates, including the voluntary reductions that Southwestern  
9 Bell made and the Missouri Commission and FCC approved, yes.

10 Q. That the FCC were compliant with TELRIC?

11 A. As indicated in paragraph 52 of their Order,  
12 yes.

13 Q. Thank you. Would your answer be -- let me  
14 ask, were there any other UNE rates other than loop, port  
15 and 1,700 minutes of use of switching included in the SWBT  
16 UNE-P rates column of your table?

17 A. I don't believe so, Mr. Morris, but let me  
18 check one thing real quick. No, there are not.

19 Q. Is your assumption of 1,700 minutes of use for  
20 switching used in the other four examples?

21 A. Yes, it is.

22 Q. Again, on my page 12 and on page 13, you make  
23 a reference of WorldCom being able to offer voicemail and  
24 internet services. What are some of these revenue  
25 generating opportunities? You mentioned voicemail in

1 response to that question.

2           A.       Yes, as examples.

3           Q.       As examples. And again, please provide an  
4 overview of your comparison. I believe you also -- I'm  
5 sorry.

6                    Do the retail rates represent all of the  
7 revenue SWBT could generate from the customer? Again, you  
8 reference voicemail in your response.

9           A.       That's correct. WorldCom could offer a  
10 voicemail service to its local end users.

11          Q.       Does Southwestern Bell have an affiliate  
12 called Southwestern Bell Messaging Services? It might go by  
13 some other name, but it went by that name at one point.

14          A.       We do have a voicemail affiliate. I believe  
15 that's still their name, but I'm not a hundred percent sure  
16 of that myself.

17          Q.       Thank you. Isn't it true that when a customer  
18 signs up for voicemail, that one of the operational  
19 characteristics of that is that when a customer picks up his  
20 or her phone that they'll get something that's called  
21 stutter dial tone, that stutter dial phone informs the end  
22 user that there's a message waiting?

23          A.       That is a feature that can be ordered on the  
24 customer's line, yes.

25          Q.       Alternatively, would you agree that in the

1 absence of stutter dial tone, the customer would pick up the  
2 phone, just get plain old dial tone, wouldn't know whether  
3 he or she had a message?

4       A.       Not without calling into their voicemail  
5 system.

6       Q.       Exactly. Thank you. Isn't it true that some  
7 voicemail comes with a stutter dial tone feature?

8       A.       I don't know.

9       Q.       Or it's available?

10      A.       I don't know that it comes with the voicemail  
11 system or if it's a feature that has to be ordered and  
12 placed on the customer's line. I know it's on the  
13 customer's line, but, Mr. Morris, I'm not sure if it's a  
14 feature of the service that our voicemail affiliate provides  
15 or if it's a service that the customer orders from the  
16 telephone company.

17      Q.       You're aware of the issue 35, the IO port  
18 issue in this case? Are you familiar with that issue?

19      A.       I know it's an issue in the case, but I have  
20 not prepared any testimony on it.

21      Q.       Okay. What I'm trying to explore with you is  
22 that your suggestion in your testimony at least in a couple  
23 places that WorldCom has additional revenue opportunities,  
24 one of which being voicemail.

25              My question is, I believe it's Southwestern

1 Bell's position in this case that WorldCom is not entitled  
2 to use the IO port at least outside of the M2A, and without  
3 the ability to do that, if WorldCom were to offer a  
4 voicemail service it could not offer stutter dial tone as  
5 part of that service; isn't that true?

6 A. I don't know.

7 Q. On page 5 of your rebuttal, the question  
8 starts, Mr. Aronson requests the Commission --

9 THE REPORTER: I'm sorry. I can't hear you.

10 BY MR. MORRIS:

11 Q. I'm sorry. It starts, Mr. Aronson requests  
12 the Commission, quote, clarify SWBT's obligations.

13 A. Yes.

14 Q. If I understand your testimony, are you  
15 suggesting that per the result in the AT&T arbitration, that  
16 the Commission issue an Order in this case stating that SWBT  
17 is not a -- may not be picked as an intraLATA carrier for a  
18 CLEC?

19 A. The issue in this case is substantially the  
20 same issue that the Commission heard in TO-2001-455, and in  
21 that particular case, as I've cited here, the Commission  
22 awarded the Staff's language to resolve the issue, and I put  
23 that in here.

24 And it's our position, the same as in the AT&T  
25 arbitration as in this proceeding with WorldCom, that



1 Southwestern Bell is not obligated to provide intraLATA toll  
2 service to a CLEC's end users, and what we're asking the  
3 Commission to do is to affirm the same decision that it made  
4 in the AT&T arbitration, and in that arbitration it made the  
5 finding that we were not obligated to be an intraLATA toll  
6 provider for a CLEC end user.

7 MR. LUMLEY: Your Honor, I believe that's all  
8 I have.

9 JUDGE RUTH: Mr. Bates?

10 MR. BATES: Thank you.

11 CROSS-EXAMINATION BY MR. BATES:

12 Q. Good morning, Mr. Hughes.

13 A. Good morning, Mr. Bates.

14 Q. There's been a lot of testimony and discussion  
15 upon the applicability of Attachment 26 in this case. Could  
16 you explain to the Commission your understanding of  
17 Attachment 26?

18 A. I'll try to clarify. I would agree there's  
19 been a lot of discussion and, unfortunately, a lot of  
20 confusion.

21 Attachment 26 as it is presented in the M2A  
22 and as the Commission approved it, the intent behind it was  
23 to clarify issues such as this, and Attachment 26 outlines  
24 for Southwestern Bell and for a CLEC, in this case WorldCom,  
25 the legitimately related provisions of the attachment such

1 that if a CLEC chooses to opt into a particular section of  
2 the M2A, it outlines the associated or the legitimately  
3 related sections that go along with them opting in.

4           For example, if a CLEC wants to opt in, and  
5 let's use the UNE example since that's been the one that's  
6 primarily been discussed here, Attachment 26 calls for under  
7 UNE Attachment 6, 7, 8, 9 and 10 as well as all the  
8 associated appendices to be opted into, in addition the  
9 legitimately related sections from the general terms and  
10 conditions that are identified on page 1 of Attachment 26.

11       Q.     Okay. Is it your position that CLECs are  
12 required to take every item under each heading in its  
13 entirety?

14       A.     As defined on page 2 of Attachment 26?

15       Q.     Yes.

16       A.     Yes.

17       Q.     So you believe that all UNEs must be taken in  
18 all of Attachments 6 through 10 must be taken?

19       A.     If a CLEC chooses to opt into those sections  
20 or in this case that section, the UNE section of the M2A,  
21 Attachment 26 calls for the associated attachments and  
22 appendices as well as the general terms and conditions that  
23 are legitimately related to that section.

24       Q.     Where do you believe that Attachment 26 makes  
25 this requirement?

1           A.       I believe it makes that requirement in the  
2 attachment itself.

3           Q.       Any particular place that you can point to?

4           A.       I don't believe I brought a copy up here,  
5 Mr. Bates, unfortunately, but my recollection is page 1  
6 outlines the general terms and conditions that are  
7 legitimately related to all of the proposed sections, and  
8 page 2 outlines the sections that can be opted into on a  
9 sectional basis, if you will. And in there it goes through  
10 resale and then it goes on to UNE, goes on to performance  
11 measurements, DSL, reciprocal compensation, E911, network  
12 security, et cetera.

13                   So I believe in the attachment itself that the  
14 Commission approved, Mr. Bates, it's inherent in the  
15 language contained in Attachment 26.

16           Q.       I'd like to come back to that in a minute when  
17 we can get you a copy of Attachment 26, but in the meantime  
18 I'd like to ask you some other questions.

19                   First of all, I'd like to go to your -- let me  
20 ask you this question. Do you believe that M2A rates are  
21 TELRIC compliant?

22           A.       I believe the Commission in setting the rates  
23 from 97-40, which are determined to be permanent for  
24 purposes of 97-40, the Commission determined that the rates  
25 were compliant with TELRIC. Southwestern Bell, as has been

1 stated, did not agree with the Commission's finding in 97-40  
2 and subsequently appealed that.

3 Q. And then --

4 A. Also -- excuse me.

5 Q. I'm sorry. Go ahead.

6 A. Also, subsequent to putting them into the M2A,  
7 Southwestern Bell made a voluntary reduction on certain  
8 UNEs, and that reduction certainly took those rates below  
9 TELRIC, in our opinion.

10 Q. And you believe that applies to UNE appendix  
11 pricing as well?

12 A. Yes.

13 MR. BATES: Your Honor, may I approach the  
14 witness?

15 JUDGE RUTH: Yes.

16 BY MR. BATES:

17 Q. Mr. Hughes, Mr. Lane's been kind enough to  
18 supply me with a copy of Attachment 26, what I just handed  
19 to you. I'd like to ask you again if you can find on  
20 Attachment 26 where it makes the requirement that if a CLEC  
21 is -- that a CLEC is required to take every item under each  
22 heading in its entirety?

23 A. I believe it's on page 1 of the attachment,  
24 Mr. Bates, and there are two paragraphs there, and in those  
25 paragraphs it starts out with the parties expressly agree

1 not to challenge that the following sections of the Missouri  
2 271 agreement are, in quotes, legitimately related for the  
3 purpose of Section 252(i) of the Federal Telecommunications  
4 Act.

5                   And it goes on to discuss in paragraph 2 that  
6 the following sections from the general terms and conditions  
7 are, again in quotes, legitimately related to each and every  
8 item or items in section or sections of the Missouri 271  
9 agreement, and then it lists the general terms and  
10 conditions sections.

11                   And then page 2 of that discusses the items  
12 that are required in the legitimately related provisions  
13 associated with that, and they're broken down by category,  
14 if you will, such as UNE, resale or interconnection.

15           Q.       You understand that while that is Southwestern  
16 Bell's position, Staff and WorldCom have different positions  
17 as to the meaning of that language?

18           A.       I don't know that I agree with that regarding  
19 WorldCom, and I don't want to obviously speak for them, but  
20 what I heard Mr. Lumley say today is that there's no  
21 disagreement between Southwestern Bell and WorldCom  
22 regarding Attachment 26.

23           Q.       Let me move on for a moment to page 2 of  
24 Attachment 26, if you would.

25           A.       Okay.

1           Q.       Can you explain the meaning of each heading on  
2 that page?

3           A.       Are you referring there to the bolded items  
4 like item requested heading?

5           Q.       Yes.

6           A.       What that is, item requested and then listed  
7 under that would be the sections that a CLEC could opt into,  
8 and those sections are broken down. The first one, for  
9 example, is UNE, the second one is resale, third one is  
10 interconnection, so on and so forth. Breaks out the items  
11 or sections that a CLEC could request to opt into.

12                   The second heading is, in quotations,  
13 legitimately related provisions, and underneath that it  
14 lists the legitimately related sections associated with the  
15 item that the CLEC may request to opt into.

16                   For example, under UNEs, the legitimately  
17 related provisions are Attachment 6 through 10 and  
18 appendices as well as the general terms and conditions  
19 specified above and Attachment 26. Specified above would  
20 refer to those that are contained on page 1 of  
21 Attachment 26.

22           Q.       Okay. Would you then explain to me how the  
23 items and sections that are noted on page 1 fit into the  
24 various headings of page 2? I think you started to do that  
25 a minute ago. I'd just like you to expand on that.

1           A.       I'm not sure I follow when you say the items  
2 in headings noted on page 1.

3           Q.       The items and sections noted on page 1.

4           A.       I don't believe page 1 has any items listed.  
5 I think that calls for the legitimately related provisions  
6 that are contained in the general terms and conditions  
7 section, and those are legitimately related to all of the  
8 items or sections that a CLEC could choose to opt into.

9           Q.       And is that without exception, in your  
10 opinion?

11          A.       That is without exception. If a CLEC chooses  
12 to opt into any of the items requested, and there appears to  
13 be maybe 15 or 16 just at a glance, then a legitimately  
14 related provision would include all of the general terms and  
15 conditions sections that are noted on page 1 of  
16 Attachment 26.

17          Q.       Does Southwestern Bell believe that the rates  
18 established in Case No. TO-97-40 are below what Southwestern  
19 Bell believes to be a reasonable application of TELRIC?

20          A.       Yes, we do, and that has been stated here and  
21 is evidenced by the appeal that we made when the Commission  
22 issued its Order in TO-97-40.

23          Q.       I'd like to refer you to your direct  
24 testimony, page 11.

25          A.       Okay.

1           Q.       Lines 10 to 11 specifically is what I'm  
2 referring to. It seems to me and I'm a little unclear as to  
3 why Southwestern Bell agreed to lower them even further in  
4 order to gain Section 271 approval. Can you explain Bell's  
5 position there?

6           A.       Yes, I can. During the course of, in Missouri  
7 it was Case No. TO-99-227, there were lingering concerns by  
8 the CLECs regarding the rates that Southwestern Bell had  
9 agreed to put into the M2A, and Southwestern Bell agreed to  
10 put the rates from the Commission Order in 97-40 even though  
11 we had appealed those rates.

12                   In an attempt to allay any lingering concerns  
13 of the CLECs, we agreed voluntarily to reduce certain loops,  
14 switching and transport rates, in addition to we made  
15 reduction on a nonrecurring charge for, I believe it was a  
16 switch port, as well as up to a 25 percent reduction on  
17 nonrecurring charges.

18          Q.       Would you turn to page 13 of your testimony,  
19 to the chart there specifically.

20          A.       Of my direct?

21          Q.       Yes

22          A.       Okay.

23          Q.       Okay. I believe, and tell me if this is not a  
24 fair representation, but that you state or represent that  
25 Southwestern Bell residential rates for a customer in Meta,



1 Missouri are \$31.37?

2 A. That's what I have on the table, yes.

3 Q. Does this include more than just basic local  
4 service?

5 A. Yes, it does.

6 Q. What else?

7 A. As I've indicated in -- on a question that was  
8 right underneath the table, goes on to the top of 14, I  
9 included basic local rates, optional MCA service where  
10 available. I also assume that the customer's purchased  
11 vertical services and a conservative amount of intraLATA  
12 toll.

13 MR. BATES: Your Honor, I'm sorry. I haven't  
14 been keeping track of the time. Have I run out?

15 JUDGE RUTH: I'll give you another minute or  
16 two.

17 MR. BATES: Your Honor, I think I'll just stop  
18 at this point. Thank you very much. Thank you, Mr. Hughes.

19 THE WITNESS: Thank you.

20 JUDGE RUTH: Mr. Hughes, at this point there  
21 are no questions from the Bench, but there may be at a later  
22 point. So we'll move on to redirect.

23 MR. LANE: I'm sorry. Was that to me?

24 JUDGE RUTH: Yes.

25 REDIRECT EXAMINATION BY MR. LANE:

1           Q.       You indicated in response to a question from  
2 WorldCom's counsel that you believe that the rates in the  
3 M2A are lower than those that would be required by TELRIC;  
4 is that a fair statement?

5           A.       Yes, it is.

6           Q.       And what was your reason for that statement?

7           A.       In Case No. TO-97-40 where the Commission  
8 established the rates that are deemed as permanent in the  
9 M2A, the Commission made adjustments in that such as a  
10 40 percent reduction in loop and a 60 percent reduction in  
11 switching, and Southwestern Bell does not believe those are  
12 appropriate, nor was Southwestern Bell given the opportunity  
13 to do any questioning of the Staff regarding the  
14 recommendation that they made to the Commission that the  
15 Commission ultimately adopted in that proceeding.

16          Q.       You indicated that Southwestern Bell also made  
17 some further reductions in those rates in order to obtain  
18 long distance authority. Do you recall that question and  
19 answer?

20          A.       Yes, I do.

21          Q.       If Southwestern Bell believed that the rates  
22 in the M2A were lower than those that were required by  
23 TELRIC, why would Southwestern Bell make additional  
24 voluntary reductions?

25          A.       As I explained to Mr. Bates, there were

1 lingering concerns from the CLECs regarding the rates, and  
2 Southwestern Bell made those reductions in an attempt to  
3 allay any further concerns that they may have regarding the  
4 rates that were contained in the M2A.

5 Q. And in connection with obtaining 271 relief,  
6 do you believe that Southwestern Bell obtained benefits from  
7 that?

8 A. I do. In exchange for those voluntarily  
9 reduced rates, we gained the approval from the Missouri  
10 Commission for those rates and then, subsequent to that, the  
11 approval from the FCC, and the benefit that the corporation  
12 received is that we were able to provide interLATA long  
13 distance service in the state of Missouri.

14 Q. Did you weigh in the analysis the benefits  
15 from long distance versus, in your view, the provision of  
16 unbundled network elements at rates lower than what you  
17 believe TELRIC would require?

18 A. That was certainly a decision that the company  
19 considered in reaching the decision to voluntarily reduce  
20 rates. It was important and remains important to  
21 Southwestern Bell and SBC to be able to offer our customers  
22 a complete package of services, and that's what our  
23 customers want. And in making the decision to voluntarily  
24 reduce the rates, we made the determination that getting  
25 into the long distance business was worth a voluntary

1 reduction.

2 Q. You indicated in response to a question -- and  
3 I said Mr. Lumley. It was Mr. Morris -- that you agreed  
4 that WorldCom was not seeking rates from Kansas in this  
5 proceeding. Do you recall that?

6 A. I do.

7 Q. In your opinion, is it appropriate to utilize  
8 rates from another state in determining what TELRIC costs  
9 are in Missouri?

10 A. It is not. The Commission should establish  
11 rates that are based upon the cost for Missouri, and in this  
12 proceeding the only party to present those costs are  
13 Southwestern Bell.

14 Q. And in response to another question from  
15 Mr. Morris, you indicated that your cost analysis under the  
16 UNE-P reflected on page 12, I believe, of your direct  
17 testimony included loop, port and minutes of use switching  
18 at the level of 1,700 minutes. Do you recall that?

19 A. I do.

20 Q. What was the reason for your using the 1,700  
21 minutes of use for switching?

22 A. It was just an assumed number that we had put  
23 together in doing calculations for UNE-P rates both on a  
24 weighted average and on a zone basis that we had previously  
25 provided to the Missouri Commission as well as to the FCC in

1 connection with our 271 application.

2 Q. If a particular CLEC customer utilizing UNE-P  
3 had less usage per month than 1,700, what would that do to  
4 the cost analysis that you present on page 12 of your  
5 direct?

6 A. The UNE-P rates would be lower. I believe  
7 Mr. Turner in his testimony used 1,300 minutes, and if we  
8 made a comparison using 1,300 minutes, the UNE-P rates that  
9 the CLEC would be charged for purchasing the UNE platform in  
10 Missouri would be less than I've indicated on that table.

11 Q. And what effect would that have on the  
12 profitability analysis reflected on page 12 of your direct?

13 A. As I've demonstrated on that table, CLECs are  
14 able to compete for not only business customers but  
15 residential customers throughout the state, and that's based  
16 upon the assumption of 1,700 minutes. If the assumption was  
17 1,300 minutes, then the UNE-P rate would go down and  
18 profitability of the CLEC would go up.

19 Q. You were asked some questions by Mr. Bates  
20 concerning Attachment 26, and I'm going to follow up on a  
21 couple of questions.

22 Is your understanding, is your view that  
23 Attachment 6 through 10 must be taken in their entirety and  
24 that, if not, all of those provisions must be negotiated and  
25 ultimately arbitrated? Is that your view of it?

1           A.       Yes.  If the CLEC chooses to opt in, they can  
2 opt in to all legitimately related provisions.  If they  
3 don't, then all those sections are subject to negotiation  
4 and/or arbitration.

5           Q.       And based on WorldCom's filing that they made  
6 today and the oral presentations that were made today, is it  
7 your understanding that WorldCom has the same view with  
8 regard to the interpretation of Attachment 26?

9           A.       I believe that to be true.

10          Q.       Is your interpretation and application of  
11 Attachment 26 in the M2A informed at all by occurrences in  
12 Texas with regard to the development of the T2A?

13          A.       Yes, it is.  The M2A in general was based upon  
14 the T2A, but specifically Attachment 26 was based upon the  
15 T2A, and in Texas it's my understanding that the Texas  
16 Commission played a large part, if not the primary part, in  
17 assisting in the development of Attachment 26.  And since  
18 then, as Mr. Smith has outlined in his testimony, there have  
19 been a few instances where they have cited back to their  
20 interpretation of Attachment 26 in the T2A.

21          Q.       Is the interpretation of Attachment 26 in the  
22 T2A the same as the interpretation that you've presented  
23 here today with regard to the M2A?

24          A.       Yes, it is.  Our position is consistent.

25                 MR. LANE:  Thank you.  That's all I have, your

1 Honor.

2 JUDGE RUTH: Mr. Hughes, you may step down,  
3 but you're not excused at this time.

4 THE WITNESS: Okay. Thank you.

5 JUDGE RUTH: It's my understanding Staff has  
6 the next witness; is that correct?

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

8 (Witness sworn.)

9 JUDGE RUTH: Thank you. Please be seated.

10 Mr. Bates, proceed.

11 CHRISTOPHER C. THOMAS testified as follows:

12 DIRECT EXAMINATION BY MR. BATES:

13 Q. Would you state your name for the record,  
14 please.

15 A. Christopher C. Thomas.

16 Q. And what is your business address?

17 A. It is 200 Madison Street, Jefferson City,  
18 Missouri 65102.

19 Q. And how and where are you employed?

20 A. I'm employed by the Missouri Public Service  
21 Commission as a Regulatory Economist II.

22 Q. Mr. Thomas, did you prepare and cause to be  
23 filed in this case what has been marked for identification  
24 as Exhibit No. 14?

25 A. Yes, I did.

1 Q. Do you have any additions or corrections to  
2 make at this time?

3 A. Yes. I have one change for consistency sake.  
4 On page 4, line 17, between the words "are" and "the", I  
5 want to insert the word "virtually", so that the sentence  
6 would now read, As mentioned previously, the rates proposed  
7 by SWBT in this proceeding are virtually the same as those  
8 proposed in Case No. TO-2001-455.

9 Q. If I were to ask you the same questions today,  
10 would your answers be substantively the same?

11 A. Yes, they would.

12 MR. BATES: Your Honor, I move into evidence  
13 Exhibit No. 14, the rebuttal testimony of Christopher  
14 Thomas.

15 JUDGE RUTH: Okay. Are there any objections  
16 to admitting Mr. Thomas' rebuttal testimony? It's been  
17 identified as Exhibit 14.

18 MR. LUMLEY: No objections.

19 JUDGE RUTH: Seeing no objections, it is  
20 received into the record.

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

22 MR. BATES: And, your Honor, at this time I  
23 tender this witness for cross-examination.

24 JUDGE RUTH: Thank you, Mr. Bates.  
25 Southwestern Bell, are you ready for cross?



1                   MR. LANE: Let me ask a question, your Honor.  
2 I had thought that WorldCom was first on this, but I may  
3 have remembered incorrectly.

4                   MR. LUMLEY: I thought it was the other way,  
5 but it doesn't matter to me.

6                   JUDGE RUTH: Let's go off the record for a  
7 minute and I'll look at my list.

8                   (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

9 CROSS-EXAMINATION BY MR. LANE:

10           Q.       Good morning, Mr. Thomas.

11           A.       Good morning, Mr. Lane.

12           Q.       My first line of questions may be obviated by  
13 the change that you made on page 4 of your rebuttal. Let me  
14 ask you a question about that.

15           A.       Sure.

16           Q.       You inserted the word virtually in doing your  
17 comparison of rates that Southwestern Bell proposes in this  
18 proceeding and the rates that it had proposed in the AT&T  
19 arbitration, Case No. TO-2001-455. What's the reason that  
20 you utilized or now added the word virtually?

21           A.       That word virtually was just omitted on  
22 accident from that sentence. There are some changes to  
23 those rates. I compared it to Exhibit 5, I believe it was  
24 Exhibit 5 to the DPL, for consistency sake because  
25 Mr. Hughes stated that the changes were -- the changes to be

1 made to -- or the changes made in his direct testimony to  
2 the pricing schedule were to the common cost allocator and  
3 to the changes in 438, to be consistent with what  
4 Southwestern Bell proposed in 438, and so by a process of  
5 elimination it was virtually the same rates.

6 Q. So it's clear, virtually all of the rates  
7 proposed in this case are different than those that were  
8 proposed in the 455 case, right?

9 A. They are different. They're different by a  
10 few factors, yes. That is my understanding.

11 Q. They may be similar and in the same range, but  
12 virtually every one is different than what was proposed in  
13 455, right?

14 A. That's correct, there are a few factors that  
15 are different.

16 Q. Reflects an updated common cost study among  
17 others, right?

18 A. Yes. But for consistency sake, we chose to  
19 compare it to 455 because I think the change in the common  
20 cost allocator only served to confuse the issue.

21 Q. Now, on page 3 of your rebuttal you recommend  
22 the use of the M2A rates in the WorldCom/Southwestern Bell  
23 interconnection agreement, right?

24 A. That's true.

25 Q. Would you agree with me that WorldCom has the

1 right to take those rates under the M2A today if they so  
2 chose?

3           A.       If they so chose to opt in, yes, that's  
4 correct.

5           Q.       And it may be that Staff has a different  
6 position than WorldCom and Southwestern Bell with regard to  
7 this, but would you agree that both Southwestern Bell and  
8 WorldCom have said that if WorldCom wants the rates from the  
9 M2A, that both parties recognize that they must take all of  
10 Attachment 6 through 10 pursuant to Attachment 26?

11          A.       I know that's what Southwestern Bell has said,  
12 and I'm a little unclear as to what WorldCom said this  
13 morning. I didn't quite pick up on it. I know it's been  
14 represented that it was said that way, but I'm not clear on  
15 that.

16          Q.       Did you read the filing that they made this  
17 morning?

18          A.       I glanced at it briefly. I didn't get a  
19 chance to read the entire filing.

20          Q.       Assuming that WorldCom and Southwestern Bell  
21 both read Attachment 26 to require that a CLEC seeking to  
22 take some UNE provisions be required to take all of  
23 Attachments 6 through 10 pursuant to Attachment 26, does  
24 Staff disagree with that?

25          A.       I don't believe we would, but I think I'd like

1 to defer that question to either Ms. Dietrich or Mr. Peters  
2 who testified on Attachment 26 specifically. They would be  
3 the appropriate witnesses.

4 Q. Okay. And you personally haven't researched  
5 the history of Attachment 26 as it pertains either to the  
6 M2A or what occurred down in Texas with regard to the T2A;  
7 is that a fair statement?

8 A. That's a fair statement.

9 Q. I want to explore with you for a minute  
10 whether it's permissible for the Commission in your view to  
11 adopt the M2A rates in this case outside of directing  
12 WorldCom to take Attachments 6 through 10 of the M2A. All  
13 right?

14 A. Okay.

15 Q. Would you agree with me that, under the act,  
16 that prices must be set pursuant to cost and that the FCC  
17 has defined cost at this point in time as being TELRIC cost?

18 A. Yes, that's correct.

19 Q. And would you agree with me that the rates in  
20 the M2A reflect additional reductions that Southwestern Bell  
21 voluntarily made in the rates that had been established by  
22 this Commission in the TO-97-40 case?

23 A. I believe that's correct, yes, and I think the  
24 FCC has still said those rates fall within a reasonable  
25 range of TELRIC.

1           Q.       Would you agree with me that the rates that  
2 are in the M2A that reflect the reductions that Southwestern  
3 Bell has taken bring those rates below the level that this  
4 Commission found to be TELRIC compliant in the TO-97-40  
5 case?

6           A.       Yes, that's true, because they were reduced  
7 after the 97-40 case was finalized.

8           Q.       And would you agree with me that the rates  
9 that were reduced for purposes of the M2A included an  
10 18 1/2 percent reduction in the per minute of use switching  
11 rate, 18 1/2 percent reduction in most transport rates,  
12 an up to 25 percent reduction in nonrecurring charges and a  
13 10 percent decrease on average for loops?

14          A.       I haven't calculated those percentages myself,  
15 but if you're willing to represent that, I don't have any  
16 reason to disagree.

17          Q.       And the Commission noted that itself, did it  
18 not, in its Order approving the revised rates for purposes  
19 of the M2A?

20          A.       I believe they might have noted something  
21 similar to that. Once again, on the exact percentages, if  
22 you're willing to represent that, I'll accept it.

23          Q.       And there hasn't been a finding by this  
24 Commission that those reduced rates needed to be reduced in  
25 order to be TELRIC compliant, correct?

1           A.       I don't believe that there was. I think  
2 Southwestern Bell came in and, after discussions with the  
3 FCC, further reduced those rates. And once again I'd like  
4 to point out that the FCC did turn around and say those  
5 rates were within a reasonable range of TELRIC.

6           Q.       The FCC didn't conduct a cost study analysis  
7 like was conducted by this Commission in TO-97-40, right?

8           A.       That's true.

9           Q.       And so for purposes of this case, would you  
10 agree that the Commission really can't require the adoption  
11 of the M2A rates without taking all of Attachments 6 through  
12 10 and having it be under the M2A because there hasn't been  
13 a showing that the M2A rates have met the TELRIC standard as  
14 interpreted and applied by this Commission because of those  
15 reductions? And that may have been too long of a question.

16          A.       I think I understand your question. I think  
17 that -- I'm not an attorney. I'd like to preface my answer  
18 with that. I'm not sure how this fits together, but in my  
19 opinion, as the FCC has already stated that the rates fall  
20 within a reasonable range of TELRIC, this Commission could  
21 very easily order these rates for this agreement.

22          Q.       And it would be because it would be relying on  
23 the FCC as opposed to the work that this Commission did in  
24 the 97-40 case?

25          A.       That's a true statement, true.

1 Q. In the -- did you participate in the AT&T  
2 arbitration, Case No. TO-2001-455?

3 A. Yes, I did, with virtually the same  
4 recommendation.

5 Q. And the recommendation that you made was to  
6 adopt the M2A rates, correct?

7 A. That's correct.

8 Q. Would you agree with me that the Commission  
9 did that in its Order in that case, correct?

10 A. That's correct.

11 Q. And that Southwestern Bell subsequently filed  
12 an Application for Rehearing which raised a question about  
13 adopting the M2A rates outside of the M2A and including the  
14 provisions from the M2A concerning combinations?

15 A. I believe that that's correct.

16 Q. And that AT&T thereafter chose to adopt the  
17 M2A with regard to the UNE provisions Attachment 6 through  
18 10 in their entirety, correct?

19 A. I do believe the parties agreed on that, that  
20 AT&T agreed to adopt, yes.

21 Q. And then Southwestern Bell subsequently  
22 withdrew its Application for Rehearing because its concern  
23 about adopting what it considered unlawful provisions from  
24 the M2A in a separate AT&T interconnection agreement had  
25 been mooted by AT&T's agreement to take the M2A UNE

1 sections, right?

2           A.       I can't read Southwestern Bell's mind, but  
3 I'll agree with your representation.

4           Q.       That's what Southwestern Bell said in its  
5 filing.

6           A.       I can't recall specifically, but if you want  
7 to represent it as such, I will accept it.

8           Q.       It's fair to say that there's no cost study in  
9 this case that the Commission can rely upon to establish the  
10 rates from the M2A for purposes of loops and switching,  
11 right?

12          A.       That's true, there is no cost study, other  
13 than the cost studies submitted by Southwestern Bell that  
14 haven't been adequately reviewed.

15          Q.       And the cost study for loops, for example,  
16 that Southwestern Bell has submitted is updated from the one  
17 that had been submitted in Case No. TO-97-40, right?

18          A.       As Southwestern Bell has stated, yes. I  
19 haven't had enough time to thoroughly review and make sure  
20 that's the case, but I don't really doubt it.

21          Q.       Now, on page 5 and 6 of your rebuttal you  
22 recommend that a generic docket be established to look at  
23 costs. Do you recall that?

24          A.       Yes, sir.

25          Q.       Would you agree with me that the



1 Telecommunications Act contemplates private negotiations  
2 between a CLEC and an ILEC leading to arbitration if  
3 agreement isn't reached?

4 A. That's true.

5 Q. And would your proposal supersede the act in  
6 that respect?

7 A. I think it would give this Commission an  
8 option the next time that this issue comes before it. And  
9 I'm not sure if that answers the question, but I'm not sure  
10 that I can answer your question in a non-legal sense. I'm  
11 not an attorney.

12 Q. Let me ask it in a more practical sense.

13 A. Okay.

14 A. Would the rates that the Commission set in a  
15 generic proceeding that you recommend supersede the rates  
16 that are today in the M2A?

17 A. I believe that they would be another option.  
18 I think that the M2A is still currently in place, would  
19 still be an existing agreement. I'm not recommending that  
20 these rates be substituted into the M2A.

21 Q. And just to make sure I'm clear, this  
22 subsequent generic proceeding would be an option that CLECs  
23 would have, but they could also have the option to take the  
24 M2A rates --

25 A. That's true.

1 Q. -- is that your recommendation?

2 And you're not proposing, then, that this  
3 generic docket if it determines that costs and thus rates  
4 should be higher than those in the M2A, that those should  
5 supersede the M2A?

6 A. We are not, but I think that we would be open  
7 to look at a situation like that if Southwestern Bell so  
8 desired. I expect some opposition to that, but that's  
9 something -- it's not part of our recommendation now, but I  
10 don't think we would be opposed to it.

11 Q. Your recommendation now essentially is a  
12 one-way street, right? If the Commission were to determine  
13 the costs were lower, the CLECs would get the benefit of  
14 that. If the Commission finds the costs are higher, too  
15 bad, the CLECs can still take the M2A; is that a fair  
16 assessment?

17 A. I think that's a true statement.

18 Q. And you agree that that's probably not a  
19 reasonable approach, that the Commission if they did a  
20 generic docket would have to try to find some way that would  
21 require all CLECs to accept the terms and rates that came  
22 out of that generic proceeding?

23 A. The Commission could very well do that. I  
24 don't think that they would be required to do, but they  
25 could.

1           Q.       But that would be your recommendation if they  
2 were -- it was within their authority to do it, it would be  
3 your recommendation that they do it?

4           A.       I'd like to look at that a little bit further.  
5 I'm not really -- I don't know for sure what Staff's  
6 recommendation would be on that, Mr. Lane. I would need to  
7 confer with counsel and with senior members of Staff before  
8 making such recommendation.

9           Q.       But you agree it's not a reasonable approach  
10 to have something where it's a one-way street coming out of  
11 your docket?

12          A.       I can see where that's a problem, yes.

13          Q.       And is it your proposal that, if the generic  
14 docket is established and rates are set, that CLECs be  
15 prohibited from engaging in arbitrations in front of the  
16 Commission to change any of the rates that are set forth in  
17 that generic docket?

18          A.       I don't believe that the Commission could  
19 prohibit that. I think that that's always an option that  
20 carriers have.

21          Q.       So in that respect it would always be a  
22 one-way street if we had a generic docket because it would  
23 be binding on Southwestern Bell but not on the CLECs?

24          A.       I believe if the Commission orders it for the  
25 agreement in question it would be binding upon the CLEC as

1 well.

2           Q.       But if it's a generic docket, I understood you  
3 meant that to mean that that's something that any CLEC that  
4 wanted to could opt into it but didn't have to if they  
5 preferred to arbitrate.

6           A.       Okay. I was speaking of an agreement that  
7 this would be put into, but yes, that is a true statement.

8           Q.       So it would be a one-way street in that the  
9 CLEC could force Southwestern Bell to utilize the prices set  
10 from a generic docket, but Southwestern Bell couldn't force  
11 the CLEC to take those things?

12          A.       I don't know that the CLEC can necessarily  
13 force Southwestern Bell. I think Southwestern Bell would  
14 always have the option of contesting those rates in a future  
15 arbitration, as you're doing right now with M2A rates.

16          Q.       So it would be your proposal if the Commission  
17 goes through a generic docket and sets rates, whatever they  
18 are, that they wouldn't be binding then on either the CLEC  
19 or Southwestern Bell and both parties could come back to the  
20 Commission in a subsequent case and arbitrate it?

21          A.       I think that's always an option, but I think  
22 the Commission would have recent work to fall back on in  
23 that instance, and if the parties could so convince the  
24 Commission that things needed to be changed, they could be  
25 changed, but the Commission would still have the more recent

1 updated studies to fall back on in that instance instead of  
2 looking at work that was done several years ago.

3           Q.       And so I guess the point I'm trying to make is  
4 you'd agree that this generic docket would either be a  
5 one-way street that would be utilized against Southwestern  
6 Bell but couldn't be utilized for Southwestern Bell or, in  
7 the alternative, it would be an irrelevant proceeding  
8 because neither party would be bound and could arbitrate  
9 subsequently in front of the Commission?

10          A.       And given the current situation, but I think  
11 there is also the option, as you expressed earlier, that  
12 Southwestern Bell could petition the Commission to  
13 incorporate the results of such docket into the M2A. That's  
14 not precluded at all. I'm just not prepared to recommend  
15 that.

16          Q.       Now, you would agree with me that the TELRIC  
17 standard is the one that's applicable today, right?

18          A.       That's true.

19          Q.       It's also true, is it not, that the Eighth  
20 Circuit has found one particular provision of the TELRIC  
21 standard, a provision concerning the use of most efficient  
22 hypothetical network, to be unlawful? You're aware of that,  
23 right?

24          A.       I'm aware of that, and it's been remanded to  
25 the Supreme Court, or not remanded. That's not the right

1 word, but it's at the Supreme Court.

2 Q. And we're waiting to see what the Supreme  
3 Court does with that, right?

4 A. We are, and I believe they have heard oral  
5 arguments on that and we're anticipating a ruling sometime  
6 early this year.

7 Q. Would you agree with me that if the Supreme  
8 Court does anything other than affirm the FCC rule as it now  
9 exists, that additional activities are likely to be  
10 necessary at the FCC to determine what cost standards should  
11 be applied in the future?

12 A. That's very likely. I think there would be a  
13 lot of work required here in Missouri as well.

14 Q. And would you agree with me that at this point  
15 in time while we're waiting to hear from the Supreme Court  
16 concerning the TELRIC standard, that even if it were  
17 otherwise appropriate and otherwise lawful to do a  
18 generic-type proceeding like you recommend, that now  
19 wouldn't be the appropriate time for it given the pendency  
20 of the issue before the Supreme Court and given that the FCC  
21 would thereafter need to weigh in?

22 A. I think this document can always be modified,  
23 Mr. Lane. I think it would be something good to get  
24 started, and it can always be modified. After the Supreme  
25 Court issues its ruling it may be.

1                   And the way the time frames work out, what  
2 we've recommended or what I've recommended is that the  
3 Commission wait until it issues its Order in 438 so that we  
4 have new cost factors to enter into this generic docket, and  
5 I think the decision is anticipated sometime before June  
6 1st. So it may be that we even have a Supreme Court  
7 decision well before the Commission would issue an Order to  
8 establish such a case.

9           Q.       But if the Supreme Court, let's say, throws  
10 out TELRIC in its entirety, then wouldn't the matter have to  
11 go back to the FCC for analysis of what cost standard to  
12 use?

13          A.       It would, and I think we can cross that bridge  
14 when we get there, but I think it's a good idea to go ahead  
15 and initiate such a proceeding and see where it goes, and I  
16 think that if it does need to be changed, it can always be  
17 changed.

18          Q.       And all of the work that would have to be done  
19 by all the parties to the case, including Southwestern Bell,  
20 might be for naught if the Supreme Court changes the  
21 standard and the FCC rules implement a different standard,  
22 right?

23          A.       That's a possibility, but I -- we do -- like I  
24 say, we anticipate that the relevant time frames would not  
25 make that an issue.

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

2 THE WITNESS: Thank you.

3 CROSS-EXAMINATION BY MR. LUMLEY:

4 Q. Good morning, Mr. Thomas.

5 A. Good morning, Mr. Lumley.

6 Q. On page 2 of your rebuttal you talk about the  
7 DPL, and I'd like to take you to that document first. Do  
8 you have a copy of it available to you?

9 A. Actually, I do. I do have -- Exhibit 2D, is  
10 that --

11 Q. No.

12 A. Just the DPL in general?

13 Q. Yeah.

14 A. I do not have the DPL. Thank you.

15 Q. And I'd just like to review the prices that  
16 are actually at issue in the case and what the issues are.

17 A. Sure.

18 Q. Would you agree with me that Issue 10  
19 indicates that the issue is whether or not loop rates should  
20 be reconsidered?

21 A. If you'd give me just a second. This is not  
22 marked very well. Bear with me. That's correct.

23 Q. And in response to that issue Southwestern  
24 Bell has provided this list of prices that you discuss in  
25 your testimony, correct?



1 A. Yes.

2 Q. But there is not an issue in this case for  
3 each of those prices, is there, on the DPL?

4 A. I'm not entirely sure of that.

5 Q. For example, do you recall there being an  
6 issue in terms of a new transport rate?

7 A. I do not.

8 Q. And then we have Issue 11 which concerns  
9 whether or not the structure of switching rates should be  
10 changed and whether switching rates should be reexamined.  
11 Would you agree with that?

12 A. Yes, that's correct.

13 Q. And then Issue 12 talks about the DUF rate?

14 A. Yeah.

15 Q. And then Issue 47 talks about DAL rate, D-A-L  
16 rate being cost based?

17 A. Yes, sir.

18 Q. And then Issue 50 talks about that local  
19 account maintenance charge?

20 A. Yes.

21 Q. And if you recall, would you agree with me  
22 that those are the five specific issues that set forth rates  
23 that are at issue?

24 A. I believe that that's correct.

25 Q. And there is not a comprehensive list of

1 decision points like we have in the 438 case, for example,  
2 for a laundry list UNE rates?

3 A. That's true.

4 Q. On page 3, you discuss your recommendation  
5 about the M2A rates. Would it be fair to say that your  
6 position is that, in this non-contested arbitration, that  
7 the Commission has described the parties submitting their  
8 position and Staff submitting its evaluation, that you're  
9 saying that Staff's conclusion is that the M2A rates are the  
10 best available rates?

11 A. Given the time constraints, yes, it is.

12 Q. And you feel that those are cost-based rates?

13 A. I think that the FCC has said that they fall  
14 within a reasonable range of TELRIC.

15 Q. At page 4 you confirm that the Staff has not  
16 been able to conduct a comprehensive review of Southwestern  
17 Bell's cost studies at this point?

18 A. Yes.

19 Q. And at the bottom of the page you indicate  
20 that the Commission should be cautious about rushing into an  
21 evaluation of such studies?

22 A. That's correct. I think there's a lot of work  
23 that goes into such studies and it needs to be done very  
24 carefully.

25 Q. Does Staff have a specific position for or

1 against the restructuring of switching rates?

2           A.       At this time, we don't have a specific  
3 position. We haven't had enough time to fully evaluate the  
4 cost studies, and I've heard very conflicting testimony from  
5 the witnesses. So at this point I'm not really clear  
6 exactly on a good solution to that.

7           Q.       In proposing a generic case, you're proposing  
8 that that issue be looked at more closely?

9           A.       Yes. Switching was one of the things we  
10 thought should be looked at in this generic case, and I  
11 think that we left it open-ended so that that could  
12 definitely be looked at.

13          Q.       Would you agree with me that the results of  
14 the generic case could be a mixed bag where some rates are  
15 higher than the M2A and some rates are lower?

16          A.       That's very true.

17          Q.       The results could cut both ways?

18          A.       Yes.

19          Q.       Would you agree with me that the results could  
20 be equally binding or equally non-binding on all companies  
21 in the state, however the Commission decides to structure  
22 that result?

23          A.       I think that's completely at the Commission's  
24 discretion, yes.

25          Q.       Does Staff oppose the use of a mechanism in

1 the WorldCom/Southwestern Bell interconnection agreement to  
2 result from this case that would allow both parties to take  
3 advantage and -- well, not take advantage, but to receive  
4 the results of the generic case when those results come out?

5           A.       Although that's not our primary  
6 recommendation, I don't believe we would oppose that.  
7 That's going to be dependent on the Commission's  
8 interpretation of the act.

9           MR. LUMLEY: That's all my questions, your  
10 Honor.

11           JUDGE RUTH: Are there any questions from the  
12 Bench, Commission Murray?

13           COMMISSIONER MURRAY: Maybe one or two. Thank  
14 you, your Honor.

15 QUESTIONS BY COMMISSIONER MURRAY:

16           Q.       Good morning, Mr. Thomas.

17           A.       Good morning, Commissioner Murray.

18           Q.       If the Commission set up a generic docket,  
19 tell me if this is true, that there could be three possible  
20 results; one would be that we determine that the costs are  
21 equal to the rates that are set by the M2A?

22           A.       However unlikely, I think that could be an  
23 outcome. I won't disqualify that.

24           Q.       And another result could be that we determine  
25 that the costs are lower than the rates that are currently

1 set in the M2A?

2 A. That's correct.

3 Q. And the third outcome could be that we could  
4 determine that the costs are higher than the rates that are  
5 set by the M2A?

6 A. Yes, ma'am.

7 Q. Can you think of any other possible result?

8 A. I cannot right now. I think that that pretty  
9 well covered it.

10 Q. Now, what would be the result that would come  
11 out of that generic docket if we determine that the costs  
12 set by the M2A, the rates set in the M2A actually reflect  
13 the cost?

14 A. Then there wouldn't be any change. We would  
15 still be with the M2A rates or the rates that are very  
16 similar to the M2A in the situation you described.

17 Q. And the outcome if we determine that the costs  
18 are lower than the rates set in the M2A?

19 A. I would expect -- this kind of goes along with  
20 what Mr. Lane was asking as to how the Commission would  
21 structure the results of such a docket. It could be that  
22 all CLECs would attempt to migrate from the M2A to the new  
23 rates, or if the Commission had ordered that those rates be  
24 incorporated into the M2A, then those would be the existing  
25 rates.

1           Q.       And assuming that the Commission found that it  
2 did not have the authority to alter existing interconnection  
3 agreements, would the -- would a possible result be that  
4 CLECs might try to negotiate new interconnection agreements  
5 and then come to the Commission for arbitration and use  
6 those costs set in that new generic docket as the basis for  
7 their cost recommendations?

8           A.       Yes, ma'am, I think that's entirely possible.

9           Q.       And then with the result that higher -- the  
10 costs were determined to be higher than what was set in the  
11 M2A, what would be the outcome of that?

12          A.       The outcome could be that those rates were not  
13 used, but I think that that depends on the applicability of  
14 the generic docket as Mr. Lane has broached.

15          Q.       And part of that would be the legality of  
16 requiring either amendment -- amendments to existing  
17 interconnection agreements, would it not?

18          A.       Yes, ma'am.

19          Q.       And part of it would also be the legality of  
20 requiring CLECs to refrain from adopting portions of the  
21 existing interconnection agreements such as the M2A or  
22 another interconnection agreement that had lower rates than  
23 those set by the generic docket; is that right?

24          A.       I think that's true.

25          Q.       So there would be significant legal issues to

1 overcome in order to create any change from the generic  
2 docket showing that costs are actually higher than those  
3 set?

4           A.       There very well could be. I'm not an  
5 attorney, ma'am, so I'm not really prepared to speak to all  
6 the changes, but I think that could be one of the outcomes.

7           Q.       And do you know what is -- what would be the  
8 length of -- I'm trying to figure out how to state this.  
9 There are existing interconnection agreements in Missouri  
10 right now, correct?

11          A.       Yes.

12          Q.       Do you know what the longest term is for any  
13 existing interconnection agreement?

14          A.       I believe the M2A is the longest currently  
15 existing, and as far as -- I cannot remember how long it is,  
16 four or five years. I can't remember off the top of my  
17 head.

18          Q.       Okay.

19          A.       But I know the normal interconnection  
20 agreements are three years.

21                   COMMISSIONER MURRAY: I think that's all I  
22 have. Thank you.

23                   JUDGE RUTH: I want to go ahead and make an  
24 announcement before we move on to some more questions from  
25 the Bench, but I am now able to excuse witnesses Turner,

1 Dr. Avera, Naughton, Cass, Makarewicz and Barch. Those are  
2 the only witnesses that can be excused at this point.

3 We'll move back to questions from the Bench.

4 Commissioner Gaw, do you have some?

5 COMMISSIONER GAW: You didn't mention Thomas,  
6 did you?

7 JUDGE RUTH: No, he is not excused.

8 THE WITNESS: Unfortunately.

9 JUDGE RUTH: For the record, I believe I said  
10 witness Barch. Okay. I did not mean witness Beach. It was  
11 witness Barch.

12 Again, Commissioner Gaw, would you like to  
13 proceed?

14 COMMISSIONER GAW: Thank you, Judge.

15 QUESTIONS BY COMMISSIONER GAW:

16 Q. Mr. Thomas, do you believe that there have  
17 been changes that warrant a generic docket to revisit prices  
18 that were established in the M2A?

19 A. Yes, I do, and I can think of two things that  
20 have been cited by other witnesses and I would see as valid.  
21 SBC has engaged in several mergers since these rates were  
22 originally set, and also they've begun to roll out their  
23 NGDLC system, Project Pronto.

24 Q. And explain why that would have an impact.

25 A. That's going to have an impact on network



1 costs, and I know -- I'm not exactly sure how all that  
2 relates. I would think somehow the maintenance factors and  
3 also in perhaps the loop deployment. I know that the loop  
4 study filed in '97 did not include the NGDLC equipment, and  
5 now the current loop study, as Mr. Smallwood has stated,  
6 does, and I haven't had a chance to thoroughly review that.

7 Q. Are there any other things that you're aware  
8 of that might impact the costs that led to the establishment  
9 of rates in the M2A?

10 A. I would think advances in technology in  
11 general. If we look at things like personal computers have  
12 probably decreased to half within the last several years,  
13 and I think that -- whether the same magnitude exists in the  
14 telecom industry I'm not sure, but I would expect there to  
15 be a decrease in technology costs as well.

16 Q. So one element, I suppose, then that we would  
17 be examining in regard to whether or not a generic docket  
18 ought to be established would be whether or not there have  
19 been changing costs, and you've just delineated those; is  
20 that correct?

21 A. Yes, sir.

22 Q. Wouldn't another element that might be  
23 relevant be a change in standard, change in the legal  
24 standard for setting rates and for determining costs?

25 A. Yes, that is -- that's true.

1           Q.       And is that second factor related to the case  
2 that's currently in front of the United States Supreme  
3 Court?

4           A.       I believe that it is. They have heard oral  
5 arguments, and we're anticipating a ruling sometime within  
6 the next several months, as I am told.

7           Q.       So it is possible, then, that we have at least  
8 two that you just mentioned potential impacts on the setting  
9 of rates that were previously established in the M2A, isn't  
10 it?

11          A.       Yes, it is.

12          Q.       One being the change of costs, correct?

13          A.       Correct.

14          Q.       The other being the potential change in the  
15 establishment of rates based upon costs which in the M2A  
16 were set based upon TELRIC principles?

17          A.       The potential change, yes, sir.

18          Q.       Is there anything else besides those two that  
19 you can think of?

20          A.       Not off the top of my head, I can't come up  
21 with anything else. I think those are the two primary  
22 reasons to look at those rates or that those rates would  
23 need to be looked at.

24          Q.       Now, previously there's been some discussion  
25 about this distinction which has been made about whether or

1 not WorldCom is attempting to adopt the M2A. You heard some  
2 of those discussions?

3 A. Yes, I have.

4 Q. And is it your understanding that they are not  
5 attempting to adopt the M2A?

6 A. That's my understanding.

7 Q. All right. Now, what is Staff's viewpoint,  
8 therefore, with a CLEC that is not attempting to adopt the  
9 M2A but is proposing things that are the same as those  
10 elements contained in the M2A in regard to what this  
11 Commission should or should not look at in determining  
12 whether or not those provisions that are identical to the  
13 M2A should be adopted in a new arbitrated agreement?

14 A. I think that it might be appropriate for me to  
15 defer this question to Ms. Dietrich perhaps or perhaps  
16 Mr. Peters who addressed Attachment 26, and I think that's  
17 the crux of the issue that you're trying to get at.

18 Q. That's fine.

19 If this Commission were to approve certain  
20 prices that were the same as those contained in the M2A but  
21 were also the subject of the 438 case, what is Staff's  
22 position in regard to whether or not -- or what occurs upon  
23 the completion of the 438 case if it is determined that  
24 those prices should be -- would be different than the  
25 interim rates set previously?

1           A.       I think that, once again, that may be more  
2 adequately addressed by Ms. Dietrich, but I can try to give  
3 you an answer.

4                   I think that it kind of depends on how it's  
5 ordered. If the Commission orders WorldCom to opt in, then  
6 I think they would be subject to some of the things in  
7 Attachment 26. However, if the Commission just orders those  
8 rates, I think that's a little bit of a different spin on  
9 the issue.

10          Q.       And do you believe the Commission can order  
11 WorldCom to opt in to the M2A?

12          A.       I think that the Commission could word its  
13 Order like that. I don't know that that would be  
14 necessarily the best way to word the Order, but I think  
15 that's always an option.

16          Q.       I'm asking because you seem to suggest that  
17 was a possibility.

18          A.       I think the Commission can basically order  
19 whatever it wants. I don't know that it's restrained in  
20 that instance. Maybe I misunderstand your question, but I  
21 don't think you're constrained by that.

22          Q.       Earlier Commissioner Murray asked you about  
23 the possibility, the three possibilities of a generic case  
24 in comparison to the previous prices that were established,  
25 I believe. If I recall correctly, you stated that there

1 would be three possibilities; one, that the rates could be  
2 higher?

3           A.       Yes.

4           Q.       Is that correct?

5           A.       Yes.

6           Q.       Another that they could be lower?

7           A.       Yes.

8           Q.       Another they might be the same?

9           A.       Yes. In an unlikely circumstance, they could  
10 be the same. That's one possibility.

11          Q.       All right. It's also possible, and perhaps  
12 this is inferred in your answer, but it's also possible that  
13 some could be higher and some could be lower?

14          A.       That's correct.

15          Q.       Or some could be the same?

16          A.       That's correct.

17          Q.       And, in fact, that is not an unlikely  
18 scenario, is it?

19          A.       Not at all. I was speaking to individual  
20 rates, but I think as a whole the rates will be a mix --

21          Q.       That's what I assumed.

22          A.       -- of increases and decreases.

23          Q.       I just wanted to clarify that.

24                COMMISSIONER GAW: I think that's all I have  
25 right now, Judge. Thank you.

1 JUDGE RUTH: Thank you. Commissioner Forbis?

2 COMMISSIONER FORBIS: No questions.

3 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Mr. Thomas, if the outcome of a generic case  
5 were that some of the rates were determined to be -- some of  
6 the costs were determined to be higher than the rates set in  
7 the M2A and some were determined to be lower, and this is --  
8 this may require a legal analysis and you may not be able to  
9 answer, but in your opinion, would Southwestern Bell be able  
10 to take advantage of the higher rates established in that  
11 generic case or would the CLECs be able to go to the M2A and  
12 take the lower rates for the corresponding rates based upon  
13 their ability to opt into an existing interconnection  
14 agreement or parts of an existing interconnection agreement?

15 A. Okay. I think that would require some legal  
16 analysis, but I can give you my non-legal opinion. I think  
17 it would be that the CLECs would need to take those rates as  
18 a whole. I think that it might be problematic to pick and  
19 choose rates from the M2A and from newly approved rates.

20 But legally I'm not sure of the implications,  
21 but from a practical standpoint, I think that you'd want to  
22 either have one or the other and not some mix of the two.

23 Q. Practicalities don't always rule if we have  
24 either laws or FCC rulings that state that we must do  
25 something different, is that --

1           A.       That's entirely correct. I'm unsure of any  
2 requirements like that, but once again I'm not an attorney.  
3 That may be something for Briefs.

4                   COMMISSIONER MURRAY: Thank you.

5                   COMMISSIONER GAW: Yes, you're right, Judge.

6 FURTHER QUESTIONS BY COMMISSIONER GAW:

7           Q.       Mr. Thomas, if a generic docket were opened  
8 and this Commission came down with findings in that generic  
9 docket that were different than -- on prices than what was  
10 determined in this arbitration, would that necessarily mean  
11 to you that WorldCom at that instant could avail itself of  
12 the new prices in a generic docket?

13          A.       It wouldn't automatically mean that. I think  
14 it would kind of depend on the issue, the Commission's  
15 wording in its Order in this case and the wording of the  
16 Order in the 438 case and how they apply. I think that's  
17 something that would be adequately addressed by the  
18 attorneys.

19          Q.       Is it possible that this Order, even if it  
20 anticipates a generic docket, might -- or generic case,  
21 might propose the 438 rates be set as the appropriate rates  
22 upon its conclusion, but that there not be some similar  
23 provision for a generic docket that might be set on other  
24 pricing outside of the 438 case?

25          A.       I think that's entirely a possibility. I

1 think it's kind of practical as well, Commissioner, that 438  
2 is going to be wrapped up shortly following the  
3 Commission's -- or as was explained in Mr. Bates' argument  
4 this morning, the relevant time lines would lead to about a  
5 month lag time, I think, between the 438 decision and the  
6 final filing of this agreement, but a generic docket could  
7 take a year, 18 months to complete.

8                   And like I said in my testimony, we're not  
9 sure of how much time a docket like that would require, but  
10 it would be significant.

11           Q.       Once there is an arbitrated agreement here,  
12 will we not have a time frame for that arbitrated agreement  
13 to be in effect between the parties?

14           A.       I'm not entirely sure, but I think that there  
15 is a time frame.

16           Q.       I may ask that question.

17                   COMMISSIONER GAW: Thank you.

18                   JUDGE RUTH: Southwestern Bell, do you have  
19 recross based on questions from the Bench?

20                   MR. LANE: Yes, your Honor.

21 RE CROSS-EXAMINATION BY MR. LANE:

22           Q.       Commissioner Murray asked you some questions  
23 about a generic docket and three possibilities at least as  
24 to an individual rate cost equal, cost lower, cost higher,  
25 and I want to focus on cost lower for a moment. And you



1 were asked whether you may move from the -- whether those  
2 rates would be inserted into the M2A. Do you recall that --

3 A. Yes.

4 Q. -- discussion?

5 Would you agree with me that the M2A was  
6 Southwestern Bell's voluntary offering to maintain a certain  
7 level of prices and other terms and conditions in return for  
8 a recommendation to the FCC that 271 relief be granted?

9 A. That's true.

10 Q. And the M2A contained a provision that said if  
11 it was granted by the FCC, the 271 application, that the  
12 term of the M2A would be extended for an additional  
13 three-year period?

14 A. That's correct.

15 Q. And that that three-year period expires in  
16 roughly early March of 2005?

17 A. That's correct.

18 Q. Would you agree with me that there's not a  
19 provision in the M2A that says that if there's a generic  
20 docket subsequently established by the Commission and the  
21 Commission finds lower rates in that docket, that those will  
22 be inserted into the M2A?

23 A. I don't think that the M2A speaks to that  
24 issue one way or the other, Mr. Lane. I think it would be  
25 completely silent on that issue, and I think it would be at

1 the Commission's discretion.

2           Q.       Well, if it's a voluntary offering by  
3 Southwestern Bell, part of the contractual offer that's  
4 available for acceptance and it doesn't contain a provision  
5 that says rates can be lowered by some subsequent generic  
6 docket, it really wouldn't be at the Commission's discretion  
7 then, would it?

8           A.       I think that may be your company's opinion,  
9 but I think the Commission has approved that agreement and  
10 it is subject to their authority, and I think they could  
11 do -- could very well choose to do that. But I'm not an  
12 attorney. I'm probably not the appropriate person to speak  
13 to that.

14          Q.       All right. Now, the M2A also contains  
15 provisions that are clearly voluntary and go beyond that  
16 which the law permits the Commission to impose, right?

17          A.       As subsequently approved by the Commission,  
18 yes.

19          Q.       I'm not sure what you mean as subsequently  
20 approved.

21          A.       Yes, the M2A does include those and the  
22 Commission has approved it, yes.

23          Q.       And if you take lower rates from some generic  
24 docket and put them into the M2A, would it be Staff's view  
25 that those voluntary offerings then could be removed from

1 the M2A because the terms of the deal had changed?

2           A.       I think that would be subject to the  
3 Commission's discretion, just as inserting the rates would  
4 be. I think that's definitely something that Southwestern  
5 Bell could propose. I don't see any prohibition against the  
6 Commission doing just that, but I think that would be a much  
7 bigger issue, and I think that this whole inserting rates  
8 into the M2A would be a large issue by itself.

9           Q.       It raises very substantial legal issues that  
10 you are not prepared to address; is that a fair statement?

11          A.       That's entirely true.

12          Q.       And as I understood your response to  
13 Commissioner Murray, you agreed that if the Commission did  
14 have a generic docket and did find that rates would be --  
15 rates were higher than those contained in the M2A, that  
16 there's substantial legal questions about whether the  
17 Commission can either put those into the M2A or force CLECs  
18 to accept those provisions, right?

19          A.       That's true.

20          Q.       And it was your opinion, I believe, that you  
21 expressed in response to questions that I'd asked you  
22 earlier that you thought you couldn't prevent CLECs from  
23 exercising their rights under the act to negotiate and  
24 arbitrate regardless of what came out of a generic  
25 agreement?

1           A.       In my non-legal opinion, yes, but I don't want  
2 to propose that as the absolute bottom line on that issue.  
3 I think it could very well be either way. I'm not entirely  
4 sure.

5           Q.       Commissioner Gaw asked you some questions  
6 about whether there were some changes that had occurred that  
7 would warrant a relook at the current level of rates that  
8 are contained in the M2A. Do you remember those questions?

9           A.       Yes, I do.

10          Q.       And you answered concerning a merger with SBC  
11 and Ameritech and with regard to Project Pronto. Would you  
12 agree with me that the evidence in this case which  
13 Southwestern Bell has submitted is that its cost studies  
14 that it provided in this case do take into account the  
15 technological changes inherent in the Project Pronto  
16 architecture as well as the pass-through of any savings that  
17 do occur under a -- under the mergers that took place?

18          A.       I believe that's Southwestern Bell's position,  
19 but I have yet to -- I have not been able to verify that.

20          Q.       And no one has presented any specific  
21 testimony that Southwestern Bell is wrong in that regard  
22 with regard to its cost studies in terms of proposing any  
23 specific adjustments to either the loop or the switching or  
24 any other study that Southwestern Bell has submitted, right?

25          A.       Given the time frames, they have not.

1 Q. And would you agree with me that the TELRIC  
2 standard requires that you look at a forward-looking most  
3 efficient hypothetical network in setting rates or  
4 determining costs?

5 A. Yes.

6 Q. Okay. And would you also agree with me that  
7 the impact of merger and the impact of Project Pronto will  
8 have a different effect in terms of comparing it to the  
9 existing network than it would in comparing it to any impact  
10 it would have on a cost study looking at a forward-looking  
11 hypothetical most efficient network?

12 A. I think that's very improbable.

13 Q. It's an apples to oranges comparison, isn't  
14 it, to say you're experiencing some savings in your existing  
15 network because you've done a merger or because you're  
16 implementing Project Pronto than it is to say that you're  
17 going to experience reductions in your forward-looking cost  
18 studies that aren't based on your existing network, right?

19 A. Could you restate that question? I kind of  
20 got lost there toward the end of it.

21 Q. So did I. I'll restate it. Would you agree  
22 with me that it's an apples to oranges comparison to say  
23 that because -- strike that.

24 Would you agree it's an incorrect comparison  
25 to say that because a merger or implementation of Project

1 Pronto reduces costs or generates some savings in your  
2 existing network, that doesn't equate to a reduction that  
3 you're going to have over in your forward-looking most  
4 efficient network?

5           A.       That could be true, but I haven't done a  
6 review of those issues, Mr. Lane, so I can just speak  
7 hypothetically, that could be an outcome.

8                   MR. LANE: That's all I have. Thank you,  
9 Mr. Thomas.

10                  THE WITNESS: Thank you.

11                  JUDGE RUTH: WorldCom?

12                  MR. LUMLEY: I have no further questions, your  
13 Honor.

14                  JUDGE RUTH: Staff, do you have redirect?

15                  MR. BATES: Yes, just a few, your Honor. I  
16 apologize, your Honor. I thought I'd put that on vibrate.

17 REDIRECT EXAMINATION BY MR. BATES:

18           Q.       Mr. Thomas, based on your experience with  
19 recent cases such as TO-2001-455 and the instant case, have  
20 any parties expressed concerns over the M2A rates at least  
21 to the extent that those rates are a result of TO-97-40?

22           A.       They have. They have stated that those rates  
23 were set four or five years ago and it's time to relook at  
24 rates.

25           Q.       Do you recall which parties expressed those

1 concerns?

2           A.       Southwestern Bell has, AT&T in 455, and in  
3 this case MCI has expressed similar concerns.

4           Q.       Based upon a question you were asked a few --  
5 based upon a question you were asked a few moments ago by  
6 Commissioner Murray, if the Commission finds that all rates  
7 in a generic docket are the same as those rates in the M2A,  
8 could the result provide a record to show that Southwestern  
9 Bell's costs in the M2A are accurate?

10          A.       It very well could.

11                   MR. BATES: Thank you very much.

12                   THE WITNESS: Thank you.

13                   JUDGE RUTH: I want to go off the record for  
14 just a moment, please.

15                   (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

16                   JUDGE RUTH: I think we need to take a very  
17 brief break. We're not going to break for lunch. We're  
18 just going to take five or six minutes, come back in here,  
19 and then, Mr. Bates, we will allow you to continue your  
20 argument from this morning. Thank you.

21                   (A BREAK WAS TAKEN.)

22                   JUDGE RUTH: We are back on the record after a  
23 short break, and now we're going to return to the oral  
24 arguments from this morning. Mr. Bates, you were  
25 interrupted and not allowed to finish. Would you like to

1 proceed now, please?

2 MR. BATES: Yes. Thank you very much. Thank  
3 you very much for your patience.

4 Before I pick up where I left off this  
5 morning, I would like to make one addition or correction to  
6 something I said this morning. I was speaking about a  
7 Commission issue -- decision being issued around June 1st of  
8 this year, and I did not mention the case number. I may  
9 have caused some misunderstanding by that. I meant a  
10 decision in the 438 case, not in this case.

11 And I believe I was -- when we had to leave,  
12 that I was reading from the First Report and Order,  
13 paragraph 2 by the FCC, and I'd like to pick up at that  
14 point, and I wonder if I could begin back where I was  
15 quoting and then continue on.

16 JUDGE RUTH: Please do so.

17 MR. BATES: Quote, on those issues where the  
18 need to create a factual record distinct to a state or to  
19 balance unique local considerations is material, we ask the  
20 states to develop their own rules that are consistent with  
21 general guidance contained herein. The states will do so in  
22 rulemakings and in arbitrating interconnection agreements.

23 On other issues, particularly those related to  
24 pricing, we facilitate the ability of states to adopt  
25 immediate temporary decisions by permitting the states to



1 set proxy prices within a defined range or subject to a  
2 ceiling. We believe that some states will find these  
3 alternatives useful in light of the strict deadlines of the  
4 law, unquote.

5               Then continuing on to paragraph 767 of that  
6 same Order, quote, we recognize, however, that in some cases  
7 it may not be possible for carriers to prepare or the state  
8 commission to review economic cost studies within the  
9 statutory time frame for arbitration and thus here first  
10 address situations which a state has not approved a cost  
11 study.

12               States that do not complete their review of a  
13 forward-looking economic cost study within the statutory  
14 time periods but must render pricing decisions will be able  
15 to establish interim arbitrated rates based on the proxies  
16 we provide in this Order, unquote.

17               Staff believes that a state commission may  
18 determine that the cost information available to it with  
19 respect to one or more elements does not support the  
20 adoption of a rate or rates that are consistent with the  
21 requirements set forth in Section 51.505 and 51.511 of this  
22 part dealing with proxies for forward-looking economic  
23 costs.

24               In that event, Staff believes the state  
25 commission may establish a rate for an element that is

1 consistent with the proxies specified in that section  
2 provided that firstly any rate established through use of  
3 such proxy shall be superseded once the state commission has  
4 completed review of a cost study that complies with the  
5 forward-looking economic cost-based pricing methodology  
6 described in Section 51.505 and 51.511 of that part, and the  
7 Commission has concluded that such study is a reasonable  
8 basis for establishing element rates, and secondly, the  
9 state commission sets forth in writing a reasonable basis  
10 for its selection of a particular rate for the element.

11               The Staff believes that the constraints on  
12 proxy-based rates described in this section apply on a  
13 geographically averaged basis. For purposes of determining  
14 whether geographically deaveraged rates for elements comply  
15 with the provisions of this section, a geographically  
16 averaged proxy-based rate should be computed based on the  
17 weighted average of the actual geographically deaveraged  
18 rates that apply in separate geographic areas in a state.

19               In Cases TO-97-40 and TO-98-115, this  
20 Commission set interim rates and followed it with a  
21 proceeding thereafter. No party opposed that proceeding on  
22 the grounds that the Commission could not set interim rates.  
23 While the Eighth Circuit voided the entire ICA, it did not  
24 address the use of interim rates because Southwestern Bell  
25 did not appeal that decision on those grounds.

1                   Which issues would remain or apply if  
2 TO-2001-438 were allowed in this case would be -- based on  
3 Staff's recommendations, TO-2001-438 would apply to those  
4 rates that are identified as interim in the M2A, so there  
5 would be no change in the existing case.

6                   Staff believes the statement information could  
7 be obtained through a review of the transcripts of 438,  
8 through cross-examination which is already been completed  
9 and through a remaining cross-examination of the costing  
10 witnesses.

11                  In conclusion, Staff would again like to  
12 reiterate that the FCC in its First Report and Order states  
13 that it relies heavily on states to apply those rules and to  
14 exercise their own discretion in implementing a  
15 procompetitive regime in the telephone markets.

16                  Staff believes that in the interest of a  
17 procompetitive market, this Commission can find that while  
18 Attachment 26 as Southwestern Bell interprets its meaning  
19 applies to the M2A, this is a separate agreement that is a  
20 result of negotiations and arbitration, and, therefore, to  
21 the extent that the provisions are legal, Attachment 26 as  
22 interpreted by Southwestern Bell does not apply.

23                  Thank you.

24                  JUDGE RUTH: Are there any questions from the  
25 Bench at this time?

1                   COMMISSIONER GAW: Mr. Bates, I've asked this  
2 question, I believe, probably in different ways of others,  
3 but I am -- I want to understand Staff's position regarding  
4 the ability of this Commission to order -- first of all, do  
5 you believe that this Commission can order WorldCom in this  
6 case to adopt the M2A?

7                   MR. BATES: I believe that's within the  
8 Commission's power, yes.

9                   COMMISSIONER GAW: All right. And if that  
10 order -- if that order were made, is it your position that  
11 the rates set in the M2A that are interim that are subject  
12 to review in 438, that those rates upon the conclusion of  
13 438 should then be the rates that are in effect for the  
14 arbitrated agreement in this case?

15                  MR. BATES: Yes.

16                  COMMISSIONER GAW: And how would that occur?  
17 And if you'd like me to elaborate on that, I will, but I'm  
18 interested in how mechanically that would evolve.

19                  MR. BATES: If you wouldn't mind elaborating  
20 some.

21                  COMMISSIONER GAW: Well, assuming we have a  
22 decision on an arbitrated agreement with certain interim  
23 rates that are still subject to 438 review, what would occur  
24 in regard to pricing in between the conclusion of this case  
25 and the 438 case, or would you anticipate that there would

1 be no activity between the parties under the arbitrated  
2 agreement until the conclusion of 438?

3                   Do you see what I'm asking? There is a window  
4 of time there if that occurs when you have interim rates in  
5 effect under this arbitrated agreement, if my hypothetical  
6 were to become reality, and I'm just trying to understand  
7 how mechanically that would work out there with the parties  
8 in their -- in that window between those two dates.

9                   MR. BATES: And are you asking me -- can I  
10 assume from your question that there would be a final Order  
11 from the Commission in this instant case?

12                  COMMISSIONER GAW: You can explore that either  
13 way if that helps you answer the question, but yes, if it  
14 helps you, go ahead and answer it that way.

15                  MR. BATES: I assume any Order by the  
16 Commission would be final unless it was superseded on that  
17 issue by a later order.

18                  COMMISSIONER GAW: Sure. Yes. Go ahead. I  
19 mean, there could be a challenge to the Order and those  
20 sorts of things.

21                  MR. BATES: That's correct. Assuming  
22 hypothetically that it was final, then those rates would be  
23 final unless in the 438 case the Commission ordered  
24 something different that was relevant to here that made it  
25 impossible for the parties to continue with the rates that

1 the Commission had set in the Order in this case.

2                   COMMISSIONER GAW: In regard to the generic  
3 docket that there's been discussion about, would Staff --  
4 would Staff be advocating that any prices that might  
5 eventually come about as a result of this new generic  
6 docket's review be implemented into the rates established in  
7 this case, or is Staff basically suggesting that it's time  
8 to revisit those prices as a matter of general policy with  
9 the Commission?

10                  MR. BATES: Are you asking me would the Staff  
11 be suggesting a generic case that rates would apply in this  
12 case retroactively or from the point that the Commission  
13 made its decision in the generic case --

14                  COMMISSIONER GAW: Yes.

15                  MR. BATES: -- to this case?

16                  COMMISSIONER GAW: Yes.

17                  MR. BATES: Yes.

18                  COMMISSIONER GAW: All right. And so if there  
19 was a conclusion a year or 18 months out, if there were a  
20 generic docket established, at that point in time, if the  
21 Commission found different rates that were in effect under  
22 the initial Order of this Commission in this arbitrated  
23 case, then you thought -- you would suggest that those new  
24 prices would then go into effect at that point in time?

25                  MR. BATES: Yes. Staff -- that's one of

1 reasons that -- and I may be picking up here, I hope, on  
2 part of your earlier question -- that Staff would like to  
3 have a generic case is in order to clear those matters up  
4 once and for all.

5 COMMISSIONER GAW: But if I understand this  
6 correctly, the proposal for a generic case is not just  
7 related to this arbitration?

8 MR. BATES: No, certainly not.

9 COMMISSIONER GAW: It has to do with  
10 questions, I assume, regarding the costs and the potential  
11 for the change in costs that have occurred since the  
12 original case that established those costs in the 97-40  
13 case; is that correct?

14 MR. BATES: Yes, that's correct.

15 COMMISSIONER GAW: Do you believe there is a  
16 difference at this point in time -- I'm going back to my  
17 original question, I believe -- between WorldCom's assertion  
18 that they are not adopting the M2A and this Commission  
19 ordering that provisions of the M2A be placed within this  
20 arbitrated agreement?

21 MR. BATES: I do think there's a difference  
22 between because the Commission can direct the parties in an  
23 Order basically to do anything that the Commission believes  
24 is the best resolution for that arbitration. So I think  
25 that there's nothing inconsistent with WorldCom's position

1 that they are not adopting the M2A, what the Commission then  
2 decides after hearing all the evidence in an arbitration  
3 that it directs the parties to adopt.

4                   COMMISSIONER GAW: I'm trying to, I guess, get  
5 a comment from you on Southwestern Bell's position that  
6 because WorldCom is not adopting the M2A but instead  
7 proposing that certain provisions of the M2A basically be  
8 inserted into this new agreement, that that then requires  
9 the Commission to analyze from the beginning whether or not  
10 those costs are appropriate and, therefore, the rates are  
11 appropriate, and that the Commission should not be able to  
12 just go back and pick those numbers out of the M2A without  
13 further analysis, if I understood Mr. Lane's comments  
14 earlier.

15                   MR. BATES: I believe Staff disagrees with  
16 Mr. Lane's position.

17                   COMMISSIONER GAW: Can you explain that a  
18 little? And I apologize to Mr. Lane if I'm  
19 mischaracterizing his -- I'm sure he should have an  
20 opportunity to recharacterize if that is necessary. But if  
21 you could please give me Staff's analysis of that, I would  
22 appreciate it, because I understood Mr. Lane to be drawing a  
23 distinction, and then the next part of that being how that  
24 impacts our ability -- our ability to review this record in  
25 this case when there are only cost studies that have been



1 presented from Southwestern Bell and not any of the other  
2 parties.

3                   MR. BATES: I may misunderstand Mr. Lane's  
4 position because -- no, I don't think I do. I think that if  
5 I understand what Mr. Lane is saying and what you're saying,  
6 that he is -- that their position is that it's not possible  
7 to do those cost studies because only one party,  
8 Southwestern Bell, has provided them in this case.

9                   COMMISSIONER GAW: It's my understanding  
10 Mr. Lane is making the argument -- and I want him to speak  
11 for himself. I apologize for that. But he's making the  
12 argument that the only evidence on the record in front of us  
13 is Southwestern Bell's cost studies. No other -- no other  
14 party is presenting any cost studies. Therefore, if we're  
15 going to look at what those costs ought to be, the record is  
16 Southwestern Bell's record.

17                   And I believe Mr. Lane believes that those  
18 cost studies would be less advantageous in the resulting  
19 prices than what WorldCom would get if they simply took the  
20 M2A.

21                   And I'm trying to understand whether or not  
22 Staff is -- because all of that analysis is a legal analysis  
23 of what's in this record, as I understand it, and I'm trying  
24 to gather whether or not Staff finds some reason to agree or  
25 disagree with that analysis.

1                   MR. BATES: Well, we would more closely concur  
2 with WorldCom's analysis than Mr. Lane's analysis, if that's  
3 the question you're asking me.

4                   COMMISSIONER GAW: I guess I'm asking you your  
5 position in regard to those issues.

6                   MR. BATES: Could I have just a moment? I  
7 think at this point I should check with Staff.

8                   COMMISSIONER GAW: Sure.

9                   MR. BATES: Thank you, Commissioner. Staff  
10 believes that the relevant -- the answer really here can be  
11 found in the 455 case where AT&T in that case proposed  
12 another state's rates but the Commission ordered the M2A  
13 rates even though they hadn't been specifically raised in  
14 that case.

15                   And we hold the same position here, that the  
16 Commission has it within its power to do that and that that  
17 is a more correct decision.

18                   COMMISSIONER GAW: That we can order different  
19 rates than are in the M2A or --

20                   MR. BATES: No. Can order the M2A rates.

21                   COMMISSIONER GAW: And I'm going to go back  
22 again. Again, this may be a distinction with that  
23 difference. Is that under the assumption that we are  
24 ordering the adoption of the M2A or is it under the  
25 assumption that we can order specific provisions of the M2A

1 to apply to a new arbitration agreement simply because they  
2 were contained in the original M2A?

3 MR. BATES: I think you can do either.

4 COMMISSIONER GAW: Okay. And can you give  
5 me -- can you give me a rationale for why we should be able  
6 to go back and just pull those rates out of the M2A without  
7 any further record?

8 MR. BATES: Well, the M2A exists as a  
9 reference point, and it's Staff's position and WorldCom's  
10 position that they can -- there are certain provisions that  
11 they can opt into without taking everything. So I think the  
12 Commission can do either course that you've mentioned.

13 COMMISSIONER GAW: Thank you. And I think it  
14 would be appropriate, Judge, to allow counsel to respond if  
15 they wish.

16 JUDGE RUTH: We'll do a second round to allow  
17 each of the counsel to respond to each other's arguments or  
18 clarify something that now you feel did not come across, but  
19 let me ask if you can give an estimate of the amount of time  
20 each one of you will need and we'll see whether we should do  
21 that now or after a break for lunch.

22 MR. BATES: I'm sorry. Before I leave the  
23 podium, were there any other questions for me, I guess I  
24 should ask?

25 JUDGE RUTH: I'm sorry. I thought we were

1 finished but we're not. Commissioner Murray?

2 COMMISSIONER MURRAY: We never cease to  
3 surprise you, do we?

4 Mr. Bates, I do have a couple of questions.  
5 When you were talking about the -- you were quoting from the  
6 FCC's First Report and Order and you were quoting where they  
7 talked about permitting states to set proxy prices due to  
8 the strict time lines of arbitration.

9 Now, is what you are indicating by referencing  
10 that First Report and Order that you think in an arbitration  
11 we can set interim pricing and establish permanent pricing  
12 after the deadlines of the -- and I'm asking you a legal  
13 question, so you don't need to consult with Staff. This is  
14 a legal analysis I'm asking for -- after the deadline for  
15 completion of an arbitration?

16 MR. BATES: Yes, I believe you can, based upon  
17 the FCC's Order.

18 COMMISSIONER MURRAY: And you quoted from that  
19 Order some wording that said based upon the proxy we  
20 establish here, something to that nature. So what I'm  
21 asking, I guess, in relation to those words, are we supposed  
22 to, if we establish interim rates, take some proxy that the  
23 FCC set or are we supposed to take interim rates that we  
24 establish and then after the deadline set permanent rates?

25 MR. BATES: It's my understanding from the

1 reading of the FCC's Order that the second is correct.

2 COMMISSIONER MURRAY: That we are supposed to  
3 establish our own set of interim rates?

4 MR. BATES: I believe it's within the  
5 Commission's power to do that, yes. I'm sorry. I didn't  
6 mean to interrupt you.

7 COMMISSIONER MURRAY: I probably interrupted  
8 you.

9 If the Supreme Court eliminates prices being  
10 set on TELRIC principles, says that TELRIC principles no  
11 longer apply, how, if at all, would that affect existing  
12 interconnection agreements in this state?

13 MR. BATES: Commissioner, I'm not sure of the  
14 answer to that. I think it's possible that the parties  
15 would want to renegotiate them, but I guess that would be up  
16 to the parties involved.

17 COMMISSIONER MURRAY: Okay. And is it Staff's  
18 position or your position from a legal analysis that this  
19 Commission can go into an existing interconnection  
20 agreement, a contractual arrangement between the parties,  
21 and make unilateral adjustments during the term of that  
22 existing interconnection agreement?

23 MR. BATES: I think that's possible, but I'm  
24 not sure what you mean by unilateral. I think that a docket  
25 might have to be reopened or opened as opposed to have it

1 done sui sponte in effect by the Commission.

2                   COMMISSIONER MURRAY: Okay. So that if we  
3 establish a generic docket to set prices for certain  
4 elements, it is not your position, is it, that following the  
5 outcome of that generic docket we would go in, we would say  
6 all existing interconnection agreements or certain existing  
7 interconnection agreements must have their terms altered to  
8 comply with the outcome of that generic docket?

9                   MR. BATES: I don't believe it would be  
10 obligatory on the Commission to do that, no.

11                  COMMISSIONER MURRAY: Would it even be legal  
12 for the Commission to do that?

13                  MR. BATES: I don't think that's been  
14 determined yet, really.

15                  COMMISSIONER MURRAY: You don't have a  
16 position on that?

17                  MR. BATES: I have a personal position, but  
18 I'm not sure I'd be speaking for the Staff on it, so perhaps  
19 I'd better not.

20                  COMMISSIONER MURRAY: Well, I'm asking for a  
21 legal position.

22                  MR. BATES: I am trying to avoid your question  
23 but not completely. I'm just not sure I can venture an  
24 opinion without it being the Staff's position.

25                  COMMISSIONER MURRAY: Now, in terms of the

1 position that I believe you've stated that if price -- if a  
2 generic docket were opened and -- no. Scratch that.

3                   What I want to ask you about is tying this  
4 case to 438, the outcome of TO whatever it is 438. Would  
5 you agree that 438 was a spinoff from the M2A?

6                   MR. BATES: Yes.

7                   COMMISSIONER MURRAY: And that it was  
8 established to set permanent rates in the M2A for certain  
9 elements?

10                  MR. BATES: Yes.

11                  COMMISSIONER MURRAY: So that if this  
12 arbitration were to say that WorldCom would have the ability  
13 to opt into the results of 438, wouldn't that require that  
14 WorldCom also take the legitimately related provisions in  
15 the M2A because 438 is setting those rates in the M2A?

16                  MR. BATES: Yes, but subject to the Staff's  
17 position on, which we've already expressed so I don't want  
18 to belabor that, but as far as what means opting into  
19 legitimately related, what that means.

20                  COMMISSIONER MURRAY: And you don't think you  
21 can look at the face of the document, the M2A, and see what  
22 that means? Because there is language in the M2A that  
23 specifically says what is legitimately related.

24                  MR. BATES: Yes, and I -- Staff stated what we  
25 believed that to mean.

1                   COMMISSIONER MURRAY: You mean the Staff does  
2 not believe that we should look at the M2A?

3                   MR. BATES: No, Commissioner, that's not what  
4 I meant. I'm sorry. But in our filing of last Friday, our  
5 previous Suggestions in Opposition to Southwestern Bell's  
6 Motion to Dismiss in this case and our argument this  
7 morning, we've expressed what we believe WorldCom can do as  
8 far as opting in and what our beliefs as far as legitimately  
9 related provisions are, which is obviously a different  
10 position than Southwestern Bell takes.

11                  COMMISSIONER MURRAY: Is that also different  
12 than what the M2A itself says?

13                  MR. BATES: We don't believe so, no.

14                  COMMISSIONER MURRAY: Thank you, your Honor.  
15 Thank you.

16                  JUDGE RUTH: Mr. Bates, I thought I understood  
17 Staff's position, but now I want to clarify a little bit  
18 more.

19                  I believe, and Mr. Lumley will correct me if I  
20 misstate WorldCom's position, but one of the options that  
21 was advocated was having the Commission establish interim  
22 rates pricing in Phase 1 and then have a second phase, then  
23 go on to do the Phase 2 to establish permanent rates. That  
24 second phase would take much longer. The first phase would  
25 be finished by the March 20 deadline.



1                   If that second phase were in a generic case,  
2 is it Staff's position then that the elements that are  
3 decided in that Phase 2 would become part of the  
4 interconnection agreement as it is decided in Phase 1?

5                   MR. BATES: Yes. We actually, as you may  
6 recall, filed jointly with Southwestern Bell a proposed  
7 procedural schedule in this matter opposed to WorldCom's  
8 procedural schedule because we agreed with Bell that as far  
9 as this case was concerned, because of the Commission's time  
10 limits or the time limits that were binding the Commission,  
11 that there was not time to do a second phase in this case.  
12 However, a generic case would be a different matter.

13                  JUDGE RUTH: So you find it acceptable to have  
14 Phase 2 as a separate generic case but not as part of the  
15 same case? But part of that's semantics. Would the generic  
16 case, if it were a separate generic case, are you saying it  
17 would automatically affect Phase 1 or the entire arbitration  
18 in this case?

19                  MR. BATES: Well, as you point out,  
20 semantically we have the problem of the time limits that are  
21 placed upon the Commission for deciding this arbitration and  
22 the Commission's FCC First Report and Order, and there is  
23 something of a tension there to some extent at least.

24                  JUDGE RUTH: I'm not sure I'm getting my  
25 question across. Look at it another way. It's my

1 understanding that the M2A, they had spinoff dockets 438,  
2 439, 440. When a decision is made in those spinoff dockets,  
3 those become the prices, terms, conditions, et cetera, for  
4 the M2A. Am I correct on that?

5 MR. BATES: Yes.

6 JUDGE RUTH: So on this case, if in this  
7 arbitration the Commission were to issue an Order by the  
8 March deadlines but it set interim and then had a generic  
9 case but tried to tie them in in their Order, could the  
10 Commission do that? Could the Commission say this is  
11 interim but there's going to be a generic case, whenever  
12 it's decided those automatically become part of this case,  
13 the rates are changed to reflect what's done in the generic,  
14 or could the Commission not do that?

15 MR. BATES: The Commission could do either.

16 JUDGE RUTH: And do you find that a wise  
17 course of action or do you see problems with that?

18 MR. BATES: Well, respectfully, there are  
19 probably problems with whatever course the Commission would  
20 take in this matter, but either one of those are certainly  
21 within the Commission's power to do.

22 JUDGE RUTH: Thank you. I think that given  
23 the time we will wait and do Phase 2 after lunch, because I  
24 suspect that there will be questions from the Bench.

25 COMMISSIONER GAW: Different Phase 2.

1 JUDGE RUTH: Round 2 of the oral arguments is  
2 what I meant, yes. It is 20 after 12. We will start back  
3 promptly at 1:30. We're off the record.

4 (A LUNCH BREAK WAS TAKEN.)

5 JUDGE RUTH: We are resuming the hearing after  
6 a break for lunch. Before we left, I indicated that the  
7 parties would be allowed a second round of the oral argument  
8 on the questions that the Commissioners had posed at the end  
9 of the hearing yesterday, and so WorldCom, we'll start with  
10 you.

11 MR. LUMLEY: Thank you, your Honor. I just  
12 want to make a few quick points. I'd like to give a little  
13 bit of perspective to what's considered at issue in the  
14 case, because that phrase has kind of been thrown around and  
15 I think it's important to focus in on this.

16 When WorldCom indicated that it was not  
17 adopting Attachments 6 through 10, it made those -- and  
18 instead it was proposing its own version of those documents,  
19 it made those attachments fair game for Southwestern Bell to  
20 similarly propose their own language, but those documents  
21 are not entirely at issue in the case at this point because  
22 the parties have resolved things.

23 So you need to focus down between what was  
24 fair game at the outset because of our approach versus what  
25 is actually in dispute. For example, you've heard that

1 Attachment 7 through 9 are resolved. They are not an issue  
2 before you any longer. I submit that the resolution of  
3 those attachments is a concession that there's nothing wrong  
4 with our approach.

5               The issues are those set forth in the DPL, and  
6 aside from those disputed provisions, I submit that the M2A  
7 language is basically the resolution.

8               Secondly, I wanted to touch on Southwestern  
9 Bell's comments about a supposed failure of evidence. One  
10 thing that troubles me about the comments are that the  
11 Commission made it very clear in the procedural orders of  
12 this case that it was not conducting a contested proceeding,  
13 but specifically it was conducting a noncontested  
14 arbitration under which you were going to consider the  
15 positions of the parties as explained to you in the course  
16 of the proceedings, as well as the Staff's evaluations of  
17 those positions, and you were going to make your selection  
18 of what you thought the best positions were.

19              In that respect, I don't believe we're facing  
20 the kind of evidentiary issues that you would face in a  
21 contested hearing. Instead, you're allowed to take the  
22 information that we're presenting to you in this arbitration  
23 and decide what you think the best positions are.

24              If we look at the issue list, you'll see that  
25 Issue 10 is, should loop rates be reconsidered? We've

1 explained to you our position as to why they should be  
2 reconsidered. And Southwestern Bell has said, If you're  
3 going to reconsider them, we think you should reconsider the  
4 whole laundry list of other items.

5                   But I submit there really isn't much of a  
6 dispute that you're not in the position to fully reconsider  
7 these things in this case. The Bell witnesses have  
8 indicated that they weren't even able to complete studies on  
9 all items yet and were rushing to complete things at the  
10 last minute.

11                   Again, I submit that our position is that you  
12 can adopt the M2A rates as the best available rates, pending  
13 this generic proceeding. The Staff witness has said the  
14 same thing. These are cost-based rates. They're the best  
15 available choice for you at this point.

16                   And I think to focus in on the dispute is  
17 really, one, will you engage in the reconsideration of loop  
18 rates and switching rates and other rates; and two, what  
19 will that mean for this particular agreement? Will you  
20 adopt WorldCom's proposed language, which you'll see in the  
21 DPL says, you know, use these rates until you resolve the  
22 next proceeding, or will you say that we'll have to wait  
23 until this contract expires before we can take advantage of  
24 those results?

25                   And I submit that that's really what the

1 issues truly boil down to, and I believe that you can  
2 legally do either. Obviously I advocate our position, but I  
3 believe that you can do either.

4                   And I want to clarify one more time, we are  
5 not opting into the M2A rates. We're saying that those are  
6 the best available rates, the best position we can advocate  
7 at this time, and that they are cost-based. You heard  
8 Staff's witness agree with us on that point. And we believe  
9 that that includes the fact that some of those rates are  
10 under reconsideration and are interim and will become  
11 permanent after the 438 case is finished.

12                   I do strongly disagree that the Commission can  
13 legally order any company to exercise its 252(i) rights to  
14 opt into existing contracts. I believe that's a free  
15 contractual right that neither this Commission nor the FCC  
16 nor any court could order somebody to do.

17                   But I also agree that there's a certain level  
18 of semantics about that because, on the other hand, I do  
19 believe that you can look at all the information in front of  
20 you and say, Based on the consideration of what we've been  
21 told, we select this section of the M2A as the rest  
22 resolution or we select this rate from the M2A as the best  
23 solution.

24                   But there's a difference there. In that  
25 position you're resolving a disagreement between

1 Southwestern Bell and WorldCom over what the answer should  
2 be. An opt-in basically under federal law allows us to  
3 force a provision on Southwestern Bell, and I think it's a  
4 significant distinction because they don't really get to  
5 respond then. They just get to say, okay, you can have it,  
6 and we wouldn't be here if that's what we were doing.

7           And finally, and I don't want to make too much  
8 out of this because it's a side issue in some respects, but  
9 Mr. Lane indicated that we had never asked for the studies  
10 up until our Data Request.

11           And I would submit that, as we indicated in  
12 our petition, all we were told by Southwestern Bell from the  
13 commencement of the negotiations to the filing of our  
14 petition was it's the M2A, take it or leave it. We had no  
15 idea what rates they might put at issue, what cost studies  
16 they might advocate in support of those rates until we got  
17 their response at the end of November.

18           That response did not include the cost studies  
19 and, therefore, we followed up immediately with a Data  
20 Request to get the information.

21           Thank you.

22           JUDGE RUTH: Thank you. Just a moment,  
23 please. Do the Commissioners have any questions for  
24 Mr. Lumley? Commissioner Gaw.

25           COMMISSIONER GAW: Mr. Lumley, when you say

1 that the reductions -- or excuse me -- that the amount of  
2 the rates that are proposed that are in the M2A as reduced,  
3 including those that were reduced voluntarily by  
4 Southwestern Bell are cost based, help me to understand how  
5 this Commission has information in front it today or at any  
6 point in time relating to those rates as reduced by  
7 Southwestern Bell as I am struggling with that. I have  
8 struggled with it in the past on other things besides this  
9 case.

10                   MR. LUMLEY: Well, first of all, I would  
11 submit that what happened in front of you was Southwestern  
12 Bell was saying use your 97-40 rates, for example. You had  
13 other parties saying, no, those aren't cost-based. They're  
14 too high. And there was basically a voluntary compromise  
15 with the reductions. That was then followed by the FCC  
16 saying, you know, we're looking at these rates under 271 and  
17 we believe they are TELRIC compliant.

18                   COMMISSIONER GAW: So your position, and I  
19 think heard Staff saying this a while ago, is that this  
20 Commission could hang its hat on the FCC's language in its  
21 271 Order or whatever it was that it had that provision in  
22 it that said these are TELRIC compliant?

23                   MR. LUMLEY: Especially in light of the fact  
24 that the reductions were made in the context of a dispute  
25 between parties, you know, where there were parties



1 advocating to you in that case that the rates should be  
2 lower to be TELRIC compliant. So it wasn't as if it was a  
3 reduction out of the blue is what I'm saying.

4                   COMMISSIONER GAW: I understand. You can't  
5 point to any particular cost study that would generate the  
6 rates that Southwestern Bell reduced, quote/unquote,  
7 voluntarily?

8                   MR. LUMLEY: I'm trying to remember --

9                   COMMISSIONER GAW: Can you?

10                  MR. LUMLEY: -- what was put -- I'm confident  
11 that there were specific critiques of the cost studies that  
12 supported the rates prior to those voluntary reductions --

13                  COMMISSIONER GAW: Yes.

14                  MR. LUMLEY: -- that indicated that they  
15 should be lower. I'm not going to stand here and say it  
16 went to every single rate element or anything like that, but  
17 I believe there were very specific critiques presented.

18                  Were they independent cost studies? Standing  
19 here, I don't believe so, although I certainly could find  
20 out that I'm remembering incorrectly, but I do believe there  
21 was very specific critiques presented to you that indicated  
22 that the rates were still too high. But before you had to  
23 resolve that, Southwestern Bell reduced them and you were  
24 satisfied with those reductions and moved on in the 271  
25 context, and then --

1                   COMMISSIONER GAW: You're speaking you in the  
2 Commission sense, I assume?

3                   MR. LUMLEY: Right, which, I mean, you were --  
4 the Commission was engaged -- I'm sorry. Yes. The  
5 Commission was engaged in the 271 process, not an  
6 arbitration, and if I'm remembering your Order correctly,  
7 you basically said you felt that the rates before the  
8 reductions were okay and, therefore, with the reductions  
9 they'd have to be okay as well.

10                  I think the FCC went a step further and said  
11 they found that it was still in the range. I think you also  
12 have to keep in mind that nobody can come before this  
13 Commission or the FCC and say, Here is the one and only  
14 TELRIC-compliant rate for any particular element. I mean,  
15 everybody will be able to have competing experts to  
16 establish ranges that you can act within.

17                  COMMISSIONER GAW: I understand that, but if  
18 we're looking at -- maybe I'm spending too much time on  
19 this, but if we're looking at the standard which at this  
20 point is still a standard until we hear otherwise from the  
21 Supreme Court, that we are to measure and look at the TELRIC  
22 principles which are based upon costs, where are the costs  
23 that we base these rates upon in this case?

24                  And that's what I'm struggling with and I'm  
25 trying to understand. Maybe it's not as significant as I'm

1 making it, but I -- I think you've already answered my  
2 question and I'm more -- I think I'm just asking in a  
3 rhetorical sense at this point. I'm not sure I can point it  
4 out.

5 MR. LUMLEY: If I can come at it a different  
6 way, I believe in the context of a noncontested proceeding  
7 where the Commission has said the parties don't really have  
8 a right to a hearing but instead it's an arbitration, you're  
9 going to present your positions, that we have to present to  
10 you, you know, a position and an explanation of why these  
11 are cost-based rates.

12 And I believe that the FCC's endorsement of  
13 them, of the rates accomplishes that. I don't know that we  
14 had a burden of coming forth with an independent cost study  
15 necessarily to achieve that, as long as we demonstrate to  
16 you that they are acceptable rates.

17 I would also encourage you to look at  
18 Southwestern Bell's Position Statement on Issue 10. I  
19 believe that they describe the loop rates as TELRIC  
20 compliant, and those loop rates in my understanding include  
21 some voluntary reductions.

22 COMMISSIONER GAW: I think I'll stop. Thank  
23 you.

24 JUDGE RUTH: Commissioner Murray?

25 COMMISSIONER MURRAY: Mr. Lumley, is it your

1 opinion that the FCC did not just determine that the rates  
2 were no greater than -- no greater than cost based on TELRIC  
3 principles but that it determined the rates were within a  
4 range that was TELRIC compliant? Is that what I heard you  
5 say earlier?

6 MR. LUMLEY: Yes, I believe you've restated  
7 that correctly.

8 COMMISSIONER MURRAY: TELRIC is based on  
9 forward-looking cost principles, correct?

10 MR. LUMLEY: Yes, ma'am.

11 COMMISSIONER MURRAY: Is it possible to  
12 determine if costs are below forward-looking principles?

13 MR. LUMLEY: I would agree that typically  
14 you're going to get competing viewpoints from different  
15 experts that establishes essentially a range where they're  
16 showing that if it was higher it would be too high and if it  
17 was lower it would be too low. So yes, I think, yeah, I  
18 will agree with that.

19 COMMISSIONER MURRAY: Would the FCC have  
20 denied Southwestern Bell's 271 application if it had found  
21 that the rates were below TELRIC-based costs?

22 MR. LUMLEY: Obviously I'm speculating, but I  
23 don't believe so.

24 COMMISSIONER MURRAY: So their primary  
25 determination was to make sure that they were no greater

1 than TELRIC-based costs; is that right?

2                   MR. LUMLEY: I would think that that would be  
3 their focus, yes.

4                   COMMISSIONER MURRAY: One last question. If  
5 the Supreme Court eliminates TELRIC as a basis for  
6 determining costs, what, if any, effect would that have on  
7 existing interconnection agreements in the state?

8                   MR. LUMLEY: I was trying to remember that  
9 when you asked that question of Mr. Bates, and I don't have  
10 documents at hand to refer to.

11                   I do believe that there's specific clauses in  
12 most, if not all, the agreements that talk about intervening  
13 changes in law, and I think many of those speak to that  
14 specific proceeding and its impacts. I would be speculating  
15 to try and recreate in my mind exactly what it says, and I  
16 think even the M2A addresses this.

17                   So rather than speculate about that, I'd refer  
18 you to the intervening law clause of any agreement that  
19 you're interested in. I think that section would resolve  
20 your question.

21                   And in general terms I would say that I  
22 believe there are some agreements that would indicate that  
23 such a change would have no effect, but I also suspect there  
24 may be some agreements that might allow Southwestern Bell to  
25 seek changes, and that's kind of changed over time. As you

1 know, the challenge to the TELRIC principle has basically  
2 shadowed these proceedings from the beginning. So it's  
3 always kind of been on the horizon.

4 COMMISSIONER MURRAY: Thank you.

5 JUDGE RUTH: Thank you, Mr. Lumley. Mr. Lane.

6 MR. LANE: It's always a bad sign if you bring  
7 up a lot of junk.

8 I do have several points I'd like to make.

9 One of the kind of issues that has arisen is what's the  
10 scope of the Commission's power and does the Commission  
11 really have the authority to undertake any action it  
12 believes is appropriate? I think it's clear that the  
13 Commission is constrained both by the Telecommunications Act  
14 and by principles of contract law.

15 I think it would be helpful to identify a few  
16 things that I don't think the Commission has the authority  
17 to do. One is that it can't impose terms and conditions  
18 that are unlawful under the act, and that has a specific  
19 meaning with regard to certain provisions of Attachment 6 of  
20 the M2A, and they relate specifically to our agreement in  
21 the M2A to do combinations, our agreement to provide  
22 enhanced extended loops, our agreement to provide unbundled  
23 local switching even in the context where the FCC has said  
24 it's not a UNE. We have a temporal waiver of the  
25 applicability of any change to the TELRIC standard, and we

1 have a temporal waiver to any subsequent decision, to the  
2 implementation of a subsequent decision that says something  
3 that the FCC previously found to be a UNE is no longer a  
4 UNE.

5 All of those things are benefits or gives or  
6 whatever word you want to put on it that are in the M2A that  
7 are available to those that take the M2A but that the  
8 Commission doesn't have the authority to impose outside of  
9 the M2A.

10 Second area where I think the Commission  
11 doesn't have authority is to vary the terms and conditions  
12 of existing interconnection agreements. To the extent that  
13 the parties have reached voluntary agreements, I don't think  
14 the Commission does have the authority to go back and say,  
15 We're going to change the prices, we're going to change the  
16 terms and conditions.

17 Third is I don't believe the Commission has  
18 the authority to change the rates that are in the M2A. That  
19 was a voluntary offer that Southwestern Bell made for  
20 purposes of getting 271 relief, and it was a good-faith  
21 offer that was open to be accepted by any CLEC that chooses  
22 to opt into it, but there's no provision in the M2A that  
23 says that we agree the Commission has the authority to  
24 change and lower those rates.

25 We would not have and still don't agree to a

1 provision like that. We don't think it's reasonable, and we  
2 also note that there's a lot of things in the M2A that we've  
3 given that aren't required by the act, and to do something  
4 that would allow prices to be lowered as well is in our view  
5 inappropriate and we wouldn't have agreed to that.

6                   The second question that's kind of come up in  
7 this is what's the authority of the Commission to set  
8 interim rates, and I tried to listen to Mr. Bates'  
9 explanation of what he believes the authority is, and he  
10 cited from one or more FCC rules.

11                   I'm aware of only three FCC rules that deal  
12 with the Commission's ability to set proxy rates for interim  
13 rates, and those sections are 51.513, 51.611 and 51.707.  
14 I'm not sure if one or more of those were what Staff read.  
15 I can't tell from my notes at this point.

16                   But I can tell you that each one of those  
17 rules has been vacated by the Eighth Circuit Court of  
18 Appeals. They have been found not to be lawful.

19                   The Iowa Utilities Board vs. FCC, the second  
20 one, which the parties often refer to as IUB-II, was decided  
21 on July 18th of 2000. It's at 219 Federal Reporter, 3rd  
22 Series 744, and then the discussion with regard to proxy  
23 prices is on pages 756 and 757. The Eighth Circuit Court of  
24 Appeals concludes that analysis by saying, quote, we  
25 conclude that proxy prices cannot stand and for the



1 foregoing reasons vacate rules 51.513, 51.611 and 51.707,  
2 unquote.

3                   And the reason that they vacate is because the  
4 FCC had itself declined to try to support in the first  
5 appeal those proxy rates. It had argued that by the time it  
6 got to the Supreme Court, it told the Supreme Court, You  
7 don't need to worry about these proxy prices, these interim  
8 rules. Those just were in existence for that narrow period  
9 of time after the act had been established when the state  
10 commissions didn't have cost studies available to it and  
11 couldn't because we just had initiated our rules.

12                   That's obviously not the situation that we're  
13 in today five years after the act has been passed and after  
14 we've gone through several different cost-type proceedings  
15 where cost studies have been prepared and obviously not in  
16 this case where we have cost studies that we have prepared  
17 and submitted to the Commission.

18                   So to cite those FCC rules as support for  
19 interim rates in this case on the theory that the FCC has  
20 blessed it is not correct because the Eighth Circuit Court  
21 of Appeals has vacated those FCC rules on that subject.

22                   Third, there's a question about going outside  
23 the record of this case to set rates, and I think that the  
24 act is also pretty clear on that. If you will look at  
25 Section 252(b)(4)(a) and (b)(4)(b), those pretty well set

1 the parameters for the Commission to act in the context of  
2 an arbitration case. Under subsection A it says the state  
3 Commission shall limit its consideration of issues to what's  
4 set forth in the petition and what's set forth in the  
5 response of parties, that that kind of sets the issues in  
6 the case.

7                Subsection B says, I'm going to read it, State  
8 Commissions may require the petitioning party and the  
9 responding party to provide such information as may be  
10 necessary for the state commission to reach a decision on  
11 the unresolved issues. If any party refuses or fails  
12 unreasonably to respond on a timely basis to any reasonable  
13 request from the state commission, then the state commission  
14 may proceed on the basis of the best information available  
15 to it from whatever source derived.

16              If we were in a situation where the Commission  
17 had asked us to submit information and we had unreasonably  
18 failed to do so, then under the act we probably could go and  
19 say, We'll use the M2A rates, but that's not the situation  
20 that we have here.

21              There's been no request from the Commission  
22 much less failure on the part of Southwestern Bell to  
23 present information to the contrary. We have presented all  
24 of the cost information that supports the rates that are at  
25 issue in this case. You may or may not accept our cost

1 studies. You may or may not think they're the best  
2 evidence, but they are evidence in this case.

3               They are the appropriate evidence on which the  
4 Commission can base its decision here, and there isn't a  
5 basis on the record at this case to go outside the record  
6 and grab some other rates.

7               The fourth point I wanted to make concerned  
8 Attachment 26, and I think it's clear now that both  
9 Southwestern Bell and WorldCom have the same view and  
10 understanding of Attachment 26 of the M2A. We both agree  
11 that these sections of the M2A describe what has to be taken  
12 together as a group.

13              We both agree that the UNE sections are  
14 Attachment 6 through 10 and that they must be taken as a  
15 group, and we both agree that once WorldCom decided it did  
16 not want to opt into that, all of those items were at issue  
17 and had to be either negotiated or arbitrated.

18              We're in agreement still that we did agree on  
19 Attachment 7 through 9. There's no longer an issue for the  
20 Commission. We're in agreement that there's various  
21 portions of 6 and 10 that we did reach agreement on, and  
22 then those that we didn't reach agreement on have been  
23 presented to the Commission in this case.

24              I think Staff's analysis to the extent it  
25 comes to any different conclusion than that which

1 Southwestern Bell and WorldCom mutually understand is simply  
2 incorrect, and I think it's probably because it wasn't  
3 informed by the proceedings that had occurred in Texas as I  
4 described in the first part of my statement to you where  
5 this issue had been litigated in the context of the  
6 development of the T2A and the essentially same language in  
7 the T2A was approved by the Texas Commission on the basis  
8 that the UNE provisions were an all or nothing, take them  
9 all or you get none of them and have to arbitrate.

10               That was in response to claims that WorldCom  
11 had made down there, and the Texas PUC went the other way.  
12 It adopted a T2A Attachment 26 that contains essentially the  
13 same conditions and same terms that we have in the M2A, and  
14 to interpret it any differently I think is wrong.

15               And if the Commission reviews Mr. Smith's  
16 testimony, pages 23 through 25, I think you'll come to the  
17 same conclusion. I think Attachment 26 is clear on its face  
18 as well, but if there's any doubt you can go and take a look  
19 at the history.

20               The next was whether this was a contested  
21 case, and this I guess relates to whether you can go outside  
22 the record. I will say that the Commission has said it's  
23 not a contested case under its Missouri PSC rules. It's not  
24 clear exactly what rules apply, but whether this is a case  
25 that has to follow the Commission rules, the Missouri

1 arbitration act, federal arbitration act or the FCC rules,  
2 all of them come to the same conclusion. You're required to  
3 follow the principles demanded by procedural due process.  
4 Those include notice and opportunity to be heard, right to  
5 submit evidence, right to cross-examination, and a decision  
6 on the record that's created in the case.

7           The act confirms that, I believe, in the  
8 section that I just read where it says you need to base your  
9 decision on what's presented to you by the parties and you  
10 can only go outside of that if the parties unreasonably fail  
11 to respond to the requests for information that the  
12 Commission submits.

13           The next area was whether if rates were lower  
14 than that required by TELRIC, was that a concern of the FCC  
15 in the 271 proceeding, and I agree with Mr. Lumley that it  
16 was not. I don't recall which order, I believe it was the  
17 Kansas/Oklahoma 271 Order where the FCC made it clear that  
18 if a rate was lower than that required by TELRIC, that  
19 certainly wouldn't prevent them from approving a 271  
20 request. That obviously makes sense from the FCC's  
21 perspective.

22           The last area was with regard to intervening  
23 law, and I would agree that most of the -- I believe all of  
24 the agreements contained intervening law language that  
25 enables the parties if there's a change in the TELRIC

1 standard or if there's a change that determines that  
2 something's no longer an unbundled network element, that you  
3 don't need -- that you go back to the Commission and bring  
4 that matter before them and revise your interconnection  
5 agreement appropriately.

6                   There's some specific terms on that that are  
7 in the M2A which I described earlier. It was in Section 14  
8 of Attachment 6, and in that area Southwestern Bell made a  
9 voluntary agreement for the benefit of the CLECs that if the  
10 TELRIC standard was overturned or if a decision that  
11 something was an unbundled network element was overturned,  
12 that we would nevertheless for a period of time continue to  
13 abide by the TELRIC standard and continue to abide by the  
14 existence of the UNE in the M2A and not go back and change  
15 it for the Commission.

16                   I believe that the time frames that are  
17 contained in the M2A says that for residential customers we  
18 won't come back until March of 2003. I said it wrong. For  
19 business customers we won't come back until March of 2003,  
20 and for residential customers we won't come back until March  
21 of 2004.

22                   So those are things that are given in the M2A  
23 which I indicated earlier I don't think the Commission can  
24 order, but in general that's how intervening law language  
25 applies in all the interconnection agreements that we have.

1 I'm not sure if I answered all the questions,  
2 but I'm certainly happy to answer anything else the  
3 Commission may have.

4 JUDGE RUTH: Questions from the Bench,  
5 Commissioner Murray?

6 COMMISSIONER MURRAY: Mr. Lane, you've  
7 indicated that there were voluntary provisions in the M2A  
8 that Southwestern Bell agreed to that were not required by  
9 the act; is that correct?

10 MR. LANE: Right.

11 COMMISSIONER MURRAY: And that those  
12 provisions cannot be imposed upon you involuntarily?

13 MR. LANE: Yes.

14 COMMISSIONER MURRAY: Were any of those  
15 provisions, although they were not required by the act, were  
16 they prohibited by either the FCC or by a court interpreting  
17 the act?

18 MR. LANE: Yes. The examples that I gave are  
19 ones which, in our view, the courts or the FCC have clearly  
20 said that an ILEC cannot be required to do. Combinations,  
21 for example, the Eighth Circuit Court of Appeals has on two  
22 occasions that are cited by Mr. Hampton in his prefiled  
23 testimony in this case made it clear that you do not have to  
24 perform combinations of unbundled network elements for  
25 CLECs.

1                   You can't separate that which is already  
2 connected, but you don't have to do combinations. And the  
3 Eighth Circuit Court of Appeals has made that clear in two  
4 separate occasions. There's similar provisions with regard  
5 to those other items that I told you about that are  
6 voluntary gives on Southwestern Bell's part in the M2A that  
7 can't be imposed.

8                   I'd also say, separate from that, there's a  
9 whole another group of provisions that I think can lawfully  
10 be imposed and we voluntarily gave them in the M2A, but if  
11 the -- if those things are at issue in this case, as I think  
12 they are, then the Commission needs to independently weigh  
13 whether those provisions remain appropriate in this  
14 interconnection agreement, and the mere fact that it's in  
15 the M2A isn't sufficient to say, well, that's what we'll do  
16 in this case.

17                   But that's a separate group from those that I  
18 think are clearly unlawful under various FCC and court  
19 decisions.

20                   COMMISSIONER MURRAY: And if we were to  
21 determine in another proceeding that there were rates that  
22 were more appropriate than the rates that are set by -- set  
23 in the M2A, is there anything that would prevent the  
24 Commission from looking separately at those rate issues for  
25 UNEs and imposing those along with whatever terms and



1 conditions that the Commission chose to impose? Is that --  
2 that may not be a clear question.

3                   MR. LANE: Let me try, and if I don't get it,  
4 let me know. I don't think the Commission can go back and  
5 vary the specific terms of the M2A. That was a voluntary  
6 contractual offer that we made, and the Commission doesn't  
7 have the authority to change particular provisions of it.

8                   I don't think the Commission has the authority  
9 to go back and change the terms of existing interconnection  
10 agreements either.

11                   What about a new CLEC that comes along and  
12 likes whatever result comes out of the generic docket? I  
13 don't think a generic docket is appropriate for a lot of the  
14 reasons that I said. One of the primary ones is that the  
15 act contemplates that you have bilateral negotiations  
16 between an ILEC and a CLEC and that, if you fail to reach  
17 agreement, then you present the matter to the state  
18 commission for arbitration. There isn't a discussion in the  
19 act of having generic proceedings that CLECs can opt into if  
20 they want.

21                   I think one of the problems with the generic-  
22 type proceeding is that it's either one way or it's  
23 ineffective and meaningless, and it's one way if  
24 Southwestern Bell is bound by it but not the CLECs, and it's  
25 meaningless if neither party is bound by it. If there's a

1 dispute between the parties, either one can bring it back in  
2 front of the Commission. There's not a lot of benefit to be  
3 gained by having a proceeding like that. I don't know if  
4 that answers your question or not.

5 COMMISSIONER MURRAY: I think it does. Thank  
6 you.

7 JUDGE RUTH: Commissioner Lumpe?

8 COMMISSIONER LUMPE: Just one, Mr. Lane. You  
9 were discussing the various voluntary provisions or some  
10 other provisions that you said you thought were unlawful, I  
11 believe might have been what you said, and you stated the  
12 phrase cannot be required. Is that equivalent to being  
13 prohibited?

14 MR. LANE: Yes.

15 COMMISSIONER LUMPE: You interpret it where if  
16 it says cannot be required, then that equals being  
17 prohibited?

18 MR. LANE: Yes. And I'll look at combinations  
19 as one particular example of that. The Eighth Circuit has  
20 said that under the act, the act says it's up to the CLECs  
21 to combine the elements that Southwestern Bell provides to  
22 it, and that's binding on the FCC and it's binding on this  
23 Commission, and it would be unlawful for the Commission to,  
24 in an arbitration proceeding, to require us to do  
25 combinations like that for CLECs. And so, yes, you would be

1 prohibited. We couldn't be required to do it.

2 COMMISSIONER LUMPE: Okay. I was just trying  
3 to understand the phrase cannot be required is equivalent to  
4 you are prohibited from, and I wasn't sure that --

5 MR. LANE: The cannot be required is my  
6 phraseology. It's not the phraseology you'll see when you  
7 read the Order. The Order says -- the Eighth Circuit Order  
8 says you can't require ILECs to perform combinations for  
9 CLECs under the act.

10 COMMISSIONER LUMPE: That's cannot require?

11 MR. LANE: Right. Could we voluntarily agree  
12 to do it? Yes. We did in the M2A. We voluntarily agreed  
13 to do it.

14 COMMISSIONER LUMPE: If the FCC or the court  
15 or whoever says an ILEC cannot be required to do this, that  
16 in your interpretation is equivalent to the Commission is  
17 prohibited from requiring them?

18 MR. LANE: Absolutely, yes. And that, I  
19 think, if a court finds that the act says it'll be done this  
20 way, then that's the way it has to be done. The Commission  
21 doesn't have the authority to impose exactly that which the  
22 court has already said can't be imposed. I think that's  
23 clear.

24 COMMISSIONER LUMPE: Thank you.

25 JUDGE RUTH: Commissioner Gaw.

1                   COMMISSIONER GAW: Mr. Lane, are you in any  
2 way suggesting that this Commission cannot or should not at  
3 some point in time have the ability to revisit the rates  
4 that are currently set in the M2A, and I guess I want to  
5 qualify that by saying including those rates that are  
6 ultimately determined in 438? And I'll stop there if I made  
7 myself clear.

8                   MR. LANE: I think so, and I'll answer this in  
9 two ways. With regard to the M2A itself, I would say you  
10 cannot and should not because the M2A is the voluntary  
11 offering that Southwestern Bell made and it didn't include  
12 provisions that would give the Commission the ability to go  
13 back and lower rates or do whatever later on or raise them,  
14 either way.

15                   With regard to the Commission's authority  
16 ultimately to look at what rates should apply for unbundled  
17 network elements under the act, the answer is clearly  
18 different. If an arbitration like this one is brought  
19 before you, that is the appropriate time and place for you  
20 to look at what rates you believe are appropriate for the  
21 interconnection agreement to be contained in the -- for the  
22 parties that are before you in that case.

23                   COMMISSIONER GAW: And if the Commission would  
24 come to the conclusion that the time limits that some have  
25 suggested that we are bound by are too limited within which

1 to appropriately study what the costs are and what the rates  
2 should be, is it Southwestern Bell's position that it would  
3 not be appropriate to have a generic case to have additional  
4 time in order to study those issues in that forum?

5 MR. LANE: Yes. Yes. I'll expand a little  
6 bit on it.

7 COMMISSIONER GAW: I want you to.

8 MR. LANE: Right. I think there is time to  
9 get done in a case before you whatever needs to be done if  
10 the parties want to have it done. And the act is what sets  
11 the time limits for the Commission to act, and it says nine  
12 months or 270 days. I forget which term they use.

13 But after 135 days of negotiation, any party  
14 can come to the Commission and say, Obviously we're not  
15 going to reach agreement. We want you to decide this  
16 matter. And that leaves 135 days, four and a half months,  
17 for the Commission to reach its decision. So I do believe  
18 there's time.

19 You hear Staff say there's not time and you  
20 hear WorldCom say there's not time. I won't speak for  
21 Staff, but WorldCom, as I said earlier, is a company of very  
22 substantial size and very substantial resources. If they  
23 want to come in and arbitrate before you, they have the  
24 ability to put together either their own cost studies, as  
25 they have done before this Commission in other cases, or

1 they can take Southwestern Bell's cost studies and propose  
2 modifications to them as they have done in other cases  
3 before this Commission.

4           I believe that what they really want is, I  
5 think they think it's in their best interests to have a  
6 generic docket, to get all of the other CLECs involved in it  
7 and bring the whole group together and figure I'll do better  
8 in a group than I'll do by myself on that. I think frankly  
9 that's what they believe, and that's just not appropriate to  
10 what's contemplated by the act.

11           COMMISSIONER GAW: And when you say it's not  
12 appropriate, I know you've discussed it, but in your  
13 briefing, I would assume the parties would draw our  
14 attention to the support for their argument about why it is  
15 not or is appropriate as the case may be.

16           MR. LANE: I will. And Commissioner, it's in  
17 Sections 251 and 252 of the act, and that is what describes  
18 how you're supposed to get rates. Congress had a number of  
19 different alternatives that were available to it. It could  
20 have chosen to let the FCC set national rates. It could  
21 have told each state to set its own rates that apply to all  
22 of the parties who came before it.

23           But it chose the option to say that it favored  
24 bilateral negotiations between a CLEC and an ILEC providing  
25 an opportunity for either side to bring it in front of the

1 Commission for resolution of any issues that they couldn't  
2 get resolved.

3 COMMISSIONER GAW: Obviously there is a  
4 disagreement about whether it's appropriate or not.

5 MR. LANE: Right.

6 COMMISSIONER GAW: So that discussion will be  
7 helpful, that point in the brief. Thank you, Mr. Lane.  
8 That's all I have.

9 JUDGE RUTH: I wanted to follow up on  
10 something that you had said earlier in your discussion when  
11 you were talking about -- in fact, you quoted some sections  
12 from the Telecommunications Act, subsection B where you  
13 said, The Commission may require the petitioning party and  
14 the responding party to provide such information as may be  
15 necessary for the state commission to reach a decision on  
16 the unresolved issues. If any party refuses or fails  
17 unreasonably to respond on a timely basis to any reasonable  
18 request from the state commission, then the state commission  
19 may proceed on the basis of the best information available  
20 to it from whatever source derived.

21 I have a question for you, then, taking into  
22 consideration the act and the portion that you quoted. That  
23 makes it sound like your position is that the Commission  
24 must select either WorldCom or Southwestern Bell's position  
25 on each issue in this case.

1                   If that's true, are you suggesting that the  
2 role that Staff has been given in this case is inappropriate  
3 and does not meet the requirements of the act? Because  
4 Staff was directed to evaluate both sides' positions,  
5 recommend to the Commission which it thought was appropriate  
6 or, when necessary, offer an alternative proposal.

7                   MR. LANE: I do not believe and I don't  
8 maintain that Staff's role is inappropriate. I believe that  
9 what this portion of the act indicates is that the  
10 Commission needs to make its decision based on the record  
11 that's before it and not go outside of it to some other  
12 source that isn't part of the proceeding in front of you.

13                   Staff's involvement here obviously is part of  
14 the proceeding. We agree with some of their recommendations  
15 but disagree with others, but I don't maintain that it's  
16 inappropriate for them to participate or to offer their  
17 views to the Commission, nor do I maintain that this is a  
18 baseball-style arbitration where the Commission has to adopt  
19 either one party's position or the other.

20                   I think as long as your decision is based on  
21 the evidence before you in this proceeding and is within  
22 that range, that's perfectly permissible for the Commission  
23 to do.

24                   JUDGE RUTH: I think you've answered this  
25 question, but I'll make sure. It's my understanding



1 Southwestern Bell did not object to the spinoff dockets in  
2 the M2A case, 438, 439, 440, but it appears then that you  
3 did not object because that was a voluntary part of the  
4 negotiation back and forth, but in this case you would  
5 object to any kind of spinoff document, this interconnection  
6 agreement?

7                   MR. LANE: Yes, I think that's a fair  
8 statement, Judge. In the 271 case, TO-99-227, there was  
9 much discussion and the Commission made it clear that they  
10 wanted to have another docket to examine certain rate  
11 elements that were part of the M2A, and we did voluntarily  
12 agree to those dockets, 438, 439 and 440, for purposes of  
13 setting, quote, permanent prices for the M2A. That's not  
14 something we're agreeing to in this case.

15                   JUDGE RUTH: I'm not sure you can answer this,  
16 but there's been a suggestion earlier, perhaps yesterday,  
17 that not all states follow the restrictive time limitations  
18 that this Commission has chosen to follow for arbitrations.

19                   Can you tell me if more tend to go one way or  
20 the other and if Southwestern Bell has made that an issue on  
21 appeal in other cases?

22                   MR. LANE: I don't know the answer to either  
23 one of those questions. I know other states and I will  
24 agree other states have done things differently than this  
25 Commission has, and I don't know the status of whether those

1 have been subject to appeals or not.

2 I know the substantive decisions of some other  
3 state commissions in the Southwestern Bell region arising  
4 out of arbitrations have been appealed, but I don't know if  
5 the -- if any generic proceeding was one of the points of  
6 that appeal. I just don't know.

7 JUDGE RUTH: Thank you. Any other questions  
8 from the Bench? Thank you very much.

9 Mr. Bates?

10 MR. BATES: Yes. I just have a few remarks as  
11 far as my part of the second round of the presentation.

12 First of all, I'd like to clarify two matters  
13 from this morning that I may have been unclear on. In  
14 response to, I believe it may have been Commissioner  
15 Murray's question about whether or not a generic case, terms  
16 set in a generic case would apply back to this case, for  
17 instance, or previously decided arbitration case, it is  
18 Staff's position that it does not have to do so, but it  
19 certainly may if the Commission decides not to -- decides to  
20 intervene, it may do so. If it decides not to, it can  
21 refrain from doing so.

22 So I believe I may have left the impression  
23 that that would happen automatically. I hope I did not  
24 leave that impression. If I did, it was not my intention  
25 to.

1                   Secondly, in response to, I believe, a  
2 question Commissioner Gaw asked regarding interim rates, 438  
3 interim rates and how they -- how that would be affected,  
4 for instance, if this case were decided first, what would  
5 happen to those rates after 438 was decided, I doubt that I  
6 was clear enough about that.

7                   The mechanism by which they could be changed,  
8 and I believe they could be changed, would probably be a  
9 true-up hearing, and that would probably be the most  
10 appropriate way of doing that.

11                  Really, the last thing that I would like to  
12 say is, regarding Mr. Lane's comments about the particular  
13 proxy rules, primarily what I was quoting from this morning  
14 was from the part of the first Report and Order preceding  
15 the Commission's discussion of that rule, which is still in  
16 effect, but then to some extent through 51.513.

17                  Again, the First Report and Order from the  
18 Commission is still in effect, and I would note that it's my  
19 understanding, it's Staff's understanding as well that in  
20 the 455 case, which occurred after the Iowa decision,  
21 Southwestern Bell did avail itself of those rules without  
22 stating -- perhaps he misunderstood our position, but  
23 without stating that they necessarily had to be or had not  
24 to be, but I believe that all parties, including  
25 Southwestern Bell, did avail itself of those rules.

1 JUDGE RUTH: Do you have anything further,  
2 Mr. Bates?

3 MR. BATES: No, thank you.

4 JUDGE RUTH: Commissioners, do you have any  
5 questions for Mr. Bates?

6 COMMISSIONER MURRAY: Your last statement  
7 about you thought the parties availed themselves of those  
8 proxy rules in 455, I believe, that's TO-2001-455?

9 MR. BATES: Yes.

10 COMMISSIONER MURRAY: Are you saying that in  
11 that Arbitration Order that interim rates were set? I'm  
12 unclear about what you mean, that the parties availed  
13 themselves.

14 MR. BATES: Well, the entire Order. Reference  
15 to the entire Order including those rules, yes, contained  
16 therein.

17 COMMISSIONER MURRAY: But we didn't set  
18 interim rates in 2001-455, correct?

19 MR. BATES: No.

20 COMMISSIONER MURRAY: Thank you.

21 MR. BATES: I'm sorry. I may have been  
22 unclear again. Thank you for the opportunity to clarify  
23 that.

24 JUDGE RUTH: Any other questions? Thank you  
25 Mr. Bates.

1                   Before we move on to the next issue, which I  
2 believe is the UNE issues, I wanted to mention that it has  
3 been brought to my attention that at least one party may  
4 wish to have another witness excused; is that correct?

5                   MR. LANE: Yes, your Honor. We'd appreciate  
6 it if Mr. Smallwood could be excused.

7                   JUDGE RUTH: Mr. Smallwood is excused.

8                   Were there any other housekeeping measures I  
9 needed to address?

10                  We'll go ahead then and work on the UNE  
11 issues. WorldCom, I believe you're calling a witness first.

12                  MR. MORRIS: Worldcom calls Don Price.

13                  (Witness sworn.)

14                  JUDGE RUTH: Thank you, please be seated.

15 DON PRICE testified as follows:

16 DIRECT EXAMINATION BY MR. MORRIS:

17                  Q.       Mr. Price, will you please state your name and  
18 job title for the record, please, sir.

19                  A.       The name is easy. The job title is a little  
20 bit tougher. My name is Don Price in the Western Public  
21 Policy Group of WorldCom. I am the Senior Manager for  
22 Competition Policy.

23                  Q.       And do you have before you what's been marked  
24 as Exhibits 15, 16NP and 16HC, being your direct and public  
25 and confidential versions of your rebuttal testimony?

1           A.       I do not have file stamped copies, but I will  
2 take your recitation of the exhibit numbers on faith,  
3 counsel.

4           Q.       Let's start with Exhibit 15. Do you have  
5 any -- your direct testimony. That's testimony you caused  
6 to be filed in this proceeding, correct?

7           A.       I do have some changes.

8           Q.       That was my next question. Do you have any  
9 changes or corrections to Exhibit 15, your direct testimony?

10          A.       Yes, I do. At page 42, at line 7, I would  
11 rework that sentence to read as follows: The transitional  
12 condition does not apply, because SWBT's Missouri access  
13 tariff does not contain such a subsidy element. And that's  
14 the first sentence.

15                   Then the second sentence I would simply strike  
16 the word "are" at the end of line 9 and add the words  
17 "should be". Would you like for me to make that change on  
18 the record copy? This isn't the record copy. Never mind.  
19 Sorry.

20                   JUDGE RUTH: Would you repeat the changes to  
21 the first sentence?

22                   THE WITNESS: Yes. I read the sentence as it  
23 would read with the correction. The transitional condition  
24 does not apply, because SWBT's Missouri access tariff does  
25 not contain such a subsidy element.

1 BY MR. MORRIS:

2 Q. Mr. Price, for clarity, would you then read  
3 the next sentence where you made that second correction?

4 A. Yes. In its entirety the sentence with the  
5 correction would read, Thus, consistent with the Texas  
6 PUC's, comma, decision -- I didn't do that right -- PUC  
7 decision, there should be no restrictions on WCC's ability  
8 to provide wholesale access to non-CLEC IXCs using UNE  
9 transport leased from SWBT.

10 Q. Do you have any other changes to your direct  
11 testimony?

12 A. Yes. At page 60, lines 5 and 6, I would  
13 delete the last sentence of that answer.

14 Q. For the record, would you state what that last  
15 sentence is.

16 A. The sentence to be deleted reads, WCOM expects  
17 that CLECs that use AIN functionalities on a more wide scale  
18 basis than WorldCom will have more to say about this issue.

19 Q. Do you have any other changes to your direct  
20 testimony?

21 A. I do not.

22 Q. Moving to your rebuttal, do you have any  
23 corrections to your rebuttal testimony?

24 A. No, I do not.

25 Q. Okay. With these changes, if I were to ask

1 you the questions contained in your direct and rebuttal  
2 testimony, would your answers be the same as contained  
3 therein?

4           A.       Yes, they would.

5                   MR. MORRIS: At this time, your Honor, we  
6 would move for the admission of Exhibits 15, 16NP and 16HC  
7 into the record.

8                   JUDGE RUTH: Thank you. Exhibit 15 is  
9 Mr. Price's direct testimony, and Exhibits 16NP and HC are  
10 Mr. Price's rebuttal. Any objections to these documents  
11 being received into the record?

12                   (No response.)

13                   Seeing no objects, they are received.

14                   (EXHIBIT NOS. 15, 16NP AND 16HC WERE RECEIVED  
15 INTO EVIDENCE.)

16                   MR. MORRIS: Your Honor, we tender the witness  
17 for cross-examination.

18                   JUDGE RUTH: Thank you. I believe  
19 Southwestern Bell will start cross.

20 CROSS-EXAMINATION BY MR. LANE:

21           Q.       Good afternoon, Mr. Price.

22           A.       How are you, Mr. Lane?

23           Q.       Good. Could you turn to page 6 of your  
24 rebuttal testimony, please? Now, on page 6 you make the  
25 claim that Southwestern Bell is asserting that it's no



1 longer obligated to do things it voluntarily agreed to do in  
2 the M2A. Do you see that reference?

3 A. I do.

4 Q. And you also claim that now that Southwestern  
5 Bell has the carrot of 271, it seeks to do away with many  
6 market opening measures. Do you see that?

7 A. Yes, I do.

8 Q. And to be fair, would you agree with me that  
9 Southwestern Bell continues to make the M2A available to any  
10 requesting CLEC, including portions of it that are  
11 legitimately related pursuant to Attachment 26?

12 A. I do understand that Southwestern Bell will  
13 make available the M2A in its entirety, and I assume,  
14 consistent with the arguments that I've heard, that it is  
15 willing to make certain portions of it available that have  
16 to do with all of what Southwestern Bell considers to be the  
17 legitimately related provisions.

18 Q. Okay. And you would agree with me that  
19 WorldCom also agrees that Attachments 6 through 10 must be  
20 taken as a whole and that WorldCom has chosen not to do that  
21 in this case, right?

22 A. I believe the record should speak for itself.  
23 I mean, there's been a lot of argument about that. I didn't  
24 really try to get into the nuts and bolts of that issue in  
25 my testimony and, quite frankly, I'm not as intimately

1 familiar with it as you are, for example.

2           Q.       Okay. But in any event, the market opening  
3 options that Southwestern Bell made available with regard to  
4 UNEs in Attachment 6 through 10 remain available to CLECs if  
5 they choose to opt into that UNE section, right?

6           A.       If they choose to opt in, and I guess what  
7 we're hearing in this proceeding is that to the extent that  
8 CLECs desire to make any change that impacts any of those  
9 sections, then Southwestern Bell's provision, as I believe I  
10 state in one of my -- I didn't say that right. Southwestern  
11 Bell's position is that everything then goes away; in other  
12 words, that Southwestern Bell has no further legal  
13 obligation.

14                   And, in fact, as you stated a minute ago in  
15 your discussions with the Commissioners, it's Southwestern  
16 Bell's position it can't be required to do some of the  
17 things, and obviously we have a very different opinion about  
18 that.

19           Q.       And it's WorldCom's position as well, is it  
20 not, that when it chose not to opt into Attachments 6  
21 through 10 of the M2A, that all of those items were at issue  
22 and had to be either negotiated or arbitrated, right?

23           A.       I believe that is the case and that that is  
24 consistent with the petition that was filed by WorldCom in  
25 this proceeding.

1 Q. Okay. Now, on Issue 2 on your rebuttal  
2 testimony on page 7, if you take a look at that, please.

3 A. I'm there.

4 Q. You indicate that there is no intent by  
5 WorldCom to require Southwestern Bell to maintain obsolete  
6 technology and that you only want the right to request  
7 Southwestern Bell to do that. Do you see that?

8 A. Yes. That's based on my reading of the  
9 language at issue in that section.

10 Q. Okay. And given your rebuttal testimony, are  
11 you proposing a change in the Decision Point List language  
12 proposed by WorldCom?

13 A. I don't believe so, no.

14 Q. Isn't it fair to say that under the language  
15 proposed by WorldCom in the Decision Point List on Issue 2,  
16 that in the vast majority of circumstances if WorldCom  
17 requests technology to be continued, that Southwestern Bell  
18 is required to continue it?

19 A. No, not at all.

20 MR. LANE: Your Honor, if I may approach the  
21 witness?

22 JUDGE RUTH: Yes. Show counsel the document  
23 first.

24 BY MR. LANE:

25 Q. Mr. Price, I want to show you the Staff's

1 evaluation of the Joint Decision Point List with regard to  
2 Issue 2 and ask if you'll agree that, under the language  
3 proposed by WorldCom, that it provides that to the extent  
4 that the requested characteristics are specifically provided  
5 for in this attachment, technical publication or other  
6 written description, SWBT at its own expense will be  
7 responsible for maintaining the functionality and required  
8 characteristics of the elements purchased by CLEC, including  
9 any expenses associated with changes in facilities,  
10 operations or procedure of SWBT, network protection criteria  
11 or operating or maintenance characteristics of the  
12 facilities?

13           A.       If I could have a minute, please. I agree  
14 that the language that you read is in the section. As I  
15 read the section, the language in the preceding sentences  
16 informed my interpretation of that, because in both  
17 instances it discusses the submission of a request pursuant  
18 to 2.17.3 and then discusses later on the special request  
19 process.

20           Q.       But if WorldCom makes the request, then under  
21 the language that I read and you agreed with, then  
22 Southwestern Bell is required to maintain the technology,  
23 right?

24           A.       Well, that's what I'm not sure of, because  
25 this is just one sentence in a longer provision, and I'm not

1 sure what Southwestern Bell's interpretation would be. The  
2 concern that I have is that SWBT's interpretation would be  
3 that it could do away with that.

4 Q. But this is your language, is it not,  
5 WorldCom's language? That's your proposal?

6 A. Right. But I was talking about your  
7 interpretation.

8 Q. And I'm trying to get your interpretation of  
9 it since you're the witness proposing that language. Is it  
10 true or not true that, under that section that you're  
11 proposing, that if you request it and those criteria are  
12 met, that Bell is required to provide it and maintain that  
13 technology at Southwestern Bell's expense?

14 A. I can see the interpretation that you're  
15 suggesting by your question. The concern that I had with  
16 the -- that I addressed not in my rebuttal but in my direct  
17 testimony has to do with the use by -- in Southwestern  
18 Bell's proposed language of a -- of the word may, which  
19 sounded to me like it gave Southwestern Bell the ability to  
20 decide whether or not it would maintain those  
21 characteristics and would not provide WorldCom any ability  
22 to make a request one way or the other.

23 Q. Southwestern Bell isn't proposing any language  
24 on this issue, is it, Mr. Price?

25 A. It does not appear so. So I apologize.

1           Q.       So for clarity, are you proposing, then, that  
2 we change your proposed language or is to stay the same?

3           A.       I would not propose to change WorldCom's  
4 language, no.

5           Q.       Okay. And it is fair to say, then, that  
6 WorldCom intends for Southwestern Bell to be required to  
7 continue to maintain obsolete technology if WorldCom  
8 requests it and that it be at Southwestern Bell's expense?

9           A.       Well, again, as I stated in my direct  
10 testimony, the intent of our proposal is to have some sort  
11 of certainty as to what the elements would comprise during  
12 the term of the agreement, and we're talking about a finite  
13 term, so --

14          Q.       Is the answer yes, then, you do seek to have  
15 Southwestern Bell be required to do it and at Southwestern  
16 Bell's expense, or should your language be interpreted to be  
17 something different?

18          A.       The language -- well, I want to be clear on  
19 this. During the term of the agreement, should a  
20 circumstance arise where Southwestern Bell seeks to do away  
21 with characteristics in its network on which WorldCom is  
22 relying to provide services to end users, WorldCom would  
23 like the opportunity to request of Southwestern Bell that  
24 those characteristics be maintained so that service would be  
25 uninterrupted during the term of the contract.

1 Q. Okay. And let's get right to it. You want,  
2 if you request it, that we be required to continue it at our  
3 expense, right? That's either yes a yes or no.

4 A. Yes, I think so.

5 Q. All right. On Issue 3, combinations, would  
6 you agree with me that in the Case No. TO-99-227 case, that  
7 the Commission here expressly found that Southwestern Bell  
8 is not required to combine unbundled network elements that  
9 are not already combined in its network?

10 A. I must confess to not being intimately  
11 familiar with that decision.

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

14 JUDGE RUTH: Yes.

15 BY MR. LANE:

16 Q. Mr. Price, I'm going to show you the  
17 Commission's decision in Case No. TO-99-227 of March 15th of  
18 2001, and with specific reference to page 13 of that order  
19 ask if you'll agree that the Commission found that  
20 Southwestern Bell also provides for some services in the M2A  
21 beyond what it is legally obligated to provide; for example,  
22 the M2A requires Southwestern Bell to combine certain UNEs  
23 that are not already combined in its network?

24 A. That's what the language states. I'm not a  
25 hundred percent sure that I know exactly what the Commission

1 meant by the phrase in its network, because I think that  
2 raises precisely what I see as the major dispute in this  
3 proceeding.

4           Q.       Would you also agree with me that in the  
5 appeal of the Commission's arbitration decision in Case  
6 Nos. TO-97-40 and TO-98-115, that the Commission on the  
7 appeal, on Southwestern Bell's appeal, took the position  
8 that while UNE combinations could not be required of  
9 Southwestern Bell, that Southwestern Bell had, in fact,  
10 voluntarily agreed to do them and in that particular  
11 instance?

12          A.       I don't know. I'm sure the record will speak  
13 for itself.

14          Q.       You didn't study anything specifically in  
15 Missouri, then, with regard to your testimony on Issue 3; is  
16 that a fair statement?

17          A.       In terms of the precedent, no. I think the  
18 public policy discussion that I included in my direct  
19 testimony bears regardless of the specifics of the state  
20 proceeding.

21          Q.       You'd agree that Staff does not concur in your  
22 analysis of Issue 3, right?

23          A.       It would appear that there is either a  
24 difference of opinion or a misunderstanding of the position  
25 based on what I read in the Staff's input in the Decision



1 Point List.

2 Q. Would you agree that the issue of requiring  
3 ILECs in general to provide unbundled network element  
4 combinations was raised in the UNE remand case at the FCC?

5 A. Oh, yes, absolutely.

6 Q. And on page 9 you make the claim that because  
7 the FCC failed to overturn its prior decision, that the only  
8 standing interpretation is from paragraph 296 of the Local  
9 Competition Order. Do you see that reference on page 9?

10 A. Are you in my direct testimony now?

11 Q. I'm sorry. Your rebuttal.

12 A. That's correct.

13 Q. It's fair to say, is it not, that in paragraph  
14 480 of that UNE Remand Order that the FCC specifically  
15 declined to interpret Rule 315(b) as requiring ILECs to  
16 combine unbundled network elements that are not already  
17 combined?

18 A. And that's precisely what I'm addressing at  
19 page 9 of my rebuttal at line 16 through 18, because the FCC  
20 did not address it, which means that the only interpretation  
21 I believe is the interpretation that had previously put  
22 forth in its Local Competition Order at paragraph 296.

23 Q. So it's clear, then, the language where the  
24 FCC says they will not, quote, interpret Rule 315(b) as  
25 requiring incumbents to combine unbundled network elements

1 that are already combined, unquote, that that means that  
2 their prior decision where they did make that determination  
3 still stands?

4           A.       I do not have the UNE remand decision in front  
5 of me, but it is my interpretation of that discussion that  
6 they did not overturn their prior -- in fact, they recited  
7 their prior interpretation and they did not overturn it.

8                   MR. LANE: May I approach?

9                   JUDGE RUTH: Yes.

10 BY MR. LANE:

11           Q.       Let me show you, Mr. Price, the FCC's Third  
12 Report and Order and Further Notice of Proposed Rulemaking  
13 in Docket 96-98 that was dated November 5th of 1999, and  
14 with specific reference to paragraph 480 ask if you will  
15 agree that the FCC said there that they would not, quote,  
16 interpret Rule 51.315(b) as requiring incumbents to combine  
17 unbundled network elements that are ordinarily combined?

18           A.       In this order, that's exactly what it says, in  
19 this order. They had previously done that. They didn't  
20 apparently see the need to do it again.

21           Q.       And would you agree with me that in paragraph  
22 481 of the Order, that the FCC goes on to say that ILECs  
23 routinely combine loop and transport elements in their  
24 network?

25           A.       Yes.

1           Q.       And that would mean ordinarily combined in  
2 your lingo, correct?

3           A.       Precisely.

4           Q.       And yet the FCC did not obligate ILECs to  
5 combine loop and transport functions in this Order under  
6 paragraph 481, correct?

7           A.       These specific combinations, no. I mean,  
8 there's discussion elsewhere in the Order about combinations  
9 generally and the fact that ILECs continue to not provide  
10 nondiscriminatory access to their network so that CLECs can  
11 do their own combining.

12          Q.       But your interpretation that ordinarily  
13 combined means that Southwestern Bell has to combine  
14 elements that aren't currently combined in its network is  
15 essentially refuted by paragraph 481 where the Commission  
16 found that loop and transport didn't need to be combined for  
17 CLECs even though there were times when the ILEC does,  
18 quote, ordinarily combine it in its network, right?

19          A.       I think the specifics of that particular part  
20 of the UNE remand decision are interesting and troubling for  
21 some of the reasons that we've already discussed here,  
22 because, for example, as you pointed out, they did say  
23 something that looks as if or could be interpreted to be  
24 directly contrary to what they said in the original local  
25 competition decision.

1 Q. No, sir. I'm asking if you wouldn't agree  
2 that what they decided was directly contrary to the  
3 interpretation that you're advancing in this case?

4 A. And I think the answer is no, and what I was  
5 trying to say is that that particular discussion was  
6 involving very -- two very specific combinations that they  
7 sort of have gone off on a tangent about with the EELS, and  
8 it takes away from the larger question of combinations  
9 generally and the whole question of whether or not the ILECs  
10 will provide nondiscriminatory access to their networks so  
11 that CLECs can do their own combining in a manner that is  
12 efficient and reasonable and yet promotes the  
13 pro-competitive results of the act.

14 Q. Nevertheless, you would agree that in  
15 paragraph 481 the Commission found that even though loop and  
16 transport are ordinarily combined as you use the term, that  
17 the ILECs are not required to do that type of combining,  
18 correct?

19 A. And I agree that that is an interpretation and  
20 that this Commission has the authority to go beyond the  
21 minimum national requirements and to make its own findings  
22 on that very specific issue in this proceeding.

23 Q. Now, let's be clear. You're not -- when you  
24 say minimum national requirements, you would agree that if  
25 the courts have spoken to a particular issue and say the act

1 doesn't require it, that the state commission, neither the  
2 state commission nor the FCC has the authority to  
3 nevertheless require it despite the specific mandate from a  
4 court, are you?

5       A.       Well, I guess in listening to your response to  
6 Commissioner Lumpe's questions earlier, I thought that we  
7 were getting very one-sided representation in the issue.  
8 When you say the courts have decided that it can't be  
9 required, that is done in the context of the question of  
10 whether or not Southwestern Bell will provide  
11 nondiscriminatory access to its network.

12               If it won't, then I don't think there's any  
13 question that this Commission has the authority to order  
14 Southwestern Bell to provide combinations.

15       Q.       I'm going to separate this out from UNE  
16 combinations for a minute and reask the question so it's  
17 clear. Are you maintaining that this Commission has the  
18 authority on any item to impose it on Southwestern Bell if a  
19 court has specifically said that that can't be done under  
20 the act?

21       A.       If the court has said that whatever we're  
22 talking about specifically cannot be done, then obviously  
23 no, I would not say that.

24               What I am saying is that what Southwestern  
25 Bell is representing the Eighth Circuit decision stands for

1 is a one-sided discussion of the issue because there has not  
2 been any discussion about nondiscriminatory access to  
3 Southwestern Bell's network, and that cannot be divorced  
4 from the issue that we're talking about.

5 Q. Would you agree with me, then, that in the  
6 TO-99-227 case the Commission here found that Southwestern  
7 Bell had provided nondiscriminatory access to its network?

8 A. Is that the Order that you asked me to look at  
9 earlier?

10 Q. Yes.

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

12 Q. Okay. Let me move over to Issue No. 5  
13 concerning stand-alone multiplexing as a UNE. On page 11 of  
14 your testimony you state your agreement that stand-alone  
15 multiplexing is not an unbundled network element. Do you  
16 see that?

17 A. Yes, I do.

18 Q. But you claim, carrying over on to page 12,  
19 that Southwestern Bell must nevertheless make multiplexing  
20 functionality available, quote, as a component of other  
21 elements obtained by a CLEC. Do you see that?

22 A. Yes, I do.

23 Q. Would you agree with me, though, that your  
24 proposed language also proposes a requirement for  
25 stand-alone multiplexing?

1           A.       I have seen that, and I do not understand it,  
2 and based on what I am here before you to say, we can craft  
3 that language in such a way, I believe, as to eliminate the  
4 concern so long as we have access to multiplexing in  
5 combination with the appropriate other elements,  
6 specifically loop and transport.

7           Q.       But it's the language that WorldCom proposes  
8 that says that Southwestern Bell has to give stand-alone  
9 multiplexing, right?

10          A.       I assume that's the case, and again, I believe  
11 that we should be able to resolve that.

12          Q.       So to the extent your language says that  
13 Southwestern Bell has to provide stand-alone multiplexing,  
14 you're no longer recommending that to the Commission in this  
15 case?

16          A.       Well, I never recommended that in my  
17 testimony. What I said was that multiplexing is a component  
18 of other UNEs and must be made available and Southwestern  
19 Bell has a clear obligation to do that.

20          Q.       You're the only witness on this Issue 5,  
21 right?

22          A.       I believe so, yes.

23          Q.       And you're the one that's supporting  
24 WorldCom's proposal to insert this language in the  
25 interconnection agreement, right?

1           A.       Perhaps as modified by my earlier answer.

2           Q.       Okay. Let me turn to Issue 7, which involves  
3 the promotional offerings found in Section 14 of the M2A.  
4 Would you agree with me that Section 14 of Attachment 6 of  
5 the M2A covers combinations, enhanced extended loops, a  
6 waiver of implementing revisions to the TELRIC standard for  
7 some period of time, and an agreement to continue to provide  
8 items that are subsequently found not to be UNEs for a  
9 period of time? All four of those things are part of  
10 Section 14 to Attachment 6 of the M2A?

11          A.       That is generally my understanding, yes.

12          Q.       And I'll separate out combinations where it's  
13 clear that our two companies have a disagreement and ask you  
14 with regard to the others, would you agree with me that  
15 those constitute voluntary offers of Southwestern Bell in  
16 the M2A that can't be imposed by the Commission outside of  
17 that?

18          A.       I would not agree with that, no.

19          Q.       You think the Commission -- and you're not a  
20 lawyer, I understand, right? Is that right, you're not?

21          A.       That is correct.

22          Q.       You think -- as a policy matter, then, you  
23 think it's appropriate for this Commission to be in a  
24 position where it tells the parties that they can't  
25 implement changes in the TELRIC standard that may be ordered



1 by the Supreme Court or by the FCC?

2           A.       No. I'm sorry. I must have misunderstood  
3 your previous question.

4           Q.       Okay. You would agree that it's not  
5 appropriate as a policy matter, setting aside the legal  
6 issue, it's not appropriate as a policy matter for the  
7 Commission to tell the parties, You cannot put a provision  
8 in your agreement that causes you to waive your rights to  
9 enforce any changes in the FCC's TELRIC rules? I may not  
10 have stated that well. Do you want me to try again or did  
11 you follow it?

12          A.       I think I followed it. As a policy matter, I  
13 think it makes sense for both parties to reserve the right  
14 to suggest changes in the event of such an occurrence at the  
15 FCC.

16          Q.       Okay. And you recognize, do you not, that in  
17 Section 14 of Attachment 6, that Southwestern Bell has  
18 voluntarily waived its rights for a period of time to  
19 enforce the results of any change in the TELRIC rule by  
20 agreeing for residential customers not to seek any change  
21 until March of 2003 and for business -- said it wrong  
22 again -- for business customers until March of 2003 and for  
23 residential customers until March of 2004?

24          A.       Yes, I believe that's -- I believe that's the  
25 case.

1           Q.       And as a policy matter, since parties should  
2 have the opportunity to implement subsequent court or FCC  
3 decisions, WorldCom is not asking to have that particular  
4 provision inserted in the interconnection agreement between  
5 our two companies; is that a fair statement?

6           A.       I believe that to be the case, yes.

7           Q.       And the same with regard to continuing to  
8 provide items that either the FCC or a court finds no longer  
9 to be unbundled network elements, WorldCom is not proposing  
10 in this case that a provision be included in the agreement  
11 that would prohibit Southwestern Bell from implementing that  
12 change until a year period for residential customers -- a  
13 year period for business customers and two years for  
14 residential customers? You're not seeking that type of  
15 provision in this case; is that a fair statement?

16          A.       I may be getting a little confused between  
17 that issue as you've just stated it and the larger question  
18 of local switching as a UNE, because obviously that is an  
19 issue in the proceeding.

20          Q.       I'm not talking specifically about unbundled  
21 local switching as a UNE. I'm talking about the provision  
22 that's in Section 14 of Attachment 6 that says if the FCC or  
23 a court subsequently declares any provision no longer to be  
24 a UNE, that Southwestern Bell has nevertheless committed in  
25 the M2A that it won't seek a change in its obligations for a

1 one-year period for business customer and a two-year period  
2 for residential customers.

3           And I'm asking whether you agree that WorldCom  
4 is not asking for a similar provision to be inserted in this  
5 interconnection agreement between the parties?

6           A.       I'm not aware of that if it is the case.

7           Q.       Okay. And if it is the case, that's no longer  
8 your position; is that a fair statement?

9           A.       You're going to have to help me. I'm not a  
10 hundred percent sure I understood that question.

11          Q.       Okay. If there is language proposed by  
12 WorldCom that would indicate that Southwestern Bell  
13 nevertheless has to continue to provide an unbundled network  
14 element for a year period for business customers and a  
15 two-year period for residential customers even if the FCC or  
16 the courts have said it's no longer a UNE, you're not asking  
17 for that to be put into this contract, right?

18          A.       Well, my earlier answer was I'm not aware that  
19 that was an issue between the parties, so I don't know.

20          Q.       Well, if it is an issue between the parties,  
21 it's this Issue No. 7 and you're the witness for WorldCom on  
22 it, right?

23          A.       Correct.

24          Q.       And so if that's in WorldCom's proposed  
25 language, then it's fair to say you're really not asking the

1 Commission to order that be included in the interconnection  
2 agreement between our two companies, right?

3           A.       Quite frankly, it would be, I think, helpful  
4 if I had the language in front of me. I apologize for not  
5 including that in my testimony, but in order to be  
6 responsive to your questions, I'd really need to see the  
7 language.

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

10                  JUDGE RUTH: Yes.

11 BY MR. LANE:

12           Q.       Let me show you the Staff evaluation of the  
13 Joint Decision Point List in this case in reference to DPL  
14 Item 7. I guess first you're listed as the witness for  
15 WorldCom on that, right?

16           A.       Right.

17           Q.       And then in WorldCom's proposed language,  
18 would you agree that in Sections 14.3 and in 14.4 that  
19 WorldCom is taking the position that it wants provisions  
20 inserted in the agreement that says that even if the FCC  
21 finds that an unbundled -- that something previously called  
22 an bundled network element is no longer one, that you want  
23 Southwestern Bell to be required to continue to provide it  
24 for one year for residential customers 'til March of 2003 --  
25 one year to business customers until March of 2003 and two

1 years to residential customers until March of 2004?

2           A.       Very quickly, I think the answer to your  
3 question is that is what we have proposed and that is the  
4 language that exists in Section 14 in the M2A. It is my  
5 understanding that this is the exact language in the M2A in  
6 these sections.

7           Q.       Yes. And so I'll go back to my previous  
8 question. Now that you know and understand that that is the  
9 language that WorldCom's proposing, is that still what  
10 you're proposing or do you concede now that it's not  
11 appropriate for the Commission to order Southwestern Bell to  
12 give up its rights to enforce any change in the unbundled  
13 network element definitions by the courts or by the FCC?

14          A.       Now that I have seen this language, my earlier  
15 answer is incorrect, and I apologize for that. I believe  
16 that the Commission can in this proceeding order language  
17 along these lines and can find that this is language that's  
18 in the public interest.

19          Q.       With regard to Issue 8, would you agree that  
20 that involves unbundled local switching, right?

21          A.       Correct.

22          Q.       And that involves specifically Southwestern  
23 Bell's proposal to utilize language that would incorporate  
24 the FCC's decision on the UNE remand case that unbundled  
25 local switching need not be provided in certain limited

1 circumstances, right? That's the issue we're dealing with?

2 A. It is.

3 Q. The FCC's decision in the UNE remand was that  
4 if you have a sufficient number of carriers collocated in a  
5 particular central office located in one of the top 50  
6 metropolitan statistical areas, that for customers with four  
7 or more lines, that the ILEC is no longer required to  
8 provide unbundled local switching if it agrees in that  
9 circumstance to provide enhanced extended loops. Is that a  
10 fair of assessment of what the FCC said?

11 A. Generally, yes.

12 Q. And then with regard to WorldCom's position in  
13 this case, you've expressed concern that goes on for several  
14 pages about WorldCom's ability to provide service to  
15 residential and small business customers, right?

16 A. Yes.

17 Q. And would you agree with me that Mr. Hampton  
18 on behalf of Southwestern Bell points out that there's only  
19 two central offices in Missouri that even qualify under the  
20 FCC's definition of where you can eliminate unbundled local  
21 switching?

22 A. I saw that in his testimony, yes.

23 Q. Do you have any reason to disagree with it?

24 A. No, I do not.

25 Q. And would you agree with me that since the

1 FCC's decision where it does apply only applies to customers  
2 who take four or more lines, that it's highly unlikely that  
3 any residential customers would be unable to be served by  
4 WorldCom using unbundled local switching because the vast,  
5 vast majority of residential customers don't take four or  
6 more lines?

7 A. For residential customers, yes.

8 Q. And so your testimony in that respect is  
9 incorrect, isn't it?

10 A. Well, generally, I was focusing on the nature  
11 of serving residential and small business customers as an  
12 example, but obviously the four-line threshold would be one  
13 that would be much more likely to impact small business  
14 customers.

15 Q. And since you're preparing this testimony and  
16 submitting it, I'm assuming that you know how WorldCom  
17 provides service in Missouri today, do you not?

18 A. Can you be a little more specific?

19 Q. Sure. You indicate in your testimony how  
20 difficult it's going to be to provide service to residential  
21 customers and to business customers if you don't have  
22 unbundled local switching available to you. And my question  
23 to you is, how does WorldCom serve all of its customers in  
24 Missouri today with regard to switching?

25 A. To my knowledge, all of the customers that we

1 have in Missouri today, perhaps I should say virtually all,  
2 would be business customers that are served on WorldCom's  
3 own physical assets, our own switches.

4 Q. Where are your switches located?

5 A. St. Louis, Kansas City and Springfield, I  
6 believe.

7 Q. And so if any central office in that -- in  
8 those areas were to qualify under the FCC's definition of  
9 areas where you can eliminate unbundled local switching,  
10 that's going to have no impact on WorldCom because you  
11 already have your own switch and already utilize it to  
12 provide service to customers in those areas, correct?

13 A. Well, it's sort of correct, Mr. Lane. The  
14 concern that I expressed in my direct testimony at pages,  
15 roughly beginning at page 56 and going on through 58 talks  
16 about the specific instances where we generally use DS-1s to  
17 provide services to business customers.

18 There's obviously an opportunity with local  
19 switching to use UNE combinations to provide business  
20 services to smaller customers, customers that perhaps we  
21 don't even reach today. And it's that discussion in here  
22 that informs my decision or my recommendation on this issue  
23 because, yes, I think that there would be instances where we  
24 could provide competitive alternatives using Southwestern  
25 Bell's local switching in the small business market that we



1 have not yet done.

2           Q.       Is it your testimony to the Commission today  
3 that WorldCom is capable or incapable of utilizing its own  
4 switch to provide service to customers with more than four  
5 business lines in St. Louis, in Kansas City and in  
6 Springfield?

7           A.       I don't believe that the test is an incapable  
8 test. I believe that the test that the FCC created in the  
9 UNE remand decision is an impairment test.

10          Q.       My question to you is not --

11          A.       What I'm trying to tell you is --

12          Q.       Hang on. That's not my question. I want to  
13 know whether your switch is capable of providing service to  
14 customers with four or more business lines in the St. Louis,  
15 Kansas City and Springfield areas?

16          A.       And the answer is capable, yes, but that is  
17 only part of the question. As I discuss at length in the  
18 part of my direct testimony that I referenced earlier, there  
19 are administrative and cost issues associated with the  
20 smaller part of the business market that make  
21 self-provisioning of circuits a very different matter for  
22 the small business customer than for the larger customers  
23 that we have traditionally served out of our own switches.

24          Q.       Where does WorldCom utilize its own loops in  
25 Missouri?

1           A.       Well, with the understanding that our, quote,  
2 loops are not the copper loops that Southwestern Bell has  
3 deployed, I mean, our facilities are limited to the  
4 metropolitan markets that I mentioned earlier.

5           Q.       St. Louis, Kansas City and Springfield?

6           A.       Yes, sir.

7           Q.       And those facilities are utilized to provide  
8 basic business services or what type of services?

9           A.       If you're using the term basic in the sense  
10 of, you know, like a business one party, you know,  
11 voice-type service, the answer is probably that they're  
12 not -- to the extent that we provide that type of service,  
13 it's in combination with other services, such as, for  
14 example ATM or frame relay, long distance, internet, you  
15 know, land-to-land connections for multi-location customers,  
16 that sort of thing.

17          Q.       On page 20 of your rebuttal testimony, you  
18 describe investments that you have in Missouri and you give  
19 a dollar figure, and I'm not going to use that because you  
20 indicate it's highly confidential, but can you describe for  
21 me what investments in what type of facilities and where  
22 they are other than the switches and the, I guess are  
23 they -- strike that.

24                   Are they fiber facilities? Let me go back.  
25 The facilities that you describe that you use for loops, are

1 those fiber facilities in St. Louis, Kansas City and  
2 Springfield?

3 A. Correct.

4 Q. And then with regard to the investment that  
5 you have in the state that comprise this figure that you  
6 utilized on page 20 of your rebuttal, are there other  
7 facilities that you have besides the switches and the fiber  
8 in St. Louis, Kansas City and Springfield?

9 A. No. The point of the qualifier there at line  
10 11 when we talk about investments to provide local services  
11 was to narrow it down and exclude other types of assets that  
12 WorldCom may own and operate in the state.

13 MR. LANE: Okay. That's all I have. Thank  
14 you, your Honor.

15 JUDGE RUTH: I think we will take a short  
16 break and come back at 3:30.

17 (A BREAK WAS TAKEN.)

18 JUDGE RUTH: Before we took our break,  
19 Southwestern Bell had finished their cross-examination. Is  
20 that correct, Mr. Lane? You had finished?

21 MR. LANE: Yes, your Honor.

22 JUDGE RUTH: Staff?

23 MR. BATES: Thank you, your Honor.

24 CROSS-EXAMINATION BY MR. BATES:

25 Q. Good afternoon, Mr. Price.

1           A.       How are you?

2           Q.       Fine, thank you. I just have a couple of  
3 questions for you.

4                   First, are AIN features functions of the  
5 switch?

6           A.       Yes and no.

7           Q.       Okay. Would you explain your answer, please?

8           A.       Be happy to. I wasn't trying to be flippant.

9           Q.       I know.

10          A.       The AIN or advanced intelligence network  
11 concept is for there to be peripherals, intelligent  
12 peripherals in the network that are physically separate from  
13 the switch -- in fact, they may even be in another city or  
14 another state or whatever -- that can be queried by the  
15 switch in order for the switch to determine what function it  
16 needs to perform or what it needs to do next.

17                   In other words, the switch suspends processing  
18 when an AIN trigger is triggered. It suspends processing  
19 long enough to go get directions or instructions from the  
20 intelligent peripheral. Then when those directions come  
21 back, then the switch performs whatever function or routing  
22 capability or whatever was in the direction from the  
23 intelligent peripheral.

24                   So the AIN is a network concept that involves  
25 the switch, and the switch does things depending on what

1 information it gets from the intelligent peripheral.

2 Q. Okay. And you may have answered this at least  
3 in part in your last answer, but I take it from what you say  
4 some of the AIN functions are not performed at the switch?

5 A. The instruction -- well, generally, the  
6 function itself is performed at the switch. It's where the  
7 intelligence that tells the switch what to do resides, and  
8 that is almost always in an AIN world outside of the switch.

9 Q. I see.

10 A. For example, one of the common things that  
11 we're all used to these days is the, not the caller ID with  
12 the number, but the name that attaches to that. When an  
13 incoming call comes to your home and you have caller ID with  
14 name, the switch suspends functionality long enough before  
15 it actually sends the ring tone to you to run off to a  
16 database and get that name that's associated with that  
17 incoming phone number so that both of them can appear on  
18 your caller ID box. So it's still a functioning of the  
19 switch, but the information is provided externally.

20 MR. BATES: Thank you very much.

21 JUDGE RUTH: Commissioner Murray, do you have  
22 any questions?

23 COMMISSIONER MURRAY: I have a few. Thank  
24 you.

25 QUESTIONS BY COMMISSIONER MURRAY:

1 Q. Good afternoon.

2 A. How are you?

3 Q. Fine. I wanted to ask you about Issue No. 2,  
4 which, as I understand it, would require Southwestern Bell  
5 to maintain the characteristics of the elements as they are  
6 currently configured even when they want to upgrade their  
7 network.

8 And with the language that you propose, it  
9 seems -- it seemed to me as I read that that you would be  
10 ensuring that Southwestern Bell either could not upgrade its  
11 network or that it must do so only in a piecemeal fashion.  
12 And can you explain what you think would happen if there  
13 were a network upgrade occurring that desired to upgrade the  
14 network and went through the process of notification and  
15 then you went through a request process, what do you think  
16 would actually happen?

17 A. First of all, I guess it probably would be  
18 helpful to note that vendors that provide equipment to  
19 telecommunications providers such as WorldCom and  
20 Southwestern Bell try to the extent possible in most  
21 instances to make their equipment backwards compatible.

22 In other words, they don't take away  
23 functionalities that existed previously in providing  
24 equipment that have new functionalities. It's sort of like  
25 you still have a little calculator on your computer even

1 though that's something that preceded the Windows world and  
2 something that was always sort of embedded in Microsoft's  
3 operating system.

4           So with that backwards compatibility, it may  
5 be that the scenario that we're talking about in this issue  
6 would never even arise, but there is a concern to the extent  
7 that we would rely on the unbundled network elements to  
8 provide services to customers, especially on a broad market  
9 basis, in other words, not just a few customers but  
10 thousands perhaps or even tens of thousands, that  
11 Southwestern Bell could make a change in its network that  
12 would take away a critical functionality during the course  
13 of the term of the contract.

14       Q.     Well, I was wondering, the language that you  
15 propose doesn't, as I read it, doesn't even require a  
16 showing that migration to the upgrade would create a  
17 hardship.

18           And if what you're concerned about is  
19 basically the cost to migrate to an upgraded UNE or whatever  
20 element you're talking about, why wouldn't you just propose  
21 that Southwestern Bell bear your costs of upgrading rather  
22 than your language which seems to prevent or severely hamper  
23 their ability to upgrade period? Does that question make  
24 sense to you? If not, I'll try to repeat it.

25       A.     Well, I think maybe another example is useful

1 in this context. We've seen over a 20-plus year period  
2 we've seen the transition from electromechanical switches to  
3 the first analog stored program control switches to the  
4 digital switches that are still out there today, the 5ESS  
5 and the top of the line digital switches made by Nortell and  
6 Lucent.

7 All of those switches continue to provide  
8 basic voice services, and that's kind of what I was trying  
9 to get at earlier when I was talking about backwards  
10 compatibility. They didn't take away functionalities that  
11 they had provided in the older technology when they  
12 introduced the new technology.

13 So it may not be that there's anything at all  
14 in this language that would prevent Southwestern Bell from  
15 upgrading its network, and it may be that there's nothing in  
16 here that would diminish the capabilities that would be part  
17 of the UNEs that WorldCom might obtain.

18 Again, we're trying to, I think, prevent what  
19 we see as a potential problem, which is all of a sudden we  
20 wake up day and because Southwestern Bell decided to do  
21 something different in its network we find that our  
22 customers don't have basic functionalities that they had had  
23 under UNEs that we had previously obtained under the  
24 agreement.

25 Q. So the language that you are suggesting under



1 217.4, the CLEC may submit a request within 30 days of  
2 receiving notice of the planned network modification to  
3 maintain characteristics of affected elements, and then it  
4 goes on different time periods under different  
5 circumstances.

6                   But I think the gist of what I'm trying to get  
7 at here is the language where it goes on to say that  
8 Southwestern Bell at its own expense will be responsible for  
9 maintaining the functionality and required characteristics  
10 of the elements purchased by a CLEC.

11                   So what you're actually saying is that so long  
12 as an upgrade does not eliminate the functionality and what  
13 you would term required characteristics of the elements that  
14 you have purchased under this interconnection agreement,  
15 they would be meeting that obligation under your language;  
16 is that right?

17           A.       I believe, if I understood you correctly, yes,  
18 I believe that's the case. In other words, unless there is  
19 something that would go away on which we were relying to  
20 provide services to end users, this would never be  
21 triggered.

22                   And the language about SWBT at its own expense  
23 being responsible for maintaining the functionality, again,  
24 doesn't speak to the fact that Southwestern would continue  
25 to get the revenues from the UNEs themselves. In other

1 words, that's separate and distinct from this language.

2           Q.       Is it possible that there might be a network  
3 upgrade that would change, that would require replacement of  
4 existing UNEs as they're currently configured with new  
5 technology and that the existing UNEs would not be  
6 compatible with that new technology?

7           A.       I think the answer is yes, it could be the  
8 case. I mean, when you look at the fact that Southwestern  
9 Bell's network is a complex, ubiquitous network comprised of  
10 lots and lots and lots of different piece parts, I don't  
11 think it's -- I don't think it's reasonable to assume that  
12 somehow that's going to all go away, even large chunks of  
13 it, for example, Southwestern Bell's loop plant, for  
14 example, or Southwestern Bell's switching plan.

15                   I don't think that we would be looking at a  
16 wholesale replacement of major portions of Southwestern  
17 Bell's network during the time frame of the agreement.

18           Q.       Okay. With the language you've proposed,  
19 though, does it, in fact, tie the hands of SWBT if they want  
20 to make an upgrade that does require -- that would require a  
21 migration to a new technology?

22           A.       Well, I think there are some limitations that  
23 would exist by virtue of this language, yes, but I don't  
24 think those limitations are -- I'm trying to think of a word  
25 other than significant, but nothing comes to mind right now.

1 I mean, Southwestern Bell has an obligation under the act  
2 with respect to its network because the act envisioned a  
3 network of networks, if you will, and the act itself has an  
4 obligation on ILECs to provide information about the changes  
5 that they make in their network.

6                   So we're really just making what I think is a  
7 relatively minor but very specific instance around that  
8 obligation under the act with respect to the UNE  
9 characteristics that we're talking about in this issue.

10           Q.       And you don't think it prevents or delays any  
11 network upgrade that Southwestern Bell wants to employ?

12           A.       In my 20 years in the business, I have found  
13 that Southwestern Bell will do what Southwestern Bell finds  
14 in its best interests, and that I don't believe that that  
15 would be affected in any significant way by the language  
16 that we're proposing here.

17                   COMMISSIONER MURRAY: I think that's all I  
18 have. Thank you.

19                   JUDGE RUTH: Recross based on questions from  
20 the Bench, Mr. Lane?

21                   MR. LANE: No, your Honor.

22                   JUDGE RUTH: Staff?

23                   MR. BATES: No, thank you.

24                   JUDGE RUTH: And redirect?

25 REDIRECT EXAMINATION BY MR. MORRIS:

1           Q.       Mr. Price, regarding the most recent topic of  
2 obsolete equipment, are you familiar with ILEC practices  
3 regarding new technologies and grandfathered services?

4           A.       As a general matter, yes. I think, for  
5 example, when new technologies are introduced by the ILECs,  
6 typically what they've done in the past is they've taken the  
7 services or the customers that may have been obsoleted and  
8 grandfathered those customers in their tariff so that those  
9 customers can continue to retain or be provided with the  
10 same services or the same functionalities that they had in  
11 the past.

12                   And then at some point in the future if there  
13 are no longer any customers that are subscribing to that  
14 particular grandfathered offering, then at that point the  
15 service is typically eliminated from the tariff.

16           Q.       Do you recall the discussion on stand-along  
17 multiplexing?

18           A.       Yes.

19           Q.       What did Southwestern Bell offer in the M2A  
20 regarding multiplexing?

21           A.       It was my understanding that Southwestern Bell  
22 offered both multiplexing in combination with loop and  
23 transport in the M2A as well as multiplexing as a  
24 stand-alone element.

25           Q.       And what would WorldCom be willing to accept

1 or live with in this case, in this arbitration?

2           A.       Well, I think, consistent with my testimony in  
3 this proceeding, I think the availability of multiplexing in  
4 combination with both transport and loops would meet our  
5 needs in providing services to Missouri end users.

6           Q.       Do you remember the discussion regarding UNEs  
7 that you had during cross-examination?

8           A.       Can you be a little more specific?

9           Q.       Well, the ability of the Commission to require  
10 an ILEC to provide certain UNEs.

11          A.       Yes, I do.

12          Q.       May a state PSC make an independent  
13 determination that the impair standard hasn't been met with  
14 respect to providing UNEs, that is independent of what the  
15 FCC has done?

16          A.       Yes. And I know I touch on that in my direct  
17 testimony, but there is a provision, I believe it's in the  
18 317 rule by the FCC, where the FCC expressly notes that  
19 states have the ability to go beyond the minimum  
20 requirements that are established in the UNE rules of the  
21 FCC. And, in fact, states do that as a matter of course,  
22 and that's part of what WorldCom sees this proceeding as  
23 involving.

24                   MR. MORRIS: Thank you. That's all I have,  
25 your Honor.

1 JUDGE RUTH: Mr. Price, you may step down, but  
2 at this point you are not excused from the proceeding.

3 THE WITNESS: Thank you, your Honor.

4 JUDGE RUTH: WorldCom, we'll move on to your  
5 next witness.

6 MR. MORRIS: Okay. Call Dan Aronson to the  
7 stand.

8 (Witness sworn.)

9 DANIEL ARONSON testified as follows:

10 DIRECT EXAMINATION BY MR. MORRIS:

11 Q. Mr. Aronson, by whom are you employed and in  
12 what capacity?

13 A. I'm employed by WorldCom. I'm the Director of  
14 Carrier Access Billing Services.

15 Q. You have before you WorldCom Exhibits 17 and  
16 18, which are your direct and rebuttal testimony. Is that  
17 testimony that you caused to be filed in this proceeding?

18 A. Yes.

19 Q. At this time do you have any changes or  
20 corrections to make to that testimony?

21 A. No.

22 Q. If I were to ask you the same questions that  
23 are contained therein, would your answers be the same?

24 A. They would.

25 MR. MORRIS: Okay. At this time, your Honor,

1 we would move the admission of Exhibits 17 and 18, being  
2 Aronson's direct and rebuttal testimony.

3 JUDGE RUTH: Exhibit 17, Mr. Aronson's direct,  
4 and Exhibit 18, his rebuttal, have been offered. Are there  
5 any objections to these exhibits?

6 (No response.)

7 Seeing no objections, they are received into  
8 the record.

9 (EXHIBIT NOS. 17 AND 18 WERE RECEIVED INTO  
10 EVIDENCE.)

11 MR. MORRIS: Thank you, your Honor. We tender  
12 the witness for cross-examination.

13 JUDGE RUTH: Mr. Lane, would you begin?

14 CROSS-EXAMINATION BY MR. LANE:

15 Q. Good afternoon, Mr. Aronson.

16 A. Good afternoon.

17 Q. Your testimony addresses Issues 9 and 29 from  
18 the Joint Decision Point List, correct?

19 A. That's correct.

20 Q. And both of these issues relate to  
21 Southwestern Bell's provision of intraLATA toll services to  
22 local customers of WorldCom, correct?

23 A. Yes.

24 Q. And your direct at page 3 states that Issue 9  
25 must be determined if the Commission rules on Issue 29 that

1 Southwestern Bell must allow WorldCom customers served by  
2 the unbundled network element platform to choose  
3 Southwestern Bell as their intraLATA toll provider. Do you  
4 see that on page 3?

5 A. Yes.

6 Q. And if the Commission finds on Issue 29 that  
7 Southwestern Bell doesn't have that duty, then Issue 9  
8 becomes moot, correct?

9 A. Yes, that's correct.

10 Q. Now, with regard to Issue 29, that issue is  
11 phrased in the DPL in terms of Southwestern Bell's  
12 obligation to bill intraLATA toll to WorldCom's customers  
13 who choose Southwestern Bell but provide that intraLATA  
14 toll, correct?

15 A. Yes.

16 Q. But Southwestern Bell has made clear that it's  
17 not agreeable to providing intraLATA toll to local customers  
18 that are served by WorldCom, correct?

19 A. Yes, that's correct.

20 Q. And you've read Mr. Cecil's testimony on  
21 behalf of Staff on this issue, right?

22 A. I've read his comments in the DPL.

23 Q. You did not read his testimony itself?

24 A. I did not see Mr. Cecil's, no.

25 Q. Okay. Would you agree that Staff's position



1 in the case is that there's no requirement under either  
2 federal or state statute that Southwestern Bell provide  
3 intraLATA toll to WorldCom's local customers?

4 A. There is no explicit requirement for that.

5 Q. And did you read Mr. Tom Hughes' testimony on  
6 Issue 29?

7 A. Yes, I did.

8 Q. And would you agree that Mr. Hughes noted in  
9 his testimony that this same issue arose in the arbitration  
10 between Southwestern Bell and AT&T in Case No. TO-2001-455?

11 A. Yes.

12 Q. And did you read that portion of the  
13 Arbitration Order in Case TO-2001-455 that Mr. Hughes cites?

14 A. The AT&T arbitration?

15 Q. Yes, sir.

16 A. Yes.

17 Q. And do you agree with Mr. Hughes that the  
18 Commission previously faced this same issue in the AT&T  
19 arbitration case?

20 A. Yes, they did.

21 Q. And you also would agree that the Commission  
22 made the statements that Mr. Hughes attributes to it in his  
23 rebuttal testimony, i.e. there is no obligation on behalf of  
24 Southwestern Bell to provide intraLATA toll services to  
25 AT&T's local customers?

1           A.       There's no explicit obligation, yes.

2           Q.       And would you agree that in that AT&T  
3 arbitration, that the Commission adopted language proposed  
4 by Staff that made it clear that Southwestern Bell is not an  
5 authorized PIC for an unbundled local switching customer of  
6 AT&T?

7           A.       Yes.

8           MR. LANE:   That's all I have.   Thank you.

9           JUDGE RUTH:   And Staff?

10          MR. BATES:   No, thank you, your Honor.

11          JUDGE RUTH:   Questions from the Bench,  
12 Commissioner Murray?

13          COMMISSIONER MURRAY:   No questions, thank you.

14          JUDGE RUTH:   Commissioner Forbis?

15          COMMISSIONER FORBIS:   No, thank you.

16          JUDGE RUTH:   Redirect?

17          MR. MORRIS:   No redirect, your Honor, but I do  
18 have one thing to note.   Just for the record, Mr. Aronson's  
19 rebuttal testimony notes it's rebuttal testimony in the  
20 upper right-hand corner, but in the title it says direct  
21 testimony, and I have changed that to rebuttal.   It says  
22 rebuttal here.   It said direct in the title.

23          JUDGE RUTH:   That correction is also going to  
24 be noted for the record.   I assume there are no objections  
25 to that minor change being noted on the front page of the

1 rebuttal?

2 MR. LANE: No objection.

3 JUDGE RUTH: It is noted for the record, then.

4 Was there anything further?

5 MR. MORRIS: That's all, your Honor.

6 JUDGE RUTH: Sir, you may step down, but

7 you're not excused at this point.

8 Southwestern Bell, do you have the next

9 witness?

10 MR. LANE: I believe so, your Honor.

11 Mr. Jerry Hampton.

12 (Witness sworn.)

13 JUDGE RUTH: Thank you. Please be seated.

14 You may proceed, Mr. Lane.

15 MR. LANE: Thank you, your Honor.

16 JERRY HAMPTON testified as follows:

17 DIRECT EXAMINATION BY MR. LANE:

18 Q. Could you state your name for the record,  
19 please.

20 A. My name is Jerry L. Hampton.

21 Q. And Mr. Hampton, by whom are you employed?

22 A. I am self-employed as a contractor at the  
23 moment for Southwestern Bell.

24 Q. And Mr. Hampton, did you prepare direct  
25 testimony in this case that has been marked as Exhibit 19?

1           A.       Yes.

2           Q.       Do you have any changes to make to that

3 testimony?

4           A.       I have no changes to the testimony.

5           Q.       Did you also prepare rebuttal testimony that's

6 been marked in this case as Exhibit 20?

7           A.       Yes, I have.

8           Q.       Do you have any changes to that testimony?

9           A.       No, I do not.

10          Q.       If I were to ask you the same questions that

11 are in Exhibits 19 and 20, your direct and rebuttal

12 testimony today, would your answers be the same?

13          A.       I have one question that I possibly could

14 answer differently.

15          Q.       Which one is that?

16          A.       That would be the question at the top of

17 page 26 of my direct testimony. The question was, Are you

18 aware of any other state that has imposed flat-rate pricing

19 for ULS or any company that does not have a usage component

20 for ULS?

21                   And what I would need to add to that

22 statement, I believe, is Mr. Turner in his rebuttal

23 testimony points to an Order from the Wisconsin Commission,

24 which at this point I haven't seen, but in his testimony

25 claims to have removed the usage component in Wisconsin. I

1 can't confirm or reject that argument, but I am aware that  
2 there apparently is an Order in Wisconsin of some nature.

3 Q. With that exception aside, would your answers  
4 to the questions that are contained in Exhibits 19 and 20 be  
5 the same if I asked them to you today?

6 A. Yes, they would.

7 Q. And are those answers true and correct to the  
8 best of your knowledge and belief?

9 A. Yes, they are.

10 MR. LANE: Your Honor, at this time we'd offer  
11 Exhibits 19 and 20 and tender Mr. Hampton for cross.

12 JUDGE RUTH: Okay. Exhibit 19, the direct,  
13 and Exhibit 20, the rebuttal, are there any objections to  
14 these documents being admitted?

15 (No response.)

16 I see no objection. Exhibits 19 and 20 are  
17 received into the record.

18 (EXHIBIT NOS. 19 AND 20 WERE RECEIVED INTO  
19 EVIDENCE.)

20 JUDGE RUTH: And WorldCom, are you ready for  
21 cross?

22 MR. MORRIS: Yes, ma'am.

23 CROSS-EXAMINATION BY MR. MORRIS:

24 Q. Good afternoon, Mr. Hampton.

25 A. Good afternoon.

1 Q. You're not an engineer, are you?  
2 A. No, I'm not.  
3 Q. Not formally trained as one?  
4 A. No, I'm not.  
5 Q. Have you ever designed a switch?  
6 A. No, I have not.  
7 Q. Have you ever installed a switch?  
8 A. No.  
9 Q. Have you ever identified the cost of a switch?  
10 A. No.  
11 Q. Have you ever performed a cost study?  
12 A. No, I have not.  
13 Q. Have you ever negotiated a vendor contract for  
14 a switch?  
15 A. No, I have not.  
16 Q. In fact, you're not familiar with vendor  
17 contracts at all, are you, sir?  
18 A. I have seen a few vendor contracts in my  
19 career.  
20 Q. Does that rise to the level of being familiar  
21 with a vendor contract?  
22 A. I can state I have read them. I'm not an  
23 expert on them, no.  
24 Q. Okay. On page 4 of your direct testimony, you  
25 make a reference to the legitimately related provisions of

1 the M2A, lines 5 and 6. Do you see that?

2 A. Yes.

3 Q. You didn't do -- you didn't do any independent  
4 analysis to determine which provisions of the  
5 interconnection agreement are legitimately related to other  
6 provisions, have you?

7 A. Other than reviewing Attachment 26?

8 Q. Yes.

9 A. No.

10 Q. With respect to the specific provisions  
11 WorldCom is proposing to modify with respect to the M2A  
12 language, you didn't do any analysis to determine which of  
13 those provisions of the interconnection agreements are  
14 legitimately related to the other as well, did you?

15 A. Which specific ones are we questioning?

16 Q. The provisions that WorldCom is proposing to  
17 modify in this proceeding.

18 A. I would say that I have reviewed the language  
19 that has been proposed, and in conjunction with  
20 Attachment 26 I do believe I can state I know which elements  
21 would be considered by Attachment 26 of the M2A to be  
22 legitimately related.

23 Q. So is it fair to say, sir, that your  
24 conclusion in your testimony regarding legitimately related  
25 provisions is based solely on your reading of Attachment 26?

1           A.       And my looking at the language that we're  
2 discussing.

3           Q.       Okay. Are you aware of any other Southwestern  
4 Bell witness that engaged in any sort of analysis  
5 independent of looking at Attachment 26 to determine which  
6 provisions are legitimately related to other provisions?

7           A.       I guess I'm not understanding your question.

8           Q.       Okay. I asked you earlier whether you did an  
9 independent analysis to determine which provisions of the  
10 interconnection agreement are legitimately related to other  
11 provisions. I believe your answer was, no, you didn't make  
12 any independent analysis other than reviewing Attachment 26.

13          A.       Which I believe is an analysis of what  
14 constitutes the legitimately related terms and conditions.

15          Q.       And my question then is, are you aware of any  
16 other Southwestern Bell witness that engaged in any sort of  
17 analysis to make -- to determine whether other provisions  
18 are legitimately related other than examining Attachment 26?

19          A.       I can't state specifically any one. I know  
20 from sitting in the hearing room today I believe Mr. Hughes  
21 has done that as well.

22          Q.       Okay. Your testimony, if I understand it  
23 correctly, is Southwestern Bell believes that it's obligated  
24 to offer currently combined UNEs but not UNEs that are  
25 ordinarily combined; is that correct?



1           A.       Yes, depending upon which section of my  
2 testimony you're referring to, I would agree with your  
3 statement.

4           Q.       Okay. I'd like to go through some examples.  
5 If an end user is currently receiving phone service from  
6 Southwestern Bell and wanted to switch to a CLEC to take  
7 local service, under that situation, since the UNEs are  
8 currently combined, Southwestern Bell would offer UNE-P in  
9 that situation, correct?

10          A.       Yes.

11          Q.       Okay. Now, let's assume that you have a  
12 vacant house. There's no end user taking phone service. In  
13 that instance, is it Southwestern Bell's position that it  
14 will not offer UNE-P because the elements, the UNE elements  
15 are not currently combined?

16          A.       No, that's not our position.

17          Q.       In other words, in that instance there could  
18 be situations where the UNEs remain currently combined?

19          A.       It is possible, yes.

20          Q.       Does Southwestern Bell ever uncombine  
21 elements, the UNE elements, once an end user terminates  
22 service and vacates the premises?

23          A.       I don't know the answer to that question.

24          Q.       Are you suggesting that Southwestern Bell  
25 never uncombines the elements once an end user terminates

1 service?

2           A.       No, that's not what I said. I said I don't  
3 know.

4           Q.       Well, earlier I believe I asked you if you  
5 have a vacant house and somebody were to move in, and I  
6 believe the question I posed to you was, in that instance  
7 Southwestern Bell would not consider -- would not offer  
8 UNE-P because the elements were not combined, and I believe  
9 your answer was not necessarily.

10          A.       That's correct, that was my answer.

11          Q.       I need to explore that with you, because if I  
12 understand your answer, what you're saying is that in some  
13 instances Southwestern Bell does not uncombine the elements  
14 but in other instances it might?

15          A.       That's not what I said.

16          Q.       What did you say?

17          A.       I said that it could be a situation where  
18 WorldCom desired service at a location where someone was  
19 moving into that there could be combined elements available.

20          Q.       What's the basis for your statement?

21          A.       My belief that there will be situations that  
22 exist where there are elements that are combined.

23          Q.       You said that was your belief. What forms the  
24 basis of your belief that there will be instances where the  
25 elements are already combined in a vacant premises, vacant

1 location?

2           A.       From my previous experience in working in the  
3 telecommunications market, it's my understanding that in the  
4 network side of the organization that it's not standard  
5 practice in any company to always remove a loop and port  
6 that are connected just because someone moved out of a  
7 location.

8                    So that tells me in experience with -- in my  
9 past experience that there will be situations where loop and  
10 ports will exist in combination in the situation that you  
11 described. I have no reason to believe that Southwestern  
12 Bell does anything different than other companies that I'm  
13 aware of.

14           Q.       Okay. In what instance would Southwestern  
15 Bell uncombine those element? I believe I asked you would  
16 they always be combined and you said no, not necessarily.  
17 What would be an instance where Southwestern Bell would  
18 uncombine these elements?

19           A.       I don't know that there's any situation that  
20 Southwestern Bell would uncombine a UNE except at the  
21 request of a carrier. There are situations where  
22 Southwestern Bell in disconnecting a service at a location  
23 may or may not separate a loop from a port in order to be  
24 able to provide service to another location, in order to  
25 repair service in some situations, something of that nature.

1 My answer is to really a different question than what you  
2 asked, I believe.

3 Q. Why?

4 A. Why what?

5 Q. What question did you just answer if it wasn't  
6 the question that I just asked?

7 A. The question you asked me was would  
8 Southwestern Bell uncombine unbundled network elements, and  
9 the first part of my answer answered that question, and then  
10 I also explained that there would be situations where  
11 Southwestern Bell may take a loop and a port that served  
12 some customer for some reason, so that if someone moved into  
13 that location, there may not be a loop and port combination  
14 already existing at that location.

15 Q. On page 6 of your direct testimony, you refer  
16 to the Verizon North vs. Strand decision out of the District  
17 Court of the Western District of Michigan. Are you aware if  
18 that case has been appealed to the Circuit Court of Appeals?

19 A. No, I'm not aware that it's been appealed.

20 Q. Are you aware of any other similar court  
21 rulings on this topic other than the Verizon North v. Strand  
22 case that you cite?

23 A. I believe I cite several other cases in my  
24 docket referring to both the FCC, the Eighth Circuit.

25 Q. No. On the issue that was before the Western

1 District of Michigan?

2           A.       I believe the issue that was before the  
3 Western District of Michigan dealt with a state commission,  
4 in this particular case the Michigan state commission, that  
5 made a decision requiring an incumbent LEC to combine UNEs.

6           The requirement to combine UNEs is an issue  
7 that, as I mentioned basically through this entire issue  
8 that I'm documenting here, has several other court rulings,  
9 FCC rulings, Supreme Court rulings, that are specifically  
10 speaking to the issue of combinations.

11          Q.       No, sir, you're not answering my question.  
12 Are there any other rulings, court rulings that you're aware  
13 of that have invalidated a state imposed obligation on ILECs  
14 to combine UNEs other than the Verizon North case that you  
15 cite?

16          A.       A state-specific ruling.

17          Q.       A state-imposed obligation, which I believe  
18 was the issue in Verizon North.

19          A.       Not that I can remember.

20          Q.       On page 7 of your direct testimony, beginning  
21 on line 17, you refer to the FCC as refusing to endorse that  
22 position, that is the ordinarily combined position. And, in  
23 fact, isn't it true that if you look at the quote that you  
24 cite in paragraph 479, the FCC simply declined to address  
25 the arguments at this time? Isn't that true?

1           A.       I would disagree with that characterization.

2           Q.       Would you read the last sentence of your quote  
3 from paragraph 479 of the UNE Remand Order.

4           A.       Sure. The last sentence states, Again,  
5 because this matter is currently pending before the Eighth  
6 Circuit, we decline to address these arguments at this time.

7           Q.       Thank you.

8           A.       But in order to respond to your question --

9           Q.       Thank you, sir. That was the only thing I  
10 asked you to do was to read that sentence.

11                    On page 10 you refer to the SBC/Ameritech  
12 merger conditions where SBC obligated itself to provide new  
13 combinations. Do you know when those conditions expire?

14           A.       36 months after the start date of that, which  
15 I believe was 11/7 of 1999.

16           Q.       Are there any limitations on that new  
17 combination obligation?

18           A.       That combination exists for, as I state here  
19 on line 14 and 15, provides for new loop port combinations  
20 of residential POTS and residential ISDN-BRI. So those two  
21 forms are what this is available for, and there's also a  
22 limitation relative to the total number of combinations that  
23 can exist.

24           Q.       And by total number, you're talking total  
25 number of lines that SBC obligated to combine; is that

1 correct?

2 A. I think lines is a fair way of saying it.

3 Q. And was that obligation detailed on a state by  
4 state basis, like a particular state had X number of lines?

5 A. Yes, it was.

6 Q. And what are the number of lines in Missouri?

7 A. 127,000.

8 Q. On page 12 of your direct testimony, line 7,  
9 you refer to multiple service orders. Do you see that?

10 A. Yes, I do.

11 Q. By multiple service orders, are you referring  
12 to the NC&D orders that have been referred to in the 271  
13 proceedings?

14 A. I wasn't part of 271 proceedings, but those  
15 are probably a fair characterization.

16 Q. New, change and disconnect I think is what  
17 they stood for. Is that what you're talking about?

18 A. Again, I think that's a fair characterization.

19 Q. Okay. On page 17 of your direct testimony  
20 regarding transport, I believe it's Southwestern Bell's  
21 position that requesting telecommunications carriers  
22 excludes third parties; is that correct?

23 A. I'm sorry. Where are we referring to?

24 Q. I'm sorry. Page 17, actually starting on --  
25 actually, Issue 6 on the bottom of 16 spilling over. The

1 answer starts at the top of page 17.

2 A. And I'm sorry, I've forgotten the question.

3 Q. Do you --

4 A. Yes. I have my answer, yes.

5 Q. Is it Southwestern Bell's position that  
6 requesting telecommunications carriers excludes third  
7 parties; is that correct?

8 A. I believe I state that we don't believe it's  
9 correct to include in the definition of dedicated transport  
10 references that would include third-party locations.

11 Q. Okay. So, for example, if WorldCom wanted to  
12 use Southwestern Bell's transport from, say, a WorldCom  
13 facility to a Rhythms facility, it's Southwestern Bell's  
14 position that it would not -- it's not obligated to provide  
15 that kind of transport; is that your testimony?

16 A. Facility running between WorldCom and Rhythms?

17 Q. Yes.

18 A. Yes, I would say that we believe that is not  
19 one that should be included.

20 Q. Is that based on your position that the word  
21 third parties is not found in that definition, just all you  
22 have is, quote, requesting telecommunications carrier?

23 A. I believe that I clearly state that our  
24 argument is, yes, our reasoning is based upon the FCC's  
25 definition of dedicated transport.



1 Q. More to the point, Southwestern Bell's  
2 interpretation of the FCC's definition, correct?

3 A. I think the language that we proposed  
4 basically is an exact copy of the FCC's definition. I don't  
5 think there's any interpretation needed.

6 Q. You would agree, wouldn't you, that if  
7 Southwestern Bell were not providing nondiscriminatory  
8 cost-based access to EELS, E-E-L-S, Southwestern Bell must  
9 continue to offer local unbundled switching in all market  
10 areas?

11 A. I believe that's correct.

12 Q. Is it your position that a state commission  
13 may not make an independent determination that the impair  
14 standard is met with respect to local switching, that is  
15 independent of the FCC's determination?

16 A. I believe the state has the ability to make an  
17 independent necessary and impair standard evaluation.  
18 However, in the case of unbundled local switching, I don't  
19 believe that they have the opportunity to change the  
20 definition as provided by the FCC, which has already done  
21 that analysis in this situation.

22 Q. I'm going to take your analysis a step  
23 further. Suppose the FCC determined that a particular  
24 element did not qualify as a UNE. Do I understand you to  
25 say that a state commission may not make a determination

1 that it is a UNE because the impair standard has been met?

2           A.       I would agree that if the FCC has already done  
3 an evaluation and determined that the item does not meet the  
4 impair standard, that a state commission cannot make a  
5 determination that it does.

6           Q.       In all cases?

7           A.       I believe that's correct.

8           Q.       Okay. On page 24, you discuss flat-rate  
9 switching and I believe one of the concerns that you raise  
10 is the specter of increased usage resulting in a  
11 cross-subsidy among users. Is that a fair characterization  
12 of that point that you make?

13          A.       I believe I make the point that it is not a  
14 good competitive environment where you have one person who's  
15 the cost causer being subsidized by others who are not.

16          Q.       I think you would agree with me that with  
17 respect to the demands placed on a switch, those demands are  
18 caused by the end users, correct, the people making the  
19 phone calls?

20          A.       Some of the demands, yes.

21          Q.       Some of the demands?

22          A.       I believe so.

23          Q.       You're going to -- what do you mean by some of  
24 the demand? I mean who other people than using the phone  
25 would cause -- put demands on the switch?

1           A.       There's also in-bound calls from IXCs, other  
2 carriers coming into that switch over trunk groups. The  
3 switch has both line side and trunk side. So there are  
4 other demands on that switch in addition to just the people  
5 on that switch making phone calls.

6           Q.       You would agree with me, sir, that in the  
7 final analysis it's end users originating calls from  
8 whatever location that are placing demands on the switch,  
9 whether it be a long distance coming in on the trunk side  
10 and terminating in that particular wire center or somebody  
11 within the wire center making an outbound call?

12          A.       In an end office switch, I would agree with  
13 that.

14          Q.       Are you aware that in Missouri most end users  
15 have flat-rated retail service?

16          A.       I don't know that I can agree it was majority.  
17 I know that flat-rated service exists in Missouri.

18          Q.       Well, assume with me that the end users have  
19 flat-rated service, okay, for purposes of this example. In  
20 that instance, isn't it true that the switch usage is not  
21 likely to change if the wholesale switching rate is offered  
22 on a flat-rate basis given that the end users that are  
23 making these calls are already basing their calling patterns  
24 based on the retail price which is a flat-rated price?

25          A.       I don't necessarily agree.

1           Q.       But you just agreed with me earlier that it's  
2 the end users that are placing the demands on the switch,  
3 correct?

4           A.       That's correct.

5           Q.       And I believe one of the points that you're  
6 making in a flat-rated environment that could cause an  
7 increase in usage on the switch, correct?

8           A.       I'm saying there's situations that if you  
9 charge for something that was really incurred on a usage  
10 basis on a flat-rate basis, that with the advent of  
11 competition in the local market, that usage can increase on  
12 the switch.

13          Q.       Sir, it's not the CLECs that are going to have  
14 this room full of gnomes making phone calls and placing the  
15 demands on the switch. It's the end users that are making  
16 the calls that are putting the demands on the switch?

17          A.       I agree.

18          Q.       And under my example, if the end user is  
19 already receiving their telephone service, their retail  
20 telephone service on a flat-rated basis, the usage  
21 characteristics of that switch are going to be governed by  
22 the retail rate paid by the end user, not whether the CLEC  
23 is paying its local switching rate either on a flat-rated or  
24 a usage sensitive basis; isn't that true?

25          A.       That's the part of the statement I disagree

1 with.

2 Q. And then my question to you is, sir, if it's  
3 the end users making the calls and their pricing signals are  
4 such that they're paying a flat rate for the service, how is  
5 usage going to increase if the CLEC pays local switching on  
6 a flat-rated basis?

7 A. It depends upon the various type of different  
8 marketing opportunities that may be taken advantage of by  
9 any particular CLEC with any group of customers or any other  
10 group of people that cause calls to increase.

11 Q. And as to those marketing opportunities, isn't  
12 it fair to say that they would be marketing to existing  
13 users who were already taking telephone service from  
14 Southwestern Bell for the most part?

15 A. And new users.

16 Q. Yeah, and new users, but for the most part  
17 it's going to be existing market base that they're going to  
18 market to, correct?

19 A. And new users.

20 Q. Okay. For the most part, it's going to be the  
21 existing market base that they're going to be targeting,  
22 correct?

23 A. I don't know that I can agree with that part.

24 Q. So you think CLECs are going to go out and  
25 target people that don't have telephone service? That's

1 their target market, is that what you're saying?

2 A. That is a possible target market.

3 Q. Are you aware of the penetration rates in  
4 Missouri regarding telephone subscribership rates?

5 A. No, I'm not.

6 Q. Would it surprise you that it's well above the  
7 national average?

8 A. It would surprise me, but I don't know what it  
9 is.

10 Q. Okay. I must say, Mr. Hampton I'm truly  
11 baffled by your comment that --

12 MR. LANE: Your Honor, I'm going to object.

13 MR. MORRIS: I'm trying to understand why if  
14 end users are receiving phone service on a flat-rated  
15 basis --

16 JUDGE RUTH: And sir, I'm going to interrupt  
17 you because I want you to maybe take a look at your notes  
18 and finish up. I think you've exceeded your time limit. I  
19 will give you another minute or two to wrap it up.

20 MR. MORRIS: Okay.

21 BY MR. MORRIS:

22 Q. On page 17 of your rebuttal testimony, you  
23 cite to a local telephone competition status report which is  
24 on lines -- starting on line 12. Do you see that? Says, As  
25 the FCC has recently recognized in its Local Telephone

1 Competition Status Report, 60 percent of CLEC local

2 telephone lines serve medium and large business,

3 institutional and government customers?

4           A.       Yes, I found it. It's at the bottom of 16,  
5 top of 17.

6           Q.       Okay. My pagination must be different. I  
7 apologize.

8                   Do you know what percentage of that 60 percent  
9 that you cite in that sentence are CLEC lines that are  
10 served by CLEC switches?

11          A.       No, I can't sit here and say that I do know  
12 how much of that 60 percent is.

13          Q.       Or how much of that is served by ILEC  
14 switches?

15          A.       No, I don't know.

16                   MR. MORRIS: That's all I have, your Honor.

17                   JUDGE RUTH: Thank you. Staff, are you ready  
18 for cross?

19                   MR. BATES: Yes, thank you.

20                   JUDGE RUTH: Please proceed.

21 CROSS-EXAMINATION BY MR. BATES:

22          Q.       Good afternoon, Mr. Hampton.

23          A.       Good afternoon.

24          Q.       I really only have a couple of questions for  
25 you.

1                   Would you clarify for me regarding Issue 6,  
2 which I believe you testified to some this afternoon, could  
3 you please explain Southwestern Bell's understanding of what  
4 it means to act on behalf of a CLEC?

5           A.       I would believe that this would be a situation  
6 where you have someone making a request for MCI but -- or  
7 WorldCom in this case, but it's not they themselves. So in  
8 my understanding of the language that they want, the example  
9 that would be a situation where they would want SWBT to  
10 provide transport between or could possibly be between two  
11 locations that are not either SWBT's and WorldCom's at all  
12 and totally between some third party just at their request.

13          Q.       Please clarify for me. I may not understand.  
14 You said someone acting on behalf of WorldCom but not they  
15 themselves. Is that what you said?

16          A.       Correct.

17          Q.       Who might that be, then?

18          A.       It could be anyone. I mean, it could have  
19 been another CLEC, as an example AT&T. You know, the list  
20 is really sort of endless, but someone other than  
21 themselves.

22          Q.       Are you aware of situations where this has  
23 happened?

24          A.       No, I'm not.

25               MR. BATES: Thank you. I think that's all the



1 questions I have.

2 JUDGE RUTH: Thank you. Questions from the  
3 Bench, Commissioner Murray?

4 COMMISSIONER MURRAY: Thank you.

5 QUESTIONS BY COMMISSIONER MURRAY:

6 Q. Good afternoon.

7 A. Commissioner.

8 Q. With the position that Staff has taken on  
9 Issue No. 6 which you were just discussing, have you looked  
10 at the language that Staff is suggesting in the position  
11 point list?

12 A. Yes, I have. Let me take a look, get my mind  
13 in the right place here.

14 Q. It's page 18 in the Decision Point List that  
15 Staff provided.

16 A. Okay.

17 Q. Would the combination of language that they're  
18 suggesting, would that require Southwestern Bell to provide  
19 transport between a WorldCom facility and a Rhythms facility  
20 as you were asked about earlier?

21 A. As I remember the question asked, that would  
22 have been a facility provided by SWBT between those two  
23 locations, and I think the possibility exists that that  
24 could be yes, with this language.

25 Q. Now, I want to ask you about your direct

1 testimony on page 8, the question in the middle of that page  
2 at line 15 about why SWBT objects to WorldCom's proposed  
3 language that would allow WorldCom to combine UNEs with  
4 SWBT's access services for other SWBT tariff service  
5 offerings. Do you see that?

6 A. Yes.

7 Q. And you go on in your answer to say that the  
8 act and the FCC's rules and orders do not require incumbent  
9 LECs to combine UNEs with tariff services.

10 My question to you is that, after you filed  
11 this testimony, did the Tenth Circuit issue a Report and  
12 Order that held that interconnection agreements between  
13 Qwest and CLECs would allow CLECs to opt into tariff  
14 provisions?

15 A. I'm not aware of that order.

16 Q. Okay. I guess I would like to request that  
17 that be briefed, because it's my understanding that the  
18 Tenth Circuit upheld the Colorado PUC on January 4th  
19 providing that interconnection agreements between an  
20 incumbent and a CLEC could allow the CLEC to opt into tariff  
21 provisions. And in doing so, I guess I would ask counsel to  
22 indicate, other than the fact that it's a different circuit,  
23 is there anything else that would distinguish that and make  
24 it inapplicable here?

25 Then on page 9 of your direct testimony, at

1 lines 5 and 6, you say a CLEC may not use UNEs to bypass  
2 special access services. Is that what WorldCom is  
3 attempting to do?

4 A. I don't know, but that is a possibility that  
5 could exist with the third-party language.

6 Q. And that's your objection to that language?

7 A. That runs to our objection, yes.

8 COMMISSIONER MURRAY: I believe that's all.  
9 Thank you.

10 JUDGE RUTH: Commissioner Forbis?

11 COMMISSIONER FORBIS: None.

12 JUDGE RUTH: We'll go ahead and move to  
13 recross based on questions from the Bench. WorldCom?

14 MR. MORRIS: One second.

15 JUDGE RUTH: Sure.

16 RECROSS-EXAMINATION BY MR. MORRIS:

17 Q. Mr. Hampton, do you recall the question from  
18 Commissioner Murray on Issue 6, the transport between  
19 WorldCom and Rhythms example?

20 A. Yes.

21 Q. You're aware that both WorldCom and Rhythms  
22 are CLECs, correct?

23 A. Yes.

24 Q. And is your concern that WorldCom would  
25 somehow be using -- trying to use UNEs as a way to avoid

1 special access? Is that Southwestern Bell's concern?

2 A. That was my response to the Commissioner, yes.

3 Q. And if I were to represent to you that this  
4 would be for predominantly local use, would your concerns  
5 over the -- with the language in Issue 6 remain or would it  
6 go away?

7 A. It would still remain.

8 Q. And why is that?

9 A. Because of the definition that the FCC has  
10 provided for dedicated transport. As pointed out in line --  
11 in my direct testimony on line 17, the definition  
12 specifically states between wire centers owned by the  
13 incumbent LEC or requesting telecommunications carriers or  
14 between the switches owned by the incumbent LECs or  
15 requesting telecommunications carriers.

16 No place in the definition provided by the FCC  
17 does it provide something other than that definition for  
18 dedicated transport.

19 Q. So, for example, sticking with the  
20 WorldCom/Rhythms example we've been talking about, would  
21 Southwestern Bell find it acceptable if we ran the transport  
22 from Rhythms to Southwestern Bell and then to WorldCom, both  
23 of them being CLECs? Would that -- are you saying would  
24 that configuration be acceptable, going directly from  
25 WorldCom to Rhythms would not? Is that what you're saying?

1           A.       I believe in your first example we wouldn't  
2 have a problem with WorldCom ordering between WorldCom and  
3 the SWBT office or Rhythms ordering between the Rhythms  
4 serving wire center or office and the SWBT office.

5                   The situation becomes a problem when it is  
6 running between the two, which is outside of the definition  
7 of dedicated transport.

8           Q.       As Southwestern Bell reads the FCC rule,  
9 correct?

10          A.       As the FCC rule reads.

11          Q.       So in other words, if we have two legs,  
12 WorldCom, Southwestern Bell, Rhythms, that's acceptable, but  
13 WorldCom to Rhythms directly is not? I mean, is that a fair  
14 characterization?

15          A.       No, I don't believe so. I believe my  
16 statement was, is because in the situation where WorldCom  
17 would order from WorldCom to SWBT and Rhythms would order  
18 from Rhythms to SWBT, I'm providing service to two different  
19 people, two different things, both of which meet the  
20 definition of dedicated transport.

21                   MR. MORRIS: Okay. Thank you.

22                   JUDGE RUTH: Staff, do you have recross?

23                   MR. BATES: No, thank you.

24                   JUDGE RUTH: I think actually we better stop  
25 here. I don't want to cut your redirect short. And you may

1 step down. You will be recalled in the morning.

2 I wanted to ask a housekeeping question or two  
3 about tomorrow. It's my understanding that, Southwestern  
4 Bell, you wanted to call a witness out of order tomorrow.

5 MR. LANE: We did, your Honor. We wanted to  
6 call Ms. Rogers, if we could, in the morning.

7 JUDGE RUTH: Are you proposing to do her at  
8 the end of the day or --

9 MR. LANE: No. We were hoping to do it in the  
10 morning.

11 JUDGE RUTH: What we'll do, then, is we'll  
12 finish this witness tomorrow morning, and then we'll move to  
13 Ms. Burgess.

14 MR. LANE: Ms. Rogers.

15 JUDGE RUTH: I'm sorry. Ms. Rogers. And are  
16 there any other changes that need to be made to the witness  
17 schedule?

18 MR. CURTIS: Yes, there are, your Honor. We  
19 would like to move one of our witnesses out of order, and it  
20 comes up actually under the schedule on the 17th of January,  
21 but it's possible we may start hitting those witnesses  
22 tomorrow, and that is witness Roseann Kendall, WorldCom  
23 witness, was scheduled to follow Mr. Lehmkuhl. We'd like to  
24 move Ms. Kendall in front of McKanna.

25 JUDGE RUTH: Just a second. Let me look at my

1 notes.

2 MR. CURTIS: So Ms. Kendall would be starting  
3 out the WorldCom witnesses that are listed under January 17  
4 on the schedule.

5 JUDGE RUTH: Okay. And that's Thursday, then.

6 MR. CURTIS: Right. And then we'd continue  
7 the same order, McKanna and Lehmkuhl.

8 JUDGE RUTH: And then this is just a question.  
9 If by chance the Commission would finish with the rest of  
10 the witnesses for the UNE issues, would Ms. Kendall be ready  
11 to go tomorrow, on Wednesday instead of Thursday?

12 MR. CURTIS: Yes.

13 JUDGE RUTH: Okay. That was my only question.  
14 That's fine to switch those around. I've made a note here.  
15 You can remind me in the morning if I forget.

16 Are there any other changes or housekeeping  
17 matters before we go off the record? Okay. Seeing none, we  
18 are adjourned for the day. Oh, wait. We're still on.

19 MR. MORRIS: I believe --

20 JUDGE RUTH: I can't hear.

21 MR. MORRIS: I believe you said Mr. Price must  
22 stay, is that correct, WorldCom witness Price? Is he still  
23 required to stay, and Aronson?

24 JUDGE RUTH: Right. I didn't think at this  
25 point you'd make a formal request for them to be excused.

1 MR. MORRIS: I'm making it now.  
2 JUDGE RUTH: Can you give me just a moment?  
3 MR. MORRIS: Yes, ma'am.  
4 JUDGE RUTH: Mr. Price may also be excused.  
5 MR. MORRIS: Mr. Price and Mr. Aronson?  
6 JUDGE RUTH: I didn't ask about Mr. Aronson.  
7 Mr. Aronson may also be excused.  
8 MR. MORRIS: Thank you.  
9 JUDGE RUTH: Anything else?  
10 (No response.)  
11 We are off the record now then.  
12 WHEREUPON, the hearing of this case was  
13 recessed until January 16, 2002.  
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