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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

HEARING

May 26, 2005

Jefferson City, Missouri

Volume 6

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

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

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

2 JUDGE THOMPSON: Great, Mr. Read.

3 Well, it looks like we've successfully  
4 connected.

5 MR. CONSTABLE: Good morning, your Honor. This  
6 is Jason Constable.

7 JUDGE THOMPSON: How are you doing?

8 MR. CONSTABLE: Very well. Thank you.

9 JUDGE THOMPSON: You were here with us earlier,  
10 as I recall.

11 MR. CONSTABLE: That's correct.

12 MS. DOUGLAS: This is Sandy Douglas with SBC  
13 Missouri.

14 JUDGE THOMPSON: Yes. And I remember you were  
15 here as well.

16 MS. DOUGLAS: Yes, sir.

17 JUDGE THOMPSON: I appreciate you taking a few  
18 minutes this morning to allow us to ask you some additional  
19 questions and I'll remind you, Ms. Douglas and Mr. Constable,  
20 that you are still under oath.

21 And, Mr. Read, I need you to raise your right  
22 hand.

23 (Witness sworn.)

24 JUDGE THOMPSON: Thank you. Since we can't see  
25 you and the reporter can't see you, anything you say, the

1 first thing out of your mouth has to be your name. Okay? And  
2 that way the reporter will be able to accurately transcribe  
3 who it is that is speaking. Okay?

4 Very good. I don't care who answers these  
5 questions, just tell me who you are so the reporter can get it  
6 down. And then, of course, you're going to have to be subject  
7 to cross-examination by the other parties' counsel that are  
8 here in the room, okay, possibly some questions from my Staff  
9 or myself -- well, actually I'm going to start off with the  
10 questions and then redirect by your own attorney. Okay.  
11 Those of you who were here can remember kind of how it worked.

12 So as I recall, what we were interested in  
13 finding out about was the technical parameters around this  
14 issue of when separate facilities are necessary and when  
15 they're not.

16 And, Leo, do you know, was Mr. Savage going to  
17 call in at this time too? It just occurred to me --

18 MR. BUB: I gave him -- it's the same number  
19 that we used for the prehearing, so he does have the number.  
20 I can call him.

21 JUDGE THOMPSON: Why don't you shoot him a  
22 quick call because he was interested in this stuff, as I  
23 recall.

24 Thanks for your e-mail, Natelle. I appreciate  
25 that.

1                   MR. BUB: We got a call at the office from the  
2 Charter attorney. He lost the number, but we gave it to him  
3 so he will be calling in momentarily.

4                   JUDGE THOMPSON: Okay. We'll just wait until  
5 he gets on.

6                   Is that Mr. Savage?

7                   MR. SAVAGE: Yes. I just joined. I apologize.

8                   JUDGE THOMPSON: That's quite all right. We  
9 haven't done anything, but we have Sandy Douglas and Jason  
10 Constable from SBC. They both appeared in the hearing earlier  
11 and were sworn at that time. Chris Read from SBC is also on  
12 and we just swore him and now I'm going to inquire. Okay?

13                  MR. SAVAGE: Excellent. Thank you, sir.

14                  JUDGE THOMPSON: Very good. So the issue is  
15 when are separate facilities necessary and when are separate  
16 facilities not necessary from the point of view of the  
17 technical limitations of the equipment. And I believe I was  
18 pursuing a line of inquiry with Mr. McPhee yesterday having to  
19 do with -- Mr. McPhee told me that it was necessary to have  
20 separate facilities in order to get the traffic parsed out for  
21 billing purposes. Okay? So that's what I'm asking about.

22                  And I don't know which of you can answer the  
23 question, but the question is, can you not program your  
24 equipment so that this traffic can be distinguished and sorted  
25 into the necessary categories without the requirement that a

1       separate facility be created to carry some subclass of this  
2       traffic?

3               MR. READ:  This is Chris Read.  I'm not sure of  
4       your -- your statement of equipment.  Are you talking about  
5       the network or are you talking about billing systems?

6               JUDGE THOMPSON:  Either.  I have no idea what  
7       equipment's involved.

8               MR. READ:  Let me --

9               JUDGE THOMPSON:  I know they're wires.  That's  
10       all I know.

11              MR. READ:  Let me make a stab at it then and  
12       hopefully others can jump in where I'm maybe missing the mark.  
13       But from a billing standpoint, the billing systems require on  
14       the net-- require the network recordings to provide  
15       information necessary for billing whatever call was just made.

16              JUDGE THOMPSON:  Right.

17              MR. READ:  And there's -- a determination has  
18       to be made in the network as to what kind of call it was to  
19       give us the right information in billing to be able to use  
20       that.

21              JUDGE THOMPSON:  Right.

22              MR. READ:  Not all types of calls, not all  
23       types of traffic, depending on what trunk it comes across, is  
24       going to create the same type of information that we would use  
25       in billing.

1 JUDGE THOMPSON: Okay.

2 MR. READ: Such as if it's an IXC call, we  
3 require it to be held -- to be handled over an IXC trunk  
4 because we get information in billing to help us identify who  
5 that IXC is that needs to be billed.

6 JUDGE THOMPSON: So if that traffic were  
7 commingled on a trunk with other traffic, you would be unable  
8 to distinguish it and bill it properly?

9 MR. READ: We wouldn't know -- yes, that's  
10 true. We wouldn't know if it were an IXC, which would be  
11 access charges, or if it would be a local company that was  
12 handling that that has handed us that traffic.

13 JUDGE THOMPSON: Okay. I think that's  
14 everything that I have.

15 Mr. Savage, you may inquire.

16 MR. SAVAGE: Thank you, your Honor. This is  
17 Chris Savage with Charter Communications. I'm calling in from  
18 Washington, DC.

19 If I heard your answer correctly, I just want  
20 to make sure I got it -- let me back up for a second. What  
21 I'm concerned about asking about, just you understand the  
22 context of my questions, is traffic going either to the 911  
23 selective router or traffic bound for a mass calling customer  
24 such as a radio station that SBC might have on its network.  
25 So my questions relate to traffic that comes from a Charter



1 customer, comes across our existing physical interconnection  
2 facility, but it's either a 911 call or it's a call to one of  
3 your mass calling customers. So you understand that  
4 limitation that I'm asking about?

5 MR. READ: Yes. I understand that.

6 MR. SAVAGE: Okay. And there's no dispute  
7 between Charter and SBC, as far as I know, about putting on  
8 separate trunks traffic bound for an IXC, traffic bound for  
9 what have you. That would all be separate trunking which is  
10 fine.

11 So what I want to ask you about is the question  
12 of a facility. Assume that we got an arrangement where --  
13 let's start with 911. 911 traffic starts with one of our  
14 customers, goes across the physical fiber facility and is sort  
15 of sitting there at I guess the SBC tandem office and your end  
16 of that fiberoptic terminal. Inbound needs to go the rest of  
17 the way from the end of the fiberoptic terminal to the 911  
18 selective router and then into 911. Are you with me so far?

19 MR. READ: Yes. But I'm hoping that our  
20 network folks can also be on board here. That would be Jason  
21 Constable. Are you aware of this, Jason?

22 MR. CONSTABLE: Generally, I'm aware of what  
23 the issue is. That's not something that I normally handle,  
24 but I think that I can maybe help out a little bit.

25 MR. BUB: Your Honor, if I may interrupt. This

1 is Leo Bub.

2 MR. SAVAGE: Hi, Leo.

3 MR. BUB: Mr. Savage, we set up this call and  
4 got the witnesses that we had with the understanding that we  
5 were addressing the Judge's question about separate trunk  
6 groups for being able to bill IXC traffic. We probably didn't  
7 get the witnesses -- I didn't understand that we were to get  
8 witnesses to answer your question about the 911 and mass  
9 calling. I thought we had handled --

10 MR. SAVAGE: If that's not on the table, I'll  
11 just withdraw the question. That's fine.

12 MR. BUB: We got the wrong -- a different set  
13 of witnesses for that. At least it was my understanding  
14 yesterday that we covered that with Ms. Chapman.

15 MR. SAVAGE: That's just fine. Then I will  
16 strike all my questions about 911 and mass calling, if that's  
17 true. Your Honor, is that the proper understanding?

18 JUDGE THOMPSON: Yes, it is, I believe.

19 MR. SAVAGE: Okay. Then let me just ask  
20 entirely and completely then about the issue of traffic to  
21 IXCs. Let's assume that what we've got here is a meet point  
22 call where one of our customers is, you know, making a call  
23 and they're PIC'd to AT&T, let's say, and we don't have a  
24 direct connection to AT&T.

25 So what we would want to do is establish a

1 trunk group that runs from our switch I guess to your tandem  
2 and then off to AT&T. That's how we set up the trunking for  
3 that. Right?

4 MR. CONSTABLE: Yes.

5 MR. SAVAGE: Yes?

6 JUDGE THOMPSON: And who was that that said  
7 yes?

8 MR. CONSTABLE: I'm sorry. This is Jason  
9 Constable.

10 JUDGE THOMPSON: Thank you. We have to know  
11 who says it.

12 MR. SAVAGE: Now, assume with me that that  
13 trunk group -- tell me if there's anything wrong with the  
14 following in terms of anything -- either technical billing or  
15 what have you.

16 We can figure that trunk group to physically  
17 ride the fiberoptic facility that today connects Charter  
18 Fiberlink's network in St. Louis to SBC's network. We would  
19 carve that traffic out as a separate trunk that would then be  
20 handed off -- you would then have that separate trunk  
21 identified at your end of the fiberoptic terminal. Could you  
22 not then cross-connect that to the tandem and then ship it off  
23 to AT&T as necessary?

24 MR. CONSTABLE: Mr. Savage, this is Jason  
25 Constable. I believe that that issue kind of goes back to

1       what we were talking about with -- we've already got the  
2       separate trunk groups and so we've got that portion taken care  
3       of and now what the issue is, is can they use the same  
4       facility or do they -- are they required to use different  
5       facilities. So I think that still goes back more to  
6       Mr. Hamiter's area of expertise.

7                   MR. SAVAGE: So to the extent that  
8       Mr. Hamiter -- whatever he said about that, he said about  
9       that. Your concern from the billing perspective is simply  
10      there be a separate trunk group and not particularly a  
11      separate facility?

12                  MR. CONSTABLE: Generally, I think -- again,  
13      this is Mr. Constable. Generally, I believe that's true. I  
14      think that the issues with the transport is more who pays for  
15      the -- who pays for the actual facilities. Is it shared costs  
16      with the facilities or who pays for that more than it is  
17      generation of the billing.

18                  MR. SAVAGE: Let me ask you a question about  
19      that. Are you familiar with the normal rules that apply and  
20      what I think of as meet point billing for jointly provided  
21      access?

22                  MR. CONSTABLE: I'm really not. Again, I would  
23      think that would be more Mr. Hamiter or Mr. McPhee.

24                  MR. READ: This is Mr. Read. I may be able to  
25      answer something there.

1                   MR. SAVAGE: My understanding is the way that  
2 works is if you've got let's say a call coming in from an IXC  
3 that goes through an ILEC tandem over some facility to a CLEC  
4 switch and then to a CLEC customer. Do you understand what  
5 I'm asking you to assume there?

6                   MR. READ: Yes.

7                   MR. SAVAGE: The way I understand it works, and  
8 tell me if I'm wrong about this, is for that call that comes  
9 in, the ILEC would bill the IXC for -- you know, starting at  
10 the IXC's pop for an entrance facility from the IXC's pop to  
11 the tandem switch for tandem switching for this portion of the  
12 transport on the way to the CLEC switch and then the CLEC  
13 would bill for its portion of the transport and, you know,  
14 whatever end-office access elements are applicable.

15                  MR. READ: That's the way I understand it, yes.

16                  MR. SAVAGE: So if we have a situation of the  
17 sort I'm describing where SBC would provide the tandem  
18 functionality, Charter Fiberlink would provide the end-office  
19 functionality and there would be some transport link between  
20 them under the -- it's called a MECAB, M-E-C-A-B, all caps,  
21 and MECOB, M-E-C-O-B, all caps, arrangements, we would simply  
22 have to agree on what is the split of the mileage -- of the  
23 airline mileage between the tandem office and the end-office  
24 so that we could each properly bill the IXC for our portion of  
25 transport; is that right?

1                   MR. READ: This is Mr. Read. Yes.

2                   MR. SAVAGE: Okay. And from your perspective,

3 would having the physical facility that carries that transport

4 service being the same fiberoptic facility that carries all

5 the rest of the traffic between us have any impact on our

6 ability to do that?

7                   MR. READ: I hate to avoid the question, but

8 I'm really not sure of the physical type of trunk that we're

9 talking about. If -- because my understanding is that all

10 traffic that comes across that meet-point trunk is assuming

11 that it's coming from an IXC. Traffic is IXC bound.

12                  MR. SAVAGE: Yes. And I agree with you. All

13 the traffic on this trunk group would be IXC bound. It's just

14 a question of the physical facility that perhaps to carry that

15 trunk group isn't germane to the calculation of those charges.

16 Is that your understanding?

17                  MR. READ: I really couldn't answer that. I'm

18 sorry.

19                  MR. SAVAGE: Okay. That's fine.

20 I don't have anything else, your Honor.

21                  JUDGE THOMPSON: Thank you, Mr. Savage.

22 Does anyone else have any questions for the two

23 witnesses we've heard from on this fairly narrow issue?

24 Anyone else on my Staff? Mr. McKinnie?

25                  MR. MCKINNIE: I might have a separate question

1 to ask Mr. Read about billing while we have him on the phone,  
2 but I wasn't going to --

3 JUDGE THOMPSON: Fire away. He's the billing  
4 guy. God forbid that, you know, I should get a DPL wrong  
5 because you didn't ask this question, so step up.

6 MR. MCKINNIE: Mr. Read --

7 MR. READ: Yes.

8 MR. MCKINNIE: -- my name is Adam McKinnie and  
9 I'm with the Staff. And I just want to ask a real quick  
10 billing question.

11 MR. READ: Okay.

12 MR. MCKINNIE: What information does SBC  
13 Missouri have about a call that it does not normally pass on  
14 in the daily usage file to a CLEC?

15 MR. READ: I'm sorry. The question was what  
16 does -- what information does SBC Missouri have in the records  
17 or -- I didn't catch that.

18 MR. MCKINNIE: Sure. Just what information in  
19 general does it have? I'm just trying to understand the  
20 issues about what information the CLECs want.

21 MR. READ: Okay. Hopefully I'm not giving you  
22 something you already know, but let me just say this, that the  
23 daily usage file created is a -- is a file of records that are  
24 in an EMI format that are created directly from the recordings  
25 made on the switch.

1                   So when a call is made on a switch through a  
2                   switch, then -- or even if it were passed to us from another  
3                   company, we would take that -- that information, put in the --  
4                   it will have the from number, the to number, the date, the  
5                   duration of the call, all of the information necessary to rate  
6                   the message. And then that message is sent to -- to the CLEC  
7                   in the daily usage file. All of this is according to industry  
8                   standards through the Ordering and Billing Forum.

9                   MR. MCKINNIE: Okay. And they seem to want  
10                  more information than that. Is that a -- is that fair to say  
11                  from an understanding of some of the reciprocal comp and  
12                  billing issues?

13                 MR. READ: That they're wanting more  
14                  information? Is that what your question is?

15                 MR. MCKINNIE: Yes.

16                 MR. READ: Well, I know that there is  
17                  information that has been a challenge to obtain since the  
18                  beginning of wholesale, and that is identification and  
19                  jurisdiction is critical to all billing systems and all  
20                  billing companies.

21                 So they -- I'm not sure if there's really any  
22                  new information that they're looking for, but if you -- if  
23                  you're referring to the fact that some records require -- they  
24                  have different fields, different records depending on  
25                  different types of calls. So some records will have CIC



1 information, which is the carrier identification code, if it's  
2 going to be billed to an IXC. Other records are going to have  
3 local information if it's going to be billed to a local  
4 company.

5 So one record can't have both. And if that's  
6 being required, of course, that just can't happen because  
7 there's been a determination of what that call was. I hope  
8 I'm not missing the mark. If I am, you know, let me try it  
9 again.

10 MR. MCKINNIE: No, no. I think that's more or  
11 less what I wanted to know. Okay. Thank you very much.

12 MR. READ: Okay.

13 JUDGE THOMPSON: Anyone have any cross based on  
14 the questions of Mr. McKinnie just addressed to Mr. Read?

15 MR. SAVAGE: I don't, your Honor.

16 JUDGE THOMPSON: Okay. Anyone here? No?

17 Yes, sir, Mr. Morris.

18 MR. MORRIS: One clarifying question.

19 JUDGE THOMPSON: Absolutely. Step up and talk  
20 into the telephone.

21 MR. MORRIS: Sir, when you mentioned EMI  
22 format, what is EMI?

23 MR. READ: I'm sorry. I shouldn't list  
24 acronyms I guess, but the electronic data -- no, it's  
25 electronic message interface. And that's a format that is

1       agreed to by the industry at the Ordering and Billing Forum.  
2       And a document is produced quarterly with any necessary  
3       updates that -- it takes the switch information that's  
4       actually recorded and then maps that from an AMA format into  
5       this EMI format and all of it's fielded where you take the  
6       from number and put it into a from number field in the EMI  
7       record.

8               The AMA format is not exchanged between  
9       companies. The EMI format was created so that all companies  
10      in the industry would understand what's being billed or what's  
11      being -- what type of call was -- had just taken place and to  
12      allow all companies to have a common understanding and  
13      expectation of how to bill accurately.

14             MR. MORRIS: Thank you. And what is AMA  
15      format?

16             MR. READ: AMA format is the -- now you're --  
17      automatic message accounting I believe is the acronym. And  
18      that's -- and that is the actual format that's created off of  
19      the switch reporting.

20             MR. MORRIS: All right. Thank you.

21             JUDGE THOMPSON: Yes, ma'am?

22             MS. BOURIANOFF: Your Honor, I think I do too.

23             JUDGE THOMPSON: Very good.

24             MS. BOURIANOFF: Mr. Read, it's Michelle  
25      Bourianoff for AT&T. Good morning.

1 MR. READ: Good morning.

2 MS. BOURIANOFF: You mentioned that for IXC  
3 calls, CIC, a C-I-C, carrier identification code, is provided.  
4 Do you recall that in responding to Staff questions?

5 MR. READ: Yes.

6 MS. BOURIANOFF: Is a CIC always provided to a  
7 CLEC on every IXC call?

8 MR. READ: If it is an access record that would  
9 be charged to an IXC, then that -- that is our -- our goal,  
10 our anticipation that a CIC would be provided. We -- we've  
11 always agreed that we would provide CICs.

12 MS. BOURIANOFF: You would agree with me,  
13 however, Mr. Read, that a CIC is not always provided in every  
14 instance. It's the agreed standard that it should be  
15 provided, but there are records passed sometimes that do not  
16 have a CIC on them; is that correct?

17 MR. READ: Well, you never say never and  
18 always. I guess there could be anomalies, but -- that could  
19 happen, but I think they are just that. And it is our goal  
20 that if it's an IXC-charged call, that the CIC would be  
21 provided. Because we could identify the traffic as coming  
22 from that IXC, we would know what CIC to provide.

23 MS. BOURIANOFF: And is the CLEC able to bill  
24 the call correctly if the CIC is not provided on the record?

25 MR. READ: Well, it creates a dilemma. As I

1       stated earlier, identification and jurisdiction are two of the  
2       top -- the largest issues that have been in the wholesale  
3       world, as -- as you know.

4                   And as many, many issues regarding  
5       identification and jurisdiction have been -- many discussions  
6       have happened in the industry. So it does create a problem.  
7       Is it impossible? I wouldn't go there. There may be other  
8       methods, there may be other avenues of information, but it  
9       does create a problem.

10                   MS. BOURIANOFF: Thank you.

11                   JUDGE THOMPSON: Thank you. Any other  
12       questions?

13                   Okay. Redirect?

14                   MR. BUB: Thank you, your Honor.

15                   This is Leo Bub and these questions are  
16       directed to Mr. Read.

17                   Mr. Read, the Judge asked you some questions  
18       about the records that are created on IXC calls. Could you  
19       tell us what type of call record is created on IXC calls?

20                   MR. READ: Well, the EMI document contains a  
21       whole series of access records. And if it is an IXC-carried  
22       call, then there would be access charges that would apply or  
23       even if charges don't apply, there are still information  
24       that's created on that access call.

25                   MR. BUB: Those EMI records that you're talking

1       about, do they require a category 11 type record to be  
2       created?

3               MR. READ:  Yes.  I'm sorry.  They are category  
4       11 records, which category and EMI is just the first two  
5       digits of the record.

6               MR. BUB:  Okay.  And those are the same  
7       records, the category 11's, that the new Missouri Commission  
8       enhanced record exchange rule requires to be created by tandem  
9       companies; is that correct?

10              MR. READ:  That's true.

11              MR. BUB:  Okay.  Do you know -- let me back up.  
12              That new rule requires the CIC to be put into  
13       the record.  Can you tell us how that CIC gets put into the  
14       record?

15              MR. READ:  The CIC is obtained by -- we have a  
16       relationship with -- with the IXC by the purchase of a trunk  
17       group and we can identify that -- that CIC based off that  
18       trunk group.

19              MR. BUB:  So it's the LEC that receives the IXC  
20       call that assigns a CIC based on a trunk group?  Is that what  
21       you said?

22              MR. READ:  Yes.

23              MR. BUB:  So the CIC gets put in by the LEC, in  
24       this case by SBC?

25              MR. READ:  Yes, it is.

1                   MR. BUB: Okay. These category 11 records that  
2 we've been talking about, who else besides SBC depends on  
3 those records?

4                   MR. READ: Well, since it's an industry  
5 document, the expectation is that everyone in the industry not  
6 only had a hand in making the records and -- but also, we have  
7 an obligation to provide those records if we're doing  
8 recording for anyone.

9                   If we are the official recording company in a  
10 transit situation, then we would provide category 11 records  
11 or if it were a UNE-P company behind our switch in an  
12 originating or terminating situation, we would create  
13 category 11 records to -- and send those to the appropriate  
14 company that is interconnected with us.

15                  MR. BUB: So carriers that are behind our  
16 company when a call goes from an IXC through SBC Missouri to  
17 another carrier, be it a small LEC or a CLEC, SBC's required  
18 to provide a category 11 record to the carriers behind us?

19                  MR. READ: Yes. Exactly.

20                  MR. BUB: What do they do with those records?

21                  MR. READ: Well, what they do is what they --  
22 what they can do since they have the records, they have the  
23 capability to bill whatever appropriate charges that they have  
24 negotiated with their customer or they can bill an access  
25 company. If it happened to be an IXC-carried call, they may

1       use that terminating access record to bill the terminating --  
2       or the IXC in that case.

3               MR. BUB:   In that case you just mentioned,  
4       would the small LEC, for example, be billing out of its access  
5       tariff?

6               MR. READ:   Yes.

7               MR. BUB:   Okay.   If the trunk groups -- if this  
8       IXC traffic were not separated and we were not able to  
9       create -- to identify the traffic like you suggested, would we  
10      be able to provide a category 11 record to the small LECs and  
11      CLECs behind us on calls passing through our network from IXCs  
12      to the small LECs or the CLECs?

13              MR. READ:   Well, it would create a -- a dilemma  
14      for us because we would have what we would determine -- have  
15      to determine as unknown traffic.   We wouldn't be able to  
16      appropriately jurisdictionalize the traffic.   And if it were  
17      dealing with a -- with multiple companies even over the same  
18      trunk groups, then we'd have an identification problem also.

19              So what we would be creating is unknown  
20      traffic, which then we would have to create some method of  
21      factoring, which is just an estimate of billing based on some  
22      history, but not the accurate billing that we're able to apply  
23      to it today.

24              MR. BUB:   I'd like to shift gears on you real  
25      quick.   And this is another question for Mr. Read.   Michelle

1 Bourianoff, the attorney for AT&T, asked you a question about  
2 whether CIC is always provided to a CLEC on an IXC call and  
3 you indicated that there may be anomalies when it wasn't. Can  
4 you give us an idea of how often a CIC is not provided on an  
5 IXC call that transits our network and goes to a CLEC behind  
6 us?

7 MR. READ: To my knowledge, I don't know of a  
8 case when we haven't provided CIC. I won't say that something  
9 hasn't happened where for some reason maybe due to some  
10 billing changes or something that a CIC didn't get applied  
11 into the record, but those are just normal billing issues that  
12 are handled. But I don't know of cases where we didn't  
13 provide CIC.

14 MR. BUB: Okay. Thank you.

15 Those are all the questions I had, your Honor,  
16 on this topic. I will note that yesterday you did have some  
17 questions I think concerning Charter's proposal and this is  
18 intercompany compensation, but it also has an impact on  
19 network and billing where Charter's proposing to have the  
20 retail local calling scope to determine whether a call is  
21 local, in which case reciprocal compensation would apply,  
22 versus a non-local call in which case access would apply. And  
23 it would be the retail calling scope that would determine that  
24 compensation. And you had some questions about, you know,  
25 whether that would have any impact on billing.



1                   Our witness touched on that, but these are the  
2                   witnesses that can address that if you care to inquire of  
3                   them. If not, that's fine. But I just wanted to let you know  
4                   that these people have the expertise.

5                   JUDGE THOMPSON: I appreciate that. I think  
6                   I've heard everything I need to hear about that. At some  
7                   point in a case this size, you have enough information.

8                   Does anyone have any questions on that topic?

9                   Okay. If there are no further questions for  
10                  any of these witnesses, then thank you very much for your  
11                  time. I appreciate you taking your time to help us out this  
12                  morning. And we'll go back to torturing the people that are  
13                  here in the room. Okay? Have a nice day.

14                  MR. SAVAGE: Your Honor, this is Chris Savage.  
15                  I'm going to have to count on Mr. Johnson to do that on behalf  
16                  of Charter.

17                  JUDGE THOMPSON: Mr. Johnson is ready, willing  
18                  and able. Take care.

19                  MR. JOHNSON: Torture.

20                  JUDGE THOMPSON: Okay. Maybe that was the  
21                  wrong word, I'm sorry.

22                  Okay. Now, I think we have a couple witnesses  
23                  left over from yesterday. I believe Mr. Price and Witness  
24                  Ivanuska; is that correct? And you guys have already decided  
25                  what order they're going to come in, is that correct, or have

1           you not?

2                       MR. LANE: I thought Mr. Ivanuska was up.

3                       JUDGE THOMPSON: That's fine with me. Let's

4           get somebody up.

5                       Morning, sir. Nice to see you.

6                       THE WITNESS: Good morning, your Honor. Nice

7           to see you.

8                       JUDGE THOMPSON: And have you been sworn?

9                       THE WITNESS: I have not.

10                      (Witness sworn.)

11                      JUDGE THOMPSON: Thank you, sir. Take your

12           seat, state your name for the reporter, spell your last name,

13           if you would.

14                      THE WITNESS: My name is John Ivanuska, I-v, as

15           in Victor, a-n-u-s-k-a.

16                      JUDGE THOMPSON: Thank you.

17                      You may inquire.

18           JOHN IVANUSKA testified as follows:

19           DIRECT EXAMINATION BY MR. MAGNESS:

20                      Q.       Mr. Ivanuska, you filed more than one piece of

21           testimony. Correct?

22                      A.       Yes, that's correct.

23                      Q.       Okay. You have testimony on UNE issues as well

24           as on general terms and conditions issues?

25                      A.       Yes, that's correct.

1           Q.       And could you just tell the Judge and Staff  
2       where you're employed?

3           A.       I'm employed by Birch Telecom headquartered in  
4       Kansas City, Missouri. I'm testifying on behalf of Birch  
5       Ionics as well as the CLEC Coalition.

6                   MR. MAGNESS: Thank you.

7                   Tender him for cross.

8                   JUDGE THOMPSON: Thank you very much, sir.

9                   Mr. Lane?

10                  MR. LANE: Thank you, your Honor.

11                  JUDGE THOMPSON: We're still on yesterday's  
12       time allotment. Right? So do you have any idea how long  
13       you'll be?

14                  MR. LANE: Less than an hour.

15                  JUDGE THOMPSON: Very good.

16                  MR. LANE: Your Honor, I'd like to get an  
17       exhibit marked, if I could.

18                  JUDGE THOMPSON: You certainly may. This will  
19       be 212.

20                         (Exhibit No. 212 was marked for  
21       identification.)

22                  JUDGE THOMPSON: How shall we describe this?

23                  MR. LANE: CLEC Coalition pricing schedule.

24                  JUDGE THOMPSON: Very good.

25       CROSS-EXAMINATION BY MR. LANE:

1           Q.       Mr. Ivanuska, I've handed you what's been  
2       marked as Exhibit 212 in this case, which is a page from the  
3       response of the CLEC Coalition to the petition for arbitration  
4       and Exhibit B to that response, which is the schedule of  
5       pricing proposed by the CLEC Coalition in this case. Do you  
6       recognize that as -- as that being what it is?

7           A.       I -- I'm seeing this I guess in this form for  
8       the first time, so I'll -- I'll accept your representation.

9           Q.       And you're the witness that addresses pricing  
10      on behalf of the CLEC Coalition. Right?

11          A.       There are some pricing issues that I speak to  
12      in my -- in my testimony or out of the UNE schedule, UNE  
13      pricing attachment, yes.

14          Q.       And you didn't attach any pricing schedule to  
15      your testimony in this case; is that right?

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

17          Q.       And the only pricing schedule that we have from  
18      the CLEC Coalition is that which was contained in Exhibit B to  
19      the response to petition for arbitration. Right?

20          A.       Yeah. I -- I can't be sure about that. Like I  
21      said, I did not attach it to my testimony. I did not -- I  
22      don't believe I've done that. With so much filed, I mean, I  
23      can't be certain that this is the only time, but again, I'll  
24      accept your representation, Mr. Lane.

25          Q.       And with regard to the pricing, Exhibit B in

1 front of you, the first seven and a half pages are essentially  
2 what SBC Missouri proposed in this case and the remainder is  
3 what appears that the CLEC Coalition is proposing as prices in  
4 this case. Is that a fair statement?

5 MR. MAGNESS: Your Honor, it seems to me  
6 Mr. Ivanuska has already testified he did not attach this, it  
7 was not attached to his testimony. And Mr. Lane refers to him  
8 as the pricing witness, but I think if one reviews his  
9 testimony, there's not testimony that says, I'm supporting all  
10 the prices that were in this appendix. And I suppose he can  
11 answer what he can answer, but --

12 JUDGE THOMPSON: Well, do you have a pricing  
13 witness?

14 MR. MAGNESS: Not an individual who is  
15 sponsoring this particular attachment, providing testimony to  
16 it.

17 MR. LANE: I guess here's the problem, Judge.  
18 I mean, I thought out of this arbitration that you were going  
19 to set prices for unbundled network elements.

20 JUDGE THOMPSON: That's my expectation.

21 MR. LANE: If their view is that they're not  
22 proposing any prices on it, that's fine. But if their view is  
23 that there are some prices to come out of this, he's the only  
24 one that addressed pricing.

25 MR. MAGNESS: Your Honor, the CLEC Coalition's

1 position, except for the very few specific rates that  
2 Mr. Ivanuska talks about that are in his testimony, is to  
3 apply current M2A rates, for example, on UNEs and resale.  
4 We're not asking for new rates to be set.

5 Looking at this schedule, it appears that there  
6 are a lot of one cent and zero references, which frankly, I  
7 haven't looked at this and I don't know that they are correct,  
8 but that's been the proposal and that's been the negotiations  
9 with SBC throughout.

10 JUDGE THOMPSON: I see there is a CLEC  
11 Coalition/SBC DPL on pricing issues. Right?

12 MR. MAGNESS: Yes.

13 JUDGE THOMPSON: So I'm being called upon to  
14 make decisions regarding prices for the interconnection  
15 agreement between the CLEC Coalition and SBC. Given that  
16 that's what I'm being asked to do, I think SBC is entirely  
17 within its rights to want to cross-examine a witness with  
18 respect to the CLEC Coalition's price position.

19 And maybe I'm off base, but the fact that these  
20 are the prices that were in the previous agreement I don't  
21 know necessarily means they automatically get into the next  
22 agreement. I mean, conditions may have changed such that  
23 those prices may no longer be TELRIC or otherwise within  
24 whatever the legal parameters are that prices have to be.

25 So I think they get to explore that and you

1       have to tell them who they get to explore that with. Okay?  
2       If this is not the right witness, that's fine, I understand  
3       that. But let's get that witness here so that Mr. Lane can  
4       ask his questions.

5                   MR. MAGNESS: I think Mr. Ivanuska can answer  
6       what he can answer concerning those. I just want to be clear  
7       about --

8                   JUDGE THOMPSON: What if he can't answer them?

9                   MR. MAGNESS: -- that we're in a different  
10      position than what -- we had a discussion of very specific  
11      rates with Mr. Rhinehart yesterday and I just wanted to make  
12      that clear. Mr. Ivanuska is in a position to answer questions  
13      about rates. I just wanted to be clear that that's where we  
14      stood as far as the proposals and negotiations.

15                  JUDGE THOMPSON: That's fine. He has to have a  
16      chance to ask someone.

17                  MR. MAGNESS: Understood. Sure.

18                  JUDGE THOMPSON: If Mr. Ivanuska is the best  
19      possible witness, that's fine with me. And he'll do the best  
20      job he can, I'm sure.

21                  Is that acceptable, Mr. Lane?

22                  MR. LANE: Sure. I guess the problem I'm  
23      having, Judge, just to be clear, I don't know what prices  
24      they're proposing. They don't have anything. They dispute  
25      our prices in full is what they say on issue 1.

1 JUDGE THOMPSON: Excuse me?

2 MR. LANE: They say on issue 1 of the DPL for  
3 the CLEC Coalition --

4 JUDGE THOMPSON: I see that.

5 MR. LANE: -- that they dispute all of the  
6 prices that we've proposed.

7 JUDGE THOMPSON: Okay.

8 MR. LANE: And yet they don't propose any. So  
9 that's the problem that I'm coming to and I want to address  
10 that.

11 JUDGE THOMPSON: That's what you want to  
12 explore?

13 MR. LANE: Right.

14 JUDGE THOMPSON: And, Mr. Ivanuska, I mean, are  
15 you aware of someone that knows more the CLEC Coalition's  
16 position on pricing?

17 THE WITNESS: No, your Honor. I am generally  
18 aware that we -- that it's the CLEC Coalition's position that  
19 the prices that are in the M2A today should continue. To the  
20 extent SBC proposes something different, we would oppose that.  
21 To the extent the prices are identical to what's in the M2A,  
22 we would have no issue with those particular prices.

23 JUDGE THOMPSON: Very good. Then you may  
24 inquire.

25 BY MR. LANE:



1           Q.       All right. As we were discussing first, the  
2       first I guess seven and a half pages of this Exhibit B to the  
3       CLEC Coalition response to the petition for arbitration are  
4       the rates that were proposed by SBC Missouri. Right?

5           A.       I'll have to accept that. I -- I don't know.

6           Q.       Okay.

7           A.       I've not reviewed this.

8           Q.       And it's fair to say that -- let's take  
9       unbundled loops, the analog loops, for example. According to  
10      the answer to the petition for arbitration, you dispute all of  
11      the prices that SBC Missouri proposes. Right?

12          A.       Where's that now?

13          Q.       It's in the response to petition for  
14      arbitration and it's in the DPL on issue 1. I'll read from  
15      the DPL on CLEC Coalition pricing issue 1. It says, The CLEC  
16      Coalition disputes SBC Missouri's proposed price schedule in  
17      full. Right?

18          A.       That's what it says.

19          Q.       And with regard to loops, in particular, then  
20      on the analog loops you dispute all of the prices that SBC  
21      Missouri proposes. Right?

22          A.       To the extent those prices are different than  
23      what's in the M2A, the answer's yes.

24          Q.       And have you presented anything to the  
25      arbitrator that identifies which ones are different from those

1 in the M2A and which ones are the same as those in the M2A?

2 A. I have not presented that in my testimony.

3 Q. So at the end of the day if the arbitrator  
4 finds that, he doesn't have a place to look to know which  
5 rates you agree with and which rates you don't agree with,  
6 does he?

7 A. Well, the arbitrator could certainly look -- I  
8 mean, we haven't laid it out side by side, but I'd say our  
9 position's entirely clear that the arbitrator could look at --  
10 to the extent SBC's proposed rates differ from those rates  
11 contained in the pricing schedule of the M2A -- we haven't  
12 extracted and presented a side-by-side comparison, but  
13 conceptually that's -- that's exactly what we're doing. We  
14 don't have a schedule per se that I know of.

15 Q. All right. And most of the rates that SBC  
16 proposes are, in fact, taken from the M2A, are they not?

17 A. Many are, I suppose, yes.

18 Q. All right. And from what you've identified,  
19 there's not a way to distinguish the two from the testimony in  
20 the case. Right? You want the arbitrator to go through item  
21 by item and compare our price proposal to what's in the M2A.  
22 Is that a fair statement?

23 A. Actually, no. I mean, I want the arbitrator  
24 just to order the continuance of the M2A rates. And from my  
25 perspective, he need not do that because I think the

1 continuation of the current M2A rates are -- is an appropriate  
2 outcome.

3 Q. All right. And so in this -- with regard to  
4 that then, any service that's not included in the M2A would  
5 not be included as a price -- as a service with a price on it  
6 in the successor agreement. Is that a fair statement?

7 A. To the extent there was any instance of that.  
8 I don't -- I don't know of any instance off the top of my  
9 head.

10 Q. How about DS-3 loops?

11 A. I don't know.

12 Q. Okay. Assuming that DS-3 loops are not  
13 included in the M2A today, would you agree that under the CLEC  
14 Coalition's proposal then, there wouldn't be any DS-3 loop  
15 availability in the successor agreement?

16 A. Well, I don't -- I don't know whether they  
17 would or wouldn't be available. Certainly if it's capable of  
18 being unbundled -- you know, there may not be a price in the  
19 pricing attachment for it. I wouldn't say that that -- that  
20 the conclusion is that DS-3 loops are unavailable. You know,  
21 there's a separate rate issue, I suppose, on DS-3 loops where  
22 prices could be established or prices could be set pursuant to  
23 ICB pricing.

24 Q. All right. You're familiar with the BFR  
25 process, are you not?

1           A.       Yes, I am.

2           Q.       And would you agree under the current M2A, if a  
3           CLEC requests an element that's not currently provided, that  
4           that is something that's done through the BFR process?

5           A.       It is either done through the BFR process or it  
6           is priced on an individual case basis, you know. There's some  
7           difference there with, you know, how a UNE is made available.

8           Q.       So with regard to DS-3 loops, in particular,  
9           assuming that those are not currently provided for in the M2A  
10          today, would you agree that the appropriate resolution of that  
11          from the CLEC Coalition's perspective is that they could  
12          request that through the BFR process?

13          A.       We could request that through the BFR process,  
14          I would agree with that.

15          Q.       On pages 8 through 14 of 212, which you have  
16          before you, there are a series of services and a series of  
17          prices. And those were the prices that were included in the  
18          CLEC Coalition's response to the petition for arbitration as  
19          Exhibit B. You'll agree with me as you look through it, that  
20          every single price in there is either zero or one penny.  
21          Right?

22          A.       Those are the numbers.

23          Q.       And would you agree with me that those prices  
24          are not appropriate prices for the arbitrator to adopt in this  
25          case?

1           A.       I don't know the context, so I don't -- I  
2       can't -- I can't agree or disagree.

3           Q.       All right. It's fair to say that the CLEC  
4       Coalition has provided no cost study or other information that  
5       would justify the adoption of any of the rates that are  
6       contained on the bottom of page 8 beginning with DSL  
7       conditioning options through page 14. Is that a fair  
8       statement?

9           A.       I'm -- I'm pretty sure the Coalition hasn't  
10      provided a cost study. As far as other justification, I  
11      cannot agree that the CLECs have or have not provided any  
12      additional justification. The case is too voluminous for me  
13      to just say that. I'm pretty certain that there were no cost  
14      studies provided though.

15                 MR. MAGNESS: Your Honor, I think we can maybe  
16      cut through some of this. This is in error. I regret I had  
17      not seen this since the filing. The rates proposed are not  
18      zero or one penny. As Mr. Ivanuska testified --

19                 JUDGE THOMPSON: Are you referring to Exhibit  
20      212?

21                 MR. MAGNESS: Yes. Page 8 through 14. The  
22      rates he testified that we intended to incorporate into a  
23      price schedule are the current M2A rates for these elements  
24      and for resale. This is -- there's some sort of formatting  
25      typographical problem with this particular document. We

1 regret that that happened in the petition and we can refile  
2 something that is basically the M2A price schedule, but I just  
3 want it clear on the record we're not asking the Commission to  
4 adopt one penny or zero rates for all these elements.

5 JUDGE THOMPSON: Okay.

6 MR. LANE: At the end of the day, your Honor, I  
7 don't think there's anything for you that you can adopt for  
8 them on the pricing schedule. There's nothing there for you  
9 to say, yes, I adopt this. The only thing that's out there  
10 for you is our pricing schedule. And I can go through all of  
11 the questions that I'd otherwise ask or if it's clear that  
12 there's nothing in here for you to adopt for them on the  
13 pricing schedule, I'm fine to stop.

14 JUDGE THOMPSON: It's clear to me what they  
15 want. I guess my question is given that he's telling you that  
16 this is in error and that this doesn't fairly reflect their  
17 position, do you want an opportunity to perhaps ask different  
18 questions or -- you see what I'm saying? That doesn't change  
19 SBC's position.

20 MR. LANE: If they're withdrawing it, that's  
21 fine. If they're asking to withdraw it, that's fine. The  
22 only thing I would object to is submitting something late to  
23 you. I would be vehemently opposed to that. This is the  
24 opportunity for the hearing.

25 JUDGE THOMPSON: Okay. I understand that.

1                   MR. LANE: All right. If it's withdrawn -- is  
2                   that right? This is withdrawn?

3                   MR. MAGNESS: Well, I guess that depends on  
4                   what the consequence of the withdrawal is. The testimony is  
5                   Mr. Ivanuska has said that our position is that the current  
6                   rates stay in effect. We did not present a cost study, as  
7                   he's testified, justifying new rates. The basic argument is  
8                   these rates are in effect now, those rates should remain in  
9                   effect. That's the M2A pricing schedule.

10                  So if the withdrawal of this document that is  
11                  the -- has typographical errors, which, as I say, we regret  
12                  occurred but apparently they did, is that there is no  
13                  reference to the M2A pricing schedule as being our proposal,  
14                  then we have a problem because that was what we attempted to  
15                  support in testimony and in the DPL. So --

16                  JUDGE THOMPSON: Is the M2A pricing schedule in  
17                  the record in this case?

18                  MR. LANE: No.

19                  JUDGE THOMPSON: It is not?

20                  MR. LANE: No.

21                  JUDGE THOMPSON: And you are strongly opposed  
22                  to any effort by them to put it in the record in this case?

23                  MR. LANE: Yes.

24                  JUDGE THOMPSON: So as far as I can see, it's a  
25                  matter where you make a motion, he responds to the motion, you

1       respond to his response and I decide. Right? It's like  
2       anything else.

3               MR. LANE: You want it now?

4               JUDGE THOMPSON: Now, after the hearing. I  
5       don't care. In terms of this is the opportunity for the  
6       hearing, you now know that this is an error and you now know  
7       what they espouse. As far as I can see, you can ask him any  
8       questions you want about what they want. As you said, this is  
9       the opportunity for the hearing. It's not like you guys don't  
10      know what the M2A pricing schedule says. Right?

11              MR. LANE: In order --

12              JUDGE THOMPSON: It has, after all, been your  
13      agreement for the last three years.

14              MR. LANE: Let me be clear. Where we're  
15      getting into the problem is that the M2A pricing schedule  
16      contains prices for elements that are no longer classified.

17              JUDGE THOMPSON: That you no longer are  
18      required to offer and that your position is should not be part  
19      of this agreement.

20              MR. LANE: Right.

21              JUDGE THOMPSON: You may decide to offer them  
22      outside of this agreement --

23              MR. LANE: And have.

24              JUDGE THOMPSON: -- and have, but it shouldn't  
25      be part of this agreement. And you don't have to offer them



1 at TELRIC. Is that your position?

2 MR. LANE: Right. And that this Commission  
3 doesn't even have the authority to decide that.

4 JUDGE THOMPSON: Bingo. I understand your  
5 position.

6 Ms. Bourianoff, you have something?

7 MS. BOURIANOFF: Yes. And I just wanted to  
8 clarify that at least some -- a large part of the M2A rates  
9 are in the record through another party. And Mr. Rhinehart  
10 was cross-examined yesterday by Mr. Lane with the AT&T  
11 proposed pricing schedule and many of the M2A rates are on  
12 that proposed pricing schedule that AT&T proposes in a  
13 slightly different format because we have a different  
14 worksheet for --

15 JUDGE THOMPSON: I understand.

16 MR. LANE: I'm not dealing with AT&T. We're  
17 dealing with the CLEC Coalition.

18 MS. BOURIANOFF: I just wanted to make sure  
19 that --

20 MR. LANE: We've got separate arbitrations with  
21 each of these groups of people.

22 JUDGE THOMPSON: I understand that. And we're  
23 working a separate ICA for each one of these. Right?

24 MR. LANE: Right.

25 MR. MAGNESS: Your Honor, this is not without

1       some context either. The parties negotiated and have been  
2       negotiating prior to the filing of the arbitration for some  
3       time. SBC's negotiators we've discussed the issue with. Our  
4       position was we're going to going in with the current rates,  
5       we're not asking for a change in rates. In other states we  
6       have settled based on current rates. That's certainly not the  
7       case here, but the position of the parties going into the  
8       arbitration, that's how we knew we had a dispute.

9                   JUDGE THOMPSON: Let me ask you a question, if  
10       I could, Mr. Magness. Is it the CLEC Coalition's position  
11       that declassified UNEs should be part of this agreement?

12                  MR. MAGNESS: In the CLEC Coalition testimony,  
13       both Mr. Ivanuska and Mr. Cadieux and maybe Ms. Mulvaney --  
14       there's testimony concerning the treatment of the declassified  
15       UNEs. We are not asking that, for example, after the  
16       transition period is over under the TRRO and unbundled local  
17       switching is no longer an element under Section 251, we're not  
18       asking that that be available under 251 --

19                  JUDGE THOMPSON: I just want to know if you  
20       want -- is it your position that declassified UNEs should be  
21       part of this agreement that we're here arbitrating right now?  
22       Yes or no?

23                  MR. MAGNESS: They're in the agreement as long  
24       as the transition period lasts, yes. So once the transition  
25       period is over --

1 JUDGE THOMPSON: Now, that's something that you  
2 two can fight out in the brief. Am I right?

3 MR. MAGNESS: Sure.

4 JUDGE THOMPSON: I mean, it is what it is.

5 MR. LANE: Let me be clear. Is it the CLEC  
6 Coalition's view that they're not seeking to have those  
7 declassified elements available in the interconnection  
8 agreement under 271?

9 MR. MAGNESS: We're asking --

10 MR. LANE: I mean, I think you're not  
11 getting --

12 MR. MAGNESS: We're asking for 271 checklist  
13 items, including switching loops and transport. Some -- to  
14 some extent switching loops and transport under Section 251  
15 are declassified under the TRRO. No disagreement after the  
16 transition period.

17 So for switching loops and transport, which  
18 need to be available in the agreement under Section 271, we're  
19 asking that they be available under this agreement, we have  
20 proposed an interim just and reasonable rate to the extent  
21 they have been declassified under Section 251 and as  
22 Ms. Mulvaney has testified, the just and reasonable rate is  
23 something that's going to need to be revisited on a final  
24 basis by the Commission.

25 JUDGE THOMPSON: I remember that.

1                   Now, Mr. Lane, what is SBC's position with  
2                   respect to these 271 elements?

3                   MR. LANE: That they're not to be part of the  
4                   contract. And that if they are in the contract, that they're  
5                   not to be set at any kind of TELRIC rate. And that to the  
6                   extent that they're to be determined on any rate, it's by the  
7                   FCC under the just and reasonable standard, not this  
8                   Commission.

9                   JUDGE THOMPSON: Very well. Do you believe  
10                  that this Commission has any role in monitoring whether or not  
11                  SBC is continuing to meet its obligations with respect to the  
12                  271 checklist items?

13                  MR. LANE: No, your Honor, you do not. That's  
14                  very clear under the law. You do not.

15                  JUDGE THOMPSON: So they're out of the  
16                  agreement, it's not this Commission's problem. If we stick  
17                  our fingers in, they're going to cut off. Right? That's what  
18                  you're telling me?

19                  MR. LANE: Yes.

20                  JUDGE THOMPSON: Very good. That's all I need  
21                  to know.

22                  And you don't agree with that position; is that  
23                  right?

24                  MR. MAGNESS: None of it.

25                  JUDGE THOMPSON: Very good. I'll expect to

1 read some exciting passages in the briefing about that.

2 Okay. I'm not going to tell them that I'm not  
3 going to consider the rates that they want because they filed  
4 something with typos.

5 MR. LANE: Okay. And my point, your Honor, is  
6 that they've got nothing in there so we've got nothing --

7 JUDGE THOMPSON: And you can argue that and you  
8 can say what you want to say and he's going to say what he  
9 wants to say and there we go. Right? Okay?

10 MR. LANE: Fair enough.

11 JUDGE THOMPSON: I'm not going to non-suit  
12 something for a typographical error. I'm just not going to do  
13 it. That's not my view of how the law should work.

14 Now, further inquiry?

15 MR. LANE: Yes.

16 BY MR. LANE:

17 Q. With regard to resale discount rates on issue 4  
18 of the pricing DPL of the CLEC Coalition, it indicates that  
19 you're not asking to have that issue addressed in this phase.  
20 Would you agree with me that there's no other phase to the  
21 arbitration scheduled in this case?

22 A. I would agree that this is the only phase of  
23 the case.

24 Q. And would you agree that the resale discounts  
25 that SBC Missouri proposes to provide are those that are from

1 the M2A and should be adopted in this case?

2 A. I haven't examined them, but to the extent they  
3 are the discount rates from the M2A, then I do think that they  
4 should be adopted, yes.

5 Q. And you haven't proposed anywhere a list of  
6 services and discount rates that you think should be  
7 applicable; is that right?

8 A. Not that I'm aware of.

9 Q. Okay. I'm going to switch over and talk about  
10 UNEs with you for a little bit.

11 A. Okay.

12 Q. In your Rebuttal Testimony, and I'm going to  
13 refer you to page 4, you discuss the process to be used if  
14 Birch or a member of the CLEC Coalition wants to submit a  
15 request for SBC to develop a process for commingling  
16 arrangements. Right?

17 A. Right. In the context of my rebuttal of SBC  
18 Witness Christensen, I discuss the change management process.

19 Q. And you have several pages where you criticize  
20 the change management process. Right? Pages 4 through 10.  
21 Right?

22 A. Right. And several attachments.

23 Q. And the particular language that you're  
24 addressing is that which is in 2.19.4.1; is that right?

25 A. I believe so.

1 Q. And that's what you list on your Rebuttal  
2 Testimony at page 4, line 16. Right?

3 A. Right. I see that. And, I mean, to be  
4 thorough, I should go to UNE 6 and make sure that there's no  
5 typos or anything, but yeah, that's what I attempt to  
6 reference.

7 Q. And UNE 6 is the -- the 6 there refers to the  
8 attachment, not to the issue number. Right?

9 A. Correct.

10 Q. And the issue number that we're dealing with  
11 that with on that is issue 13. Right?

12 A. Okay.

13 Q. Do you have the DPL in front of you?

14 A. No, I don't. This is -- this is my fourth 2A.  
15 I've printed 500 pages of DPL, the other three, and never used  
16 them. And now I don't have it and -- so the answer's no.

17 MR. MAGNESS: I'm pulling up the electronic  
18 version.

19 THE WITNESS: Sorry.

20 MR. LANE: That's okay.

21 JUDGE THOMPSON: It's a hard case to be  
22 prepared for.

23 THE WITNESS: I was so represented in Texas and  
24 Kansas City and Oklahoma and 1,500 pages of legal size later,  
25 I -- I thought I won't need them.

1 BY MR. LANE:

2 Q. Let me just ask you a process. In writing your  
3 Rebuttal Testimony, did you read the DPL at that point when  
4 you wrote it?

5 A. Sequence of things, I don't remember. I  
6 mean --

7 Q. Okay.

8 A. -- I looked at SBC's direct. I don't know. I  
9 don't really remember.

10 Q. Okay.

11 MR. MAGNESS: It's part 2 -- is it issue 13,  
12 Paul, you said?

13 MR. LANE: Yes.

14 MR. MAGNESS: Okay. Issue number.

15 THE WITNESS: Okay.

16 MR. MAGNESS: Enlarge it a little so you can  
17 see it.

18 THE WITNESS: Okay.

19 MR. MAGNESS: Scroll down to 13.

20 THE WITNESS: Are you going to be my navigator?

21 BY MR. LANE:

22 Q. Do you have it in front of you now,  
23 Mr. Ivanuska?

24 A. I'm scrolling. Do you have a page number?

25 Q. 55.



1           A.       I'm there.

2           Q.       All right. Let's get back into context, if we  
3 could, for a minute. It's fair to say that this language  
4 arises only when we're dealing with requests for commingling  
5 arrangements that aren't already accounted for in an SBC  
6 proposal that's available to the CLECs online. Right? That's  
7 the context that we're dealing with?

8           A.       That's correct.

9           Q.       Okay. And from yesterday we know from  
10 Exhibit 211 that there's some 11 commingling arrangements that  
11 SBC Missouri has proposed that can be ordered without a BFR.  
12 Right?

13          A.       Well, these are in the process of being  
14 developed, yes. The -- it's the Evergreen CLEC website, I  
15 guess. That's what's coming off the website at this point.

16          Q.       And would you agree with me that those lists of  
17 arrangements commingling arrangements that are available  
18 without a BFR request account for well over 90 percent of the  
19 commingling arrangements that CLECs anticipate requesting?

20          A.       I don't know that to be a fact.

21          Q.       And was Birch a member of the CLEC Coalition in  
22 Texas when this issue was raised?

23          A.       We appeared in Texas, yes.

24          Q.       And would you agree with me that in Texas the  
25 testifying witness for the CLEC Coalition testified that the

1 11 co-mingling arrangements that are represented in  
2 Exhibit 211 account for more than 90 percent of the  
3 co-mingling arrangements that CLECs seek to request?

4 A. Probably not. I mean, we didn't have 11 back  
5 in Texas. We had 4 that came off this website.

6 Q. Would you agree that the 4 that were listed on  
7 the website accounted for more than 90 percent of the  
8 co-mingling arrangements that the CLECs expected to order?

9 A. I don't remember the testimony. I do know that  
10 there were three, then SBC added the DS-1 loop to DS-1  
11 transport, essentially the reconstitution of the EEL. That  
12 one alone probably constitutes the majority of commingling  
13 arrangements. I mean, I'll give you that much. I don't  
14 remember the 90 percent.

15 Q. Are you familiar with Mr. Hyde, the witness for  
16 the CLEC Coalition from Cibion?

17 A. I do. Yeah, I remember Mr. Hyde.

18 Q. And do you recall his testimony in Texas that  
19 those 4 commingling arrangements accounted for over 90 percent  
20 of the commingling requests that the CLECs would make?

21 A. I don't remember that statement.

22 Q. Do you have any reason to dispute it?

23 A. No, I don't really. I'm not surprised the --  
24 like I said, the reconstituted EEL is clearly the vast  
25 majority of commingled instances that CLECs require.

1           Q.       All right. And so what we're dealing with in  
2       the Section 2.19.4.1 is generally less than 10 percent of the  
3       commingling arrangements and how you handle those when there's  
4       a request but there's not a process already in existence.  
5       Right? That's what we're dealing with?

6           A.       That is what we're dealing with, with the  
7       exception of -- that the 11 commingled arrangements that are  
8       listed on the exhibit that was introduced yesterday, most, if  
9       not all of those, are still works in process. I mean, I don't  
10      know what they're going to be in their final form  
11      operationally.

12                    It may very well be that the process that gets  
13      established by SBC is wholly unacceptable to CLECs, in which  
14      case SBC may say, you know, if you want a fully mechanized  
15      process for this commingled arrangement, you're going to have  
16      to go through the CMP or the process that we have established  
17      for SBC to consider and evaluate these.

18           Q.       7 of the 11 are already available to CLECs  
19      according to Exhibit 211. Right?

20           A.       I haven't reviewed 211.

21           Q.       Okay. So when your statement that the majority  
22      of them are not available, that was made without reference to  
23      the document itself. Right?

24           A.       Well, I -- I can --

25           Q.       Yes or no?

1           A.       I looked at the document for one particular  
2       thing.  
3           Q.       Okay.  
4           A.       And it was the --  
5           Q.       All right. I'm trying to get to a particular  
6       point, if I can.  
7           A.       Sure.  
8           Q.       The criticism that you leveled with regard to  
9       the change management process deals only with the small --  
10       strike that.  
11                    The criticism that you level with the change  
12       management process here is not even applicable because it's  
13       the BFR process that would apply in this instance, isn't that  
14       correct, under the language that has been proposed in Section  
15       2.19.4.1?  
16           A.       My screen just went dark. Excuse me. It went  
17       to sleep, didn't it?  
18                    MR. MAGNESS: I think it did. It's locking up.  
19                    THE WITNESS: Now it's locked.  
20                    JUDGE THOMPSON: We're having a difficult time  
21       here today. Do you have a need a copy of the CLEC Coalition  
22       DPLs because I have a box with them in it.  
23                    MR. MAGNESS: If you have attachment 6. If you  
24       have it on paper.  
25                    JUDGE THOMPSON: Attachment 6, is that a DPL or

1 part of the proposal?

2 MR. LANE: No. You'd need the DPL. Attachment

3 6 UNE is what he's referring to. You've got one?

4 JUDGE THOMPSON: Here. I'm sure you can find

5 in there somewhere.

6 MR. MAGNESS: Okay.

7 THE WITNESS: Page 55.

8 JUDGE THOMPSON: Mr. McKinnie actually has the

9 right one, which would be even quicker.

10 I'm just glad you guys didn't leave a lot of

11 points for me to decide because --

12 THE WITNESS: 2.19 -- would you repeat your

13 question?

14 BY MR. LANE:

15 Q. Yes. My question was, while you have

16 criticized the change management process, would you agree with

17 me that in this issue that we're dealing with, that the

18 process that's to be used for a request for commingling

19 arrangement where a process doesn't exist already is the BFR

20 process, not the change management process?

21 A. As I understood Mr. Christensen's testimony, he

22 was directing CLECs to the change management process as a --

23 as a way of submitting and prioritizing commingled

24 arrangements, if I recall. I mean --

25 Q. My question, Mr. Ivanuska, is in the language

1       that we're dealing with in the issue that you identified --

2               A.       Uh-huh.

3               Q.       -- is it correct that the change management

4       process isn't called for, it's the BFR process?

5               A.       I'm -- help me with that reference. I'm --

6       2.19 --

7               Q.       .4.1 on page 56.

8               A.       Right. I don't believe that we disagree

9       necessarily with -- I don't see that language in disagreement.

10              Q.       Look on page 56, if you would.

11              A.       Uh-huh.

12              Q.       The bolded language, Any CLEC request for a

13       commingled arrangement not found on the then existing list of

14       orderable commingling arrangements must be submitted via the

15       BFR --

16              A.       Okay. I'm with you.

17              Q.       -- process. And that's bolded because the CLEC

18       Coalition didn't agree with it. Right?

19              A.       Thank you. Yes.

20              Q.       And so the reference in your testimony to the

21       change management process is not what's at issue in Section

22       2.19.4.1. Right?

23              A.       So what you're saying is what Mr. Christensen's

24       testimony was is different than --

25              Q.       What I'm asking you is that the language itself

1       that we're dealing with deals with the BFR process. Right?

2           A.       Right.

3           Q.       And your language that's proposed in that same

4       issue on 2.19.4 also references an agreement to utilize the

5       BFR process. Right?

6           A.       That's true.

7           Q.       Okay. And to the extent that a request for a

8       commingling arrangement that's not currently available, the

9       small -- less than 10 percent that we're talking about,

10       doesn't involve the BFR process and may involve the change

11       management request process, it's a fair statement that the

12       CLEC Coalition has already agreed to utilize that. Right?

13          A.       Well, first of all, as I said before, I can't

14       confine the CLEC Coalition's exposure, if you will, to just

15       the remaining 10 percent, as you say.

16          Q.       All right.

17          A.       There may be problems with that.

18          Q.       I'll take that out and let me re-ask the

19       question. That was a little editorializing. I'll admit that.

20                 With regard to any request for a commingling

21       arrangement that's not currently provided for, it's intended

22       that the parties will utilize the BFR process. But to the

23       extent that it also requires consideration of the change

24       management process, it's a fair statement that the CLEC

25       Coalition has already agreed to utilize that change management

1 process. Right?

2 A. Utilize the change management process now?

3 Q. Yes.

4 A. I -- no. I think to the extent that -- okay.

5 So you're saying to the extent that there is a commingled

6 arrangement that's not already on the list of 11?

7 Q. Yes.

8 A. Okay. I -- I suppose for that -- for those

9 that are not on the list of 11, we've agreed that the BFR

10 process is sort of an appropriate way to get that considered.

11 My bigger concern though is that with the 11 that are on the

12 list, it looks that the one I'm most particularly interested

13 in is being developed in such a sub-standard way we're going

14 to be in front of the --

15 Q. This is --

16 A. -- change management process.

17 Q. Okay. You would agree -- take a look, if you

18 would, at issue 11 on the CLEC Coalition DPL, page 50. Are

19 you there? Tell me when you get there.

20 A. I am.

21 Q. Would you agree with me that this section also

22 deals with the issue of processes to be utilized when a

23 commingling arrangement is requested that's not on the list of

24 already developed ones? Right? That's what the issue deals

25 with?



1           A.       Yes. It has to do with process and/or  
2       commingling order charges.

3           Q.       And in the CLEC Coalition proposed language,  
4       your own proposal, contemplates that you'll use either change  
5       management guidelines or BFR guidelines, whichever is  
6       applicable. Right?

7           A.       Well, our own language begins by saying, SBC  
8       shall use existing ordering and provisioning processes already  
9       developed for other UNEs if possible. So there's -- there's a  
10      threshold parity obligation from a UNE world to a commingled  
11      world.

12          Q.       My question, Mr. Ivanuska, is pretty specific.  
13      You agree in your own proposed language to utilize either the  
14      change management process or the BFR process as applicable.  
15      Right?

16          A.       To the extent it's necessary.

17          Q.       Right.

18          A.       To the extent it's not necessary -- and it is  
19      CLEC Coalition's position that, you know, for -- for the  
20      certain commingled arrangements that I'm particularly familiar  
21      with, we should never have to go to the BFR process or the  
22      change management process.

23          Q.       Right. We're only dealing with situations  
24      where there's not a process that's already in place in this  
25      language. Right? That's all we're dealing with?

1           A.       Remember, this is the commingled analogy to a  
2 pure UNE world. And SBC's first obligation under this  
3 language is to, you know, essentially make the process the  
4 same for the commingled arrangement.

5                   Failing that -- and we may have some  
6 disagreement over whether SBC is able to use processes and  
7 procedures already developed. You may say we -- we can't.  
8 CLECs may say, well, we think you should. I don't think the  
9 next step is to use the change management or BFR process. If  
10 it's an undefined set of network elements where SBC has never  
11 provisioned them before, that's another story. But, in  
12 particular --

13           Q.       All right. The issue we're dealing with here  
14 is when it's something that hasn't been ordered before.  
15 Right? That's what we're dealing with. And I'm just trying  
16 to make it clear, and I think you've agreed, I hope, that you  
17 do recommend utilizing and agree utilizing the change  
18 management process and/or BFR as applicable or appropriate.  
19 Right?

20           A.       Right. But I'm pretty sure we disagree as to  
21 whether something's been provided before.

22           Q.       I want you to go back to issue 13 and talk  
23 about the other problem that we have with the language that  
24 you're proposing there. Your proposed language states that,  
25 quote, The parties agree that the commingled products that are

1 identified in Exhibit A to this attachment shall be available  
2 to the CLEC upon request as of the effective date of this  
3 agreement.

4 Is it a fair statement that the CLEC Coalition  
5 hasn't provided this Exhibit A for SBC Missouri to look at?

6 A. I'd be surprised if we haven't.

7 Q. Do you have it with you?

8 A. Oh, I don't know. We've provided this  
9 everywhere else. Again, the 2A arbitrations run together. I  
10 don't know if I have it with me or whether it was in the  
11 testimony of Mr. Cadieux or --

12 Q. All right. The other issue that we have with  
13 your language relates to the requirement that it be available  
14 as of the effective date of the agreement. You understand  
15 that's an issue between us?

16 A. Right.

17 Q. And when this agreement is adopted and becomes  
18 effective, if those processes aren't available at that time,  
19 we're already in violation of the agreement. Right?

20 A. Absolutely.

21 Q. And yet we know that all of the processes that  
22 are reflected in Exhibit 211, that 4 of the 11 are not  
23 currently available and may not be available as of the  
24 effective date of the agreement. Right?

25 A. Yeah. That's a problem for SBC.

1           Q.       And so your proposed language is designed to  
2       ensure essentially that we wind up being in violation of the  
3       agreement from day one because they haven't been provided.  
4       Right?

5           A.       Absolutely not. That is certainly not our  
6       intent. Our intent is to ensure --

7           Q.       That is the result. I should say the result.

8           A.       That's -- that's SBC's fault, if you will.  
9       It's certainly nothing that we've done. SBC has known for a  
10      long time that commingling has been required. SBC has chosen  
11      to essentially sit on its hands in --

12          Q.       Now --

13          A.       -- in operationalizing the most --

14          Q.       Mr. Ivanuska, you're going way beyond the  
15      question that I asked you. I'm just asking you what the  
16      effect of what happens is. The effect of it is -- whether you  
17      think it's fair or not, the effect is we're in violation of  
18      the agreement from day one. Right?

19          A.       I don't know whether SBC can operationalize  
20      this or not.

21          Q.       Okay. Flip back to issue 11, if you would,  
22      page 50. It's fair to say that we're dealing with requests  
23      that may be made by the CLEC Coalition for a commingling  
24      arrangement after the agreement becomes effective. Right?

25          A.       There is that opportunity.

1           Q.       Okay. And under the language that you've  
2       proposed there, like in section 13 -- or issue 13, in both  
3       cases if a request is made for a commingling arrangement after  
4       the agreement is entered into, after it becomes effective, it  
5       has to have been available back at the time that the agreement  
6       became effective or we're in violation of the contract.  
7       Right?

8           A.       Well, I think it's the CLEC Coalition's  
9       testimony that those commingled arrangements that we specified  
10      in Exhibit A were the five that we have consistently  
11      articulated to SBC need to be made available.

12          Q.       My question to you is not that. Okay?

13          A.       Okay.

14          Q.       You're permitted, under the agreement, to  
15      request a commingling arrangement on August 1st of 2006 if you  
16      want. Right?

17          A.       Sure.

18          Q.       And under the language that you've proposed,  
19      when you request a new one on August the 6th -- August the  
20      1st, if we didn't have it available two weeks before when the  
21      agreement became effective, we're already in violation of the  
22      contract. Right?

23          A.       That's certainly not the intent of the --

24          Q.       But that's the language, isn't it?

25          A.       That's not our intent.

1 Q. But that's the language, isn't it?

2 A. I don't know.

3 Q. Well, take a look on issue 11 on page 51. The

4 language that's underscored there is that which SBC Missouri

5 objected to. And it refers specifically to the date on which

6 this agreement is approved. Right? That's the obligation to

7 make it available as of that time. Right?

8 A. Let me read the whole thing.

9 Q. Sure.

10 A. Okay. I've read it.

11 Q. Do you agree with me?

12 A. Question again, please? I'm slow. I'm sorry.

13 Q. If the CLEC Coalition requests a commingling

14 arrangement after this agreement comes into place, under the

15 language that you're proposing, we're in violation of it from

16 day one because it wasn't available back when the agreement

17 became effective. Right?

18 A. Well, that seems to be the effect. And I'll

19 tell you what the intent is.

20 Q. Would you agree that that language should be

21 dropped and if the arbitrator adopts your position on this

22 issue, that it should exclude that underscored provision on

23 page 51?

24 A. The date on which this agreement is approved?

25 Well, I -- I certainly would not want to put SBC in a quirky

1 position of being instantly in violation. However, I would  
2 want to review context before I agreed that that should be  
3 dropped.

4 It's certainly not our intent for SBC in the  
5 August 2006 example that you gave to have SBC be instantly in  
6 violation. There are bigger issues in play here that are real  
7 issues and not hypothetical issues. And, you know, we just  
8 are very concerned about the availability of --

9 Q. Right.

10 A. -- a commingled analogy to the UNE  
11 availability. The problem is --

12 Q. I don't have a question pending.

13 A. -- the problem --

14 Q. I know you want to talk about it and that's  
15 fine, but that's not my question. Okay?

16 Let me flip over and talk about issue No. 17.  
17 17B, in particular.

18 A. Could I have a page reference, please?

19 Q. 62.

20 A. Okay.

21 Q. Are you there?

22 A. Yes.

23 Q. This issue involves the definition of a  
24 building. Right?

25 A. Yes.

1           Q.       And the importance of that is because the FCC's  
2       order provides some limitations on the provisions of DS-1 and  
3       DS-3 loops to a building.  Right?

4           A.       Correct.

5           Q.       And in your rebuttal you criticize Mr. Smith's  
6       testimony by saying that he was looking at an old version of  
7       your proposal.  Right?

8           A.       Right.

9           Q.       In fact, the criticisms that Mr. Smith leveled  
10      go to this proposal, do they not?  And let me go through a few  
11      of them.

12          A.       Uh-huh.

13          Q.       Let's take a look at the question of a  
14      multi-tenant building, which was one of the issues that  
15      Mr. Smith raised.  Is it correct that under what your proposal  
16      is here, that in this building, the Missouri Public Service  
17      Commission building, where we have the PSC operating on  
18      several floors, a law firm operating on the top floor, that  
19      the law firm on the top floor of this building is to be  
20      considered a separate building unless all of the  
21      telecommunications services in the building are provided  
22      through a common telecommunications equipment room?

23          A.       That's correct.

24          Q.       Okay.  And so Mr. Smith's criticism that you  
25      could wind up with a single building -- or a single physical



1 structure being considered multiple buildings under your  
2 proposal is correct, is it not?

3 A. That -- that wasn't my critique of Mr. Smith's  
4 criticism. My critique of Mr. Smith's criticism was that we  
5 were -- we were essentially modifying our definition, you  
6 know, recognizing instead of a minimum point of entry that  
7 there be a termination closet or something like that.

8 Q. Right. But your proposal still involves an  
9 issue where multiple tenants in a single physical structure  
10 are considered as residing in separate buildings?

11 A. Right. I'm recognizing that that's not stale  
12 criticism. I still disagree with it, but yeah.

13 Q. Right. But that's the result of what your  
14 proposal still is?

15 A. Right.

16 Q. You can have a single physical structure being  
17 considered multiple buildings and SBC Missouri would, under  
18 that, still be required to provide DS-1 loops and DS-3 loops  
19 well beyond the 10 that the FCC indicated for an individual  
20 building?

21 A. Well, because of the way we're defining  
22 buildings, yes.

23 Q. Right. And if you define building to be a  
24 multiple structure -- a single structure being multiple  
25 buildings, then you can require SBC Missouri to provide DS-1

1       and DS-3 loops to a greater extent than you otherwise could.  
2       Right?

3             A.       Right. The effect is to try with more  
4       precision than SBC has done to, you know, make this as clear  
5       as possible so that we're not back here arguing over the  
6       definition of a building. That -- that's clearly our attempt  
7       and it's to add more specificity.

8             Q.       To be clear, specificity you want us to be  
9       obligated to provide DS-1 and DS-3 loops in more situations  
10      than we otherwise would if a single building -- if a single  
11      physical structure is considered to be a building. Right?

12            A.       Just as though SBC wants to provide DS-1 and  
13      DS-3 in less instances where they would consider a  
14      multi-building premise one building. I mean, yeah, we're  
15      coming at this from different points of view clearly.

16            Q.       Right. And I'm just trying to point out so  
17      it's clear on the record what the effect of it is.

18            A.       Right.

19            Q.       It's not just a simple esoteric argument about  
20      what's a building. Right?

21            A.       Oh, no.

22            Q.       It has practical consequences?

23            A.       It absolutely does. And I think that's why we  
24      feel so strongly about it.

25            Q.       In addition, under your proposed definition of

1 a building, a convention center, an arena, an exposition hall  
2 in any location which is used for special events of a limited  
3 duration wouldn't be considered a building at all. Right?

4 A. That's true. And I think the TRO is very clear  
5 on that.

6 Q. And there's disagreement on that and we'll  
7 argue.

8 A. Right.

9 Q. But that's the effect of your language. Right?

10 A. That is the effect of my language because of  
11 the intermittent nature of the revenue stream as set forth in  
12 I think it's paragraph 152 of the TRRO.

13 MR. LANE: All right. That's all the questions  
14 I have. Thank you, Mr. Ivanuska.

15 JUDGE THOMPSON: Thank you, Mr. Lane. 55  
16 minutes and 49 seconds. That's an excellent performance.

17 MR. LANE: Just time-wise or how about  
18 substance?

19 JUDGE THOMPSON: You knew that part. I didn't  
20 have to tell you that.

21 MR. MAGNESS: Of course it was excellent.

22 JUDGE THOMPSON: Before you start, we're right  
23 at the point where we're ready for a break for the reporter so  
24 we'll go ahead and take 10 minutes now. Thank you.

25 (A recess was taken.)

1 JUDGE THOMPSON: All right. Let's go back on  
2 the record. I think it's actually time for my questions.  
3 QUESTIONS BY JUDGE THOMPSON:  
4 Q. I understand that a BFR is a bona fide request.  
5 A. Yes, your Honor.  
6 Q. It's terminology I find interesting. Is that  
7 like in comparison to a spurious request?  
8 A. We really mean it.  
9 Q. Were you not serious about it?  
10 A. We really want it.  
11 Q. And what is the BFR process?  
12 A. In a word, cumbersome actually. Extremely  
13 cumbersome. In a nutshell, CLECs submit with as much  
14 specificity as possible a request for something that is not  
15 yet available. For example, a new unbundled network element  
16 that SBC's never made available.  
17 Q. So how does it work? You fill out a form?  
18 A. Fill out a form, send it to SBC. They do an  
19 evaluation of it, decide if we've given them enough  
20 information. Sometimes there's clarifying questions. Then  
21 the request goes into SBC for evaluation and there are time  
22 frames associated with when a required response is to be made  
23 available.  
24 At certain intervals there's maybe a  
25 preliminary response as to, Yeah, we can probably make this

1       available but we either need some money or we need to -- we'll  
2       get going on it and then there's a cost estimate. The problem  
3       is it's somewhat open-ended. You know, there's certainly a  
4       process.

5               Q.       I sense you don't like the process.

6               A.       I don't like the process. And as a matter of  
7       fact, we have several issues in my testimony where we -- where  
8       we critique the process because we're looking for specificity  
9       in the way of standards of pricing that are consistent with  
10      the Telecom Act, finality of rate quotes when they're made,  
11      that they're not just preliminary, and operationalization  
12      commitment dates as to when we get --

13              Q.       What does that mean?

14              A.       When it's going to work.

15              Q.       Okay.

16              A.       When it's actually going to be --

17              Q.       So when you send a BFR and you use that to  
18      request --

19              A.       A new unbundled network element.

20              Q.       A UNE. Right?

21              A.       Sure.

22              Q.       Could be commingling?

23              A.       Right.

24              Q.       So you send a BFR. And as I understand it,  
25      your complaints are you think it takes too long; is that

1 right?

2 A. Well, that's -- that's not on our list of  
3 disagreements. I do think it takes too long.

4 Q. Takes too long to get certainty with respect to  
5 price?

6 A. Well, we don't get certainty with respect to  
7 price necessarily, that it's not committed to be a final  
8 price, that SBC does not necessarily have to adhere to the  
9 TELRIC pricing standard or the just and reasonable standard.  
10 And we're just trying to make that clear in our language.

11 Q. Make it clear that they do have adhere to it or  
12 that they don't?

13 A. Yes, that they do. Because they're --

14 Q. There's actual different rules for different  
15 UNEs. Right?

16 A. Well, certainly it's TELRIC if it is an  
17 unbundled network element made available pursuant to Section  
18 251.

19 Q. But if it's declassified?

20 A. If it is declassified, so to speak, it must be  
21 priced or deemed just and reasonable.

22 Q. Okay.

23 A. So we're saying one of those standards needs to  
24 apply to your price.

25 Q. That's your view?

1           A.       Yes.  Absolutely.

2           Q.       Do you believe SBC disagrees?

3           A.       Well, they must because they haven't accepted  
4       our language.

5           Q.       Okay.  If you know, is there dispute with your  
6       language because they think some other standard is involved or  
7       is it, do you think, because there's some other element or  
8       aspect of your language that they don't like?

9           A.       I don't think they want to be held to those  
10       standards, your Honor.

11          Q.       Okay.  And so you want the process reformed by  
12       simply clarifying the standards they must adhere to in terms  
13       of pricing?

14          A.       That would be one clarification, yes.

15          Q.       What other clarifications do you want?

16          A.       The other clarification would be that when they  
17       do quote us a price, that it be a final price.  In other  
18       words, at the end of 180 days or -- I can't recall exactly  
19       what the standard is, but when we do get a price for this  
20       thing we're requesting, that that's the price, that we know  
21       that's what we're going to be required to pay for the  
22       development of this -- the availability of this.  That I want  
23       this to be a final price.  Simply it is in searching of the  
24       word final in the language.

25          Q.       Am I correct in inferring that you've had

1 experiences in doing this in the past where you have not  
2 gotten a final price?

3 A. I think we've been made aware that, you know,  
4 this is a preliminary price, we haven't locked this down. You  
5 know, I can't recall an instance where it's changed or not  
6 changed we're -- offhand. We just want to make clear that the  
7 end of six months, you ought to know really what it's going to  
8 cost us before we send you off to build it, so to speak.

9 JUDGE THOMPSON: And, Mr. Lane, who's the SBC  
10 witness on this issue?

11 MR. LANE: I was trying to look that up. I  
12 believe that Mr. Silver addressed it and Mr. Smith addressed  
13 it, but I'm trying to --

14 JUDGE THOMPSON: I'll make a note to read their  
15 testimony on this point.

16 MR. LANE: These are different issues than I  
17 was crossing him on, Judge. Just so it's clear. What I was  
18 crossing him about was the agreement to use that BFR process  
19 and there's no dispute of that.

20 JUDGE THOMPSON: Thank you for reminding me of  
21 that.

22 BY JUDGE THOMPSON:

23 Q. So you guys want to do something besides the  
24 BFR process?

25 A. Your Honor, we think that for specific



1 commingled arrangements, specifically the ones that we've set  
2 forth, we shouldn't have to go through that BFR process.  
3 SBC's known about the requirement to make commingling  
4 available since late in 2003. Yet and here we sit and, you  
5 know --

6 Q. You know we were talking about family law  
7 earlier? There are a lot of people who know they're supposed  
8 to pay child support, but funny how the check doesn't show up  
9 in the mailbox.

10 So they know commingling exists, but that  
11 doesn't necessarily mean that they're ready tomorrow to  
12 commingle whatever you might to commingle, does it?

13 A. Well, as a matter of fact, no, your Honor. And  
14 that is a serious -- there may not be a more serious issue for  
15 CLECs in this case.

16 Q. Okay.

17 A. This is extremely serious.

18 Q. Explain to me why it's so serious.

19 A. It's extremely serious because there are  
20 certain unbundled network elements that are properly  
21 declassified.

22 Q. Okay.

23 A. All right. There's transport routes. SBC  
24 says, We don't have to provide these as a UNE. The only way a  
25 CLEC will be able to constitute what it used to get on a pure

1       UNE basis is going to be on this thing we call a commingled  
2       arrangement.

3           Q.       Which is part UNE and part --

4           A.       It's part UNE and --

5           Q.       -- and part declassified UNE?

6           A.       -- part something else is what we like to say  
7       to avoid the fight. Part something else.

8           Q.       All right.

9           A.       But, you know, CLECs buy a lot of DS-1 EELs.  
10       You know, that's -- that is the DS-1 loop to DS-1 transport  
11       combined. It is -- it is the lion's share of high-capacity  
12       network that CLECs use to serve medium to large business  
13       customers.

14          Q.       You say that's a DS-1 loop plus what?

15          A.       Plus a DS-1 transport link. It is combined,  
16       it's linked together. We call it in the UNE world an EEL.  
17       Tomorrow when that transport link is declassified, SBC does  
18       not have to make that transport portion of the EEL available  
19       as a UNE.

20          Q.       So that's been declassified?

21          A.       Yeah. Let's say that's properly declassified.

22          Q.       So right now it's still under the transition  
23       rules?

24          A.       It's under the transition rules, but if it's --  
25       you know, but the stuff that's declassified, you know, they --

1       if -- once we evaluate their -- yeah.

2               Q.       I'm just trying to understand the nature of  
3       this thing.

4               A.       We can't get it as a UNE anymore, let's just  
5       say.

6               Q.       But you can still get it, just in a different  
7       way, isn't that right, or on a different basis?

8               A.       That's the problem.

9               Q.       You can't get it?

10              A.       No.   SBC will not allow us -- if you look at  
11       the -- if you look at the exhibit that was introduced  
12       yesterday, the commingling with stuff from the CLEC online  
13       website --

14              Q.       Is that this one, the commingling exhibit?

15              A.       Yes, your Honor.   The essential --

16              Q.       211?

17              A.       Yes.   The essential prerequisite in paragraph 1  
18       is -- about the fifth line down, To request a commingled  
19       arrangement, a CLEC must first have language in its  
20       interconnection agreement with the particular SBC ILEC.   So --

21              Q.       Which permits commingling and provides the  
22       associated terms and conditions.   Right?

23              A.       Right.

24              Q.       And that's what we're here to do, isn't it,  
25       make this interconnection agreement?

1           A.       That's right.

2           Q.       And it's going to say commingling is  
3       permissible under this agreement and here are the terms and  
4       conditions. Right?

5           A.       Let's hope. Let's hope. However --

6           Q.       Does their suggested language say you can't  
7       have commingling?

8           A.       Their suggested language is deficient in many  
9       respects in that they would -- if it were SBC's view of the  
10      world with the routes that they have sought declassification  
11      of, we'd be needing to get access to a commingled arrangement  
12      now.

13                   And as a matter of fact, since the FCC order  
14      has gone into effect, SBC -- or excuse me, CLECs have been  
15      requesting these commingled arrangements because the day that  
16      SBC makes the arrangement available does not mean that the  
17      arrangement is functional. It is the functional equivalent.

18                   I mean, the biggest commingled arrangement, the  
19      most popular one, is so functionally different than what we  
20      get today. I mean, there's a serious flaw in this DS-1 EEL.  
21      If you read this document, your Honor --

22           Q.       Yeah.

23           A.       -- yes, it requires CLECs to fax in portions of  
24      what used to be a fully mechanized order. This thing is --  
25      it's so difficult. If you go to page 3 --

1 Q. Yeah.

2 A. -- and read halfway down the page, Additional  
3 requirements for -- it says type 4 above.

4 Q. Okay.

5 A. Really we're referring to type 2, because this  
6 is a -- this is a revised version that wasn't completely  
7 revised. UNE DS-1 loop connected to a non-channelized special  
8 access DS-1 interoffice facility. So we're talking about the  
9 commingled version of the EEL for this paragraph.

10 Q. Okay.

11 A. If you read bullet 2, LSR submitted to order  
12 the UNE 1 DS-1 loop must be manually faxed to CLEC's non-ICR  
13 fax number.

14 So not only can we not order the combination of  
15 loop and transport together, we have to order them separately,  
16 but now what used to be a fully mechanized process is half  
17 electronic and half fax. So procedurally and process-wise,  
18 this presents tremendous difficulties for the CLECs. This is  
19 the CLEC's bread and butter.

20 Q. Let me ask you some questions about that.  
21 Until this order came out that declassified a portion of this  
22 EEL, right, you got all the parts of it as a UNE, is that  
23 correct or as UNEs?

24 A. Yes.

25 Q. And they had to combine them at your request.

1 Right?

2 A. Yes.

3 Q. Or you did or however that works.

4 A. It's the nature of the EEL, yeah.

5 Q. So they're already in place. Right?

6 A. The -- for our embedded base, sure.

7 Q. So all that's going to change is the way you're

8 billed; isn't that right? Is the problem with new ones?

9 A. We don't have a prob-- well, I mean, the

10 embedded base, there's a pricing component. The problem is

11 very much new ones. You know, they aren't going to --

12 Q. So when you say "embedded base," you mean the

13 ones that are already in place --

14 A. Existing customers.

15 Q. -- that are already used? Existing customers.

16 A. Fine, we have a pricing issue that we're going

17 to deal with during the transition period. They don't have to

18 provision new customers during this transition period. So if

19 we want to get a new customer --

20 Q. They don't have to provision it the way they

21 were provisioning it?

22 A. No.

23 Q. Now they have to do it as I commingler?

24 A. Right.

25 Q. Okay.

1           A.       And they won't do it, says this document,  
2       unless we have got contract language in effect.

3           Q.       Okay.

4           A.       So we have a gap.

5           Q.       Right now you're still under the existing M2A.  
6       Right? Doesn't that allow you to get those things?

7           A.       Not for new customers.

8           Q.       Not for new customers. Okay. So you're just  
9       out of luck with new customers until you get the new  
10      agreement?

11          A.       Pretty much.

12          Q.       Okay.

13          A.       And out of luck is a -- you know, I -- make  
14      sure that the court appreciates how serious this is. This is  
15      the CLEC's bread and butter --

16          Q.       Okay.

17          A.       -- the DS-1 to DS-1 EEL. Having a commingling  
18      or a commingled substitute for what was the pure UNE EEL is  
19      essential. You know, this is far from anything but the, you  
20      know, sort of an analogous substitute.

21          Q.       But this is something the FCC has done to you,  
22      isn't it? Didn't they change the rules?

23          A.       We don't have a problem -- and we recognize  
24      there's a rule change. The problem we have is SBC's  
25      implementation of the FCC's rule is, you know, we don't end up

1       anywhere near where we were operationally. That's the problem  
2       I have. I understand --

3               Q.       Let me just make sure. I'm trying to grasp.  
4       In your view of this new world where the rules have changed,  
5       your view, if I'm right, is that the CLECs should be able to  
6       obtain these commingled UNEs for new customers that it needs  
7       quickly and easily. You'll pay whatever it is you've got to  
8       pay to get them under the new scheme of things, but you ought  
9       to be able to get them quickly; is that correct?

10              A.       We certainly recognize that there is -- there  
11       is a new world that we have to do business. No quarrel with  
12       that.

13              Q.       Okay.

14              A.       Quickly and easily, I -- my term would be, you  
15       know, in a -- in a manner the same as or similar to -- very  
16       similar to the way we got them in the old world.

17              Q.       In the past?

18              A.       Yes.

19              Q.       Okay. And because all that has changed  
20       actually is the billing; is that right?

21              A.       Essentially, yes. Now, SBC --

22              Q.       In other words, when it's declassified, that  
23       means the rate doesn't have to be TELRIC anymore, it can be  
24       something else?

25              A.       Well, and they have another product. They



1       would say, well, that's special access and that's a whole --  
2       there's a big difference. But facilities-wise it's a pricing  
3       change, your Honor.

4               Q.       It's going to be the same items, the same  
5       equipment?

6               A.       It is the same equipment. You know, it's  
7       probably not literally as simple as that, but it's not nearly  
8       as complicated I'm sure as SBC was leading us to believe.

9               JUDGE THOMPSON: Okay. And I want to read  
10       Silver and Smith to get SBC's side of this?

11              MR. LANE: At least. We'll cite in our brief  
12       if you need additional information, your Honor. Obviously our  
13       witnesses would dispute everything that he's said and they're  
14       not here to respond, but --

15              JUDGE THOMPSON: I understand that. And I'm  
16       not trying to blind side you. I'm just trying to understand  
17       what's going on. If you need to bring another witness down,  
18       bring them down, put them on the phone, whatever. I mean,  
19       this is my opportunity to learn what I need to learn --

20              MR. LANE: All right. We'll get somebody.

21              JUDGE THOMPSON: -- about this case.

22              MR. LANE: We'll get somebody.

23              JUDGE THOMPSON: And I understand that maybe  
24       we've gotten into something that you haven't addressed.  
25       That's fine. Get them down here.

1                   MR. LANE: Actually, Judge, I guess what I'd  
2                   say is we've addressed it, it's in the testimony and we've  
3                   explained it. But if you have questions about it, and  
4                   obviously you do, then it would be helpful, from our  
5                   perspective, if you heard from our witnesses on the same  
6                   questions.

7                   JUDGE THOMPSON: Absolutely.

8                   MR. LANE: We vehemently disagree with --

9                   JUDGE THOMPSON: Absolutely. So I can talk to  
10                  them both even at the same time.

11                  MR. LANE: I'll get somebody.

12                  JUDGE THOMPSON: Okay. Well, while Mr. Lane is  
13                  out of the room, I don't think we should continue with my  
14                  inquiries to you because that's not fair.

15                  You got somebody else we can put up? Sir?

16                  MR. MORRIS: Mr. Price is the --

17                  JUDGE THOMPSON: Let's do it. Why don't you  
18                  step down, Mr. Ivanuska, and we'll go back to you and we'll  
19                  take up Mr. Price. Is Mr. Lane the lawyer doing Mr. Price or  
20                  you are? Great. And you're here, we're ready to go.

21                  MR. MORRIS: And just for clarification, we're  
22                  on the UNE section. SBC has no questions for Mr. Price as to  
23                  UNEs, but he's also here to address collocation.

24                  JUDGE THOMPSON: Do they have questions on  
25                  collocation?

1                   MR. MORRIS: Yes, your Honor, they do. If I  
2                   could beg the court's indulgence, if I could take Mr. Price  
3                   out of order so I can get him --

4                   JUDGE THOMPSON: We can continue with him while  
5                   Mr. Lane's out of the room. Let's put somebody up here. I'm  
6                   not going to waste this time. Remember how I told you we're  
7                   done Friday at 5:00? I ain't kidding.

8                   THE WITNESS: Your Honor, just so you'll know,  
9                   I also address some of the same issues that you were just  
10                  discussing with Mr. Ivanuska in my direct and rebuttal  
11                  testimonies as well on commingling and the BFR process.

12                  JUDGE THOMPSON: Great. I don't want to hear  
13                  about those while Mr. Lane is absent. That's not fair to  
14                  Mr. Lane or to SBC.

15                  THE WITNESS: Agreed.

16                  JUDGE THOMPSON: This is your third trip up  
17                  here, isn't it?

18                  THE WITNESS: Yes, it is. Is this fun or what?

19                  JUDGE THOMPSON: Yeah, we're having a good time  
20                  here. Fire away.

21                  DON PRICE testified as follows:

22                  CROSS-EXAMINATION BY MR. GRYZMALA:

23                  Q.       Good morning, Mr. Price. How are you?

24                  A.       I'm fine, Mr. Gryzmala. Thank you.

25                  MR. GRYZMALA: Your Honor, if I may, let me

1       just sort of size the issues. This has to do with the  
2       collocation DPL.

3               JUDGE THOMPSON: Okay. And for who?

4               MR. GRYZMALA: This has to do with MCI's  
5       proposal for what we will call, loose hand fashion, power  
6       metering.

7               JUDGE THOMPSON: Is this the one about putting  
8       electric meters on collocation spaces that they only pay for  
9       the power they actually use instead of the power they could  
10      have used if --

11              MR. GRYZMALA: That's right.

12              JUDGE THOMPSON: -- you pumped them absolutely  
13      as much power as the wires and links could provide?

14              MR. GRYZMALA: Pretty much sizes it up.

15              JUDGE THOMPSON: Let's cut to the chase on this  
16      one. Why not, SBC? Why not?

17              MR. GRYZMALA: I think we can establish that,  
18      your Honor.

19              JUDGE THOMPSON: Here's your chance.

20              MR. GRYZMALA: By way of predicate, I would  
21      refer you to --

22              JUDGE THOMPSON: Because I'll tell you  
23      something. I pay electric bills. Okay? I pay electric  
24      bills, in fact, lots of other bills too. And I wouldn't want  
25      to Ameren on the basis of what they could provide to me if I

1       was using everything that could possibly come over that link.  
2       Right?

3                   MR. GRYZMALA:  I think there's some --

4                   JUDGE THOMPSON:  That would make we cry.

5                   MR. GRYZMALA:  I think from a high level, and  
6       with all due respect, superficial analysis, I think that's a  
7       fair assessment, because that's my initial reaction too.  
8       However, it maybe differs when you look at the way the details  
9       flow out.  The devil is in the detail and --

10                  JUDGE THOMPSON:  I understand.  And I read  
11       with -- let me say with great interest someone's testimony  
12       that had a lot of factual details, meaty factual details --

13                  MR. GRYZMALA:  Meat and potatoes.

14                  JUDGE THOMPSON:  -- on how you provide power to  
15       these collocation spaces.  That was very interesting.

16                  Could I jump in for a minute and ask you, who's  
17       going to pay for these meters -- putting the meters in, who's  
18       going to pay for that?

19                  THE WITNESS:  The cost of establishing that  
20       arrangement is something that in Illinois, which is referred  
21       to in my testimony, is borne by the requesting entity.  So --

22                  JUDGE THOMPSON:  In other words, the CLEC?

23                  THE WITNESS:  -- in this case it would be MCI,  
24       yes.

25                  JUDGE THOMPSON:  So if they want electric

1 meters and they're going to pay to put in the electric meters,  
2 I mean, you're going to convince me that that's not right?

3 MR. GRYZMALA: I think so.

4 JUDGE THOMPSON: Fire away.

5 MR. GRYZMALA: I think so. And just not to  
6 beat the case up, I think you want to look, your Honor, at  
7 Mr. Pool, I think you want to look closely at Mr. Pool. I  
8 think you want to look closely at Mr. Roman Smith. We will  
9 discuss very briefly, very to the point what other  
10 jurisdictions have done. It's been a struggle. It's not been  
11 like do it and all of a sudden a light turns on.

12 JUDGE THOMPSON: Let me just say I'm not all  
13 that moved by what other jurisdictions have done. It's of  
14 interest --

15 MR. GRYZMALA: I agree. I can understand that.

16 JUDGE THOMPSON: What other jurisdictions do  
17 provides some guidance, but they do silly things in other  
18 states.

19 MR. GRYZMALA: And I only get into it to the  
20 extent that I kind of am required to respond to it where  
21 Mr. Price points to other states and --

22 JUDGE THOMPSON: Ms. Bourianoff, you have  
23 something?

24 MS. BOURIANOFF: Your Honor, I just wanted to  
25 point out that Mr. Henson, who was excused because he

1 doesn't -- no one had questions for him, also addresses this  
2 issue in his testimony from a factual perspective.

3 JUDGE THOMPSON: Very good. I'll be sure to  
4 read that. You can believe I've read much, if not most, of  
5 the testimony already. If I weren't here doing this hearing,  
6 I would be reading it even now. And I will certainly have  
7 read all of it probably multiple times by the time I write  
8 this decision. And there's just not going to be a lot of  
9 sleep between now and whenever my due date is.

10 BY MR. GRYZMALA:

11 Q. Mr. Price, I think that his honor has set the  
12 issue up very nicely. I want to direct you right to your  
13 testimony wherein you reference whether -- or rather how SBC  
14 Missouri's tariff address power charges. I'm looking at  
15 page 58.

16 A. All right.

17 Q. Okay. And I think the point that you make, as  
18 is indicated at the following page 59, is that basically the  
19 tariff here points to charging on a per amp basis as consumed.  
20 Is that not a fair statement at line 2 of page 59? Do you see  
21 the words "per amp basis"?

22 A. I do. I was looking back at the tariff  
23 reference to the previous page.

24 Q. Okay. Our pagination may differ.

25 A. I do see the phrase "as consumed." And I think

1       the phrasing may be a little inarticulate there.

2               Q.       That's what we want to talk just a moment  
3       about. I want to ask you -- and let's assume for purposes of  
4       my questions here that the portion of the tariff shown as  
5       Section 20.5, which on my copy appears at page 58, is  
6       accurately replicated on your testimony.

7               A.       Okay.

8               Q.       I don't have the tariff in front of me.

9               A.       All right.

10              Q.       What part of that statement or what part of the  
11       Section 20.5 tells you that one should only be required to pay  
12       on a per amp basis as it is consumed? What portion of the  
13       language in the tariff?

14              A.       Well, there's reference in the case of HVAC,  
15       which is the heating/air conditioning, that references DC  
16       power consumption.

17              Q.       Okay. That's one.

18              A.       And, then again, actually in a separate  
19       section, 21.4, where the heading of the section in the tariff  
20       is DC power consumption.

21              Q.       That's two. Any more?

22              A.       Those are the two that are referenced in my  
23       testimony.

24              Q.       Very good. Would you not agree, sir, that with  
25       respect to the caption 20.5, consumption, which is a third



1 instance -- do you see that as well?

2 A. Yes.

3 Q. Would you not agree that the generic caption  
4 then is followed by specific language? The DC power charge  
5 consists of use, etc., etc. Do you see that?

6 A. Yes.

7 Q. Okay. And would you not also agree that that  
8 specific sentence, the very first sentence, in identifying how  
9 to interpret the generic caption refers specifically to the  
10 word "redundant DC power"?

11 A. Yes.

12 Q. And isn't it a fair statement to say that the  
13 term "redundant DC power" is understood in the industry refers  
14 not to actual use, but to capacity?

15 A. Well, I'm not sure I would infer quite that  
16 same meaning. In this -- in this -- let me stop. I'm not  
17 sure that I would infer quite the same meaning. In this  
18 context, the -- the redundancy is the total amount of capacity  
19 considering the fact that there are, as shown in my diagram,  
20 redundant feeds.

21 Q. Right.

22 A. In other words, each cage has two separate  
23 feeds that provide the power redundancy such that if there's a  
24 failure on one, there will be a second power path to the cage.

25 Q. And I don't disagree with that. But I just

1 want to simply establish for purposes of reading and  
2 interpreting what the caption DC power consumption may refer  
3 to, the specific language refers to the concept of redundant  
4 DC power. Is that not correct?

5 A. That -- that phrase is in your tariff language,  
6 yes.

7 Q. And isn't it a fact that redundant DC power is  
8 generally associated with capacity, not actual usage?

9 A. Again, I'm not sure I can answer the question  
10 as it's phrased. I mean, as I read this, it --

11 Q. I'm not asking about the language now. I'm  
12 sorry. I don't mean to interject. I'm just asking you in  
13 your experience in the industry -- in the industry, is not the  
14 word "redundant DC power" generally associated with the amount  
15 of power at a capacity level, not the amount of power actually  
16 used?

17 A. It is the sum of the two feeds capacity, yes.

18 Q. Now, at page 59 you refer to, Mr. Price, what  
19 we'll just call the Texas award. Okay? The 2003 Texas award.

20 A. I'm sorry. The page reference again?

21 Q. Page 59.

22 A. Thank you.

23 Q. And actually the Texas award is referenced in a  
24 footnote.

25 A. Right.

1           Q.       And you use, in part, your -- or you base your  
2       argument in part on that development in 2003 in Texas, do you  
3       not?

4           A.       Agreed.

5           Q.       Now, you agree that the order -- the Texas  
6       order in 2003 did not actually order that power metering be  
7       implemented, did it?

8                    Let me rephrase.   Would you agree that the  
9       Texas 2003 order did not actually direct SBC Texas to  
10      implement power metering?

11          A.       I -- I agree that the appropriate -- well, in  
12      my view, the appropriate characterization of that order is  
13      what's contained there at lines 11 through 13 of my -- as I  
14      said, I used the phrase is consistent with a metering concept.

15          Q.       And I appreciate your point, Mr. Price.   Let me  
16      redirect you to my question.   My question had not to do with  
17      your testimony, sir.   My question had to do with the order.

18                    Would you agree that the Texas Commission's  
19      2003 order did not direct SBC Texas to implement power  
20      metering?

21          A.       I can answer that yes or no with a  
22      qualification.

23          Q.       I think it's a yes or no answer.   Did it order  
24      that SBC Texas put in place power metering or did it not?

25          A.       I do not believe that it expressly ordered SBC

1 to implement metering.

2 Q. Isn't it a -- thank you.

3 And isn't it a fact that SBC Texas was directed  
4 to consider one of three options, one being the total DC power  
5 consumption in terms of ampere draw of all equipment  
6 collocated by the CLEC based on the information obtained from  
7 the CLEC through its collocation application form; or two, the  
8 maximum current carrying capacity of either A or B feed; or  
9 three, based on the establishment of a mutually agreeable  
10 metering arrangement? Isn't that a fair characterization of  
11 what the Texas Commission ordered in 2003?

12 A. I will accept that subject to my recollection  
13 at this time and not having that order in front of me, sir.

14 Q. And with respect to the third of the three  
15 options that the Texas Commission contemplated, do you have  
16 any reason to believe -- well, that is the only one of the  
17 three that actually refers to power metering. Isn't that the  
18 case, based on what I just read to you?

19 A. I would agree with that.

20 Q. And would you also agree that the Texas  
21 Commission emphasized mutually agreeable metering arrangement  
22 in that third option?

23 A. Again, I don't have the order in front of me  
24 and I don't know whether the order itself emphasizes that.

25 Q. Is power metering actually in place in MCI's

1 collocation cages in Texas today? Yes or no?

2 A. Not to my knowledge.

3 Q. And, in fact, do you not refer at page 61 to

4 your -- do you not refer at page 61 in your testimony to

5 collocation arrangements in Texas? And in doing so you

6 characterize them as being non-metered arrangements. Is that

7 a fair statement --

8 A. Yes. With the clarification --

9 Q. -- at lines 18 and 19?

10 A. Yes. With the clarification that we're

11 referring to a period of data that's approximately a year old

12 now.

13 Q. Right. That was kind of where I was going

14 next. So at least we agree that, based on your testimony, the

15 MCI arrangements in Texas as of July 2004 were non-metered?

16 A. I agree.

17 Q. And they remain non-metered today, don't they,

18 sir?

19 A. I believe I answered that. Not to my

20 knowledge.

21 Q. Thank you.

22 Now, at page 59 I believe you were asked -- or

23 I'm sorry, asked the question as presented in your Direct

24 Testimony at page 59, when asked whether power metering is

25 technically feasible, you point to Illinois. Is that a fair

1 statement?

2 A. Indeed it is.

3 Q. And is it not fair to state that the Illinois  
4 example is known as -- is known as so-called return side or  
5 shunt metering, s-h-u-n-t, metering?

6 A. That is my understanding and that's consistent  
7 with the diagram I believe DGP-Exhibit 2 or Attachment 2.

8 Q. And this is installed on the ground side of a  
9 DC circuit, is it not, sir? That is, a meter -- a shunt meter  
10 is installed on the ground side of the DC circuit?

11 A. It's on the return side. I believe the  
12 entirety of the configuration is grounded, so I'm not -- I'm  
13 not sure that -- I'm not sure that I can agree with your  
14 question the way it was phrased.

15 Q. I, frankly, may have written it down  
16 incorrectly, but I do recall that as well. It's on the return  
17 side. And you agree with that?

18 A. Yes, I do.

19 Q. This may not be the only -- excuse me.  
20 This form of power metering on the return side  
21 is not the only form of power metering that has been talked  
22 about in Texas or elsewhere, is it?

23 A. I -- I agree. And it's consistent with my  
24 testimony there at page 16, lines 18 through 22.

25 Q. But it, nonetheless, is the only one relied on

1 in your testimony; isn't that correct?

2 A. Well, it's the one that is in effect and has  
3 been in effect for some years between our two companies and  
4 apparently without complaint from SBC.

5 Q. And your reference again on the -- I take it is  
6 with respect to Illinois?

7 A. It is.

8 Q. Certainly not with respect to Texas?

9 A. Correct.

10 Q. Okay. So that wherein AT&T, for example,  
11 proposes, if I recall properly, at least three potential means  
12 by which metering could be accomplished, your testimony is  
13 only directed to one form; is that correct?

14 A. In the interest of -- yes, in the interest of  
15 providing factual data to this Commission, I relied on the  
16 facts that were available to MCI given the circumstances that  
17 are currently in effect between our two companies in an  
18 adjacent state.

19 Q. In Illinois?

20 A. And I concede in my -- yes.

21 Q. Okay.

22 A. And I concede in my testimony that that is not  
23 the only conceivable architecture. We're not proposing a  
24 specific architecture here.

25 Q. And you do not advance -- you do not support

1 with concrete detail any of the two other architectures that  
2 AT&T talks about in its testimony?

3 A. That is true.

4 Q. All right. I want to ask you though, with  
5 respect to the shunt metering -- I'll just call it shunt  
6 metering for lack of a better handle.

7 A. It sounds so, you know, exciting, doesn't it?

8 Q. It's not as good as I could come up with. But  
9 it's one that sticks in my mind.

10 Shunt metering, your actual contract language  
11 does not propose any form of the various metering  
12 possibilities, does it?

13 A. I believe that's true. And, again, it's  
14 consistent with I believe my testimony here this morning.

15 Q. So, for example, your testimony does not -- or  
16 rather your language does not expressly state that charges for  
17 power -- withdraw. Let me move on.

18 Is there any third-party validation study,  
19 analysis, attestation which supports the accuracy and  
20 reliability of shunt metering? Let me withdraw the question.

21 Does your testimony refer to any third-party  
22 audit, validation, study or the like which supports the  
23 accuracy and reliability of shunt metering?

24 A. My -- my Direct Testimony did not. And the  
25 only extent that I touched on that in my Rebuttal Testimony



1 was in response to the testimony of Mr. Pool of SBC.

2 Q. You are aware then, I assume, of a third-party  
3 study that has been done with respect to the accuracy and  
4 reliability of the shunt metering, power metering -- shunt  
5 metering, power metering arrangement in Illinois; is that  
6 correct?

7 A. I am aware of an analysis.

8 MR. GRYZMALA: May I approach, your Honor?

9 JUDGE THOMPSON: You may.

10 MR. GRYZMALA: Your Honor --

11 JUDGE THOMPSON: Thank you. Do you want this  
12 marked?

13 MR. GRYZMALA: Yes, sir.

14 JUDGE THOMPSON: This will be No. 213.

15 (Exhibit No. 213 was marked for  
16 identification.)

17 BY MR. GRYZMALA:

18 Q. I'll represent to you, sir, as is indicated on  
19 the label, Telcordia Technologies, November 2002 entitled  
20 Frame Ground Currents at SBC Collocated Equipment as being the  
21 study that Mr. Pool relies on in both his direct and his  
22 rebuttal. Have you seen this copy before?

23 A. I was made aware of this last evening when I  
24 believe your fellow counsel provided a copy to counsel for  
25 MCI.

1           Q.       And I would like to refer you to those portions  
2 not specifically -- I don't have them with me, but you do  
3 recall Mr. Pool's testimony that this particular study reached  
4 ultimate conclusions regarding the arrangements it considered  
5 in Illinois under the SBC Illinois power metering, do you not?

6           A.       I -- I recall Mr. Pool's testimony making --  
7 making those allegations, yes.

8           Q.       And isn't it fair to state that, as he  
9 reported -- or isn't fair to state that he accurately reported  
10 that it is not -- excuse me, it is not possible to obtain  
11 accurate power metering on the return side of the DC  
12 distribution as Telcordia Technology reported in this study?  
13 Did he accurately convey that in his testimony?

14                  MR. MORRIS: Your Honor, I'm going to object.  
15 It's assuming facts not in evidence. This is not in evidence.  
16 Secondly, I'm not sure Mr. Price can even validate this  
17 document. And, third, if counsel for SBC wanted this in  
18 evidence, he had two opportunities to do it in the direct  
19 testimony of Mr. Pool or the rebuttal testimony of Mr. Pool.

20                  MR. GRYZMALA: Your Honor, I apologize. I may  
21 have made a mistake here. It took me some time in order to  
22 identify and locate this study and to get the proper  
23 authorization to get a hold of it and to use it. And it's  
24 noted as restricted access. I've been told that this should  
25 be regarded as proprietary under the protective order. I

1 apologize because under the protective order that would mean  
2 that other parties to the case -- or that other parties beyond  
3 those interested in the claims should not have access to it.  
4 I see there are people in the room. I've only distributed it  
5 to MCI and AT&T.

6 MR. MORRIS: Your Honor, I think that that  
7 underscores my objection. If SBC --

8 MR. GRYZMALA: No, I --

9 JUDGE THOMPSON: Wait, wait, wait. We have to  
10 hear from one person at a time because the reporter can't  
11 really take down a free-for-all and I can't hear what you're  
12 saying. So let's hear from Mr. Morris.

13 MR. MORRIS: Your Honor, what Mr. Gryzmala just  
14 said in terms of this study, in fact, on the front it says  
15 Telcordia Confidential Restricted Access. If he had trouble  
16 obtaining this, certainly -- you know, we certainly did. You  
17 know, we don't have access to it.

18 And now on what's probably the last day of the  
19 hearing after having two opportunities to submit this through  
20 Mr. Pool, his own witness, he's trying to get this into the  
21 record through MCI's witness who, frankly, I don't think can  
22 validate this or authenticate this.

23 JUDGE THOMPSON: Ms. Bourianoff?

24 MS. BOURIANOFF: Your Honor, I also have  
25 concerns. SBC has used this document, they've marked it as

1 confidential in other states. We've seen it in Texas --

2 JUDGE THOMPSON: So you've seen this document.

3 MS. BOURIANOFF: My witness has seen this

4 document.

5 JUDGE THOMPSON: Have you seen this document?

6 MR. MORRIS: It was handed to me last night

7 after the hearing for the first time.

8 JUDGE THOMPSON: So have you been involved in

9 arbitrations on --

10 MR. MORRIS: No, sir.

11 JUDGE THOMPSON: -- elsewhere? This is the

12 only one?

13 MR. MORRIS: I was not part of the traveling

14 road show. This is my first one.

15 JUDGE THOMPSON: Okay. That's an important

16 question.

17 MS. BOURIANOFF: Your Honor, if I may, pursuant

18 to the protective order in place in Texas, we could not use it

19 in another state. So my witness, although he's seen it,

20 couldn't refer to it. He has concerns with what Mr. Pool

21 represents this study to say but because of the protective

22 order in place, couldn't use it. SBC did not make it

23 available, did not attach it to their testimony, just

24 selectively excerpted it.

25 And I'm also concerned about them now saying --

1       this is what they're doing. They did not mark in Mr. Pool's  
2       testimony the portions of it that they chose to rely on as  
3       confidential. They released those portions of it, but they  
4       want to mark the rest of it as confidential. And I would -- I  
5       have a strong problem with them saying they get to selectively  
6       release the portions of it that they think support their case  
7       and not release all of the document.

8                 JUDGE THOMPSON: Okay. What's so secret about  
9       this?

10                MR. GRYZMALA: Your Honor, to put it on the  
11       table, when the testimony was prepared by Mr. Pool and  
12       reviewed by me, I did not know that the study was restricted  
13       or proprietary in any way, didn't occur to me to ask.

14                JUDGE THOMPSON: So you're saying that you  
15       should have marked Mr. Pool's testimony proprietary?

16                MR. GRYZMALA: Had I had this study before me,  
17       your Honor, when I reviewed Mr. Pool's testimony, I would  
18       likely have recommended that this be marked as confidential in  
19       some fashion given their lodgement of restricted access.

20                But as Ms. Bourianoff pointed out, AT&T in  
21       other states has been made keenly aware of this testimony.  
22       And I don't know that MCI has not been made aware. Mr. Morris  
23       may not have been in attendance at the traveling road show. I  
24       highly suspect that MCI has been in the traveling road show.  
25       But in any event, it is what it is.

1 JUDGE THOMPSON: Well, let's shortcut that and  
2 return to my question. What is so secret about this document?  
3 What in here is so secret or so proprietary?

4 MS. BOURIANOFF: Obviously, your Honor, they  
5 don't even treat it that proprietary within the company if  
6 Mr. Pool didn't mark the information as confidential. And  
7 I -- I mean --

8 JUDGE THOMPSON: Well, this is an important  
9 matter.

10 MS. BOURIANOFF: It is important because our --

11 JUDGE THOMPSON: Every case that goes on here  
12 has to do with private companies that spend a great deal of  
13 their shareholders' money to develop the processes and the  
14 technology that they use to create the products that they  
15 sell. Okay?

16 So in this Commission we typically do  
17 everything we can to protect proprietary and highly  
18 confidential business information which otherwise would damage  
19 one or more of the parties that are here. At the same time,  
20 the Commission needs the information that it needs to make the  
21 decisions.

22 And where the information is pertinent to the  
23 decision being made, clearly the other parties need it as  
24 well, or as I think our protective order provides, at least  
25 their experts, their outside experts need it so that they can

1       come in and talk about whether we should be persuaded by it or  
2       not. Right? That's to sketch out the terrain.

3               Now, here I have a document as being brought  
4       out on the cross-examination of this man and it's my  
5       expectation that this document will refute whatever it is this  
6       man has said; otherwise, he wouldn't be bringing it out.

7               So what I'm asking -- for God's sakes, this is  
8       on how you power collocation spaces. Right? I mean, what is  
9       secret about that? Is there something SBC is doing in its  
10      central offices that SBC's the only phone company that knows  
11      how to do? I mean, I just don't understand. Maybe I'm think  
12      what's secret --

13              MR. BUB: I think secrecy may be a different  
14      classification. Like, in Missouri under our protective order  
15      we have proprietary and highly confidential. And those  
16      differentiations are driven by potential uses, if something is  
17      about particular employees or something that's about a  
18      product --

19              JUDGE THOMPSON: Right. It's not about  
20      employees.

21              MR. BUB: No market --

22              JUDGE THOMPSON: It's not about market share.

23              MR. BUB: Not about specific customers. It's  
24      not highly confidential -- not something to be kept away from  
25      other parties' employees. It's something though that our

1       company did -- I --

2                   JUDGE THOMPSON:  You spent money to develop --

3                   MR. BUB:  We spent money to develop this study.

4                   JUDGE THOMPSON:  -- to develop the study?

5                   MR. BUB:  Yes.  And it's something --

6                   JUDGE THOMPSON:  But the study itself is not

7       about something that's proprietary?

8                   MR. BUB:  Well, the subject is not, but the

9       results of the study are proprietary because it does have some

10      value to a company engaged in a business -- telecom business.

11                  JUDGE THOMPSON:  Let me ask you this.  If this

12      became available to your competitors, would that place you at

13      a competitive disadvantage?

14                  MR. BUB:  It would help them as competitors

15      because it would give them insight into the subject of power

16      metering that we had to pay to develop.

17                  Now, for purposes of litigation --

18                  JUDGE THOMPSON:  In that case --

19                  MR. BUB:  -- we understand that, you know, the

20      parties here can see it, Mr. Price could see it.  As long as

21      they sign the protective order, other parties' employees can

22      see it.  That's the distinction I was trying to go with the

23      secretness.

24                  JUDGE THOMPSON:  As to our additional question,

25      which is have they seen it?  I mean, I think --



1 MR. BUB: They may have seen it in other --

2 JUDGE THOMPSON: -- Mr. Morris's objection was  
3 this is at the 11th hour being pulled out of a hat.

4 MR. GRYZMALA: I think he talked about his own  
5 having viewed it particularly, but I don't know that MCI has  
6 not. I mean, as Ms. Bourianoff has said AT&T has seen the  
7 same study in other states.

8 JUDGE THOMPSON: I understand what  
9 Ms. Bourianoff said. I'm inquiring as to MCI's position.  
10 Were you aware --

11 MR. MORRIS: I was handed this last night.

12 JUDGE THOMPSON: That's personally?

13 MR. MORRIS: Me personally.

14 JUDGE THOMPSON: I understand that's placed you  
15 at a disadvantage. I'm aware and grasp that point. Now, your  
16 client -- has your client, if you know, seen this or had  
17 access to this prior to when you were handed it last night?

18 MR. MORRIS: I don't know. I could ask.

19 JUDGE THOMPSON: You don't know. That's the  
20 answer.

21 Have you seen it, Mr. Price?

22 THE WITNESS: I have not.

23 JUDGE THOMPSON: You have not. That's your  
24 answer.

25 THE WITNESS: And, to my knowledge, MCI was not

1 provided a copy of this in the Texas proceeding.

2 JUDGE THOMPSON: One more point.

3 MR. BUB: This was quoted in both our direct  
4 and in our rebuttal. And there was discovery so they could  
5 have asked for it and we would have provided it in discovery.

6 MR. GRYZMALA: That's right.

7 MR. BUB: It would have been marked propriety,  
8 but anybody, including Mr. Price and the other witnesses,  
9 could have seen it if they'd asked for it.

10 JUDGE THOMPSON: Your response?

11 MR. MORRIS: If SBC wanted to get this into the  
12 record, again, they had two opportunities to do it through the  
13 two pre-filed testimonies of their witness, Mr. Pool, as  
14 opposed to trying to get -- you know, get it into the record  
15 through our witness.

16 JUDGE THOMPSON: Let me ask -- I understand  
17 what you're saying. Let me short--

18 MR. MORRIS: Frankly, I don't know if my  
19 witness can authenticate this.

20 JUDGE THOMPSON: I understand. Are you going  
21 to direct his attention to a portion of this that was not  
22 quoted in the testimony --

23 MR. GRYZMALA: No, sir.

24 JUDGE THOMPSON: of SBC's witness?

25 MR. GRYZMALA: No, sir.

1 JUDGE THOMPSON: You're going to ask about  
2 something that's already in evidence about the testimony of a  
3 witness?

4 MR. GRYZMALA: Excepting I want to add this to  
5 the record.

6 JUDGE THOMPSON: I'm not going to let you add  
7 it to the record. Okay?

8 MR. GRYZMALA: Okay.

9 MR. JOHNSON: Your Honor, I'm not sure I have a  
10 dog in this fight, but it would seem to me that for purposes  
11 of cross-examination, the most that counsel for SBC could do  
12 would be to present the study to the witness, ask him to look  
13 at certain portions and ask him whether he agrees or disagrees  
14 with it. And if the witness says I don't know, then it really  
15 can go no further than that.

16 JUDGE THOMPSON: I agree with you.

17 In Missouri the general rule is you can hand  
18 anything to a witness and ask them questions about it, which  
19 they answer or don't answer as they're able. So if he can't  
20 authenticate it, who cares. He can still hand it to him and  
21 ask him questions about it.

22 MR. JOHNSON: In addition --

23 JUDGE THOMPSON: That's the way it works here.

24 MR. JOHNSON: -- the study cannot be used for  
25 any substantive purpose.

1 JUDGE THOMPSON: Bingo. And that's why I'm  
2 going to say I'm not going to let you put it in the record.  
3 Portions of it are already in the record. I understand that  
4 and I assume you picked those portions that were best for your  
5 case. Right? That was presumably what you were doing.  
6 The rest of it I'm not going to allow in  
7 because I'm not going to let it become substantive evidence at  
8 this late date, this 11th hour. I will allow you to ask this  
9 man any questions about it that you want.  
10 MR. GRYZMALA: Thank you, your Honor.  
11 JUDGE THOMPSON: This hearing is proving to be  
12 much more exciting than I expected.  
13 MR. GRYZMALA: Thank you, your Honor. I'll  
14 move on.  
15 JUDGE THOMPSON: You're all to be  
16 congratulated.  
17 BY MR. GRYZMALA:  
18 Q. Mr. Price, do you recall that portion of  
19 Mr. Pool's testimony to the effect that the Telcordia study  
20 determined that it was not possible to obtain accurate power  
21 metering on the return side of the DC distribution?  
22 A. I recall his representations to that extent.  
23 Q. Correct. Do you have any personal knowledge  
24 that would refute that assertion?  
25 A. Well, for the reason that we've just discussed,

1 I mean, other than the review time that I've had since --  
2 since being handed a copy of this yesterday evening, I have --  
3 I had no personal knowledge of this document, so --

4 Q. I understand. And I'm trying to limit this  
5 based upon his honor's ruling.

6 My question is a little bit different. If the  
7 assertion is made -- I mean, I accept your answer, but what I  
8 want to point out is a little bit more granular. If the  
9 assertion is made that it is not possible to obtain accurate  
10 power metering on the return side of the DC distribution,  
11 would you have any personal knowledge as to facts that would  
12 refute that assertion?

13 A. I -- I think the limitation of my knowledge  
14 would be to -- to compare Mr. Pool's representation with the  
15 relevant passage and simply see whether or not it was  
16 correctly cited or quoted. Beyond that, no.

17 Q. Okay. Let me ask one last question about that  
18 point. Are you aware of any study, any independent  
19 third-party analysis the conclusion of which would be that it  
20 is possible to obtain accurate power metering on the return  
21 side of the DC distribution?

22 A. I have no such knowledge.

23 Q. Thank you.

24 And if the assertion were made that the error  
25 in this form of metering could be about 30 to 50 percent of

1       the measured values, as Mr. Pool testified, do you have any  
2       personal knowledge that would refute that statement?

3             A.       The -- the document itself actually refutes  
4       that statement.

5             Q.       No, I didn't ask you that, Mr. Price.

6             A.       But that's the knowledge that I have.

7             Q.       I'm not talking about the document. Let's put  
8       aside the document. Let's just put that aside for a moment.  
9       I'm sorry to confuse you.

10            Let me ask you to assume that an assertion has  
11       been made that the error in this form of metering could be  
12       about 30 to 50 percent of measured values. Let's just assume  
13       that assertion had been made -- has been made.

14            A.       Okay.

15            Q.       Do you have any personal knowledge that would  
16       refute that assertion?

17            A.       And -- and my personal knowledge is different  
18       now than it was 24 hours ago, because I've had an opportunity  
19       to review this document. And given that, the personal  
20       knowledge that I have is that this document itself refutes  
21       that claim.

22            Q.       Okay. I want to turn to page 61 of your  
23       testimony. Let me collect the document.

24            You refer at page 61 to data that appears to  
25       compare and contrast Texas and Illinois; is that correct?

1           A.       That is what is stated there at page 61. And  
2       then the results of that are provided as the highly  
3       confidential attachments I believe 3 and 4 to my testimony.

4           Q.       And this data was acquired by MCI's -- or from  
5       MCI's collocation arrangements with Rhythms in Texas; is that  
6       correct -- Texas and Illinois?

7           A.       That's correct.

8           Q.       Not SBC?

9           A.       No. I'm sorry, Mr. Gryzmala. Rhythms is an  
10      affiliate of MCI. And the collocations that -- on which the  
11      data were provided to me are from MCI's internal analysis of  
12      the power bills for those Rhythms' collocations in SBC's  
13      central offices.

14          Q.       Thank you. I apologize. I did not know that  
15      about Rhythms.

16                 Did the study or the data -- the comparative  
17      data that you present here account for the fraction of any  
18      current that would have been or might have been lost to the  
19      frame?

20          A.       The amounts reflected in the schedules are  
21      merely for the billed amounts from SBC based on the metered  
22      results. I --

23          Q.       So it's not -- I'm sorry.

24          A.       I have no knowledge that SBC adjusts the  
25      billings to accomplish this adjustment to which you referred.

1           Q.       You point at page 65 to other jurisdictions, if  
2 I recall. Question being, Having metering arrangements been  
3 acquired in other jurisdictions?

4                   And is it a fair characterization to say that  
5 among those jurisdictions -- or rather the jurisdictions to  
6 whom you point would be Illinois and Texas? I'm sorry,  
7 Illinois and South Carolina?

8           A.       That's correct.

9           Q.       Okay. Now, in reference to the South Carolina  
10 Commission's action, the South Carolina passages that I'm  
11 reading here indicate that the Commission ordered Bell South  
12 to provide CLECs with the option to purchase power directly  
13 from an electric utility company. Is that passage reflected  
14 in the MCI-proposed language for collocation powered metering?

15           A.       Is the direct -- I'm sorry. I'm not sure I  
16 understand your question. If you're asking me whether the  
17 direct purchase from the electric utility that was ordered by  
18 the South Carolina Commission was reflected in the language  
19 that we proposed in the collo appendix --

20           Q.       Right.

21           A.       -- I believe that it is not.

22           Q.       The South Carolina Commission also indicated  
23 that the actual work to install the arrangement would be  
24 performed by a Bell South certified vendor hired by the CLEC.  
25 Do you see that passage in your indented quote?



1           A.       Correct.

2           Q.       And is there any MCI language which states that  
3           the actual work would be done by an SBC certified vendor hired  
4           by the CLEC -- hired by, in this case, MCI?

5           A.       My recollection is that that's covered in the  
6           collocation tariff. So there is language providing for that,  
7           albeit not expressly within the -- the very short phrase that  
8           I include in my testimony.

9                    In other words, we understand that SBC and MCI  
10          both have an interest in protecting the integrity, the safety,  
11          if you will, of all our respective equipment in that -- in  
12          that space and have previously agreed in the broader context  
13          of the collocation tariff to -- to have such matters only done  
14          by certified vendors.

15          Q.       But I'm not -- okay. And help me out. I'm not  
16          sure I see this in the language. Let me go back.

17                   The Bell South order, if you will, South  
18          Carolina order, says that the actual work will be done by a  
19          Bell South certified vendor?

20          A.       Agreed.

21          Q.       And I see your language as saying the work to  
22          be done will be done by MCI's certified vendor. Isn't that  
23          what that says? I'm looking at page 2 of 2 of the DPL.

24          A.       Well, I have the language in my testimony at  
25          page 57. I see that. And, again --

1                   Q.       But --

2                   A.       -- it is my understanding that there are

3                   provisions in the collocation tariff which this -- you know,

4                   modifies only slightly in -- in this regard.  In other words,

5                   if you look at the entirety of the collocation appendix, I

6                   think it's a single page, other than perhaps a title page, the

7                   vast majority of the terms and conditions that -- that are not

8                   in dispute are over in your collocation tariff here filed with

9                   the PSC in Missouri.  I believe that there is language there

10                  that allows MCI to have its own certified vendors so long as

11                  they are on an SBC-approved list or that they are otherwise

12                  approved by -- by SBC.

13                  Q.       Do you agree that the language does not -- the

14                  language offered by MCI in its ICA collocation appendix does

15                  not refer to installation by SBC's certified vendor?  In fact,

16                  isn't it true, as I see SBC Missouri's position, that MCI

17                  would need to have an SBC tier 1 installation power vendor

18                  install fuses and power cabling?

19                  A.       If there is a significant dispute on this

20                  particular issue, I feel certain that could be resolved by our

21                  companies.

22                  MR. LANE:  Your Honor, if I may, I hate to

23                  interrupt, but I've got the witnesses that are available to

24                  answer the question.  One of them is going to board a plane in

25                  about a half an hour.  Could I ask that --

1 JUDGE THOMPSON: Let's talk to them.

2 MR. MAGNESS: Your Honor, we have --

3 Mr. Cadieux was -- actually on most of the issues that you

4 were concerned about commingling, Mr. Cadieux was the primary

5 witness. Mr. Ivanuska I believe had testimony as well.

6 Mr. Cadieux is available by phone -- actually will probably be

7 here in about 15 minutes, we could patch him in as well.

8 MR. LANE: I'll have them call in now, Judge.

9 JUDGE THOMPSON: Commingling, yeah. My head's

10 full of metering.

11 MR. BUB: Judge, can we off the record for a

12 minute?

13 JUDGE THOMPSON: Absolutely. Let's go off the

14 record.

15 (Off the record.)

16 JUDGE THOMPSON: Mr. Ivanuska is back up on the

17 stand. I'll remind you're under oath. Mr. Price is taking a

18 breather. We'll come back to the metering issue after we talk

19 some more commingling.

20 MR. LANE: I think we have on the phone, I

21 hope, Mr. Silver and Mr. Christensen.

22 JUDGE THOMPSON: Hello, Mr. Silver,

23 Mr. Christensen?

24 MR. CHRISTENSEN: I am here.

25 JUDGE THOMPSON: What about Mr. Silver? Is he

1       here?

2                   MR. CHRISTENSEN:  I haven't heard him beep in  
3       yet.  I assume he'll be here shortly.

4                   JUDGE THOMPSON:  Very good.  Now, you were here  
5       earlier, right, Mr. Christensen?

6                   MR. CHRISTENSEN:  No.  Actually, Mr. Silver was  
7       there.

8                   JUDGE THOMPSON:  Well, let me take a minute to  
9       swear you in then.

10                  (Witness sworn.)

11                  JUDGE THOMPSON:  Thank you, sir.  Would you  
12       please state your name for the court reporter and spell your  
13       last name?

14                  MR. CHRISTENSEN:  Certainly.  My name is  
15       Fredrick, middle initial C, last name Christensen,  
16       C-h-r-i-s-t-e-n-s-e-n.

17                  JUDGE THOMPSON:  Thank you, sir.  Because  
18       you're not present in the room, the reporter won't know who's  
19       talking.  So, consequently, the first thing out of your mouth  
20       always has to be your name, this is Fred Christensen.  That  
21       way the court reporter will know who's talking and be able to  
22       transcribe it.  Okay?

23                  MR. CHRISTENSEN:  very well.

24                  MR. MAGNESS:  Your Honor, as I mentioned,  
25       Mr. Ed Cadieux who has been sworn, was excused, is going to be

1       here probably in the next two or three minutes so if he could  
2       just join the discussion at that point. Obviously Mr.  
3       Ivanuska is --

4               JUDGE THOMPSON: He obviously has something to  
5       say on this issue.

6               MR. MAGNESS: Actually, Mr. Cadieux was the  
7       primary witness on the issues you were asking about on  
8       commingling, about the billing change processes, that sort of  
9       thing.

10              MR. SILVER: Mike Silver joined.

11              JUDGE THOMPSON: Mr. Silver, you're on now?

12              MR. SILVER: Yes, I am.

13              JUDGE THOMPSON: Very good. Let me remind you  
14       you are still under oath, sir. In order for the court  
15       reporter to accurately transcribe your remarks, be sure to say  
16       your name when you start out. Okay?

17              MR. SILVER: Yes.

18              JUDGE THOMPSON: Because we've got more than  
19       one person on the phone and she can't see who's talking.

20              MR. SILVER: Right.

21              JUDGE THOMPSON: Are we going to wait a few  
22       minutes for Mr. Cadieux or just let him join in when he gets  
23       here? What do you want to do?

24              MR. MAGNESS: When I spoke to him, he said he  
25       was just passing the Capitol, so I expect he'll be here in

1       just a minute.

2                   JUDGE THOMPSON: Does he have to find a parking  
3       space?

4                   MR. MAGNESS: I'll go park his car, do  
5       something useful here today.

6                   JUDGE THOMPSON: We're just going to wait a few  
7       minutes for another witness who is rushing back to the  
8       building as quickly as he can.

9                   Tell me we have gotten some of today's issues  
10       and witnesses. Right? We're not just finishing off  
11       yesterday's, are we?

12                  MR. MAGNESS: Yes.

13                  JUDGE THOMPSON: Very good. I'm glad to hear  
14       that.

15                  Great background noise there.

16                  MR. SILVER: I'm at the airport. I tried to  
17       find the quietest place I could.

18                  JUDGE THOMPSON: I appreciate your willingness  
19       to take the time to help us out.

20                  MR. SILVER: That's what we're trying to do,  
21       make sure that everybody understands what our position is and  
22       why. So I appreciate the opportunity.

23                  JUDGE THOMPSON: Great. Thank you.

24                  This was the whole BFR request thing.

25                  MR. IVANUSKA; That's how it started.

1 JUDGE THOMPSON: I'm getting back to it.

2 MR. LANE: The process that's involved to  
3 request commingling arrangements and bring them into being.

4 JUDGE THOMPSON: Natelle, if you guys have any  
5 questions, you should feel free to jump in. Because since  
6 this is getting to be sort of a free-for-all, I may forget to  
7 ask you.

8 MR. MAGNESS: Your Honor, do you mind if  
9 Mr. Cadieux sits here so he could be miked?

10 JUDGE THOMPSON: Absolutely. That is a great  
11 place for him. I'm sorry you had to interrupt your day to  
12 come back.

13 MR. CADIEUX: No problem.

14 JUDGE THOMPSON: Appreciate it. And I'll  
15 remind you, Mr. Cadieux, you are still under oath.

16 We're now taking kind of a panel approach. I  
17 feel like Oprah, very exciting. So I assume we're just going  
18 to start off and I'm going to start asking questions. Right?  
19 Because that's how we got to this. And then people will jump  
20 in to answer or disagree and quarrel with each other. Okay.

21 Now, I was asking you, sir -- remind me your  
22 name again.

23 MR. IVANUSKA: Mr. Ivanuska, John Ivanuska.

24 JUDGE THOMPSON: Thank you. Blanked out on  
25 that.

1 I was asking Mr. Ivanuska about the  
2 provisioning of commingling arrangements. Right? Where we  
3 have some UNEs that you're required to provide under 251 and  
4 some former UNEs have been declassified and evidently are  
5 available but under different circumstances on a different  
6 rate basis.

7 And Mr. Ivanuska had been telling me that the  
8 process -- the BFR process that is in -- that SBC proposes to  
9 put into the interconnection agreement is cumbersome and slow,  
10 if I am summarizing your testimony accurately.

11 MR. IVANUSKA: You are, but we -- the issues of  
12 disagreement are beyond the cumbersomeness and slowness. We  
13 accept that that's a process we have to adhere to. We also  
14 talked about particular items of disagreement that don't  
15 really have to do with that.

16 JUDGE THOMPSON: Remind me what those are.

17 MR. IVANUSKA: When we get a price quote, we  
18 want it to be a final price quote.

19 JUDGE THOMPSON: Certainty in prices?

20 MR. IVANUSKA: Certainty in prices, certainty  
21 in when it becomes operational and that -- jeez, I just drew a  
22 blank.

23 JUDGE THOMPSON: That's been happening to me  
24 all day.

25 MR. LANE: I think in particular then, Judge,



1 following that where we led into this was questions that you  
2 had for him about the process that's involved in submitting a  
3 request for a commingling arrangement and, in particular --

4 MR. SILVER: I'm sorry. I can't hear.

5 MR. CHRISTENSEN: That conversation's breaking  
6 up, your Honor.

7 MR. LANE: I think the question that you had,  
8 your Honor, that we were trying to get the witnesses on the  
9 phone were more related to the question of how one goes about  
10 ordering a commingled arrangement and, in particular,  
11 Mr. Ivanuska's concerns about the process involved with a DS-1  
12 loop along with special access. And that's where we were  
13 headed.

14 JUDGE THOMPSON: Which is the DS-1 transport  
15 part. Right?

16 MR. LANE: It's actually special access, your  
17 Honor, is what we're dealing with.

18 MR. IVANUSKA: The commingled equivalent to the  
19 EEL.

20 MR. SILVER: This is Michael Silver on behalf  
21 of SBC speaking. Just real quick, I can speak to the final  
22 quote issue. I addressed that in my Rebuttal Testimony  
23 speaking to Mr. Ivanuska's point there.

24 And I explained the fact that when you say you  
25 want final quote that's definitive, as far as the -- if we're

1       talking the UNE piece, we will give you that. What the  
2       problem is, is as we're developing the final request, before  
3       the final request gets taken care of, we incur costs. And  
4       those are the costs that when we give you your final quote --  
5       that's why we can't say it will be this exact dollar amount.  
6       Because until we actually process the request and actually put  
7       it into place, we don't know what the costs are going to be  
8       yet.

9                   JUDGE THOMPSON: Let me break in, if I could,  
10       Mr. Silver, and ask a clarifying question.

11                  MR. SILVER: Sure.

12                  JUDGE THOMPSON: When you are processing their  
13       request, you incur costs in doing that processing?

14                  MR. SILVER: When we -- we've got to remember  
15       what we're talking about here from a BFR process. When they  
16       ask for a BFR, it goes through a number of steps. The initial  
17       step is within the first 30 days we evaluate their request and  
18       tell them whether, one, it's technically feasible; two,  
19       whether it meets the eligibility criteria. And at the end of  
20       the 30 days, presuming that it is, we will give them a  
21       preliminary estimate of time and cost.

22                  JUDGE THOMPSON: Okay.

23                  MR. SILVER: At that point in time, they tell  
24       us -- they've got 30 days to tell us whether they want to go  
25       forward.

1 JUDGE THOMPSON: Okay.

2 MR. SILVER: Following that, we will go through  
3 the process -- and at that first -- during the first 30 days  
4 it's just a very high level process we've gone through to  
5 identify, one, whether it's eligible and two, approximately  
6 what it's going to take.

7 JUDGE THOMPSON: Okay.

8 MR. SILVER: After we get the go-ahead from  
9 them, we then have to bring in all the various groups that are  
10 involved in this thing, that's going to be the billing group,  
11 it's going to be the provisioning group, it's going to be I  
12 guess -- Fred, any others you can think of off the top of your  
13 head?

14 MR. CHRISTENSEN: Your Honor, Fred Christensen  
15 on behalf of SBC. Certainly if we have any manual processes  
16 that we have to -- have to enact in the LSC, local service  
17 center, or any OSS changes so those groups also would be  
18 involved.

19 JUDGE THOMPSON: Let me ask you a clarifying  
20 question, if I could. Is the process identical for every EEL  
21 that they ask for or does it differ based on where it's  
22 located and where it needs to go and that kind of thing?

23 MR. SILVER: Are you talking about commingled  
24 or are you talking a combination of UNEs?

25 JUDGE THOMPSON: I think we're talking

1       commingled here.

2                   MR. LANE: Just for clarification, Judge,  
3       you're jumping topics, which is fine.

4                   JUDGE THOMPSON: I didn't mean to.

5                   MR. LANE: We were dealing with a BFR process,  
6       which is one issue and then a second issue, which they are  
7       prepared to address, is what's the reason that it takes some  
8       period of time to respond to requests for combination -- or  
9       commingling of.

10                  MR. CADIEUX: Your Honor, I think I can clarify  
11       that a little bit to put this into context.

12                  JUDGE THOMPSON: Mr. Cadieux, please.

13                  MR. CADIEUX: Your Honor, I think a fair  
14       statement of the way the testimony stands at this point, I --  
15       Mr. Silver, I believe in his Direct Testimony, gave a list of  
16       11 different commingled arrangements that SBC says they are  
17       presented to offer to CLECs without going through the BFR  
18       process.

19                  JUDGE THOMPSON: Okay.

20                  MR. CADIEUX: In our testimony we had had a  
21       list of 5 and that -- let me back up. The SBC list has grown  
22       over the last couple of months. The first list that was put  
23       out on CLEC online had 3 arrangements, the second list had 4.  
24       This one has 11 and this -- we saw it for the first time in  
25       Mr. Silver's testimony on May 9th.

1 JUDGE THOMPSON: Okay.

2 MR. CADIEUX: Now, we have 5. Actually, the  
3 list of 11 in Mr. Silver's testimony is acceptable to us. It  
4 really -- it's really our list of 5 just broken down into  
5 additional subparts. So in terms of the types of arrangements  
6 that would be available without going through the BFR process,  
7 I don't think there's a dispute at this point, at least  
8 between the CLEC Coalition and SBC. And we are also agreed --

9 JUDGE THOMPSON: And, Mr. Ivanuska, you're  
10 MCI? MR. IVANUSKA: No.  
11 I'm with Birch and CLEC Coalition.

12 JUDGE THOMPSON: So you're on the same side?

13 MR. CADIEUX: Yes. And I think there's also  
14 agreement, again with the CLEC Coalition, that anything -- any  
15 arrangement beyond the list would be requested via a BFR  
16 process.

17 JUDGE THOMPSON: Okay. Mr. Price, you had  
18 something to add?

19 MR. PRICE: Yes, your Honor. Don Price for  
20 MCI.

21 The -- the problem that MCI has with the list  
22 that Mr. Cadieux was just discussing is there is a separate  
23 dispute in our DPL with regards to the exclusion -- with  
24 regards to the exclusion by SBC of a wholesale service that  
25 would be a 271 element. That is a separate dispute, but

1 definitely related here because --

2 JUDGE THOMPSON: Is any part of this  
3 arrangement that you've got this separate dispute on, is any  
4 part of that a UNE under 251?

5 MR. PRICE: Well, by definition because it is a  
6 commingled arrangement, it is a combination of a UNE under  
7 251, what SBC describes I believe as a wholesale service.  
8 Their definition --

9 JUDGE THOMPSON: I'm just trying to understand  
10 if it's something totally outside of 251.

11 MR. SILVER: This is Mr. Silver. I'm having a  
12 very hard time hearing Mr. Price.

13 JUDGE THOMPSON: Do you want to stand by the  
14 phone, Mr. Price? You guys who talk more softly have to shout  
15 or stand by the phone or something.

16 MR. PRICE: The concern that I was expressing  
17 on behalf of MCI was that Mr. Silver's list, by virtue of  
18 having excluded from the ability to combine an element  
19 obtained through 271 was slightly different than Mr. Cadieux's  
20 willingness to accept that list as it stands now.

21 JUDGE THOMPSON: Okay. Mr. Cadieux?

22 MR. CADIEUX: And just a clarification on that  
23 too. You know, the CLEC Coalition's position -- and I've said  
24 I won't get in the argument here, is that elements that are  
25 delisted under 251 like the -- let's say DS-3 transport --

1 JUDGE THOMPSON: When you say delisted, is that  
2 declassified?

3 MR. CADIEUX: Declassified, non-impaired.  
4 Let's say there's a route where -- a transport route where  
5 DS-3 has been declassified, is no longer available as a 251  
6 UNE. I think the -- just -- and this is to clarify the  
7 different permutations of this.

8 I think the CLEC position is the same as the  
9 MCI position in that we would argue that -- that that DS-3  
10 transport link should be available as a 271 element and should  
11 be -- should be in the intersection agreement. Now, we have  
12 an argument with SBC about that.

13 JUDGE THOMPSON: I understand.

14 MR. CADIEUX: The difference I think between us  
15 and MCI is we understand that the 271 issue, you know, is not  
16 resolved at this point. So we are willing to take the --  
17 Mr. Silver's list as a starting point. And if we win on the  
18 271 issue, that those -- any additional arrangements, any 271  
19 related arrangements we would attempt to then add to the list  
20 via the BFR process.

21 JUDGE THOMPSON: I see.

22 MR. LANE: I think, Judge, just for  
23 clarification, combining as a general term means two unbundled  
24 network elements. Commingling involves putting together a UNE  
25 with a something else. And the something else is special

1 access services in the case of the CLEC Coalition and then MCI  
2 says they want 271 as well.

3 MR. MAGNESS: That's not right.

4 MR. CADIEUX: That's not accurate. We say 271  
5 is also available as a commingled arrangement. The only  
6 question -- the only difference between us and MCI is how does  
7 it get on the list? Does it go on the list immediately or  
8 does it get added to the list via the BFR process.

9 MR. LANE: Right. The 11 that we're dealing  
10 with do not deal with 271 elements.

11 MR. CADIEUX: That's correct.

12 MR. LANE: That's the point I was trying to  
13 make.

14 JUDGE THOMPSON: And you'd like some additional  
15 ones that do?

16 MR. CADIEUX: Let's say the Commission would  
17 rule in our favor that -- for example, if the Commission were  
18 to rule completely in our favor on the 271 issue, they would  
19 say that trans-- that loops, transport and switching are all  
20 271 network elements, that there's an unbundling obligation,  
21 that those elements should go in the interconnection agreement  
22 and our proposal for pricing is that they be priced on an  
23 interim basis at the transition rate. Right?

24 JUDGE THOMPSON: That's a legal issue that I'm  
25 going to read about in the briefs.



1                   MR. CADIEUX: Right. And the point here is if  
2                   the Commission -- the approach the CLEC Coalition is taking  
3                   regarding the list is that if the Commission would come out  
4                   with that decision, we would presumably be back pretty quickly  
5                   to SBC with a BFR request to add those 271 arrangements to the  
6                   list of 11.

7                   JUDGE THOMPSON: Okay. What happens if I rule  
8                   the other way? Let me just --

9                   MR. CADIEUX: Well, if you rule --

10                  JUDGE THOMPSON: On 271. Then what happens?

11                  MR. CADIEUX: Well, if you rule completely in  
12                  SBC's favor, as I understand it -- and they can speak  
13                  obviously to this, they are taking the position not only that  
14                  271 elements do not go into the interconnection agreement, but  
15                  they're also taking the position that there's no obligation to  
16                  commingle a 271 element with a 251 element. In other words,  
17                  that --

18                  MR. SILVER: your Honor, this is Mr. Silver  
19                  speaking. Our position is that we -- we are not required to  
20                  do the commingling on the 271 element with a 251 UNE.  
21                  However, that does not stop a CLEC from entering into a  
22                  commercial agreement with us whereby they obtain the 271  
23                  element via the commercial agreement and then they can also  
24                  obtain a 251 UNE via their interconnection agreement and if  
25                  they want to put those together, they are willing -- they are

1 welcome to do so.

2 JUDGE THOMPSON: I understand what you're  
3 saying. It would just be obtaining it in a different way and  
4 taking a different kind of price.

5 MR. CADIEUX: Your Honor, there is a  
6 distinction there. As I understand what Mr. Silver is saying,  
7 we would have to do the combining in that situation.

8 JUDGE THOMPSON: Couldn't you pay --

9 MR. CADIEUX: The connecting --

10 MR. LANE: Commingling in the parlance we've  
11 been using.

12 MR. CADIEUX: Yeah. SBC's position is, in  
13 effect, the CLEC would have to have a collocation or a point  
14 of presence where those two elements come together so that the  
15 CLEC could do the connecting of those two things; whereas, our  
16 position is that -- our view is that the SBC would have --  
17 would have to be prepared to do the connecting for us.

18 JUDGE THOMPSON: And then you wouldn't need a  
19 collocation.

20 And this woman needs to speak. Please.

21 MS. BOURIANOFF: I just wanted to clarify that  
22 AT&T also has issues on this. I can't -- Mr. Rhinehart's on  
23 his way back to St. Louis, doesn't have a cell phone. I can't  
24 get him. He's the one person I know who doesn't have a cell  
25 phone. But on the AT&T/SBC UNE --

1 JUDGE THOMPSON: I didn't carry one for years  
2 for exactly that reason, so no one could get ahold of me.

3 MS. BOURIANOFF: Issue 13 is the issue that you  
4 started off speaking about, which is how should the ICA  
5 address these commingled arrangements. And it's AT&T's  
6 position that there should be a minimum set of commingled  
7 arrangements set forth in the ICA and not just pointed to on  
8 the CLEC website.

9 And then this issue about commingling 271  
10 checklist item UNEs, that's also an issue AT&T has and that's  
11 AT&T/SBC issue -- UNE issue 10. And so I just wanted to make  
12 clear that it's not just the CLEC Coalition and MCI.

13 JUDGE THOMPSON: And you're going to tell me  
14 all this in your brief. Right?

15 MS. BOURIANOFF: It's set forth in  
16 Mr. Rhinehart's testimony. I'll tell it to you in the brief.  
17 I'll get Mr. Rhinehart on the phone at a later date if you  
18 have any questions for him or I'll answer written questions.

19 MR. LANE: Judge, I don't want to devolve into  
20 a legal argument. I'm not going to address that. The purpose  
21 of our having these particular witnesses on the phone was for  
22 you to ask questions as you saw fit about Mr. Ivanuska's  
23 contentions that the process takes too long on the list of the  
24 11 that we're dealing with with the CLEC Coalition. They can  
25 address those questions if you have some on that topic.

1 JUDGE THOMPSON: So if I understand this,  
2 there's a list of 11 that are readily available and are priced  
3 and all they have to do is say we want one; is that correct?  
4 Mr. Silver, Mr. Christensen, tell me how this list of 11  
5 works.

6 MR. SILVER: The list of 11 -- this is  
7 Mr. Silver speaking.

8 The list of 11 works that they do not have to  
9 file a BFR to get those arrangements. They just need to place  
10 the order and we will get the tariff taken care of for them.

11 JUDGE THOMPSON: And there's a set rate or  
12 price for each of those?

13 MR. SILVER: There will be, yes.

14 JUDGE THOMPSON: Mr. Cadieux?

15 MR. CADIEUX: Your Honor, that's not my  
16 understanding of the SBC position. My understanding is -- I  
17 mean, they have agreed that this list of 11 is a -- a list of  
18 common commingled arrangements that should be available via  
19 the BFR -- without the BFR process.

20 JUDGE THOMPSON: Isn't that what he said?

21 MR. CADIEUX: No. That's different from the  
22 question -- there's several different issues here. One of --  
23 my understanding is SBC is not saying that these 11 --  
24 let's -- let's say -- just to make a date, let's say that the  
25 interconnection agreement becomes effective on July 1 just to

1 pick a date.

2 My understanding is SBC is not committing that  
3 those list of 11 arrangements will be available for ordering  
4 by the CLEC on July 2nd.

5 JUDGE THOMPSON: Is that true, Mr. Silver?

6 MR. SILVER: I think Mr. Christensen might be  
7 able to answer that a little bit better.

8 JUDGE THOMPSON: Whoever.

9 MR. SILVER: And this is Mr. Silver speaking.  
10 What I'm trying to say is they do not have to issue a BFR for  
11 any one of those 11 arrangements. Now, I believe -- I'm not  
12 sure who was speaking --

13 JUDGE THOMPSON: On the day that the agreements  
14 that we're arbitrating here, on the day that those agreements  
15 become effective, are they going to be able to order an  
16 arrangement off that list of 11? Yes or no?

17 MR. CHRISTENSEN: My understanding, your  
18 Honor -- this is Fred Christensen. My understanding is, yes,  
19 they should because we've already got those --

20 JUDGE THOMPSON: When you say "should," are you  
21 doubtful?

22 MR. CHRISTENSEN: Well, no. We have the  
23 processes already posted on CLEC online, your Honor. We do --

24 JUDGE THOMPSON: So your answer is yes, they  
25 will be able to?

1                   MR. CHRISTENSEN: Well, we do talk about the  
2                   ordering process and what's necessary for the CLEC to order  
3                   the arrangement today.

4                   MR. CADIEUX: Your Honor, that's the position  
5                   we've taken in the DPL is that those -- the common  
6                   arrangement, whatever the list consists of should be available  
7                   on the date the interconnection agreement is effective. And  
8                   if SBC is committing to that, that's terrific. But that has  
9                   not been their position to date. In fact, they've been  
10                  unwilling, in my experience, to make any commitment as to when  
11                  they'd been in a position to accept and process an order for a  
12                  commingled arrangement.

13                  MR. CHRISTENSEN: Your Honor, I think -- this  
14                  is Fred Christensen again. I think there's -- the distinction  
15                  is -- or has been that the CLECs don't necessarily agree with  
16                  the processes that we have posted on CLEC online and how they  
17                  have to go about ordering a commingling arrangement.

18                  JUDGE THOMPSON: I'm assuming -- and you tell  
19                  me if I'm wrong -- that every part of your ordering process  
20                  exists because of a necessary and sufficient business and/or  
21                  technical reason. Is that true, Mr. Silver?

22                  MR. SILVER: Ask Mr. Christensen.

23                  MR. CHRISTENSEN: I would say that's a fair  
24                  assessment, yes.

25                  JUDGE THOMPSON: In other words, I'm assuming

1       that there's nothing in your ordering process that is there  
2       for no good reason.

3               MR. CHRISTENSEN: I would agree with that.

4               JUDGE THOMPSON: Okay. So, I mean, I think SBC  
5       gets to say how you have to order things. And I'm assuming  
6       that SBC is acting in good faith in that the steps that  
7       they're making the CLECs jump through are necessary from a  
8       business and/or technical point of view to get the right  
9       equipment placed or programmed or combined or whatever the  
10      heck it is you actually do in the right place at the right  
11      time and the right price; is that correct?

12              MR. CHRISTENSEN: I would agree with that, your  
13      Honor.

14              JUDGE THOMPSON: I'm not sure they agree with  
15      that, but I want to make sure that's your position as to your  
16      ordering method.

17              Mr. Cadieux, you have something to say.

18              MR. CADIEUX: Yes, your Honor. And, again, we  
19      still -- we'll still have issues, but certainly we would  
20      consider it to be substantial progress if SBC is saying that  
21      there will be a process for accepting commingled orders, you  
22      know, upon -- upon the date that this interconnection  
23      agreement becomes effective.

24              JUDGE THOMPSON: Let me say that it is my  
25      expectation that they will be accepting orders from the moment

1       that the interconnection agreement becomes effective, assuming  
2       that the interconnection agreement allows for such things to  
3       be ordered.

4                   MR. CADIEUX:  Your Honor, just to complete the  
5       picture, and there will be still be discussions and issues, I  
6       believe, between the CLEC -- you know, outside of this  
7       interconnection arbitration process with SBC because as has  
8       been explained to us, initially at least for the -- what is  
9       the most common -- will be the most common commingled  
10      arrangement for NuVox and I think a number of other CLECs the  
11      DS-1 -- 251 C3 DS-1 loop with a special access DS-1  
12      interoffice transport --

13                  JUDGE THOMPSON:  Is this the one he was talking  
14      about and he referred to as the bread and butter of the CLECs?

15                  MR. IVANUSKA:  Yes.

16                  MR. CADIEUX:  Yes.

17                  JUDGE THOMPSON:  Is that on the list of 11?

18                  MR. CADIEUX:  It's on the list, but on -- the  
19      CLEC online description of the process says that that will  
20      be -- at least initially that will be a manual ordered  
21      process, in other words, faxing the orders in.  And,  
22      understand, we don't do any -- for any of the UNEs that we do  
23      now and the UNE combinations, that same physical arrangement  
24      that today is available as a combination where both elements  
25      are 251 C3, and we have thousands of them in place, those are



1 all -- those are all ordered --

2 MR. SILVER: This is Mr. Silver. The key there  
3 is that under today's scenario you are talking about both  
4 elements being 251 C3 UNEs. What we're talking about under  
5 the commingling is one is a 251 C3 UNE and the other piece is  
6 a special access. And because of that, the systems are --  
7 we're not capable of doing the full electronic ordering and  
8 that is why one piece has to be ordered via manual.

9 MR. CADIEUX: And all I'm saying --

10 JUDGE THOMPSON: What is it that's different  
11 that precludes electronic ordering?

12 MR. CHRISTENSEN: Your Honor, this is Fred  
13 Christensen.

14 Traditionally the access world has been ordered  
15 in the ASR process. That's been true since basically the  
16 divestiture of the Bell system back in the early '80s. Access  
17 was created back then in order to process requests from the  
18 long distance carriers to provide access to the network.

19 JUDGE THOMPSON: I understand that. But the  
20 world is changing here.

21 MR. CHRISTENSEN: Exactly. I totally agree  
22 with that. The local process or the LSR process is the way  
23 the industry has agreed to order UNEs. When something is no  
24 longer a UNE, it -- it can't be ordered via that LSR process.

25 JUDGE THOMPSON: It has to be ordered a

1 different way.

2 MR. CHRISTENSEN: It has to be ordered via the  
3 access process.

4 JUDGE THOMPSON: What I think I hear the CLECs  
5 saying is they'd still like to be able to order it  
6 electronically; is that right?

7 MR. CADIEUX: Your Honor, that's right. And my  
8 understanding is SBC has committed, at least in Michigan, that  
9 they're going to work to that. But it's not -- it's not  
10 available at this point. So what they're telling us is that  
11 out of the box --

12 JUDGE THOMPSON: It won't be available.

13 MR. CADIEUX: -- it won't be available and  
14 we'll have to do it manually. We may not like that but that's  
15 certainly -- we want some process for ordering commingled  
16 arrangements as soon as possible because the delisting has  
17 already been decided to be self effectuating back to  
18 March 10th.

19 JUDGE THOMPSON: I understand.

20 MR. CADIEUX: But there is progress here that  
21 at least in my experience, today for the first time I've heard  
22 SBC commit that the manual process for these 11 listed  
23 arrangements will be available upon the effective date of this  
24 interconnection agreement.

25 MR. CHRISTENSEN: This is Fred Christensen

1       again. I'm a little surprised by that statement from  
2       Mr. Cadieux because the commingling ordering process has been  
3       posted on CLEC online for several -- several weeks at least.

4               MR. CADIEUX: It has, but the -- but it also  
5       says that -- indicates testing is still in progress,  
6       availability is subject to successful completion of testing.  
7       And there's been no commitment to us as to when the testing  
8       would be --

9               MR. CHRISTENSEN: Your Honor, there are -- of  
10      the -- of the 11 that are listed out there, there are 4 of  
11      those arrangements that are still in the test phase, that is  
12      true.

13              JUDGE THOMPSON: What does that mean, it's  
14      still in the test phase?

15              MR. CHRISTENSEN: Well, basically we're still  
16      going through the process of making sure the appropriate  
17      processes are in place to be able to handle the specific  
18      requests that the CLEC may make for that specific arrangement.

19              JUDGE THOMPSON: Okay. And how long is it  
20      going to take you to get those testings completed?

21              MR. CHRISTENSEN: Gosh, I would be guessing at  
22      this point, your Honor. I don't --

23              JUDGE THOMPSON: What if I said it would be no  
24      longer than until the date that this agreement is effective?

25              MR. CHRISTENSEN: I don't think I could say

1       that unequivocally, sir.

2                   JUDGE THOMPSON:  You talk with your lawyers  
3       about that, your Honor.

4                   MR. IVANUSKA:  Ironically enough, your Honor,  
5       the bread and butter -- so-called bread and butter is one of  
6       the four that is in testing.

7                   JUDGE THOMPSON:  Okay.  I understand you have  
8       to get your house in order and you have to get your processes  
9       in place.  I understand that.  I think -- I think the whole  
10      sense of what Congress intended in the Telecommunications Act,  
11      what the Missouri legislature intended in the section they  
12      gave us in the laws telling us how to interpret the  
13      telecommunications law here in Missouri, it all needs to fit  
14      together seamlessly as of the date that the agreement takes  
15      effect.  And if you need them to send a bicycle courier down  
16      with a handwritten note, then that's fine, but there has to be  
17      some way they can order these things on that date.

18                   Mr. Price?

19                   MR. PRICE:  Your Honor, Don Price for MCI.

20                   Just briefly in response to Mr. Christensen's  
21      earlier comment, I agree that the ASR, access service request,  
22      was borne out of the access world and has traditionally been  
23      used in the access arena.  It is also true that -- that ILECs  
24      other than SBC that have allowed the ordering of unbundled  
25      elements on an ASO.  So this -- this issue is not an

1 element -- is not a -- a gating issue that is industry-wide.  
2 It is only with regards to SBC's previous position that an ASR  
3 not be used to order a 251.

4 JUDGE THOMPSON: I think SBC gets to have  
5 whatever business processes SBC wants as long as SBC meets its  
6 obligations under the law

7 MR. LANE: I think, Judge, to make sure you  
8 understand, we had an ASR process that was in place for long  
9 distance companies to order access services. We created an  
10 entirely new system to handle the effect of the Telecom Act to  
11 be able to process orders for local. Now for the first time  
12 the FCC has said you need to allow them to commingle a local  
13 unbundled network element with a long distance special access  
14 and --

15 JUDGE THOMPSON: So you're scrambling to put a  
16 process in place.

17 MR. LANE: And we don't have a process because  
18 they're here and here.

19 JUDGE THOMPSON: I understand.

20 MR. CADIEUX: Your Honor, one last comment. We  
21 do not disagree with -- we don't want to micromanage SBC's  
22 processes. We want them to be non-discriminatory and  
23 compliant with the law.

24 The frustration here is that, you know, the  
25 commingling obligation -- or yes, the commingling obligation

1       became effective under the FCC's TRO in October 2003. It was  
2       not appealed. It became final a year ago when --

3               JUDGE THOMPSON: Do I hear you saying you don't  
4       understand why this isn't all finished already?

5               MR. CADIEUX: Yes.

6               JUDGE THOMPSON: Fine. And I appreciate your  
7       frustration and maybe it's valid, maybe it's not. I don't  
8       want to get into that.

9               What I'm telling SBC is this. Whatever the  
10      interconnection agreement says you're going to do, you have to  
11      be able to do as soon as it takes effect. I think that's  
12      pretty simple. Right? If I make an employment contract with  
13      somebody, then I expect to show up on the job the day that my  
14      employment contract takes effect, you know. Once this  
15      agreement is in effect, then they have to be able to do these  
16      orders. And even if your processes aren't finished yet,  
17      you're going to have to have some kind of intermediary process  
18      or what have you, temporary process.

19              MR. SILVER: Your Honor, this is Mr. Silver.  
20      I've got to get on my plane. Is there anything --

21              JUDGE THOMPSON: I don't want to hold you up.  
22      Go ahead. Have a nice flight.

23              MR. CADIEUX: Your Honor, we don't want orders  
24      falling through. We don't want to come in --

25              JUDGE THOMPSON: I understand.

1                   MR. CADIEUX: One other alternative, we've been  
2     discussing this, you know, consistently internally, you know.  
3     And kind of in the same vein as you've talked about is, you  
4     know, irrespective of how we got here, you know, what can we  
5     do with this.

6                   And, you know, an alternative that we've talked  
7     about that -- you know, would be if there absolutely has to be  
8     some limited additional period of time, and that is not our  
9     preference, before SBC would be able to process these orders  
10    without creating, you know, frustrations of orders being  
11    rejected, of possibly service going out for customers, that,  
12    okay, give them that additional limited period of time, but  
13    make a financial obligation back to the effective date of the  
14    interconnection agreement where the parties would be put-- put  
15    in -- basically put on a true-up basis, could be put back in a  
16    financial position as if the commingled arrangement had been  
17    processed on July 1 rather than, you know, some later date.

18                  JUDGE THOMPSON: I'm not sure I understand your  
19    proposal. Is it part of the DPL?

20                  MR. CADIEUX: No, it's not.

21                  JUDGE THOMPSON: So it's not even in front of  
22    me. I can't pick it anyway so let's not talk about it.

23                  MR. MAGNESS: Your Honor, what is in front of  
24    you, just to be sure we don't lose the point, is one of the  
25    issues that Mr. Ivanuska was subject on cross on earlier which

1 is the DPL for UNE attachment 6, part 1, it's issue 11. And  
2 issue 11 and 13 are related. That is exactly where this comes  
3 up because that is the place where the CLECs are advocating  
4 that when this agreement goes into effect, those obligations  
5 arise. So that's where the dispute between the competing  
6 language lives. I just want to be sure that's clear.

7 JUDGE THOMPSON: I just want to be sure you  
8 guys understand that from my point of view, I'm playing  
9 baseball and I'm going to pick one or the other of the options  
10 that have been presented by the parties.

11 But in the -- there's nothing stopping you from  
12 reaching a different agreement in the course of this  
13 proceeding. If you decide that there's something you can live  
14 with that's different than either option, I urge you to make  
15 that agreement because you may not like the option that I  
16 eventually pick. Okay?

17 But I'm only going to pick from those two  
18 options. I'm not cutting the baby, I'm not carving a statue.  
19 I'm not doing anything that's not been presented by the  
20 parties. So I hope what you've presented is something you can  
21 live with. And if it's not, then you better rush out and make  
22 an agreement with them. Okay?

23 Thank you very much, Mr. Christensen, if you're  
24 still on the phone there, I appreciate your time.

25 MR. CHRISTENSEN: Yes, I am, your Honor.



1 Thank you.

2 JUDGE THOMPSON: And I think we can let you go  
3 now.

4 Do we have any questions from any of the  
5 lawyers here before Mr. Christensen goes?

6 MR. LANE: No, your Honor.

7 JUDGE THOMPSON: Thank you, Mr. Lane.

8 I think we can let you go. Thank you, sir.  
9 Have a nice day.

10 MR. CHRISTENSEN: Thank you. Bye-bye.

11 JUDGE THOMPSON: This has been invaluable.  
12 Thank you.

13 Okay. Now, I don't know where we are or are we  
14 back to the examination of Mr. Ivanuska? Are we done with  
15 Mr. Ivanuska?

16 MR. MAGNESS: I guess -- do you have any more  
17 cross for him?

18 MR. LANE: No.

19 MR. SCHEPERLE: Yes, Ms. Dietrich had some, but  
20 she had to leave.

21 MR. MAGNESS: Then we've got redirect.

22 JUDGE THOMPSON: Then we get back to Mr. Price.

23 MR. MAGNESS: Let me see if I've got any  
24 redirect and then we'll go back to Mr. Price.

25 JUDGE THOMPSON: We're going to go to lunch in

1 a few minutes because I don't know how much of this you think  
2 I can take. Okay. Mr. Scheperle, questions from the Bench.  
3 JOHN IVANUSKA testified as follows:  
4 QUESTIONS BY MR. SCHEPERLE:  
5 Q. Good morning, Mr. Ivanuska.  
6 A. Good morning.  
7 Q. I'm asking questions for Ms. Dietrich here, but  
8 could you turn to your Direct Testimony on page 27?  
9 A. The GTNC or UNEs?  
10 Q. It would be in UNEs.  
11 A. UNEs, okay.  
12 Okay. I'm there.  
13 Q. And we're addressing lines 12 through 16 there.  
14 And in that it says that Section 14.3 of attachment 6 in the  
15 M2A addresses combinations and that SBC should provide a  
16 secure location. Is that in your new proposal -- in your  
17 proposal today?  
18 A. Yes. Yes, it is.  
19 Q. Okay. Would SBC incur costs to create a secure  
20 space?  
21 A. Quite possibly they would, yes.  
22 Q. Okay. How would they -- how would they be  
23 reimbursed for that cost?  
24 A. Well, it's the CLEC's position that because of  
25 SBC's policy that CLECs not be allowed to perform a combining

1 function at their main distribution frame, that because of  
2 that policy, they have to create this secured frame room or  
3 this location where we can do our combining, that they would  
4 bear the cost of that.

5 Having said that, you know, we -- while CLECs  
6 don't believe we have to share in that cost, because this is  
7 an SBC policy requiring this, you know, we certainly would  
8 be -- would be willing to, you know, share in the just and  
9 reasonable as so deemed cost of creating this secured location  
10 in the central office.

11 Q. Okay.

12 A. So it's SBC's to pay, but if we have to, you  
13 know, we'll pay our share.

14 Q. Okay. Thank you.

15 Now, I'd like to go to page 31 and this lines  
16 22 through 25. And could you please explain exactly what  
17 you're objecting to there?

18 A. Let me just take a quick look here.

19 The issue really here is to the extent that --  
20 we're just testifying that SBC needs -- needs to make  
21 available to CLECs on an unbundled basis anywhere that they  
22 have facilities and equipment and not necessarily in the way  
23 that SBC is attempting to limit it by -- by their language.  
24 We want access wherever they have facilities that they use to  
25 provide service. We think they should be obligated to offer

1           that on an unbundled basis pursuant to the unbundling rules.

2                   Q.       Okay.

3                   A.       And I -- essentially I think what we're trying

4           to do is preserve the -- the requirement that existed in the

5           M2A or that exists in the M2A currently.

6                   MR. SCHEPERLE:   That's all the questions I

7           have.   Thank you.

8                   JUDGE THOMPSON:   Thank you, Mr. Scheperle.

9                   Any other questions Mr. Johnson, Mr. McKinnie?

10                  MR. JOHNSON:   No, sir.

11                  MR. MCKINNIE:   No, sir.

12                  JUDGE THOMPSON:   Very well.   Recross?

13                  MR. LANE:   No.

14                  JUDGE THOMPSON:   Redirect?

15                  MR. MAGNESS:   No, sir.

16                  JUDGE THOMPSON:   Thank you.   You may step down,

17           Mr. Ivanuska.   I appreciate your testimony.   I particularly

18           appreciate you taking part in our free-for-all session, which

19           had to be trying for the witnesses as well as everyone else.

20                  MR. MAGNESS:   So are Mr. Ivanuska and Mr.

21           Cadieux excused at this point?

22                  JUDGE THOMPSON:   As far as I'm concerned,

23           they're excused.   But I've excused Mr. Cadieux before and he

24           keeps coming back.

25                  MR. LANE:   I think excused and banned from

1 calling back.

2 MR. MAGNESS: We'll have them lurking around  
3 the building just in case.

4 JUDGE THOMPSON: I think we've come to a good  
5 moment to have our lunch recess for 60 minutes. Mr. DeFord?

6 MR. DEFORD: Your Honor, it's my understanding  
7 that SBC doesn't have any cross for the WilTel witnesses  
8 and --

9 MR. GRYZMALA: I have very limited cross, just  
10 a couple questions.

11 JUDGE THOMPSON: When he says very limited  
12 cross, that's usually about three hour. Tell him to book a  
13 room.

14 MR. MAGNESS: Before we break, what do we have  
15 left? I know we've got to finish Mr. Price.

16 JUDGE THOMPSON: Finish Mr. Price.

17 MR. MAGNESS: I think all of our witnesses --

18 JUDGE THOMPSON: Beat up on the WilTel  
19 witnesses and I believe --

20 MR. LANE: Your Honor, we are waiving the  
21 WilTel witness, your Honor.

22 JUDGE THOMPSON: So, yeah, you can go.

23 MR. DEFORD: Excellent. Thank you.

24 JUDGE THOMPSON: I don't know. Do any of you  
25 guys have questions for WilTel? Okay.

1 MR. MAGNESS: So finishing Price is --

2 JUDGE THOMPSON: That's all that's left.

3 Aren't there hundreds of names on this?

4 MR. BUB: We have like -- a few -- no more than

5 five minutes.

6 JUDGE THOMPSON: For who?

7 MR. GRYZMALA: Mr. Price. Three minutes.

8 JUDGE THOMPSON: For Mr. Price. Why don't we

9 just keep going until we're done, do lunch when we're done.

10 Just remind me, if you would, what it is we're

11 talking to Mr. Price about.

12 MR. GRYZMALA: Collocation metering.

13 JUDGE THOMPSON: Back to the metering. I

14 remember that.

15 DON PRICE testified as follows:

16 CROSS-EXAMINATION (CONT'D) BY MR. GRYZMALA:

17 Q. I think we were concluding with the discussion

18 regarding the Bell South portion of the -- or the Bell South

19 order I think that you were relying on in your testimony and

20 I'm going -- I have no further questions on that.

21 I want to ask you just a couple remaining

22 questions, one of which is, I see, if I have this correct, at

23 page 46 of your rebuttal you state, do you not, Mr. Price,

24 that MCI is pursuing power -- I'm sorry, MCI is pursuing

25 metered power as an option for MCI, not as a requirement that

1       SBC must provide. Is that your statement, sir?

2           A.       You read a portion. I think it's important to  
3       read the rest of the sentence Mr. Gryzmala.

4           Q.       Okay. In this proceeding, however, MCI is  
5       pursuing metered power as an option for MCI not as a  
6       requirement that SBC must provide throughout all of Missouri  
7       for all CLECs.

8           A.       That is my testimony.

9           Q.       Okay. Show me in your DPL proposal language,  
10       sir, where MCI represents that power metering would be an  
11       option.

12          A.       I think it's -- it has to be read in the  
13       context, as I mentioned earlier, with the overall collocation  
14       tariff that exists.

15          Q.       Okay.

16          A.       In other words, this language would create the  
17       metered option the tariff itself currently provides for the --  
18       the billing arrangement that exists today.

19          Q.       Show me in your -- do you agree that there is  
20       nothing in the ICA amendment -- or I'm sorry, in the ICA  
21       proposed language of MCI that reflects that power metering  
22       would be an option?

23          A.       I don't agree with that. And the reason for  
24       not agreeing is because of -- the second sentence states that  
25       MCI would have to, you know, go through expense and

1 re-engineering of its collo space in order to take advantage  
2 of that. And there's nothing in here that requires MCI to do  
3 that. So it is an option.

4 It would be something that would be done at  
5 MCI's option. We would look at this circumstance, we would  
6 determine whether or not in our view it's appropriate to go  
7 through that expense, that activity. And if we determined  
8 that it was appropriate to do so, we would then take advantage  
9 of -- of the provision that's in the -- that's disputed.

10 Q. So that when you refer in your testimony to the  
11 existence of an option, there is no option presented to SBC  
12 rather, do I understand you correctly, the option is solely in  
13 the hands of MCI --

14 A. Again, consistent --

15 Q. -- correct?

16 A. -- with the fact that MCI would be the one that  
17 would be incurring the nonrecurring expense, if you will, to  
18 establish the arrangement, yes.

19 Q. Okay. But the answer to my question is yes?

20 A. Agreed, with that qualification.

21 Q. It would be up to MCI to make that call?

22 A. Agreed, with that qualification.

23 Q. Would you not agree that that option is not  
24 stated in the first sentence -- strike that.

25 Would you not agree that that option is removed



1 by the first sentence where it says that charges for power  
2 will be assessed?

3 A. I can answer that question with a  
4 qualification, Mr. Gryzmala. And my answer is I agree. My  
5 qualification is, had SBC Missouri been interested in pursuing  
6 language that they were comfortable with here, I would assume  
7 that they would have proposed competing language. As you see,  
8 SBC's competing language says intentionally omitted, meaning  
9 that there was no --

10 Q. We understand.

11 A. -- ability to reach a meeting of the minds as  
12 to any details. It was simply black and white.

13 Q. Do you not agree, however, that the mandatory  
14 words "will be assessed" does not indicate an option?

15 A. I agree.

16 Q. Thank you.

17 Are you aware of any order of either the Kansas  
18 or the Texas Commission which has specifically directed SBC to  
19 implement power metering in an SBC ICA?

20 A. I am not aware of such an order and do not  
21 believe that I represented in my testimony that such an order  
22 existed.

23 Q. You mentioned just a couple of last things.  
24 You mentioned that Rhythms is an MCI affiliate?

25 A. Correct.

1           Q.     Is there any relationship, Mr. Price, between  
2     Rhythms and a company called On Net?

3           A.     Quite frankly, I couldn't answer that one way  
4     or the other, Mr. Gryzmala. There have -- as you may be  
5     aware, there have been substantial corporate restructurings as  
6     a result of the bankruptcy process and trying to simplify and  
7     make somewhat rational something that was perhaps less than  
8     rational previously. And I'm not sure that I have all of  
9     those details committed to memory.

10          Q.     Okay. Give me just one second. I don't want  
11     to go into details on the bankruptcy and the restructure, but  
12     I presume or may -- can you confirm On Net would now be  
13     regarded as an affiliate then of MCI?

14          A.     I -- my only hesitation in agreeing with that  
15     is that I am not personally aware that that -- that the term  
16     "On Net" refers to a legal entity as opposed to simply a  
17     project or organization.

18          Q.     It could be, for example, an affiliate, it  
19     could be a division, it could be a joint venture? You're not  
20     certain, have no information either way?

21          A.     And it could merely be an internal project  
22     name.

23          Q.     You don't have any personal knowledge?

24          A.     That is correct, I do not.

25          Q.     Finally, how much of MCI's line or loop

1       splitting is done with Rhythms?

2               A.       Based on my understanding of the use of those  
3       assets, I would -- I would understand it to be the vast  
4       majority.

5               MR. GRYZMALA:   Thank you.

6               JUDGE THOMPSON:   Thank you, Mr. Gryzmala.

7       QUESTIONS BY JUDGE THOMPSON:

8               Q.       I'm intrigued by this metering question.   You  
9       obtain power in your collocation spaces from the host ILEC; is  
10      that correct?

11              A.       Yes, your Honor.

12              Q.       Is there any reason you can't obtain it  
13      directly from the local electric utility?

14              A.       I don't believe that -- that there is a -- a  
15      reason why it could not be done.   I mean, there -- there is --  
16      I mean, as you may be aware in the diagram --

17              Q.       Assume I'm not aware.

18              A.       -- in my testimony -- okay.

19                      Telephone equipment typically operates on DC  
20      power.

21              Q.       Okay.

22              A.       And the diagram attached to my testimony as I  
23      believe attachment 2 reflects that arrangement.   In other  
24      words, one entering into an SBC central office in Kansas City  
25      or St. Louis or whatever would see in some part of the central

1 office a large array of batteries that are used to provide  
2 this 48 volt DC power. And essentially that -- that -- I  
3 forget the term -- array, I think, is used to power not only  
4 all of SBC's equipment, switching equipment, line equipment,  
5 fiberoptic terminals, whatever, but also the -- the equipment  
6 that the CLECs put in their collocation spaces within that  
7 central office. So it is -- it is --

8 Q. Let me stop you for a minute now. I took a  
9 tour of the Sprint central office right here in Jefferson City  
10 and I remember seeing a gigantic array of batteries. And what  
11 they told me was that the batteries were for when the power  
12 was out.

13 So are you telling me that the local electric  
14 utility can't bring their alternating current to the site,  
15 transform it into DC current and then just provide it to you  
16 directly?

17 A. Your Honor, that's an excellent clarification.  
18 I'm glad you caught me on that. The diagram shows also a  
19 rectifier arrangement there, which is the device that's used  
20 to convert the AC power into the 48 volts. And, yes, it is  
21 used. But because that rectifier already exists, it is the --  
22 how shall I say --

23 Q. It's convenient --

24 A. The CLEC does not -- it is convenient.

25 Q. -- to piggyback on their power. Right?

1           A.       Exactly. And those arrangements are --

2           Q.       But you want a different payment arrangement  
3 for the power of theirs that you're piggybacking on?

4           A.       Correct.

5           Q.       Okay. What about this indication that metering  
6 on the one end isn't going to work?

7           A.       There may be reasons why there are inaccuracies  
8 as to that metering arrangement. And that representation was  
9 made in the document that we quarrelled about.

10          Q.       Right. I think it's also though in Direct  
11 Testimony of SBC witnesses.

12          A.       Right. Based, again, I think on this -- this  
13 same document.

14          Q.       Based on that document.

15          A.       It has been my experience in the past that if  
16 there is something that SBC wants to present evidence on, it  
17 has a rather significant ability to present quite a bit of  
18 data around something.

19          Q.       I'm sure. But I don't want to decide this  
20 based on technical rules of evidence. I want to decide it on  
21 substantive evidence that persuades me as to what's the best  
22 arrangement.

23          A.       And my point, sir, was going to the fact that  
24 in the Illinois case that I referred it my -- in my -- in my  
25 testimony where the -- the rates -- the TELRIC rates were at

1 issue, SBC could have availed itself of that opportunity to  
2 present evidence to the Illinois Commission that there were  
3 under-billings, if you will, that were occurring as a result  
4 of this error, they could have presented studies that sized  
5 that, that showed, you know, on a detailed basis how much that  
6 is on average and they chose not to do that in any way. They  
7 didn't even contest the rate.

8 Q. Okay.

9 MR. GRYZMALA: Your Honor, one clarifying  
10 thing. And I apologize, I'm not sufficiently sophisticated to  
11 speak to the merits. I think Mr. Pool did directly speak to  
12 the drawbacks associated with the shunt you were talking  
13 about. And subject to what his testimony says, I believe he  
14 spoke to his personal knowledge and then alluded to Telcordia.  
15 Not that he spoke only to what Telcordia found.

16 JUDGE THOMPSON: I understand that. And either  
17 way and however he spoke about it, it is in the record and I'm  
18 just trying to understand the ramifications here.

19 I mean, as a layperson, obviously is what I am,  
20 when the CLECs tell me they only want -- they want meters so  
21 they pay for the power they use, that makes sense. I think I  
22 said that at the beginning of this issue, right? As a  
23 homeowner, I don't want to pay for power I don't use. I only  
24 want to pay for what I use.

25 And you told me that, in fact, yeah, that's how

1       it struck you at first too, but that if we look at the issue  
2       more deeply, we'll understand it can't work the way they want  
3       it to work. Right? And I understand the core of your  
4       objection is that the metering is inaccurate, is inherently  
5       inaccurate and, in fact, under-reports the amount of power  
6       they use; is that correct?

7                   MR. GRYZMALA: That's certainly what Mr. Pool  
8       demonstrates.

9                   JUDGE THOMPSON: So we have them saying the way  
10      you want to do it requires them to pay too much and we have  
11      you saying the way they want to do it requires -- has them  
12      paying too little. Right? So all we're talking about is  
13      money. Why can't you use the metering with an appropriate  
14      adder or multiplying factor that jumps it up to where it would  
15      be -- more accurately should be?

16                  MS. BOURIANOFF: Well, your Honor, and I just  
17      want to clarify that when you say SBC claims that the metering  
18      under-reports --

19                  JUDGE THOMPSON: Right.

20                  MS. BOURIANOFF: -- the amount of power  
21      consumed, Mr. Gryzmala's questions on cross-examination with  
22      Mr. Price were devoted to one form of metering, shunt side  
23      metering that has been used in Illinois. Both Mr. Price said  
24      that's not the only form of metering that could be done and  
25      Mr. Gryzmala even made the clarification that that is not

1       the -- that's not the only metering that AT&T recommends.  
2       AT&T recommends other form of metering. So I just want to  
3       make sure there's no --  
4               JUDGE THOMPSON: I appreciate that.  
5       BY JUDGE THOMPSON:  
6               Q.       Let me ask you this. Is the DPL tied to a  
7       particular type of metering or does it just say metering?  
8               A.       It just says metering, your Honor.  
9               Q.       So it could be whatever is the appropriate type  
10       of metering; is that right?  
11              A.       Correct.  
12              Q.       Okay. So there is some kind of meter in place  
13       in Illinois; is that correct?  
14              MR. GRYZMALA: That's my understanding, your  
15       Honor based -- right.  
16              JUDGE THOMPSON: How does SBC feel about that  
17       metering there?  
18              MR. GRYZMALA: Frankly, SBC opposes and does  
19       not feel it yields accurate measurements.  
20              JUDGE THOMPSON: You believe that the metering  
21       in place in Illinois is also inaccurate?  
22              MR. GRYZMALA: Not only that. We also feel  
23       that it exacts an enormous drain on our resources in order to  
24       implement it and make sure that it's provided to the CLECs.  
25              JUDGE THOMPSON: Okay. We're getting now into



1 a different kind of contention. How does it create an  
2 inordinate drain on your resources?

3 MR. GRYZMALA: Well, in the sense that -- and,  
4 again, I'm not a factual expert.

5 JUDGE THOMPSON: I understand.

6 MR. GRYZMALA: If we need to get one, we can.

7 The basic point is that when we are in receipt  
8 of a request for collocation, the collocator will normally --  
9 and it has been this way traditionally -- asks us to provide  
10 certain capacity and that's what we do.

11 JUDGE THOMPSON: That's makes sense.

12 MR. GRYZMALA: The assumption being that if you  
13 want to order this capacity, then you must have intended that  
14 at some point you'll be in a position to be able to use it.

15 JUDGE THOMPSON: But see, here in the utility  
16 world we know that the pipe has to be big enough for a peak  
17 day, but that doesn't mean that the volume the pipe is  
18 delivering is always at peak. Right? That's how it works in  
19 the water industry, that's how it works in the electric  
20 industry, that's how it works in the sewer industry. You have  
21 to size the pipe for the largest flow you expect ever.

22 MR. GRYZMALA: That's where we are in terms  
23 of --

24 JUDGE THOMPSON: But that doesn't mean it's  
25 always flowing at that level. And, in fact, those other

1 industries I mentioned, they have a complicated way of coming  
2 up with rates where you pay both for the large capacity that  
3 you've got for your peak day, but you also pay based on what  
4 your average volume is. Right? Maybe you can do something  
5 like that, borrow something from the electric industry. I  
6 don't know.

7 MR. GRYZMALA: Well, and we have, in fact.  
8 Your Honor will recall if not specifically but it's in the  
9 Commission's records. ICA amendments have been approved in  
10 this state under the -- to the extent that SBC will charge for  
11 one half of the capacity, subject to check, and with AT&T only  
12 recently -- that SBC would charge AT&T for half the capacity  
13 that it orders on its combined A and B leads and AT&T warrants  
14 that it won't use any more of that capacity. That is an  
15 option. And that's for several agreements NuVox, Birch,  
16 Ionics.

17 JUDGE THOMPSON: She's got something to say.

18 MS. BOURIANOFF: That's a separate issue.  
19 That's an issue that SBC for years was charging for redundant  
20 power, charging for the power used over both -- the power  
21 amount over both the A and B feed regardless of the fact that  
22 in the telecommunications industry it's standard for a CLEC to  
23 only draw power over one feed.

24 The point I wanted to make is SBC does charge  
25 separately. They charge for the power delivery arrangement.

1       There's a non-recurring charge for the pipe itself. And then  
2       the issue we have about power metering is about the power  
3       consumption, the DC power that's --

4               JUDGE THOMPSON: That's a separate charge?

5               MS. BOURIANOFF: That's a separate charge and  
6       that's a recurring charge every month.

7               JUDGE THOMPSON: So you are paid for providing  
8       the equipment the power's going to come across --

9               MS. BOURIANOFF: Yes.

10              JUDGE THOMPSON: -- right?

11              MR. GRYZMALA: Yeah.

12              JUDGE THOMPSON: And I assume that what you're  
13       paid is based on what your costs are in providing it?

14              MR. GRYZMALA: I believe that would be  
15       accurate.

16              JUDGE THOMPSON: According to whatever the  
17       appropriate costing standard is. And I know there's a lot of  
18       play there.

19              MS. BOURIANOFF: Right. There's not a dispute  
20       over the rates for the DC power --

21              JUDGE THOMPSON: Just for the consumption.

22              MS. BOURIANOFF: Just for the consumption. And  
23       there's not even a dispute over the per amp consumption rate.  
24       There's -- that per amp consumption rate, as far as I'm aware,  
25       every party in this arbitration has agreed to it. The dispute

1 is over how you measure that per amp consumption rate.

2 And it's AT&T's position, it's the CLEC -- it's  
3 other CLECs' position that it ought to be based on  
4 consumption, that it ought to be metered. And AT&T in its  
5 proposed contract language has some alternatives, alternative  
6 forms of metering that could be done. And one thing we even  
7 propose is that it could be done based on the rated ampere  
8 capacity of the equipment in the collocation cage. Because  
9 when the CLECs --

10 JUDGE THOMPSON: Rather than the capacity of  
11 the pipe?

12 MS. BOURIANOFF: Right. Because when the CLEC  
13 fills out the collocation application, and this is in  
14 Mr. Henson's testimony, they have to list the equipment that's  
15 going to go in the collocation cage along with the list one  
16 and list two drain of the equipment.

17 JUDGE THOMPSON: I remember that alternative.  
18 That seems sensible to me. What's SBC's problem with it?

19 MR. GRYZMALA: Your Honor, I suggest at this  
20 point that I am not going to be as sufficiently capable of  
21 providing you the information on the three alternatives as  
22 Mr. Pool would be who --

23 JUDGE THOMPSON: But you know what your  
24 position is. Right? You've read Mr. Pool's testimony?

25 MR. GRYZMALA: Yes, I did.

1 JUDGE THOMPSON: You can tell me what's wrong  
2 with that alternative. Right?

3 MR. GRYZMALA: I don't believe it's a feasible  
4 alternative for the reasons that Mr. Pool presented. I would  
5 not have any independent knowledge --

6 JUDGE THOMPSON: If that's the best you can do,  
7 then that will work. You know, I can't turn you into a fact  
8 witness and I apologize for trying. I'm just trying to  
9 understand because I've got to pick one or the other. Right?  
10 And it just seems to me that where one side is talking, hey,  
11 that's too much money and the other side is saying, hey,  
12 that's not enough money, that there's a meeting point in the  
13 middle that somehow you get to, okay, that's enough money.  
14 And I urge you to get to that point rather than  
15 having me pick one of these alternatives that's going to leave  
16 somebody feeling like they got a raw deal, you know. I mean,  
17 I don't know why you would want to do that, but --

18 THE WITNESS: Point taken, your Honor.

19 JUDGE THOMPSON: So that's all the questions I  
20 have. Any questions from my Staff?

21 MR. JOHNSON: You answered mine, your Honor.

22 THE WITNESS: He did or I did?

23 MR. JOHNSON: He did.

24 MR. SCHEPERLE: Ms. Dietrich had some questions  
25 on UNEs.

1 JUDGE THOMPSON: Come on up. I think we're  
2 talking about metering here.

3 THE WITNESS: I've got UNE testimony as well.

4 JUDGE THOMPSON: Okay. Why not? I'm just  
5 thinking, boy, if we go down the UNE road, you know what I  
6 mean, my grandchildren will be born before I get out of this  
7 room.

8 THE WITNESS: If I was here one more day, one  
9 of my granddaughters would be a year older.

10 JUDGE THOMPSON: There you are. I don't want  
11 that to happen.

12 QUESTIONS BY MR. SCHEPERLE:

13 Q. Good afternoon, Mr. Price.

14 A. Good afternoon.

15 Q. If you could turn on your Direct Testimony to  
16 page 26.

17 A. All right, sir. I'm there.

18 Q. And we're talking about lines 5 through 7.

19 A. Okay.

20 Q. And in that reading there it says, The first  
21 FCC created an 18-month transition period for dark fiber loops  
22 during which time dark fiber loops are available subject to 47  
23 CFR 51-319 A62. My question has to do -- does MCI have any  
24 existing dark fiber that it wants to maintain during a  
25 transition plan?

1           A.       In Missouri, it is my understanding that we do  
2       not.

3           Q.       Okay. I think that answers that portion of it.  
4                    Now I'd like to go to your rebuttal on page 7.

5           A.       Okay.

6           Q.       On lines 21 and 22 you talk about a  
7       telecommunications station. Could you please explain what a  
8       station is?

9           A.       Well, this will -- this will show how long I've  
10       been around. When -- I believe it was in the 1970s when the  
11       FCC deregulated consumer premises equipment that we now refer  
12       to as CPE. The systems, the processes, the measurements, the  
13       reports that the telephone companies did were on a station  
14       basis because it -- it was everything from the station  
15       equipment back into the network that represented their  
16       investment and their processes.

17                    So the term "station" really today has only  
18       sort of an archaic sort of meaning. But for -- for walking  
19       around purposes, if you will, it would be any -- any telephone  
20       set that's connected in your household versus the telephone  
21       set connected to another business or another household. And  
22       in this context, I believe the -- the reference was in  
23       definition of telecommunications service. So did that help?

24           Q.       Yes. Thank you.

25                    I had a question on collocation metering that

1 we just went through. And I was seeing under your proposal  
2 that you wanted to actually pay for the power that you used  
3 each month. In other words, you would take a reading on the  
4 meter and you would actually pay for what you actually used;  
5 is that correct?

6 A. Yes.

7 Q. Okay. I noticed some of the proposals had kind  
8 of an estimate that they would take a reading at a point in  
9 time and kind of use that. But your proposal is that you  
10 would actually take the usage that you use each month, you  
11 meter it and you actually pay for what you use?

12 A. Generally, yes. I mean, I think again although  
13 that was just one thing that we had -- one proposal that we  
14 had that we were putting forward. The specific proposal,  
15 recognizing that there are others, I think to the discussion  
16 that we just had that that is viewed as the most fair and  
17 reasonable approach to compensate for the use of that power  
18 and not -- not overcompensate.

19 Q. Okay. Are you aware that other proposals that  
20 some other parties have proposed would not measure it on a  
21 month-to-month basis on a metered basis?

22 A. Yes. I mean, what is in -- for example, in  
23 AT&T's testimony that I think was just discussed is the use of  
24 the rated power for the equipment in a collo cage. And  
25 however pieces of equipment are in there, it would simply be



1 the sum of the rated power of that equipment that would be  
2 charged.

3 Q. Okay.

4 A. So there -- yes, there are other alternatives.

5 Q. Okay. But MCI's proposal is to actually take a  
6 reading each month and base the bill based on the actual meter  
7 reading of power used?

8 A. Generally, yes. I mean, certainly to the  
9 extent that another approach such as the one we just discussed  
10 were made available by SBC, we would certainly consider it.

11 MR. SCHEPERLE: Okay. That's all the questions  
12 I have. Thank you.

13 JUDGE THOMPSON: Thank you Mr. Scheperle.  
14 Mr. McKinnie?

15 MR. MCKINNIE: No, sir.

16 JUDGE THOMPSON: Very good. Mr. Johnson?

17 MR. JOHNSON: No, sir.

18 JUDGE THOMPSON: Recross?

19 MR. GRYZMALA: No thank you, your Honor.

20 JUDGE THOMPSON: Very good. Redirect?

21 MR. MORRIS: Briefly your Honor.

22 JUDGE THOMPSON: Briefly is good.

23 REDIRECT EXAMINATION BY MR. MORRIS:

24 Q. Mr. Price, do you recall a discussion regarding  
25 which vendor MCI would select in the event MCI were to want to

1 install meters in its collocation facility?

2 A. Yes, I do.

3 Q. Well, I believe we can all agree that the

4 language in the DPL refers to MCI's vendor. Just so

5 everything is clear, in that instance, MCI would pick a vendor

6 that's on SBC's approved list like its collocation tariff or

7 wherever that list resides; is that correct?

8 A. Yes. And I think -- yes. To be clear, it

9 would not be a vendor that was solely certified by either

10 party. Rather, it would be one who met the certification

11 requirements of both parties.

12 MR. MORRIS: Okay. And one last thing, I'd

13 like to approach the witness with the Telcordia report.

14 JUDGE THOMPSON: You may. Is that the very

15 same report I said can't be in the record?

16 MR. GRYZMALA: Yes. Your Honor, we would

17 object to questions that would be directed to the report.

18 We're not seeking to offer the report into evidence.

19 JUDGE THOMPSON: I understand. But he gets to

20 show it to him and ask him questions about it just like you

21 did.

22 BY MR. MORRIS:

23 Q. Mr. Price, on this report I would ask on

24 page 16 that you read what I've underlined under paragraph 4.

25 A. All right. In the majority of cases, power

1 measurements could not be conducted on collocator equip-- I'm  
2 sorry, collocator equipment. The reason is that collocator's  
3 equipment is contained within locked equipment cages. These  
4 equipment cages can only be unlocked by the collocator's  
5 personnel who were not in attendance at the time of testing.

6 Telcordia -- this is the second paragraph.  
7 Telcordia performed a second set of measurements on  
8 10/11/2002. In view of the difficulties with the collocated  
9 equipment, it was decided to conduct measurements on select  
10 Ameritech equipment.

11 Q. Okay. Thank you.

12 MR. GRYZMALA: Your Honor, may I ask in keeping  
13 with the -- that the witness read the remainder of the  
14 sentence?

15 JUDGE THOMPSON: Go ahead and read the  
16 remainder.

17 THE WITNESS: The remainder of the paragraph?

18 MR. GRYZMALA: Just start with, This was an  
19 acceptable.

20 THE WITNESS: Continuing where I stopped, This  
21 was an acceptable substitute because the chosen measurements  
22 were made on Ameritech equipment that performs a similar  
23 function to and uses the same power and grounding scheme as  
24 the collocator's equipment.

25 MR. GRYZMALA: Thank you.

1 BY MR. MORRIS:

2 Q. On page 24 could you read the last sentence?

3 MR. GRYZMALA: I'm sorry?

4 MR. MORRIS: Page 24, last sentence.

5 THE WITNESS: I see it. The last sentence of

6 the conclusion at paragraph 24 reads, These considerations

7 affect less than 40 percent of SBC power plants that have the

8 shunt on the return side.

9 BY MR. MORRIS:

10 Q. And, finally, if you could read the second

11 paragraph on page 3.

12 MR. GRYZMALA: Can we back up just a minute?

13 Can we agree, just so the record is clear on it, that the

14 sentence that Mr. Price just read follows the sentence that

15 says, It seems that the error in the metering could be about

16 30 to 50 percent of the measured values, just so his honor and

17 everyone can understand.

18 THE WITNESS: That is the way it appears in the

19 copy, yes.

20 MR. GRYZMALA: Thank you. Just for context.

21 JUDGE THOMPSON: Thank you.

22 BY MR. MORRIS:

23 Q. And lastly, second paragraph on page 3.

24 MR. GRYZMALA: Page 3?

25 THE WITNESS: Yes. Under -- on page 3 under

1 the heading Notice of Disclaimer, the second paragraph reads,  
2 Telcordia makes no representation or warranty, express or  
3 implied, with respect to the sufficiency, accuracy or utility  
4 of any information or opinion contained herein.

5 MR. MORRIS: Thank you. That's all the  
6 redirect I have.

7 JUDGE THOMPSON: In other words, here's our  
8 report, but don't rely on it because it may not be right?

9 THE WITNESS: That's the way I read it, your  
10 Honor.

11 JUDGE THOMPSON: Clearly Telcordia also employs  
12 attorneys. It's kind OF like the ladder I bought at Wal-Mart  
13 the other day. They said, Here's a ladder and it's a good  
14 one, but don't use it because you might hurt yourself. If you  
15 do, don't say we didn't tell you.

16 Okay. Are you done?

17 MR. MORRIS: I'm done. May this witness be  
18 excused?

19 JUDGE THOMPSON: Yes, he may. Thank you,  
20 Mr. Price. Thank you very much.

21 I assume this is the last witness. Right?

22 MR. MORRIS: Last MCI witness, yes.

23 JUDGE THOMPSON: Is it the last witness from  
24 anyone? We have excused Pool and Henson and Krabill and Fox  
25 and porter and Schwebke and all these people. Right? Atwal,

1 Henson, Gates, Tenerelli. I have no complaint. Dysart. I  
2 will read all of their testimony.

3 Now, if I have any additional questions upon  
4 reviewing this material, if my Staff have any additional  
5 questions, then you can expect to receive written questions.  
6 Written questions will be served on all parties and anybody  
7 who wants to -- the answer needs to be served on all parties  
8 and anybody that wants to scream and yell can file whatever  
9 they want. Okay? I think that's fair.

10 I don't expect to have a lot of written  
11 questions, if I have any. But if there's some point that I  
12 think in all fairness has to be resolved in reaching a  
13 decision, then I will do so.

14 As you know, we've received the testimony filed  
15 by all the witnesses. I've read that list once. I'm not  
16 going to read it again. In addition, offered and received  
17 Exhibits 201, 202, 203, 204, 205, 206, 207 not offered, 208  
18 not offered, 209 offered and received, 210 not offered, 211  
19 offered and received, 212 not offered, 213 not offered. And I  
20 told you don't bother because I wouldn't receive it anyway.  
21 Okay?

22 Yes, sir?

23 MR. MAGNESS: Two things, your Honor. First,  
24 if you do have the written questions, do you want the  
25 responses to come from witnesses in the case or do you --

1 JUDGE THOMPSON: I think -- yeah. If the  
2 question is a factual question, it needs to come from a  
3 witness. Probably should be verified so that on appeal you're  
4 not going to be able to say, well, he went outside the record  
5 because he's evil.

6 MR. MAGNESS: And, two, I believe the  
7 procedural order has one brief due June 7th?

8 JUDGE THOMPSON: I was just going to go over  
9 the procedural order. Thank you very much. Post-hearing  
10 briefs are due by 4:00 p.m. on June 7th. The final  
11 arbitrator's report is due by 4:00 p.m. on June 17th. And I  
12 can tell you right now it is my intention to meet that  
13 deadline.

14 Comments on the final arbitrator's report are  
15 due 4:00 p.m. on June 24th. Oral argument before the  
16 Commission is set for 9:00 a.m. on June 29th. And the final  
17 Commission arbitration decision is due by 4:00 p.m. on  
18 July 6th. I wish I could say that I didn't think I would be  
19 involved in helping the Commission reach its final decision,  
20 but I'm sure I will be. So it's going to be an interesting  
21 summer for me. It's going to be a lot of fun.

22 Anything else that the parties want to bring to  
23 my attention, file whatever you have, whatever you want to.  
24 Obviously serve it on all parties and expect screaming and  
25 yelling. Okay?

1                   MR. GRYZMALA: Just a preface, your Honor, we  
2                   will be filing minor modifications to Mr. Pool's testimony

3                   JUDGE THOMPSON: There have been things  
4                   trickling in all week. I've noticed them. And I assume  
5                   you've been receiving copies.

6                   I want to think the attorneys and witnesses for  
7                   doing an excellent job. This has been a very difficult case.  
8                   I'm sure we could have talked for weeks and weeks and weeks,  
9                   but at some point you just have to say, enough, let's just  
10                  finish this thing off and there you are.

11                  You have to let me know about any DPLs that are  
12                  settled. I hope your settlement discussions will continue.  
13                  Remember, why come to me to tell you what your contract's  
14                  going to be. Right? You should be able to work it out  
15                  between yourselves. I would think that would be preferable.  
16                  I'm going to, you know, obviously decide every DPL that's left  
17                  unresolved, but I hope you will resolve some more between now  
18                  and June 17th. Just let me know which ones they are.

19                  Thank you. Have a safe trip home. We are  
20                  adjourned.

21                  WHEREUPON, the hearing was adjourned.

22  
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