

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

NORTHEAST MISSOURI RURAL TELEPHONE COMPANY  
and MODERN TELECOMMUNICATIONS COMPANY, vs.  
SOUTHWESTERN BELL TELEPHONE COMPANY, et al.

Case No. TC-2002-57

HEARING

SEPTEMBER 8, 2004

FILED

SEP 20 2004

Missouri  
Public Service Commission

ORIGINAL

## MIDWEST LITIGATION SERVICES

*"From Discovery to Trial"*

● Jefferson City, MO

● Rolla, MO

● Columbia, MO

Headquarters  
711 North 11th Street  
St. Louis, Missouri 63101

● Springfield, MO

● Kansas City, MO

● Edwardsville, IL

Nationwide Scheduling

**1.800.280.3376**

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Hearing

September 8, 2004  
Jefferson City, Missouri  
Volume 12

Northeast Missouri Rural Telephone )  
Company and Modern Telecommunications )  
Company, )

Petitioners, )

v. )

Southwestern Bell Telephone Company, )  
et al., )

Respondents. )

Case No. TC-2002-57

KEVIN A. THOMPSON, presiding,  
Deputy Chief Regulatory Law Judge  
STEVE GAW, Chairman,  
CONNIE MURRAY,  
ROBERT M. CLAYTON, III,  
JEFF DAVIS,  
LINWARD "LIN" APPLING,  
Commissioners

REPORTED BY:  
Jennifer L. Leibach, RPR, CCR(T)  
MIDWEST LITIGATION SERVICES

## A P P E A R A N C E S

1

2

3

CRAIG JOHNSON, Attorney at Law

BRYAN LADE, Attorney at Law

4

ANDERECK, EVANS, MILNE, PEACE &amp; JOHNSON

700 East Capitol

5

Jefferson City, Missouri 65101

(573) 634-3422

6

FOR: Northeast Missouri Rural Telephone  
Company & Chariton Valley Telephone

7

8

9

MARK P. JOHNSON, Attorney at Law

SONNENSCHNEIN, NATH &amp; ROSENTHAL

10

4520 Main Street, Suite 1100

Kansas City, Missouri 64111

11

(816) 460-2400

12

FOR: T-Mobile, USA and Western Wireless

13

LEO BUB, Attorney at Law

14

One SBC Center, Room 3518

St. Louis, Missouri 63101

15

(314) 235-2508

16

FOR: Southwestern Bell Telephone, L.P., d/b/a  
SBC Missouri

17

18

DAVID MEYER, General Counsel

P.O. Box 360

19

Jefferson City, Missouri 65102

(573) 751-8706

20

FOR: Staff of the Public Service  
Commission

21

22

23

24

25

1 PROCEEDINGS

2 JUDGE THOMPSON: Good morning, my name is  
3 Kevin Thompson. I'm the Regulatory Law Judge assigned to  
4 preside over this matter, which is Northeast Missouri Rural  
5 Telephone Company and others versus Southwestern Bell  
6 Telephone Company and others, Case No. TC-2002-57.

7 This case is a consolidated case. Originally  
8 they were some seven or eight cases. I don't recall the  
9 exact number, and this is, in fact, the second hearing that  
10 we have held in this matter. The case was reopened by the  
11 Commission in order to determine a particular class of  
12 evidence or item of evidence that's necessary to resolve the  
13 case.

14 At this time, then, do any of the parties have  
15 anything to bring to my attention before we proceed? Hearing  
16 nothing, then, we'll go to opening statements, and the first  
17 opening will be the Missouri Independent Telephone Group,  
18 Mr. Johnson.

19 I guess we should do oral entries of  
20 appearance. I did forget that part. Why don't we start with  
21 you, Mr. Johnson.

22 MR. CRAIG JOHNSON: Thank you, your Honor.  
23 Craig Johnson and Bryan Lade, Andereck, Evans, Milne, Peace &  
24 Johnson, 700 East Capital, Jefferson City, Missouri, 65102,  
25 for the Petitioner.

1 JUDGE THOMPSON: Thank you. Mr. Other  
2 Johnson.

3 MR. MARK JOHNSON: May it please the  
4 Commission. On behalf of Respondents T-Mobile USA, Western  
5 Wireless and Aerial Communications, Mark Johnson of the law  
6 firm Sonnenschein, Nath & Rosenthal, 4520 Main Street, Suite  
7 1100, Kansas City, Missouri, 64111.

8 JUDGE THOMPSON: Thank you. Mr. Bub.

9 MR. BUB: Thank you, your Honor. Good  
10 morning. Leo Bub for SBC Missouri. Our address is One SBC  
11 Center, St. Louis, Missouri, 63101.

12 JUDGE THOMPSON: Mr. Meyer.

13 MR. MEYER: Good morning, David Meyer on  
14 behalf of the Staff of the Missouri Public Service  
15 Commission. Our address is PO Box 360, Jefferson City,  
16 Missouri, 65102.

17 JUDGE THOMPSON: Thank you. Now, Mr. Johnson,  
18 without further adieu, we'll go to opening statements.

19 MR. CRAIG JOHNSON: Thank you, Judge Thompson,  
20 and may it please the Commission.

21 First thing I wanted to do is kind of short  
22 circuit the opening statement I'm going to give this morning.  
23 We've tried this case or tried a prior hearing in this case  
24 in August of 2002, and I believe of the current five  
25 Commissioners, only Commissioner Murray and Commissioner Gaw

1 had some contact with the case at that time, so I had  
2 prepared more of an extended opening statement for the  
3 benefit of Commissioners Clayton, Davis, and Appling, none of  
4 whom are here, so what I --

5 JUDGE THOMPSON: Commissioner Appling is on  
6 his way.

7 MR. CRAIG JOHNSON: Okay. Well, I'm not going  
8 to sit here and talk to the people who know everything I'm  
9 going to be saying, so what I did do is made additional  
10 copies, and if it's acceptable to you, I could just hand out  
11 copies of the opening statement for anyone's use on the  
12 bench, if they wanted to refer to it later in the case.

13 And if I guess Commissioner Appling jumps down  
14 here, I might -- during the middle of my opening statement, I  
15 might go back and pick it up then, but I also have copies to  
16 hand out to everyone.

17 JUDGE THOMPSON: That would be fine. Do we  
18 need to mark this?

19 MR. CRAIG JOHNSON: No, it's not evidence.

20 MR. BUB: Your Honor, the only comment I'd  
21 like to make is if we don't hear the opening statement when  
22 it's being made, you know, we're not going to be able to  
23 respond to it, and if the Commissioners do come down, we  
24 didn't know that there was going to be written opening  
25 statements presented, so I think we need at least a little

1 bit of time to review it in order to --

2 JUDGE THOMPSON: Tell you what, why don't you  
3 just give it orally.

4 MR. CRAIG JOHNSON: All right.

5 JUDGE THOMPSON: And the other Commissioners  
6 will certainly be reading it.

7 MR. CRAIG JOHNSON: Okay. First thing I'd  
8 like to remind the Commission that the traffic that we're  
9 arguing about here is relatively old. It terminated between  
10 February 5, 1998, and the end of 2001. And as Judge Thompson  
11 pointed out, the purpose of this hearing today is to  
12 determine what proportions of that old traffic, the 1998 to  
13 2001 traffic, is interMTA or intraMTA in jurisdiction.

14 As I was saying earlier, I believe only two of  
15 the current five Commissioners have had any prior contact  
16 with this case, so I have prepared a written outline of an  
17 opening statement that we've distributed. And part of my  
18 opening statement today is designed to give my view or my  
19 overview of the history of the -- this dispute.

20 And one of the reasons I wanted to do that is  
21 because this case, in my view at least, has a fundamental  
22 difference that another case that's been submitted with the  
23 Commission, and that case is the Small Telephone Company  
24 Group versus T-Mobile.

25 And in that case, all of the traffic accident

1 that's at issue terminated to those small companies after  
2 they had a wireless termination tariff in effect. And as I  
3 recall, not being here for the hearing, but I think after the  
4 hearing, one of the primary issues of concern was whether or  
5 not Southwestern Bell would still have any secondary  
6 liability under a small company's wireless termination  
7 tariff.

8           The reason I point that out is that this case  
9 is fundamentally different because we do have left a small  
10 amount of traffic that terminated to Mocan Dial, Alma, and  
11 Chocktaw that was originated by T-Mobile. We've got an  
12 unopposed factor, so we've agreed all the traffic is intraMTA  
13 and would be subject to wireless termination traffic.

14           There is some traffic that was in dispute here  
15 at one time that did terminate while those three companies  
16 had a wireless termination tariff. Those were approved, I  
17 believe, in February of 2001, so there was about ten months  
18 of traffic that came to those companies. But all of the  
19 petitioners here, the six petitioners, all of their traffic  
20 that terminated to them, besides that small amount to those  
21 three companies, terminated when their only tariff was  
22 switched access tariff.

23           And so from that standpoint, there's a  
24 fundamental difference in this case and that case, because  
25 all this traffic terminated to us when we did not have either



1 a wireless termination tariff and we did not have an  
2 interconnection agreement that this Commission had approved,  
3 which would have provided reciprocal compensation.

4 Now, I want to back up a little bit and give  
5 you a little bit of the preceding history because there was,  
6 unfortunately, a large amount of preceding history that came  
7 before we had our first hearing in this case two years ago in  
8 August of 2002.

9 The traffic we're talking about is traffic  
10 that a cellular customer makes. Its wireless company takes  
11 the call, hands it off to Southwestern Bell, Southwestern  
12 Bell will transport it to us, and is terminated on our  
13 facilities. In between, I would say, 1990, and February 5,  
14 1998, Southwestern Bell had a state tariff, a wireless  
15 interconnection tariff that was the vehicle these wireless  
16 carriers used to give their traffic to Southwestern Bell, or  
17 SBC as they're now more commonly referred to. As pursuant to  
18 that tariff that SBC gave the traffic to the small companies.

19 In the mid to late 90's, after there was no  
20 compensation paid for this wireless traffic, there were three  
21 complaint cases filed and decided by this Commission that  
22 said Southwestern Bell had to pay terminating access for all  
23 that wireless traffic. There was United complaint case,  
24 there was a Mid-Missouri Telephone Company complaint case,  
25 and there was a Chariton Valley complaint case.

1           After those cases were decided, Southwestern  
2 Bell filed a modification to that Missouri tariff where they  
3 wanted to end their role as paying for the termination to the  
4 small companies, or the third party carriers. They wanted  
5 their compensation responsibility to stop where their network  
6 stopped.

7           And the Commission approved that tariff,  
8 changing it to what's usually called a transiting role, and  
9 they approved that tariff effective February 5, 1998. But  
10 when the Commission approved that, they also -- also approved  
11 language, and they required Bell's tariff to say that none of  
12 this traffic would come to the small companies, like my  
13 clients, unless there was an interconnection agreement  
14 covering that traffic.

15           And I think the Commission's expectation at  
16 the time was they wanted the wireless carriers to request,  
17 negotiate, and have arbitrated a reciprocal compensation  
18 agreement with the small companies. If that had been done,  
19 we would have had a reciprocal compensation, the factors  
20 would have been there, the rate would have been there, and we  
21 wouldn't have had the compensation dispute that we have  
22 today. They didn't do that and the traffic kept coming when  
23 we didn't have an agreement, all we had was our access  
24 tariff.

25           Then in this -- in 1996, and maybe I'm getting

1 to these things out of order, the Telecommunications Act of  
2 1996 introduced local competition, and it introduced a new  
3 form of compensation, reciprocal compensation.

4 And reciprocal compensation was supposed to be  
5 cheaper than access compensation. But not only did the Act  
6 adopt this new mechanism, it also put into place specific  
7 procedures by which a local competitor, a CLEC, a land line  
8 company, or a wireless carrier had to go through in order to  
9 get reciprocal compensation.

10 And that Act made arrangements for them to  
11 request interconnection, required us to negotiate in good  
12 faith, and if we reached an agreement, we had to submit it to  
13 the state Commission for approval. If we didn't reach an  
14 agreement, either carrier could request arbitration, and then  
15 the Commission would arbitrate it for us. And that's exactly  
16 what the wireless carriers did with Southwestern Bell.

17 Even though they had a state tariff that they  
18 were purchasing services out of from Southwestern Bell, the  
19 wireless interconnection tariff that I mentioned earlier,  
20 they wanted reciprocal compensation because they felt it  
21 would be a better arrangement for them. So they negotiated  
22 and had approved reciprocal compensation interconnection  
23 agreements with Southwestern Bell, even after this Commission  
24 approved the change to Bell's state tariff.

25 In those agreements, there also were terms

1 that Southwestern Bell placed in there that made it the  
2 responsibility of the wireless carrier to get agreements with  
3 the third party carriers, the small companies, and they were  
4 supposed to get those agreements with us, again, before they  
5 send traffic to us. That didn't happen.

6 So neither Southwestern Bell allowed the  
7 traffic to flow, despite the Commission's order in the tariff  
8 case and despite the terms of these agreements, and the  
9 wireless carriers did not abide by the terms of the  
10 Commission's order approving the change in the wireless  
11 tariff of Southwestern Bell, and they didn't abide the terms  
12 of the interconnection agreements that said they were  
13 supposed to get agreements with us. They just kept sending  
14 the traffic, all we had to bill was our access tariff.

15 Under our access tariff, Southwestern Bell is  
16 the customer that ordered access from us, and they were the  
17 ones that were paying us access before. The pre-conditions  
18 that were supposed to exist before there was a change in that  
19 relationship never happened, and so we billed Bell access,  
20 they refused to pay it. We billed the wireless carrier, they  
21 refused to pay it. And so we're here today, we filed these  
22 complaints because we were trying to find out who's got to  
23 pay us and what they have to pay for.

24 Since 1998, both this Commission and the  
25 Circuit Court and the Courts of Appeal have ruled that it's

1 the wireless carrier's responsibility to request, negotiate,  
2 and retain reciprocal compensation agreements. If they don't  
3 do that, there's no reason you can't apply state tariffs to  
4 the wireless traffic.

5 This Commission said that first when it  
6 approved the wireless -- the small company's wireless  
7 termination service tariffs. I think it's referred to as the  
8 Mark Twain, et. al. case. The Circuit Court agreed and the  
9 Court of Appeals agreed. And the reason they agreed in the  
10 Commission's explanation, which the Court of Appeals agreed  
11 with, was reciprocal compensation is a necessary component of  
12 an interconnection agreement.

13 And it's something the parties have to  
14 negotiate, but it's not a necessary component of the state  
15 tariffs, and if this traffic is coming without anybody paying  
16 compensation, there's nothing wrong with applying a state  
17 tariff because that will incent and should incent the  
18 wireless carriers to complete the process that only they can  
19 make sure is completed, which is what you expected in 1997  
20 when you ordered the change in Bell's tariff, and that's what  
21 you admitted when you approved the wireless termination  
22 tariff to the small companies in 2001 that had been  
23 unsuccessful in occurring.

24 So I'm telling you today that we're going to  
25 ask -- today, we're only having a hearing about the

1 proportions of traffic that are in dispute. And again,  
2 because of the time involved in these series of disputes,  
3 what we're fighting about here is about four years' worth of  
4 traffic. The most recent of which stopped coming in about  
5 2001. So we're talking about real old traffic and there's  
6 another three and a half years' worth of traffic out there.

7 And we want you to hold that access can be  
8 applied to the traffic in dispute in this case. That's the  
9 only holding that we think you can provide that's going to  
10 incent the rest of the wireless carriers to complete the  
11 process that they did with Bell in order to get out of Bell's  
12 tariff, that they did with some of the small companies in  
13 order to get out of the small companies' wireless termination  
14 tariffs, but which they haven't done or did not do with us  
15 when our only state tariff was our access tariff.

16 We -- I don't know when we filed these  
17 complaints, I think in 2001. We had our first hearing in  
18 August of 2002. I think sometime in April of 2003, this  
19 Commission decided it wanted to have evidence as to how much  
20 of the traffic, the '98 to 2001 traffic, was interMTA, which  
21 means the call originated in one major trading area and  
22 terminated in another major trading area, because that  
23 interMTA traffic everybody agrees is access traffic.

24 Versus how much of the traffic in dispute is  
25 intraMTA, because for purposes of applying reciprocal

1 compensation, if there's a reciprocal compensation agreement,  
2 the FCC has said that wireless to land line calls that  
3 originate and terminate within the same MTA, or local, and  
4 eligible for this new form of compensation, reciprocal  
5 compensation.

6 And we have -- that's what this hearing is  
7 for. And I'm just going to tell you all right now that with  
8 respect to this traffic that terminated when we only had an  
9 access tariff in place, I'm not sure it makes any difference  
10 if that traffic was intraMTA or interMTA. They didn't have a  
11 recip comp agreement with us, our access tariff doesn't  
12 differentiate between calls that are interMTA or intraMTA.  
13 Only a wireless termination tariff or an approved  
14 interconnection agreement would have made that distinction.  
15 That's all the bad news.

16 The good news is that since we filed these  
17 complaints, we have been successful in getting some  
18 settlements. There were six to eight wireless carriers and  
19 six petitioners, so we had a potential of 40 or 50  
20 complaints. There weren't that many, but we've settled a lot  
21 of them, and there's been three types of settlements.

22 One is what I call a comprehensive settlement.  
23 For example, Cingular and Sprint. That comprehensive  
24 settlement included not only a payment of all the back  
25 traffic that hadn't been paid for, it also included an

1 interconnection agreement so that going forward we had a rate  
2 for the intraMTA traffic, we had a factor to distinguish the  
3 interMTA versus the intraMTA traffic, and we had the rest of  
4 the terms and conditions necessary to have an interconnection  
5 agreement with Sprint and -- I'm talking about Sprint, PCS,  
6 the wireless carrier, and with Cingular. Those have been  
7 approved by the Commission, and I think we've dismissed those  
8 complaints.

9           The second type of a settlement we had is a  
10 little more obscure, because I think it was -- it was the  
11 type of settlement that we did for Nextel early in the case,  
12 for Verizon Wireless early in the case, and what we've  
13 recently done for Western Wireless. In those types of  
14 settlements, they have paid us for the traffic that had been  
15 -- past traffic that had been uncompensated for. We've  
16 compromised that and settled it.

17           But instead of them negotiating and having  
18 approved an interconnection agreement with factors and rates  
19 for the traffic coming forward, they have agreed to take that  
20 traffic off Bell's network and they're putting on the  
21 interexchange carrier's network where everyone agrees that it  
22 doesn't matter if it's interMTA or intraMTA. Since it's on  
23 the interexchange carrier's network, it's access traffic.

24           And the third type of an agreement that we  
25 have today is an agreement only as to the proportions of the



1 traffic in dispute, the '98 to 2001 traffic, that is interMTA  
2 versus intraMTA. And we got those agreements two ways.

3 One is the three small companies, Mocan Dial,  
4 Alma and Chocktaw that have wireless termination tariffs in  
5 effect. They also are situated fairly close to the middle of  
6 their MTA, or major trading area, and you would expect most  
7 of their traffic to be intraMTA. And their rate differential  
8 between their access rates and what their wireless  
9 termination service tariff rates is not that great, and the  
10 traffic volumes in dispute between those companies and the  
11 wireless carriers are not that great.

12 So they proposed just taking a zero interMTA  
13 factor, we'll just agree that all of our traffic is intraMTA  
14 so we don't have to come down here and fight before the  
15 Commission about what that factor is, and we don't have to  
16 try to go to all the trouble to do a call study. And so they  
17 filed zero factors, and I think it's correct to say that no  
18 carrier has opposed the zero percent factor.

19 So there's a zero, or unopposed zero factor,  
20 between Alma Telephone Company and US Cellular, between Alma  
21 Telephone Company and T-Mobile, between Chocktaw Telephone  
22 Company and US Cellular, between Mocan Dial, Inc. and US  
23 Cellular, and between Mocan Dial and T-Mobile.

24 We also have a signed stipulation with United  
25 States Cellular. And Chariton Valley, one of my clients, and

1 another signed stipulation is an interMTA factor between US  
2 Cellular and Northeast Missouri Rural Telephone Company,  
3 another one of my clients.

4 The factor that Northeast and United States  
5 Cellular agreed to is 22.5 percent, which means they agree  
6 that of the traffic, US Cellular traffic, terminated to  
7 Northeast, 22.5 percent is interMTA, crosses the MTA  
8 boundaries. And conversely, since there's only -- it's only  
9 possible to be either inter or intra, there's no third  
10 category here, the other 77.5 percent would be intraMTA  
11 traffic. And between Chariton Valley and United States  
12 Cellular, the factor they've agreed to is 26.0 percent  
13 interMTA, which would mean 74.0 percent is intraMTA.

14 So after having said all that, the only two  
15 factors that are left for purposes of this hearing for the  
16 limited purpose that you reopened the record are the interMTA  
17 factors between T-Mobile and Northeast Missouri Rural  
18 Telephone Company and between T-Mobile and Chariton Valley  
19 Telephone Company.

20 And you have some evidence in front of you.  
21 My clients have pre-filed testimony, and they'll -- they'll  
22 show you that they have done call studies. When they get  
23 this traffic, it all comes over the Southwestern Bell trunk  
24 to them. And they went back and took -- I think Northeast  
25 took three months out of the '98 to 2001 period, and Chariton

1 Valley took two months, and they looked at those and they  
2 studied all the calls that came in from T-Mobile.

3 And the information they get over the network  
4 will give them the calling, the wireless customers' phone  
5 number, and they can go to the LERG and other industry  
6 resources and figure out where that customer resides, and  
7 they can figure out which MTA, major trading area, is his or  
8 her home MTA.

9 They also know where the call terminates to  
10 their own customer, and they can figure out what MTA customer  
11 lives in. So then you look at the original MTA and  
12 terminating MTA, and if they're the same, it's an intraMTA  
13 call. If they're different, it's an interMTA call. And  
14 Northeast's study of all the traffic coming from T-Mobile  
15 showed that every one of those calls was an interMTA call,  
16 100 percent. Chariton Valley's study showed that 73 percent  
17 of those calls were interMTA.

18 Now we got some explaining to do to maybe take  
19 care of any disbelief that may be hanging there. When these  
20 wireless carriers interconnect with Southwestern Bell, the  
21 most logical place for them to interconnect is, in this case,  
22 is the Kansas City Magee tandem of Southwestern Bell. It's  
23 located in Kansas City.

24 Southwestern Bell, the land line company, it  
25 has what they call access tandems or lata tandems. And the

1 Kansas City lata, if you go back to the old AT&T breakup in  
2 the descent decree, Southwestern Bell is still prohibited  
3 from transporting calls across lata boundaries. So if a  
4 wireless carrier wants to know where to take a call to get it  
5 to my clients, since they're all served by Southwestern  
6 Bell's Kansas City lata tandem, that's the logical place to  
7 get it is Southwestern Bell.

8 But when the FCC created reciprocal  
9 compensation, they didn't use the lata boundaries for  
10 determining whether a wireless call is local or access. They  
11 used major trading areas. And primarily in Missouri, and  
12 we've got a schedule attached to our testimony that shows you  
13 where this MTA boundary, it pretty much splits Missouri in  
14 half.

15 There's the St. Louis MTA, or major trading  
16 area, which includes the eastern half of Missouri and some of  
17 Illinois, and then there's the Kansas City MTA, the western  
18 half of Missouri plus some of Kansas. Plus for purposes of  
19 this case, Northeast Missouri has one exchange up in the very  
20 northeast corner of this state all the way up there by Iowa  
21 that's in the Des Moines major trading area.

22 So having said that, I want to give you a  
23 little bit of the logistics or the dynamics of where  
24 Northeast and Chariton Valley's customers lie in relation to  
25 these major trading area boundaries. Northeast has 8,800

1 access lines, and they have 14 different exchanges. Again,  
2 all of the them are served by Southwestern Bell's Kansas City  
3 lata tandem. And so if a wireless carrier wants to deliver  
4 traffic that's going to Northeast, they give it to  
5 Southwestern Bell at Magee in Kansas City.

6 But of Northeast's 14 exchanges, 12 of them  
7 are entirely in the St. Louis major trading area. One of  
8 their exchanges is entirely in the Des Moines MTA. And their  
9 last exchange is split between Kansas City MTA and the St.  
10 Louis MTA. MTA boundaries actually splits their exchange,  
11 because the MTA boundaries largely follow county lines, and  
12 some of the exchanges out here don't necessarily follow  
13 county lines. So only 31 of Northeast's 8,800 access lines  
14 lie in the Kansas City major trading area. That is less than  
15 three and a half percent.

16 Chariton Valley is kind of the same but a  
17 little different. Chariton Valley lies in two major trading  
18 areas, Kansas City and St. Louis. Again, they're entirely  
19 served out of Southwestern Bell's Kansas City lata tandem.  
20 Chariton Valley has 18 exchanges; 13 of them lie entirely in  
21 the St. Louis MTA, 2 of them are entirely in the Kansas City  
22 MTA; and 3 of them are split between Kansas City and St.  
23 Louis. Again, the MTA boundary splits those three exchanges.  
24 Of Chariton Valley's 8,620 access lines, 16 percent of them  
25 or 1,417 are in the Kansas City MTA. The other 84 percent

1 are in the St. Louis MTA.

2 So when we looked at the traffic information  
3 that we got from the network, compared the originating MTA to  
4 the terminating MTA on these wireless calls, just for  
5 T-Mobile, we came up with 173 percent factors.

6 And I wanted to tell you something else about  
7 our studies. Our studies were performed on the only call  
8 information that's available. These wireless carriers, if  
9 they want to, and they used to do this because they needed to  
10 do it in order to distinguish a roaming call from a  
11 non-roaming call when they were billing their end users --  
12 or, well, maybe I should back up.

13 The FCC, when they gave guidance to the  
14 industry as to how to come up with factors for purposes of  
15 negotiating these interconnection agreements, they said  
16 there's three methods that we can think of. One is you get  
17 together, you exchange your call information, you study it,  
18 and you use that to negotiate an agreed factor. You put that  
19 factor in agreement, it gets approved, no problem, you know  
20 what you're going to bill.

21 The second method they said was or if you  
22 don't want to just have a surrogate factor that's used  
23 permanently or until you decide to renegotiate that factor,  
24 you can have the wireless carrier pass you the information  
25 that tells you where the wireless call originated. Because

1 the FCC has said that for purposes of determining whether  
2 it's inter or intraMTA, it's the originating cell site  
3 location that determines where that call originated.

4 So when the wireless customer dials the  
5 number, the first cell tower that hits is where that call  
6 originated and where that cell tower is located what MTA it's  
7 in will determine whether the call is inter or intra in  
8 combination with the information as to the calling or called  
9 party's number and location.

10 And the third thing the FCC said you could use  
11 is you can, just for an easy point of reference, you can just  
12 say where are you guys interconnecting, and just assume  
13 that's the origination point for where all the traffic  
14 originates, then all you got to do is look where the call  
15 terminates and determine whether it's inter or intraMTA.

16 Of course, we didn't have the opportunity to  
17 have any of these factors negotiated or these methods  
18 utilized in an agreement because we don't have any  
19 agreements. But when we decided to do our call study, we  
20 decided to use what the FCC said was the best method, and  
21 that is to try to figure out where the wireless call  
22 originated.

23 But we don't get passed, through the network,  
24 that information. Only the wireless carrier could have  
25 provided that information and Bell could have passed to us if

1 it had been provided, but T-Mobile in this case didn't record  
2 it and didn't preserve it. We asked for it, they don't have  
3 it.

4 So they may come in here and say that our  
5 studies have errors in them. And there are, in fact, two  
6 types of theoretical errors in our studies. We assumed that  
7 we're the -- that all these calls were made by the wireless  
8 customer while the wireless customer was in their major  
9 trading area, that area that covers an entire state, or in  
10 our state, half of Missouri and half of Illinois, or half of  
11 Kansas and half of -- the other half of Missouri.

12 And we thought that was a fairly safe  
13 assumption when we thought it was safe to assume that most  
14 wireless customers will make a call, most of the wireless  
15 calls from their home MTA. If we're wrong, there are two  
16 types of errors.

17 If that guy was -- customer was -- if the  
18 number shows that they're in an MTA that's different from our  
19 records where they showed that call terminated, the MTA where  
20 the call terminated. If they were roaming in that MTA where  
21 the call terminated, then we could have mislabeled as an  
22 interMTA call, a call that was truly intraMTA. But that  
23 caller would have had to be driving or traveling outside of  
24 his home and would have had to be in the MTA where the called  
25 party was and called that party at the same time.



1           The other type of error that we could have  
2     made was we could have seen a wireless customer's number, and  
3     under the LERG, it would have resided in the same MTA the  
4     call would have terminated to, in which case it would have  
5     been an intraMTA call. But in fact, that call could have  
6     been made while the caller, the mobile customer was traveling  
7     away from his home MTA. So in that situation, we could have  
8     mislabeled an intraMTA call when, in fact, it really was an  
9     interMTA call.

10           Those are theoretical problems with our  
11     studies, but nobody can say that we mislabeled any particular  
12     call because nobody preserved the true call records from 1998  
13     to 2001. And you're not going to hear anybody point to any  
14     call that's actually in our studies and say it's wrongfully  
15     labeled. It's the best we got. It's all the information  
16     they give us.

17           I don't think you should sit here and listen  
18     kindly to them suggesting you should fault our study because  
19     we don't have information that they failed to preserve, and  
20     only they could have preserved. So we're going to ask you to  
21     rule for these two factors, the interMTA factors between  
22     T-Mobile and Northeast and between T-Mobile and Chariton  
23     Valley, the 100 percent and the 73 percent.

24           And we're going to ask you to rule -- once  
25     this hearing is over, we're going to go back and pick up the

1 record, and I suppose the briefing and proposed decisions  
2 that have been pending since the August 2002 hearing, and  
3 we're going to ask you to rule in our favor on these issues  
4 because we want to get the rest of these carriers in, we want  
5 agreements, we want comprehensive agreements, and we think  
6 that's the only decision that's going to make that happen.

7 We still have all the T-Mobile traffic from  
8 2001 to now to worry about, even after you decide this case,  
9 because this case doesn't go -- doesn't address traffic  
10 terminating after 2001.

11 The same with US Cellular. And even though we  
12 have an agreed factor with US Cellular, they are the huge  
13 chair that's left in terms of traffic. There's millions and  
14 millions of minutes that haven't been paid for from '98 to  
15 2001, and there's millions and millions of minutes that have  
16 accrued since 2001.

17 And also we've got AllTel Wireless and AT&T  
18 Wireless, and we're going to -- if we can't use the results  
19 of this case to get those things taken care of, we're going  
20 to be back.

21 Thank you.

22 JUDGE THOMPSON: Thank you, Mr. Johnson. Any  
23 questions from the bench? Very well.

24 Mr. Bub, aren't you next? I don't care what  
25 order that you go in, I just thought in the order that you

1 filed --

2 MR. BUB: Thank you, your Honor, and good  
3 morning. I'll try and be brief. I'd like to respond briefly  
4 to some of the history that Mr. Johnson raised in his opening  
5 statement, at least to give you the perspective of  
6 Southwestern Bell Telephone d/b/a SBC Missouri. And I'll be  
7 referring to ourselves as SBC Missouri throughout. As  
8 Mr. Johnson pointed out, that's our new business name, and I  
9 appreciate him using it as well. It's finally sinking in.

10 As you'll recall from the prior hearings, our  
11 primary interest in this case is the claim against SBC  
12 Missouri for secondary liability. And as Mr. Johnson  
13 indicated, we're the carrier in the middle. These calls that  
14 are issued here originated with the wireless carriers, they  
15 handed them to SBC Missouri.

16 Our network then distributed them to the small  
17 companies behind us, including the complainants here, and we  
18 -- if there's one point that I could leave you with from this  
19 proceeding is that we strongly oppose the imposition of  
20 secondary liability on the transit company.

21 There's absolutely no authority to hold SBC or  
22 any other transit company liable for this type of traffic.  
23 And you need to know that we're not the only transit company  
24 in the state. Sprint Missouri also is a transit company.  
25 Wireless carriers interconnect with them, other land line

1 companies interconnect with them to transit and distribute  
2 traffic to small companies that are behind Sprint Missouri,  
3 Inc., the LEC.

4 They're not here today because, as Mr. Johnson  
5 indicated, the claims that relate to wireless carriers that  
6 interconnect with Sprint have been settled, so they're not  
7 here, but I just want to make sure that you understand that  
8 there are other transit carriers besides SBC Missouri.

9 Now, listening to Mr. Johnson's opening  
10 statement, I think you might be left with the impression that  
11 there's something wrong or inappropriate with transit  
12 traffic. And I need to tell that you that's -- that there's  
13 nothing further than the truth. Transit or transport, as  
14 it's also called, is a normal part of telecommunication. Not  
15 only in this state but throughout the country. And that's  
16 because every telecom's carrier's network doesn't go  
17 anywhere.

18 In other cases, I've used an analogy to the  
19 railroads. One railroad, their traffic doesn't go throughout  
20 the United States, and if they have a customer that wants to  
21 ship a product from one point in the country or the state to  
22 another, it needs to use other railroad's tracks.

23 An example we've used is farmer in Jefferson  
24 City that would want to ship some corn from Jefferson City to  
25 Hannibal, the way they do that is they would contract with

1 Union Pacific that serves this area to get it up there.

2 Well, Union Pacific's tracks don't go all the way to  
3 Hannibal.

4 Physically, they take that boxcar full of its  
5 customer's grain, take it to St. Louis, hand the car off to  
6 the St. Louis terminal railroad association railroad. They  
7 would switch the car, run it over the tracks to where they  
8 meet up with the Burlington Northern, and then Burlington  
9 Northern would take it up to Hannibal.

10 In that situation, Burlington Northern then  
11 would deliver that boxcar to wherever the farmer wanted it  
12 taken. And in that situation, Burlington Northern doesn't  
13 bill the terminal railroad, they bill the originating  
14 shipper, the Union Pacific, for the use of the Burlington  
15 Northern tracks. The same thing with the St. Louis Terminal  
16 Railroad Association. They also bill the originating  
17 shipper, Union Pacific, for the use of its tracks.

18 Same thing happens in telecom. If a customer,  
19 say, Sprint Missouri, Inc., the LEC, in Warrensburg,  
20 Missouri, if they wanted to make -- if one of their customers  
21 wanted to make a call to Chariton Valley, all within that  
22 Kansas City lata, Sprint Missouri would take the call from  
23 their customer's house, take it to its meet point with SBC  
24 Missouri, and then we would take it, switch it, and take it  
25 on to Chariton Valley's -- our meet point where Chariton

1 Valley. Chariton Valley is one of the small LECs that is  
2 behind our tandem.

3 So in that situation, you have three LECs that  
4 are involved in carrying that one customer's call. The  
5 originating, SBC Missouri, and then Chariton Valley. And in  
6 that situation, happens today, Chariton Valley doesn't bill  
7 SBC Missouri, the carrier in the middle, for the termination  
8 charges that it incurs. It bills the originating carrier,  
9 Sprint Missouri, Inc., and that happens on all LEC originated  
10 tolls in Missouri.

11 And there are very complex and long-standing  
12 relationships that govern how records and facilities and  
13 billing happens when you have more than one LEC involved in  
14 the call, and those are all encompassed in the LEC tariffs,  
15 and it's called meet point billing.

16 Essentially, the concept is that each carrier  
17 bills access charges out of its overtariff to the originating  
18 carrier. So in this example that we have on the call from  
19 Warrensburg, SBC, carrier in the middle, would bill its  
20 transport and some switching charges to the originating  
21 carrier, Sprint. And then Chariton Valley behind us would  
22 also bill its charges out of its access tariff to the  
23 originating carrier, Sprint Missouri, Inc.

24 That's meet point billing, it's a normal part  
25 of business, and it's in everybody's tariffs. It's in our

1 tariff, it's in the small company's tariffs, and it's in the  
2 national tariffs as well.

3 I also need to point out that Mr. Johnson  
4 indicated that both Chariton Valley, and another of his  
5 clients, Northeast, another complainant here, have reached  
6 full traffic termination agreements with both Cingular and  
7 Sprint PCS, Sprint the wireless carrier, and those have  
8 resolved all the claims here. So those minutes aren't at  
9 issue.

10 But one thing that I want to point out is  
11 those agreements are fully consistent with this industry  
12 standard under which the terminating carrier bills the  
13 originating wireless company, because these agreements, they  
14 call for the wireless carrier to pay for the termination  
15 charges. They don't call for the terminating carrier,  
16 Chariton Valley or Northeast, to bill the transit company.  
17 Those agreements provide that the terminating company is to  
18 bill the wireless carrier.

19 And this shouldn't be surprising. These  
20 agreements have all been approved by the Commission here in  
21 Missouri because they conform to the law, and the law on this  
22 is very clear. The FCC has ruled on numerous occasions that  
23 it's the calling party's network that pays. Step back a  
24 minute, the calling party here in this case, it would be the  
25 cellular carrier -- excuse me, the cellular subscriber, the

1 one that makes the call.

2 And the calling party's network is a cellular  
3 company, so for all these calls that terminate to the small  
4 companies here under the FCC rules, it's the calling party's  
5 network, the wireless carrier that pays. And each time the  
6 FCC looked at this issue, it ruled that the transit company  
7 is not the one responsible for the terminating charges. It's  
8 the calling party's network that's the one that's  
9 responsible.

10 And that's our position in a nutshell on the  
11 secondary liability issue. But I don't want to leave the  
12 impression that we're somehow trying to prevent the small  
13 companies or any other from receiving appropriate  
14 compensation for terminating wireless calls. We're not.  
15 Remember, we're only here because we've been sued, small  
16 companies have sued us along with the originating wireless  
17 carriers.

18 Our view is that all companies, including the  
19 small LECs here, should receive appropriate compensation for  
20 terminating another carrier's calls. That's a matter between  
21 the small companies and the wireless carriers. It's not SBC  
22 Missouri's traffic. Our customers didn't make the calls, we  
23 shouldn't be part of this dispute.

24 Now, I'd like to turn briefly to the factor  
25 issue here. Our position here is basically that the factors



1 that the small companies are proposing for T-Mobile, the ones  
2 that are left, are too high, and that's all reflected in our  
3 position statement here. You know our view is that these  
4 factors that they've proposed are not sufficiently supported.

5 Now, as you'll see from the pre-filed  
6 testimony, we did file testimony on this factor issue, but  
7 since we did that, or when we did that, there was several  
8 factors at issue. And since that time, the issues have  
9 narrowed significantly, so now there's only, I think, four  
10 factors at issue, and they all, I think, revolve around  
11 T-Mobile. And in view of the narrowing of the issues, and I  
12 guess the small amount of -- that's at issue, we've decided  
13 that to help move things along here, we will not be  
14 presenting our testimony.

15 We're hoping that that will make things go a  
16 little bit quicker here, but our position still is that  
17 they're not sufficiently supported, but we just think it  
18 would be a little more efficient for the Commission and the  
19 party's time if we didn't present our witness.

20 So with that, I very much appreciate your time  
21 and attention throughout this hearing. We will be doing some  
22 limited cross-examination, but our participation will  
23 probably be limited.

24 JUDGE THOMPSON: Thank you, Mr. Bub.

25 MR. BUB: Thank you.

1 JUDGE THOMPSON: Any questions from the bench  
2 for Mr. Bub? Thank you, Mr. Bub. You may step down. Mr.  
3 T-Mobile Johnson. Oh, excuse me, Mr. -- Commissioner  
4 Appling.

5 COMMISSIONER APPLING: Would you name for me,  
6 again, the four companies that is in dispute that we're  
7 trying to make the agreement on here today? Can you do that  
8 next?

9 MR. MARK JOHNSON: I'll be happy to.

10 COMMISSIONER APPLING: Okay. Thanks.

11 MR. MARK JOHNSON: May it please the  
12 Commission. My name is Mark Johnson. I'm here today on  
13 behalf of three companies, each of which -- all of which were  
14 related at one point, and let me tell you -- let me explain  
15 the -- how these companies have come to be.

16 In 1999, a company called Voicestream split  
17 into two different companies, Western Wireless and  
18 Voicestream. Voicestream continued to exist, and it spun off  
19 Western Wireless. And if you don't mind, let me point out  
20 where -- and they're both wireless companies, and let me  
21 point out to you where they provide service back in 1999,  
22 where they provided service in Missouri.

23 What I have here is obviously a map of the  
24 state over which I have layed a transparency, which shows  
25 where the major trading areas in Missouri are. The thick

1 black lines show where the MTA, the acronym that you have  
2 heard and will continue to hear, are situated in the state.

3 In the western half of the state, we have the  
4 Kansas City MTA; eastern half of the state, including areas  
5 -- cities such as Springfield and Poplar Bluff and Rolla and  
6 the like, we have the St. Louis MTA. And way up in the  
7 northeastern corner, there's a little bit of the Des Moines  
8 MTA.

9 MTAs were created by the Federal  
10 Communications Commission when they initially licensed  
11 wireless carriers. And MTAs are based on county lines, and  
12 so what you'll see here, if you look closely, is that each of  
13 the MTA lines are county lines. Easy enough.

14 The problem is that the local exchange  
15 carriers, which you regulate, provide service based on  
16 exchanges, which sometimes are based on county lines, but  
17 that is, in fact, the exception.

18 And what I have tried to put on here and I  
19 don't know how easy it is for you to see it, are the lines --  
20 the outlines of the exchanges served by, first, Northeast,  
21 which is, as Mr. Craig Johnson said, and I'm Mark Johnson,  
22 said in his opening statement, is up in the northeast part of  
23 the state. And then there's Chariton Valley, which is to the  
24 slightly south and to the west of the northeast service area,  
25 and it's this area right here. I outlined it in blue, and

1 there's some crosshatching. And the northeast area, I  
2 outlined in red and also included some crosshatching.

3 But what you'll see, as I believe Mr. Johnson  
4 pointed out, is that the Northeast service area lies almost  
5 entirely within the St. Louis MTA. There is a -- one  
6 exchange that's in the Des Moines MTA up here in the  
7 northeastern corner in the state. On the other hand,  
8 Chariton Valley service area sits astride the MTA line  
9 between St. Louis on the right -- on your right, and Kansas  
10 City on your left.

11 You have some Chariton Valley exchanges, which  
12 I'm pointing to here, that fall in the Kansas City MTA, and  
13 some Chariton Valley exchanges that fall in the St. Louis  
14 MTA, and then you have, I believe, one or two, that sit  
15 astride the MTA line. Nobody said this was going to be easy.

16 Now, Mike -- oh, I'm sorry, I said I would  
17 point out where Western Wireless and Voicestream, which about  
18 a year later, in about 2000, changed its name to T-Mobile, so  
19 what was Voicestream is now T-Mobile. T-Mobile, back in the  
20 1999-2000 time frame provided service in the Kansas City  
21 area. Since then, in the last few years, it has also started  
22 to provide service in the St. Louis metropolitan area.

23 Western Wireless, on the other hand, is a  
24 rural wireless carrier. The -- the Federal Communications  
25 Commission licensed a number of wireless carriers around the

1 country to provide service in what are called rural service  
2 areas, or RSAs, again, based on county lines. And Western  
3 Wireless provides service in one RSA in the state, and that  
4 is in sort of the southwest central part of the state, it's a  
5 five-county service area, including towns such as Nevada --  
6 well, it's Bates County, Henry, St. Clair, Cedar, and Vernon  
7 Counties, and I'm kind of outlining it right here. So that's  
8 where Western Wireless provides service.

9 Now, the third respondent, whose name you've  
10 heard, is Aerial Communications. Aerial Communications was  
11 acquired by Voicestream in 2000, so its liability, if any in  
12 this case, has been subsumed, absorbed by what is now  
13 T-Mobile.

14 As Mr. Johnson indicated, Western Wireless and  
15 his clients have reached a settlement, and as I understand  
16 it, it is a comprehensive settlement. Western Wireless has  
17 made payment to Mr. Johnson's clients, and as I understand  
18 it, a Motion to Dismiss Western Wireless from the case has  
19 been filed. Although not yet ruled on, I anticipate that  
20 Western Wireless will soon be eliminated from this case  
21 altogether.

22 So that leaves it T-Mobile as the sole  
23 respondent, and as Mr. Johnson indicated in his opening  
24 statement, what we are here today for is one issue, to decide  
25 one issue. And that is to determine the appropriate

1 allocation of traffic generated by T-Mobile customers between  
2 February of 1998 and December of 2001, between -- and traffic  
3 going to these -- his two companies, Northeast and Chariton  
4 Valley, to determine the jurisdictional allocation between  
5 MTAs of that traffic. That's all we're here for today.

6 As the complainants, Northeast and Chariton  
7 Valley, bear the burden of proof in this case. My client  
8 does not bear a burden of proof. Chariton Valley and  
9 Northeast will present testimony today through pre-filed  
10 testimony, and then testimony on the stand from their  
11 witnesses concerning their position as to the appropriate  
12 calculation of the split of that traffic between -- between  
13 MTAs.

14 An important point to remember, as you listen  
15 to the testimony, is that the amount of money that those  
16 companies will receive for interMTA traffic is easy to  
17 calculate. Because as Mr. Johnson told you, the Federal  
18 Communications Commission has said that traffic that is  
19 interMTA in nature will generate revenues for the terminating  
20 local exchange carriers, such as Northeast and Chariton  
21 Valley, based upon their intrastate access charges.

22 And you have before you a tariff, which --  
23 which your predecessors approved, from -- or I should say  
24 tariffs from both of those companies, which state so many  
25 cents per minute for intrastate access charges. So in

1 calculating how much in revenues that those companies would  
2 receive from the traffic generated by T-Mobile, their  
3 incentive would be for it to be interMTA in nature because  
4 that calculation would be quite easy. So many cents --  
5 pardon me, so many minutes times so many cents per minute,  
6 that's what they receive.

7 On the other hand, if the traffic is intraMTA  
8 in nature, the calculation becomes much fuzzier. So we  
9 believe that they have an incentive to make this traffic  
10 interMTA because calculating how much they receive then is  
11 quite easy. I think, however, upon reviewing the pre-filed  
12 testimony, and hearing the cross-examination today, you will  
13 see that there are significant problems with the evidence  
14 that the rural carriers are presenting to you as to how that  
15 jurisdictional allocation should be calculated.

16 Given the fact that that is the only issue  
17 that's presented to you today, I don't believe that it's  
18 necessary to go into the history of the case or to speculate  
19 as to whether and when we will be before you again concerning  
20 traffic generated from 2002 to date and going into the  
21 future.

22 Thank you for your time.

23 JUDGE THOMPSON: Thank you, Mr. Johnson.  
24 Questions? Very well. Mr. Meyer.

25 MR. MEYER: Good morning. I will defer to my

1 predecessor's comments as far as the overall history of the  
2 case. I think that at this point, hopefully everybody has a  
3 sense of where we're coming from.

4 As you are well aware, this is the second  
5 hearing that's been conducted in this case. The Commission  
6 had reopened the record back in June of last year to  
7 ascertain the percentage of traffic that is interMTA and the  
8 percentage of traffic that is intraMTA to assist it in  
9 reaching a decision in the overall matter.

10 The point of determining the nature of the  
11 traffic is to identify the rate to apply to that traffic.  
12 Staff believes everybody agrees that the location of the cell  
13 site when a call begins and the terminating location of the  
14 call are used to determine the jurisdiction of the traffic.  
15 In other words, whether it's interMTA or intraMTA. However,  
16 it's been shown by the record so far the termination is not  
17 that simple.

18 In his additional rebuttal testimony, Staff's  
19 witness, Mike Scheperle, outlined four progressive options  
20 for asserting the jurisdiction of the traffic. Staff had  
21 recommended, first, that the wireless provider and  
22 complainant could negotiate and agree to an interMTA factor,  
23 and in fact, as you've heard discussed earlier, the  
24 complainants were able to negotiate interMTA factors with  
25 many of the wireless providers in this case. Staff certainly



1 believes that's the best alternative where the wireless  
2 provider who originates the traffic and each complainant who  
3 terminated the traffic agree to an interMTA factor.

4 As the second option, the wireless providers  
5 could create a billing record for each wireless call from the  
6 cell site information terminating to a specific telephone  
7 number of the complainant for traffic transited by a traffic  
8 -- by a transiting carrier. This is the preferred choice and  
9 the one designed to lead to the most accurate numbers, but  
10 that information, as Mr. Johnson -- as Mr. Craig Johnson had  
11 previously referenced, simply was not available during the  
12 relevant time period.

13 This leads to a third proposal. Staff's third  
14 option is that the three guidelines outlined by the FCC back  
15 in the mid 90's, when this era began to develop, should be  
16 considered. Those three options, as Mr. Johnson noted  
17 earlier, were that the parties could calculate overall  
18 compensation amounts by extrapolating from traffic studies  
19 and samples.

20 This method was actually used here by Chariton  
21 and Northeast, but Staff has some concerns with their  
22 proposals in light of a discrepancy between the minutes of  
23 use in the cellular transiting usage summary reports, which  
24 will be discussed as we go along, and the roughly equivalent  
25 time periods, minutes of use and the study provided by the

1 complainants' witness' testimonies.

2           The second of the FCC factors is considering  
3 the location of the cell site when a call begins is the  
4 determinant of the geographic location to the mobile  
5 customer. Mr. Johnson had noted some concerns that might  
6 stem from that with mobile users.

7           And the third FCC factor is that the local  
8 exchange carrier and the wireless provider could use the  
9 point of interconnection between the two carriers at the  
10 beginning of the call to determine the location of the mobile  
11 caller, or called party. From Staff's perspective, this is  
12 somewhat of a challenge because there are, in fact, three  
13 parties involved here, not just two; the wireless provider,  
14 the transiting provider, and the terminating company. So the  
15 interconnection point possibilities does not seem viable.

16           At this point, then, Staff created a fourth  
17 option for the Commission to consider in determining these  
18 factors. What happens if a wireless provider does not make a  
19 recommendation? In this case, T-Mobile did not actually make  
20 a concrete recommendation except in its pre-filed testimony,  
21 except to say that negotiation was the best way to achieve an  
22 acceptable and supportable allocation of wireless traffic.

23           The Commission has concerns with the proposal  
24 for interMTA factors previously outlined. T-Mobile did not  
25 conduct a study or recommend an interMTA factor in its

1 testimony. Staff had concerns with complaints --  
2 complainant's proposals, so Staff and Mr. -- through  
3 Mr. Scheperle's testimony is presenting a fourth option  
4 involving interMTA factors developed on the probability that  
5 a wireless originated call in an MTA area would terminate in  
6 a different MTA area.

7           The probability analysis is essentially the  
8 number of times that something might occur over the range of  
9 possibility occurrences. In other words, flipping a coin,  
10 what's the probability that heads would occur, 1 in 2 chance  
11 or 50 percent. Or role a dice, what's the possibility that  
12 -- probability that one would occur out of six, it would be 1  
13 in 6 chance.

14           Staff used this logic and based its  
15 recommendations on the probability that a wireless originated  
16 call would originate in a given MTA area, and terminate in  
17 another MTA area, based on cell site information and the  
18 number of access lines -- I'm sorry, the sites of access  
19 lines in the MTA those access lines of the terminating local  
20 exchange carrier.

21           As an example, and I think this is made clear  
22 in Mr. Scheperle's testimony, at a given moment in time,  
23 T-Mobile might have 632 cell sites in Missouri. They would  
24 be located in three different MTA areas, as Mr. Mark  
25 Johnson's map demonstrated. A set percentage, 35 percent of

1    them may be in the Kansas City MTA, 64 percent in the St.  
2    Louis MTA, then another percentage, actually, in the Memphis  
3    MTA, which I think was yet a forth MTA in a corner of the  
4    state of Missouri, in a corner of the state, I think down in  
5    the bootheel.

6                   Those percentages, then, interrelate with, for  
7    example, Chariton Valley's access lines, which are in a  
8    different cross-section of MTAs, the set number of access  
9    lines with, say, 17 percent in the Kansas City MTA and 82  
10   percent in the St. Louis MTA. Mr. Scheperle has run the  
11   probability of a given call being -- originating in one MTA  
12   and terminating in other MTA, and arrived at a number that we  
13   propose as a proper factor to consider for the Commission.

14                   In this example, with these kinds of numbers,  
15   the number ends up being 41 percent, and this is all outlined  
16   in Staff's testimony in Schedules 5 and 6. In light of the  
17   information that's available for the Commission to consider  
18   in this case, Staff recommended the Commission use this  
19   information to arrive at the appropriate factors for T-Mobile  
20   traffic, and then proceed from there to make its final  
21   determination in this case.

22                   And that's all I have. Thank you.

23                   JUDGE THOMPSON: Thank you, Mr. Meyer. Any  
24   questions for Mr. Meyer? Commissioner Murray.

25                   COMMISSIONER MURRAY: Would you please repeat

1 the factors that you said that Mr. Scheperle came up with?

2 MR. MEYER: Mr. Scheperle's factors are on  
3 Schedule 6 of his testimony for T-Mobile, and again, I  
4 apologize, I think you'll find that with all of us, that we  
5 have far more testimony that is necessary at this point, but  
6 there's a line on that for T-Mobile that kind of provides an  
7 overview. Actually, the complainants propose 73 percent for  
8 Chariton Valley, Staff's proposing 41 percent. And for  
9 Northeast Missouri and T-Mobile, complainant says 100  
10 percent, and Staff has arrived, using its probability  
11 analysis, at a number of 33 percent.

12 COMMISSIONER MURRAY: Thank you.

13 JUDGE THOMPSON: Thank you. Any further  
14 questions? Very well. Just as sort of a postscript to the  
15 brief history that we've heard about this case, let me -- let  
16 me point out as originally consolidated, there were seven  
17 complainants and twenty-one respondents in this case. And if  
18 you count each claim against a particular respondent, there  
19 were 76 claims. Many of those have since been compromised as  
20 has been described by the opening statements.

21 There are still live claims involving Aerial  
22 Communications. I mentioned AllTel. I think that's probably  
23 not really live, but my records suggest it still is. The  
24 same thing is a live one with Sprint, that perhaps really  
25 isn't live. Live claims against Southwestern Bell, United

1 States Cellular, and T-Mobile, formerly known as Voicestream.  
2 There are factors, then, with respect to these  
3 live claims that have been agreed, or at least are not in  
4 dispute, with respect to US Cellular, and with respect to  
5 T-Mobile's traffic with Alma and Mocan Dial.

6 Okay. So as I understand it, we're here today  
7 to see what the factors are for the traffic between T-Mobile  
8 and Northeast, and T-Mobile and Chariton Valley, correct?

9 Okay. Now, to the extent that Aerial had  
10 traffic with those two complainants, is it going to be the  
11 same factor?

12 MR. CRAIG JOHNSON: I believe if you'll ask  
13 the witnesses, the Aerial, Voicestream, T-Mobile traffic has  
14 all been lumped together and is called T-Mobile traffic.

15 JUDGE THOMPSON: Very well.

16 MR. CRAIG JOHNSON: The Western Wireless case  
17 has been submitted because there's no Western Wireless  
18 traffic in dispute now.

19 JUDGE THOMPSON: Very well. The first witness  
20 we're going to hear from, then, today, I believe, is  
21 Mr. Biere; is that right?

22 MR. CRAIG JOHNSON: That's right.

23 COMMISSIONER MURRAY: Judge, may I ask one  
24 more question of counsel?

25 JUDGE THOMPSON: Yes, ma'am.

1 COMMISSIONER MURRAY: Mr. Meyer.

2 MR. MEYER: Yes.

3 COMMISSIONER MURRAY: Is it Staff's position  
4 that SBC, as a transiting carrier, is not liable for the  
5 traffic?

6 MR. MEYER: I believe that is correct. That  
7 has been our consistent position throughout.

8 COMMISSIONER MURRAY: Thank you.

9 JUDGE THOMPSON: Mr. Biere.

10 (MITG'S EXHIBIT NOS. 301 AND 302 WAS MARKED  
11 FOR IDENTIFICATION BY THE COURT REPORTER.)

12 (THE WITNESS WAS SWORN.)

13 JUDGE THOMPSON: Would you please state your  
14 name for the Reporter and spell your last name?

15 THE WITNESS: William Biere, B-I-E-R-E.

16 JUDGE THOMPSON: Very well. Mr. Johnson.

17 WILLIAM BIERE testified as follows:

18 DIRECT EXAMINATION BY MR. CRAIG JOHNSON:

19 Q. Mr. Biere, would you, again, state your name  
20 and give us your business address?

21 A. William Biere, 109 Butler Street, Macon,  
22 Missouri.

23 Q. And you're here testifying for the group in  
24 particular for Chariton Valley Telephone Corporation?

25 A. That's correct.

1 Q. And are you the same William Biere that's  
2 caused to be pre-filed, signed, the direct testimony which I  
3 believe is Exhibit 301, and the surrebuttal, which I believe  
4 has been marked just now as Exhibit 302?

5 A. Yes, I am.

6 Q. And if I were to ask you the same questions  
7 that are contained in writing in those two exhibits, would  
8 your answers be the same as are contained in writing in those  
9 two exhibits?

10 A. Yes, they would.

11 Q. And do you have any changes or corrections to  
12 make today?

13 A. No.

14 MR. CRAIG JOHNSON: Your Honor, I would offer  
15 Exhibits 301 and 302, and tender Mr. Biere for questions.

16 JUDGE THOMPSON: Very well. Do I hear any  
17 objection to the receipt of Exhibit 301 or 302? Hearing no  
18 objections, those exhibits are received.

19 (MITG EXHIBIT NOS. 301 AND 302 WERE RECEIVED  
20 INTO EVIDENCE BY THE JUDGE.)

21 JUDGE THOMPSON: And let me look at the list  
22 and see who the first cross-examiner will be. Mr. Bub.

23 MR. BUB: Thank you, your Honor.

24 JUDGE THOMPSON: It's actually you, Mr. Meyer,  
25 I apologize.



1 MR. MEYER: I'm thinking that, but wasn't  
2 sure. I may have an old version.

3 JUDGE THOMPSON: I'm sorry.

4 CROSS-EXAMINATION BY MR. MEYER:

5 Q. Good morning.

6 A. Good morning.

7 Q. Mr. Biere, as I understand, you developed a  
8 percent of interMTA traffic for T-Mobile based on Schedule 3  
9 attached to your direct testimony; is that correct?

10 A. That's correct.

11 Q. Could you just briefly describe your Schedule  
12 3? And I would note that that's highly confidential, so if  
13 you could describe that in a generic sense.

14 A. Schedule 3 is a -- is a schedule developed  
15 from calls that we recorded that terminated to our exchanges.  
16 And not having any other information available, we looked in  
17 -- in industry databases to determine the NPA/NXX of the  
18 originating caller and then determined which MTA that  
19 information was connected to and compared that to the MTAs  
20 that Chariton Valley's exchanges lie in and made a  
21 determination of which calls were interMTA and which ones  
22 were intra.

23 Q. And what period does the time that you -- did  
24 this examination cover?

25 A. It was a two-month period. I believe it was

1 November and December.

2 Q. Okay. And in this exhibit there's, a column  
3 called seconds; is that correct?

4 A. That's correct.

5 Q. And could you explain what kind of seconds  
6 they are, are they seconds of air time used?

7 A. Those are seconds of air time used. As you'll  
8 note, we had filed a correction, the switch records those in  
9 CCS, or hundreds of seconds, and in our calculation, we  
10 failed to convert those to seconds and had to do that -- make  
11 that correction later.

12 Q. Are you familiar with the CTUSR reports that  
13 Southwestern Bell generates?

14 A. Yes, I am.

15 Q. And were you able to compare the minutes of  
16 use in your Schedule 3 with the equivalent minutes in the  
17 CTUSR report generated by SBC for that same equivalent period  
18 of time?

19 A. No, we are not, because we do not get -- we  
20 get none of the detail associated with the CTUSR report, and  
21 all -- a summary information, there's no way to validate it,  
22 check it, cross-reference it, and in fact, we have determined  
23 that in some cases, it's in error.

24 Q. You may have already answered my next  
25 questions, but I'll ask it anyway. Would you expect that the

1 minutes of use in your Schedule 3 and the CTUSR numbers would  
2 be the same?

3 A. You would expect them to be, but however, they  
4 are not always the -- they aren't the same and there's no way  
5 to validate they're the same without the detail.

6 Q. Okay.

7 MR. MEYER: May I approach the witness,  
8 please?

9 JUDGE THOMPSON: You may.

10 MR. MEYER: And what I'm going to provide is a  
11 summary of the CTUSR minutes and the numbers in a schedule  
12 that -- that Mr. Biere's numbers and a highly confidential  
13 schedule.

14 JUDGE THOMPSON: Very well.

15 (STAFF EXHIBIT NO. 303 WAS MARKED FOR  
16 IDENTIFICATION BY THE COURT REPORTER.)

17 JUDGE THOMPSON: Okay. This will be Exhibit  
18 303. Should we call it highly confidential schedule?

19 MR. MEYER: Yes.

20 Q. (By Mr. Meyer) And I guess I'll just ask you  
21 this, Mr. Biere. If you're familiar with the CTUSR reports,  
22 are you aware of the exact numbers that the CTUSR report  
23 would have had for the relevant period, the November and  
24 December -- the November and December time frame? And if you  
25 are not, I can also provide you a copy of those.

1           A.       I think you will probably need to provide me a  
2     copy, because I don't recall.

3           Q.       Certainly.

4           MR. MEYER: May I approach again?

5           JUDGE THOMPSON: You may.

6           Q.       (By Mr. Meyer) Mr. Biere, have you had an  
7     opportunity to review the CTUSR report?

8           A.       Yes.

9           Q.       Okay. Would you agree that the number that is  
10    in the CTUSR report would be also the same number that's in  
11    the exhibit that we have had marked that you've been  
12    provided?

13          A.       Yes, I would.

14          Q.       Okay. And would you agree that the summary of  
15    your testimony on the right-hand side of that page is, in  
16    fact, an accurate description of your numbers that you used?

17          A.       I don't have those numbers to compare to, but  
18    I would assume that that would be correct. Are those the  
19    revised?

20          Q.       I believe so. Yes, they are.

21          A.       Okay.

22          MR. MEYER: With that, I would move for the  
23    admission of the comparison of minutes of use of CTUSR in  
24    complainant's Schedule 303.

25          JUDGE THOMPSON: Very well. Do I hear any

1 objections to the receipt of Exhibit 303? Hearing no  
2 objection, the same is received and made a part of the record  
3 of this proceeding.

4 (STAFF EXHIBIT NO. 303 WAS RECEIVED INTO  
5 EVIDENCE BY THE JUDGE.)

6 MR. MEYER: And that's all I have. Thank you.

7 JUDGE THOMPSON: Thank you, Mr. Meyer. Now it  
8 is your turn, Mr. Bub, and I apologize for the earlier  
9 confusion.

10 MR. BUB: Thank you, your Honor.

11 CROSS-EXAMINATION BY MR. BUB:

12 Q. Good morning, Mr. Biere.

13 A. Good morning.

14 Q. I would like to direct your attention, first,  
15 if I may, to your direct testimony, which I believe has been  
16 marked as Exhibit 301. If we could go, first, to Page 4.  
17 Let me know when you get there.

18 A. Okay.

19 Q. Okay. The last question and answer on that  
20 page, the answer, you indicate that Alma, Chocktaw, and Mocan  
21 had wireless termination agreements approved in 2001, but  
22 then you later say but neither Chariton Valley's, Northeast,  
23 nor Mid-Missouri didn't have a wireless termination service  
24 tariff in effect during the four years of traffic at issue  
25 here; is that correct?

1 A. That's correct.

2 Q. Okay. These companies could have filed a  
3 wireless termination tariff at the same time Alma, Chocktaw,  
4 and Mocan did; is that correct?

5 A. That's true.

6 Q. It chose not to?

7 A. That's correct.

8 Q. Okay. Would we also be correct to say that  
9 these pressing for access charges on this wireless traffic?

10 A. I think it's fair to say that the companies  
11 who didn't file wireless termination tariff only had access  
12 tariffs to apply to minutes at that point in time.

13 Q. Okay.

14 A. And the objective was to get the issue  
15 resolved.

16 Q. Okay. And the reason you did not file  
17 wireless termination tariffs is that you preferred to  
18 continue to press for the application of your access tariffs;  
19 is that correct?

20 A. Our preference was to get a business  
21 relationship with the originating wireless carriers and get  
22 that written in a document that would have addressed the  
23 issue.

24 Q. So your approach was to try to amend your  
25 access tariff to specifically apply to wireless traffic; is

1 that correct?

2 A. Our approach was to maintain that our access  
3 rates were the applicable rate in the absence of any other  
4 agreement.

5 Q. Okay. And you tried to do that by amending  
6 your access tariff, did you not, in case TT-2001-428?

7 A. You would have to refresh my memory on that.

8 Q. In the matter of the Mid-Missouri group's  
9 filing to revise its access tariff number TT -- excuse me, I  
10 had the number wrong, TT-99-428. Does that sound familiar?

11 A. Again, without checking, my memory is not good  
12 enough to recall that.

13 Q. Well, you do recall that your company, along  
14 with the other companies in the Mid-Missouri group, filed to  
15 amend your access tariffs to apply to wireless tariffs? You  
16 remember that though?

17 A. I would really prefer to have more of the  
18 detail than to stipulate to just that broad statement.

19 Q. Well, I'll just move on if you can't remember.  
20 Do you remember that you filed to amend your access tariffs?

21 A. Again, I would prefer to have my memory  
22 validated before I address that.

23 Q. Okay. We'll come back to that a little later.  
24 I want to focus on, right now, the termination tariffs. You  
25 indicated that Chariton Valley, Northeast, nor Mid-Missouri

1 has traffic termination tariffs. Do any of them do any of  
2 them have a termination tariff?

3 A. I believe they do, yes.

4 Q. Which ones?

5 A. I believe they all do now.

6 Q. Okay. So Chariton Valley now has a traffic  
7 termination tariff on file with the Commission?

8 A. Yes.

9 Q. Okay. And so does Northeast?

10 A. I believe that's correct.

11 Q. And so does Mid-Missouri?

12 A. I believe that's also correct.

13 Q. Okay. Thank you. Let's move on to Page 7,  
14 please, if we could.

15 A. Okay.

16 Q. Line 16, you indicate that the MITG companies  
17 have been left with no effective recourse other than this  
18 complaint proceeding. Do you see that?

19 A. Yes.

20 Q. Is it correct that the Mid-Missouri MITG  
21 companies could have also filed the wireless termination  
22 tariff like Alma and the other carriers did?

23 A. Certainly a tariff could have been filed.

24 Q. And that would have provided a remedy, at  
25 least, on a go-forward basis?



1           A.       It potentially would have provided a remedy on  
2 a go-forward basis. It would not have addressed the minutes  
3 that terminated prior to that, nor would it have really  
4 resolved some of the other issues.

5           Q.       Okay. And at this point, all three of those  
6 companies have at least availed itself of that remedy, filing  
7 traffic termination tariffs?

8           A.       That's correct.

9           Q.       Okay. Let's move on to Page 9, if we could.  
10 Lines 18 and 19, you're asked the question do you see any  
11 problems with applying the access tariffs directly to the  
12 wireless carriers. Do you see that?

13          A.       Yes.

14          Q.       Okay. And then on the next page, 10, Line 1,  
15 you respond, yes, exchange access services and service the  
16 MITG companies provide to interexchange carriers pursuant to  
17 the access tariff. Prior to being billed for access under  
18 this tariff, traditionally carriers have ordered access and  
19 met the terms of the access tariff. The wireless carriers  
20 have not done that, only SWBT has. Do you see that?

21          A.       Yes.

22          Q.       And I correctly portrayed your answer?

23          A.       Yes, you read it correctly.

24          Q.       Thank you. Your company now has traffic  
25 termination agreements with both Cingular and Sprint PCS; is

1 that correct?

2 A. That's correct.

3 MR. BUB: Your Honor, at this point, I would  
4 like to go off-the-record and have an exhibit marked, if I  
5 may.

6 JUDGE THOMPSON: Absolutely. This will be  
7 Exhibit 304.

8 (SBC EXHIBIT NO. 304 WAS MARKED FOR  
9 IDENTIFICATION BY THE COURT REPORTER.)

10 Q. (By Mr. Bub.) Mr. Biere, I've handed you  
11 what's been just marked by the Court Reporter as Exhibit 304.  
12 Could you identify this as the agreement, which starts  
13 actually about nine pages back, the traffic termination  
14 agreement between Chariton Valley Telephone and Sprint  
15 Spectrum, L.P. d/b/a Sprint PCS?

16 A. Yes.

17 Q. And this is the agreement that your company  
18 had filed with the Missouri Public Service Commission in Case  
19 TK-2004-0543; is that correct?

20 A. I'm assuming you have the correct number.

21 MR. BUB: May I approach the witness, your  
22 Honor?

23 JUDGE THOMPSON: You may.

24 Q. (By Mr. Bub) Is that the correct number?

25 A. Yes, it would be.

1 Q. Thank you. I'd like to direct your attention  
2 to Paragraph 4.1.2 on Page 4 of the agreement.

3 A. I'm sorry, 4.1 --

4 Q. 4.1.2 --

5 A. Okay.

6 Q. -- on Page 4. Have you had a chance to review  
7 that?

8 A. Yes.

9 Q. Okay. This provision provides the  
10 compensation for non-local intrastate traffic, does it not?

11 A. Yes.

12 Q. It states the compensation will be based on  
13 the rates in Appendix 1; is that right?

14 A. Yes.

15 Q. And then when you go back to Appendix 1, I'll  
16 give you a minute to get there.

17 A. Yes.

18 Q. It says rates for termination of non-local  
19 intrastate traffic shall be taken from ILECs access tariff or  
20 intrastate intralata traffic; is that correct?

21 A. That's correct.

22 Q. Okay. And the ILEC you referred to in this  
23 provision is Chariton Valley; is that correct?

24 A. That's correct.

25 Q. Okay. And just to short circuit this, the

1 same provisions are in Chariton Valley's agreement with  
2 Cingular; is that correct?

3 A. That's also correct.

4 Q. Okay. And to keep the record straight, the  
5 Chariton Valley/Cingular Wireless termination -- traffic  
6 termination agreement was filed in Case No. TK-2004-0518.  
7 Would you confirm that for me, please?

8 A. That's correct.

9 Q. Thank you. The next -- I'd like to go back to  
10 your direct testimony, if we may, Page 12, Line 10 through  
11 11. You're asked does Chariton Valley have any approved  
12 agreements with Respondent wireless carriers containing any  
13 of these three methods. And you answered no. It's correct  
14 now, though, that you have traffic termination agreements  
15 with Cingular and Sprint that we just discussed; is that  
16 correct?

17 A. That's correct. At the time this testimony  
18 was filed, the testimony as printed was correct and there  
19 have been subsequent events.

20 Q. Okay. So if you were to write it today, you  
21 would have included those two agreements?

22 A. Yes.

23 Q. Okay. Do you know of any other wireless  
24 termination agreements with any other carriers besides Sprint  
25 and Cingular?

1 A. Yes, we have one with Chariton Valley  
2 Wireless.

3 Q. Okay. I'd like to go down to the next  
4 question, if I may. It's at Line 17. If you want to take a  
5 minute to review the question and answer so I can ask you a  
6 couple questions about that.

7 A. Could you direct me to a particular part or  
8 the whole page?

9 Q. I'm sorry, Line 17 through 22 of Page 12, and  
10 then on the next page, your answer continues to Line 4.

11 A. Back to Page 12?

12 Q. Yes, sir.

13 A. Okay.

14 Q. Okay. That question and answer on Page 12  
15 carries to the top of Page 13. That generally deals with the  
16 responsibility to record and retain information on calls to  
17 distinguish between inter versus intraMTA traffic volumes; is  
18 that correct?

19 A. That's correct.

20 Q. Okay. On Line 13, line -- I'm sorry, Page 13,  
21 Line 3, you indicate that SBC Missouri should have made  
22 arrangements to preserve information that would distinguish  
23 between interMTA and intraMTA traffic volumes.

24 A. I'm sorry, what line was that, Mr. Bub?

25 Q. Three and four.

1 A. Okay. Repeat your question, please.

2 Q. There in that answer, you indicate basically  
3 that SBC Missouri should have made some arrangements to  
4 preserve information so you could distinguish between  
5 interMTA and intraMTA traffic volumes; is that correct?

6 A. That's correct, because SBC Missouri was the  
7 company that delivered the traffic to our ILEC.

8 Q. Okay. Would you agree that on a mobile to  
9 land call, you need to know where the mobile handset is  
10 located to determine whether the call is inter versus  
11 intraMTA?

12 A. Assuming you use the originating cell site as  
13 one of the three approved FCC methods, yes.

14 Q. Okay. Well, short of having the actual  
15 physical location of where that handset is when it made the  
16 call, you can also use some cell tower information, and that  
17 would help jurisdictional inter versus intra; is that right?

18 A. You could use the location -- one of the three  
19 FCC approved methods is to use the location of the  
20 originating cell site.

21 Q. Okay. Would you agree that in the ordinary  
22 course of business, LECs that receive mobile calls from  
23 wireless carriers don't get this type of information from the  
24 wireless carriers?

25 A. I think that's probably true.

1 Q. Okay. In fact, you testified to that in your  
2 surrebuttal, did you not? May I help you, let's go to Page  
3 16 of your surrebuttal, if we could. Line 5, you indicate  
4 that wireless carriers are the only entities with the  
5 capability of creating call records containing cell tower  
6 locations?

7 A. Yes, they are the only people who have the  
8 capability to create the record once the record is created.  
9 If the -- if the record is maintained in tact, that  
10 information should flow through to wherever the record  
11 resides.

12 Q. And if they don't pass it, then the transiting  
13 carrier wouldn't have it either?

14 A. If that information was not passed, the  
15 transiting carrier would not have it, that's correct.

16 Q. Thank you. Let's go on to Page 14. Back to  
17 your direct, if we could, please. I'd like to direct your  
18 attention to the bottom half of that page, question and  
19 answer, beginning at Line 11, if you want to take a minute to  
20 take a look at that.

21 A. Okay.

22 Q. Would you agree with me that in that portion  
23 of your testimony, you're critical of the CTUSR that was  
24 provided by SBC Missouri?

25 A. Absolutely. I'm highly critical of the CTUSR

1 because it was represented by SBC as containing all necessary  
2 information for ILECs to bill wireless traffic, and that's  
3 not true.

4 Q. Okay.

5 A. All we received is summary information,  
6 summary minutes that are not verifiable in any form.

7 Q. Okay. And you testified to that at the top of  
8 Page 15, do you not, where you say Line 1 through 2, in  
9 TT-97-524, SWBT told the Commission in a reply brief that the  
10 CTUSR, quote, should provide the ILECs with sufficient  
11 information to render a bill, close quote. That's part of  
12 your testimony, is it not?

13 A. Yes, it is.

14 Q. Okay. I'd like to go back to what has been  
15 marked as Exhibit 304. This is your agreement with Sprint  
16 PCS.

17 A. Okay.

18 Q. Let's go to Page 5, if we could, Section 55.1.  
19 Could you read that first sentence, please?

20 A. CTUSR's currently report volumes of traffic  
21 originated by Sprint PCS and terminating to ILEC.

22 Q. Okay. And then on the next page, could you  
23 read the last sentence of that Paragraph 5.1, it's the first  
24 full sentence on the top of Page 6.

25 A. Until more detailed records are reasonably



1 available, CTUSR's will be considered a sufficient billing  
2 record.

3 Q. Thank you.

4 MR. BUB: Your Honor, at this time, I would  
5 like to move for the admission of 304, please.

6 JUDGE THOMPSON: Any objections to the receipt  
7 of Exhibit 304? Hearing none, the same is received and made  
8 a part of the record of this proceeding.

9 MR. BUB: Thank you, your Honor.

10 (SBC EXHIBIT NO. 304 WAS RECEIVED INTO  
11 EVIDENCE BY THE JUDGE.)

12 Q. (By Mr. Bub) Mr. Biere, this is the final line  
13 of questions that I have. If we could go now to your  
14 surrebuttal testimony on Page 26, Line 22. That first  
15 sentence, you state SBC is the access customer under the MITG  
16 access tariff. Period. Next page, the wireless carriers  
17 have not become access customers under the MITG access  
18 tariff. Period. The MITG believes SBC should be liable for  
19 this traffic. Period. Did I correctly portray your  
20 response?

21 A. Yes, you did.

22 Q. Okay. It's correct that Chariton Valley  
23 concurs in the Oregon Farmer's Access Tariff that's on file  
24 with and approved by the Missouri Public Service Commission?

25 A. Yes.

1 Q. Okay. And you're aware that the Oregon Farmer  
2 Tariff contains meet point billing language situations when  
3 access services are provided by more than one telephone  
4 company; is that correct?

5 A. Yes.

6 MR. BUB: Your Honor, I'd's like to go off the  
7 record to have an exhibit marked.

8 JUDGE THOMPSON: Very well. This would be  
9 Exhibit 305.

10 (SBC EXHIBIT NO. 305 WAS MARKED FOR  
11 IDENTIFICATION BY THE COURT REPORTER.)

12 Q. (By Mr. Bub) Okay. Mr. Biere, I've handed you  
13 what's now been marked as Exhibit 305, which is Section 2.4.5  
14 of the Oregon Farmer's Mutual Telephone Company Access  
15 Tariff. Do you have that before you?

16 A. Yes, I do.

17 Q. Have you had a chance to look at it. If you  
18 want to take a minute now, please do.

19 A. Is there a particular section of this that you  
20 could direct me to?

21 Q. Well, let's look at the first paragraph. Take  
22 a look at that, please.

23 A. You're talking about the Paragraph 2.4.5?

24 Q. Yeah.

25 A. Okay.

1 Q. And generally, this 2.4.5, that whole section,  
2 this is a section that contains a provision for when more  
3 than one telephone company provides access service. Is that  
4 generally correct?

5 A. It's generally correct, however, the tariff  
6 only applies to companies who have ordered access. And in  
7 this case, I don't believe there's any -- there are -- this  
8 tariff sets in place a mechanism for proper billing of the  
9 carriers, which is not true in the case at hand regarding the  
10 wireless carriers.

11 Q. Okay. But you are billing the wireless  
12 carriers out of this access tariff. Is that not correct?

13 A. Yes, that would be correct.

14 Q. Okay. Let's take a -- let me back up one more  
15 question. This is the tariff that Chariton Valley uses when  
16 it and SBC Missouri handle a call from, say, Sprint Missouri,  
17 the ILEC in Warrensburg, that goes through SBC Missouri and  
18 terminates to one of the customers in your exchanges at  
19 Chariton Valley; is that correct?

20 A. Restate the question.

21 Q. Okay. Let me back up. I'll start again.  
22 This tariff provides a method, both for a single company and  
23 a multiple company -- I'm sorry, a multiple bill method; is  
24 that right?

25 A. Yes, it does.

1 Q. Okay. And Chariton Valley and SBC Missouri,  
2 when they both provide access service and jointly provide  
3 access service to a carrier, they use the multiple billed  
4 method; is that correct?

5 A. Actually, I'm not for sure whether -- in what  
6 case the multiple bill method is used.

7 Q. Okay. Let's use our example of the call that  
8 would originate from Sprint Missouri, Inc., the ILEC in  
9 Warrensburg, go through SBC Missouri, and terminate to a  
10 Chariton Valley customer. We have that call flowing. Do you  
11 understand that?

12 A. This call originates in a --

13 Q. Sprint.

14 A. -- Sprint exchange.

15 Q. Yes, sir.

16 A. Transits -- or is carried by SBC to Chariton  
17 Valley and terminates.

18 Q. Yes, sir.

19 A. And I believe we would bill SBC the  
20 terminating rate.

21 Q. Do you not, in that situation, bill under this  
22 tariff, Sprint Missouri, Inc., the terminating rate?

23 A. I don't believe so, I believe we bill SBC the  
24 terminating rate and whatever arrangement is between them and  
25 Sprint would apply to the rest of the charges.

1 Q. Okay. Let's look at the multiple company  
2 billing. It's on page -- original sheet 34, 2.4.5, capital  
3 B. Multiple company interconnection point billing. Doesn't  
4 that section provide that --

5 A. I believe your questions are specifically how  
6 it's applied, and those are the kind of questions you really  
7 need to ask people -- someone other than me. I don't get  
8 involved with the day-to-day application of this tariff.

9 Q. So your answer, then, is you don't know?

10 A. The answer is I don't know. I cannot say  
11 positively.

12 Q. How it's applied, either way?

13 A. That's correct.

14 Q. So you don't know whether you bill SBC or  
15 whether you bill Sprint, you just don't know?

16 A. It's my belief we bill SBC, but I could not  
17 say that absolutely.

18 Q. You can't swear to it either way?

19 A. That's correct.

20 MR. BUB: Your Honor, at this point, I would  
21 still like to offer Exhibit 305 into the record.

22 JUDGE THOMPSON: Very well. Any objections to  
23 the receipt of Exhibit 305? Hearing none, the same is  
24 received and made a part of the record of this proceeding.

25 MR. BUB: Thank you, your Honor.

1 (SBC EXHIBIT NO. 305 WAS RECEIVED INTO  
2 EVIDENCE BY THE JUDGE.)

3 Q. (By Mr. Bub) Mr. Biere, you're also aware that  
4 SBC Missouri's access tariff contain meet point billing  
5 provisions?

6 A. Again, I could not -- I could not validate  
7 what SBC's tariffs are.

8 Q. Would it help if I showed you a copy?

9 A. Sure.

10 MR. BUB: Your Honor, I'd like to get another  
11 exhibit marked, if I may.

12 JUDGE THOMPSON: Very well.

13 MR. CRAIG JOHNSON: Your Honor, I'm going to  
14 object to the relevancy at this point. We're here to be  
15 arguing about interMTA factors, and I fail to see what  
16 Southwestern Bell's access tariff has to do with what the  
17 factors should be for traffic the wireless carrier originates  
18 and terminates.

19 MR. BUB: Your Honor, I'm cross-examining him  
20 on his testimony. He said that SBC is the access customer  
21 and that the MITG access tariff, the wireless carriers have  
22 not become access customers. If MITG believes SBC should be  
23 liable for traffic, I'm trying to establish how this access  
24 traffic in the ordinary course of business is handled, and I  
25 can do that through the tariffs.

1 JUDGE THOMPSON: Well, Mr. Johnson, is it  
2 still the position of MITG that if T-Mobile doesn't pay for  
3 the traffic, the factors of which we're here to establish  
4 today, then Bell needs to pay for it?

5 MR. CRAIG JOHNSON: Yes, your Honor, my  
6 relevancy objection is Southwestern Bell's access tariff has  
7 nothing to do with this case.

8 MR. BUB: Just the contrary. Our access  
9 tariffs have coordinating provisions to handle meet point  
10 billing or access services. You know, maybe one way to  
11 handle it is --

12 JUDGE THOMPSON: I think it's relevant to the  
13 defense that Bell is attempting to establish. You brought  
14 them into the case, they get a chance to try to wiggle out.  
15 We will allow the question. The objection is overruled.

16 MR. BUB: Thank you, your Honor.

17 JUDGE THOMPSON: Thank you. This will be  
18 Exhibit 306.

19 (SBC EXHIBIT NO. 306 WAS MARKED FOR  
20 IDENTIFICATION BY THE COURT REPORTER.)

21 MR. CRAIG JOHNSON: The further objection is  
22 the effective date of 11 April 1993 is over one year, maybe,  
23 after the traffic that's in dispute in this case terminated,  
24 so I fail to see the relevance of what Bell's tariff said a  
25 year after this traffic terminated.

1 JUDGE THOMPSON: Mr. Bub, are you going to  
2 show us the relevance?

3 MR. BUB: I'll show you the relevance, and if  
4 it would help, I'll get the prior edition that was in effect  
5 when the complaint was filed.

6 JUDGE THOMPSON: Please proceed.

7 MR. BUB: Thank you.

8 Q. (By Mr. Bub) Mr. Biere, are you ready?

9 A. Yes.

10 Q. Okay. Mr. Biere, I've handed you what's been  
11 marked as Exhibit 306. And this is Section 2.4.5 of SBC  
12 Missouri's access service tariff. Could you confirm that  
13 this is a section that contains the ordering rating and  
14 billing of access services where more than one exchange  
15 telephone company is involved?

16 A. That's what it says.

17 Q. I'd like to go to the first paragraph on this  
18 first page sheet, 223, when access service is ordered by a  
19 customer when one end of the service is in one exchange  
20 telephone company operating territory and the other end is in  
21 another exchange telephone company operating a territory,  
22 i.e., jointly provided access service, the exchange telephone  
23 companies involved will agree upon a billing, design, and  
24 ordering arrangement, which is consistent with the provisions  
25 contained in this section and the ordering and billing form



1 standards multiple exchange carrier access billing (MECAB)  
2 and multiple exchange carrier ordering and design (MECOD).  
3 Do you see that?

4 A. Yes.

5 Q. Okay. Now, would you agree with me that this  
6 tariff contains the ordering, rating, and billing of access  
7 services where more than one exchange telephone company is  
8 involved?

9 A. I would agree that you read your tariff  
10 correctly.

11 Q. Okay. Let's go to sheet 24, which is the next  
12 page, Paragraph 2.4.5, paragraph capital B, subpart one.  
13 General meet point billing in (MPB) is for the joint  
14 provisioning of FGB, FGC, FGD, skip the rest, through  
15 multiple exchange telephone company ordering and billing  
16 arrangements. MPB, meet point billing, allows each involved  
17 exchange telephone company to provide a service and bills for  
18 the portion of access service that it renders under its own  
19 tariff. Do you see that?

20 A. Yes.

21 Q. Okay. Do you agree that that's how meet point  
22 billing is supposed to work?

23 A. I agree that's what your tariff says.

24 Q. Okay. Do you agree that that's how meet point  
25 billing is supposed to work?

1 A. I agree that's what your tariff says.

2 Q. So do you not know?

3 A. I don't know how you apply your tariff.

4 Q. I'm not asking about my tariff, I'm asking  
5 about meet point billing in general. Is that your  
6 understanding of how meet point billing works?

7 MR. CRAIG JOHNSON: Object, your Honor, this  
8 is argumentative. He just got through having him read Bell's  
9 tariff, and he was asking him about Bell's tariff. Now he's  
10 trying to ask him about the general business practice and the  
11 witness has answered the question saying he doesn't know what  
12 -- how Bell applies their tariff. This is argumentative.

13 JUDGE THOMPSON: Well, I think it took several  
14 repetitions of the question to get to that point, so I'm  
15 going to overrule the objection. I'm going to direct the  
16 witness to answer the question that is asked, rather than the  
17 question you wished he had asked. May we please proceed?

18 MR. BUB: Thank you, your Honor.

19 Q. (By Mr. Bub) The question that I have is this  
20 your understanding of how meet point billing works?

21 A. Yes, I think that's a good general description  
22 of how meet point billing works.

23 Q. Thank you. I'd like to go to the next page,  
24 sheet 24.01. And there I would like to direct your attention  
25 to paragraph capital B, subparagraph 3, multiple bill

1 arrangement. A multiple bill arrangement allows all exchange  
2 telephone companies providing service to bill the customer  
3 for their portion of a jointly provided access service  
4 according to its access service tariff charges. Do you agree  
5 that I've read my tariff correctly?

6 A. Yes.

7 Q. Okay. And would you agree that that's how  
8 multiple bill arrangement under meet point billing works?

9 A. Yes, I think that's generally correct.

10 Q. Thank you.

11 MR. BUB: With that, I would like to move for  
12 the admission of 306, please.

13 MR. CRAIG JOHNSON: Same objection I've  
14 previously expressed.

15 JUDGE THOMPSON: Objection is overruled,  
16 Exhibit 306 is received and made a part of the record in this  
17 proceeding.

18 (SBC EXHIBIT NO. 306 WAS RECEIVED INTO  
19 EVIDENCE BY THE JUDGE.)

20 JUDGE THOMPSON: Mr. Bub, do you have much  
21 more? The reason I ask is that because I intend to take a  
22 lunch break from 12:00 to 1:30.

23 MR. BUB: I'm sorry, your Honor, I probably  
24 do.

25 JUDGE THOMPSON: Very well. We'll go right up

1 to 12 o'clock, then, and I'll cut you off and we'll go off  
2 and eat.

3 MR. BUB: Sounds fine, thank you.

4 Q. (By Mr. Bub) Mr. Biere, this is follow-up on  
5 the line of questions we talked about earlier about your  
6 company and the rest of the MITG group, or the Mid-Missouri  
7 group and their effort to revise this access service tariff  
8 to apply to wireless traffic. I think, correct me if I'm  
9 wrong, you generally agree that you filed some access tariff  
10 revision; is that correct?

11 A. I think that's correct, but before I would  
12 comment beyond that, I would need to refresh -- refresh my  
13 memory on the specifics of that.

14 Q. Okay. If I were to hand you Bob Schoonmaker's  
15 testimony, would that help refresh your recollection?

16 A. It perhaps would.

17 Q. Okay.

18 MR. BUB: May I approach the witness?

19 JUDGE THOMPSON: You may approach.

20 MR. BUB: Could we go back on the record,  
21 please?

22 JUDGE THOMPSON: Absolutely.

23 MR. BUB: Thank you.

24 Q. (By Mr. Bub) Mr. Biere, I would like to go  
25 back and ask you just a couple of general questions in Case

1 TT-99-428. It was that case in which the Mid-Missouri group  
2 collection of small LECs that made up the Mid-Missouri group  
3 filed revisions to the access service tariffs, their  
4 individual access service tariffs to make it apply to  
5 wireless traffic. Do you recall that now?

6 A. Yes.

7 Q. And the problem, from your perspective, was  
8 the wireless traffic was transiting SBC and other large LEC  
9 networks coming to the MITG companies' exchanges, and  
10 wireless carriers were not paying for them; is that correct?

11 A. I believe in the testimony that I just  
12 reviewed, it states that the -- or it implies that under  
13 normal considerations, there are business relationships in  
14 place with all of the participating carriers that, in fact,  
15 may suggest that the modification needs to be that traffic  
16 would not be transited by the SBC network until there were  
17 business arrangements in place with all participating  
18 carriers, which is really the core issue here.

19 Q. And the problem in this case was that you just  
20 weren't getting paid for the wireless traffic?

21 A. That's correct, and there was -- we were not  
22 being paid, and in fact, did not even have an opportunity to  
23 create a business relationship with those wireless carriers  
24 that were terminating traffic.

25 Q. So what you did in this case was change your

1 access tariff to apply to wireless traffic in a general way,  
2 the revision?

3 A. I believe that's generally -- generally  
4 correct, yes.

5 Q. And Robert Schoonmaker from GEMW Consulting  
6 testified in support of the Mid-Missouri groups' efforts to  
7 revise access tariff; is that correct?

8 A. I believe that to be correct as well.

9 Q. Okay. Excuse me one minute, I need to show  
10 something to Mr. Johnson.

11 JUDGE THOMPSON: Go right ahead. I have 12  
12 o'clock on the official computer clock here, so we're going  
13 to go ahead and recess for lunch at this time, and see you  
14 all at 1:30. We are in recess.

15 (A LUNCH RECESS WAS HAD.)

16 JUDGE THOMPSON: Okay. Mr. Bub, I believe you  
17 have some cross-examination to continue.

18 MR. BUB: Thank you.

19 Q. (By Mr. Bub) Good afternoon, Mr. Biere.

20 A. Good afternoon.

21 Q. I believe where we left off was talking about  
22 or beginning to talk about Bob Schoonmaker's testimony that  
23 he filed in Case No. TT-99-428. Do you recall that?

24 A. Yes.

25 Q. Okay. Before we get into the testimony, you

1 know Mr. Schoonmaker, do you not?

2 A. Yes, I do.

3 Q. Okay. You would agree with me that he is a  
4 recognized expert on the subject of access charges?

5 A. Yes, I would.

6 Q. Okay. And he's familiar with how access --  
7 the Oregon Farmer's Access Tariff that your company and the  
8 other small LECs in Missouri concur in?

9 A. I believe he is.

10 Q. Okay. And he's familiar with how access  
11 charges are applied in Missouri?

12 A. I would assume that also to be true.

13 Q. Okay. I don't remember if I asked this  
14 question or not, but just another foundational question. In  
15 Case TT-99-428, Mr. Schoonmaker did file testimony supporting  
16 the access tariff revisions that your and the other  
17 Mid-Missouri company groups made filings that they made to  
18 revise their access tariffs; is that correct?

19 A. Mr. Schoonmaker did file testimony in that  
20 case. He was not a witness on behalf of the MITG group, and  
21 that particular case, I believe, was for clarification of the  
22 tariff, not modification of the tariff.

23 Q. Okay. But there was a tariff revision filed?

24 A. There was a -- a filing made to clarify the  
25 application of the tariff.

1 Q. And clarified by adding provisions to the  
2 tariff to make the tariff clear that it applied to wireless  
3 traffic and filing companies?

4 A. I don't recall if there was language added to  
5 the tariff or not, but I think the case was clearly to  
6 clarify the continued application of the tariff. That was  
7 the same tariff that SBC had paid us for wireless terminating  
8 traffic earlier.

9 Q. Okay. And you would agree with me that  
10 Mr. Schoonmaker supported that clarification that you're  
11 discussing right now?

12 A. I believe that's correct. I believe he did  
13 support the clarification.

14 Q. Okay.

15 MR. BUB: Your Honor, may I approach the  
16 witness?

17 JUDGE THOMPSON: You may.

18 MR. BUB: Thank you.

19 Q. (By Mr. Bub) Mr. Stole, [sic], I'm handing you  
20 what was Exhibit No. 3 in Case TT-99-428. It was Robert C.  
21 Schoonmaker's direct testimony. And I'd like to direct your  
22 attention to Page 5 where he asks what are the current  
23 contractual relationships between the incumbent local  
24 exchange carriers in the state. Do you see that question?

25 A. Yes.



1 Q. Okay. And he indicates there from his  
2 experience, he believes that there are two primary  
3 contractual documents that establish the terms and conditions  
4 for network connections between all the ILECs in the state at  
5 this time. In certain circumstances, a few other limited  
6 contracts. Am I reading his testimony correctly so far?

7 A. Appear to be.

8 Q. Okay. The first is a PTC slash secondary  
9 carrier in parentheses SC contracts, which have been  
10 terminated already, for some companies and will soon -- and  
11 will be soon for the remainder of the ILECs pursuant to  
12 Commission order. And I'm going to skip a description of  
13 those contracts. And resume on Line 6.

14 The second is the ILEC access tariffs, which  
15 provide for the joint provisioning of the exchange access to  
16 other carriers. Did I read that correctly as well?

17 A. Yes.

18 Q. Okay. And skip down to a question that  
19 Mr. Schoonmaker asks himself. Page 6, Line 18, are you  
20 saying that SWBT should not be transiting traffic to the LECs  
21 under any other basis than the joint billing of access  
22 traffic. Answer: That's exactly what I am saying. Did I  
23 read that correctly?

24 A. Yes, you read that correctly.

25 Q. Okay. And I'm going to read this into the

1 record because I think this clarifies your concern about my  
2 words clarify versus amend, so this next question, how does  
3 this prior discussion relate to the tariff provisions filed  
4 by the MMG companies.

5 Answer -- this is on Page 7, Line 19. Answer,  
6 because -- begins Line 21, the tariff provisions filed by the  
7 MMG companies clarify and make more specific the  
8 appropriateness of using the access tariff to bill all  
9 companies who are using the network connections established  
10 via the joint provision of access services. Period. Did I  
11 read that correct?

12 A. Yes, you did.

13 Q. Okay. Okay. Skip to Page 8, Line 9, does  
14 this mean that the STCG believes that SWBT should be blocking  
15 this traffic. Answer: No, as long as the traffic is being  
16 delivered under the auspices of the joint provisioning of the  
17 access tariff, there should be no blocking of the tariff.  
18 Did I read that correctly as well?

19 A. Yes.

20 Q. Okay. Thank you. Mr. Biere, does your  
21 company, Chariton Valley, also concur in the National  
22 Exchange Carrier Association, or NECA, tariffs filed at the  
23 federal level?

24 A. In some parts of it.

25 Q. Okay. Do you concur in FCC Tariff No. 5, and

1 to help you, that's the one that contains the provision that  
2 I'm interested in, the meet point billing provisions. Would  
3 it help if I showed it to you?

4 A. Yes, it would.

5 JUDGE THOMPSON: You may approach?

6 MR. BUB: Thank you.

7 THE WITNESS: I believe that's correct.

8 Q. (By Mr. Bub) Okay. Having reviewed Section  
9 2.4.5, or excuse me, Section 2.4, the general regulations in  
10 FCC Tariff No. 5, would you agree with me that this tariff  
11 also contains provisions -- meet point billing provisions for  
12 access services provided by more than one telephone company?

13 A. Isn't it correct that those meet point billing  
14 arrangements deal with the transport portion, and so that  
15 each company gets paid for their transport -- their portion  
16 of the transport facility use.

17 Q. Well, let's look. Let's look specifically --  
18 well, let me back up and get an answer to my general question  
19 first. You would agree with me that this tariff section of  
20 FCC Tariff No. 5 does contain meet point billing provisions?

21 A. Yes, it does contain meet point billing  
22 provisions.

23 Q. Okay. Now let's look specifically at the  
24 multiple bill option, and this would be under Section 2.4.7,  
25 capital B, subparagraph 2.

1           A.       It says under the multiple bill option, each  
2   company providing the access bill will render an access bill  
3   to the customer for its portion of the service provided on  
4   its access tariff rates and regulations, which I believe  
5   deals with the transport -- transport function because the  
6   norm is Feature Group D connection where the terminating --  
7   or the A company orders access and is responsible for the  
8   charges for the traffic terminated to the local exchange  
9   carrier.

10           Q.       This transport you're talking about, that's  
11   one of the access elements, is it not?

12           A.       I believe that's correct.

13           Q.       And there are other elements, aren't there?

14           A.       Yes.

15           Q.       Channel mileage?

16           A.       I believe those are flat rate charges.

17           Q.       Okay. And then there's switching charges?

18           A.       I can't quote you all the elements from  
19   memory.

20           Q.       But there are some?

21           A.       There are several elements.

22           Q.       Carrier common line?

23           A.       Yes.

24           Q.       Local switching?

25           A.       That, I believe, would be one.

1 Q. Now, under this multiple bill option that you  
2 read for switched access multiple bills, the end office  
3 company's generally considered the initial billing company;  
4 is that correct?

5 A. The end office company is considered -- say  
6 that -- or ask me that again.

7 Q. End office company is the initial billing  
8 company, IBC?

9 A. And it goes on to say that the IBC is a  
10 company that calculates and provides all the information to  
11 the carriers, and again, I believe that's relative to  
12 transport.

13 Q. Okay. To the subsequent billing companies you  
14 mean?

15 A. To the other companies involved, subsequent  
16 billing company, yes.

17 Q. Okay. And then it goes on to say that each  
18 company, IBC, which is the initial billing company, and the  
19 SBC, which in this case is the subsequent billing company,  
20 will prepare its own bill; is that correct?

21 A. That's what it says.

22 Q. Determine its charges for local transport  
23 directory transport and/or channel mileage as set forth in  
24 three following?

25 A. Because each company --

1 Q. That's what it says?

2 A. That's what it says.

3 Q. Okay. And then determine and include all  
4 recurring and non-recurring rates and charges of its access  
5 rates and tariffs?

6 A. That's also what it says.

7 Q. And reflect its billing account reference  
8 (BAR), and all connecting company billing account  
9 cross-references?

10 A. That's also what it says.

11 Q. And then you forward that bill to the  
12 customer. In this case, it would be the access customer; is  
13 that correct?

14 A. It says forward the bill to the customer.

15 Q. Okay. And then it says the customer will  
16 remit payment directly to each bill rendering company?

17 A. That's also what it says.

18 Q. Okay. Okay. Then going -- looking at Section  
19 2.4.7, capital B, subparagraph 3, subpart C, it says for  
20 future groups A, B, C, and D, tandem switch transport, talks  
21 about multiplying the number of originating and terminating  
22 access minutes of use routed over the facility times a number  
23 of airline miles as set forth in a proceeding times the BP,  
24 billing percentage, for each telephone company times a tandem  
25 switched facility rate; is that correct?

1           A.       That's what it says, and clearly that  
2 indicates that it's a charge for transport.

3           Q.       Okay. Tandem switching is different, is it  
4 not, for transport?

5           A.       Switching is different, yes.

6           Q.       Okay. Then you -- then it also says you  
7 multiply the tandem switch termination rate times the number  
8 of originating and terminating access minutes routed over the  
9 facility; is that correct?

10          A.       That's what it says.

11          Q.       And it also says when a tandem office is  
12 located within the operating territory of a telephone company  
13 participating in NECA's traffic sensitive pool, multiply the  
14 tandem switching rate times the number of originating and  
15 terminating access minutes that are switched at the tandem;  
16 is that correct?

17          A.       That's also what it says.

18          Q.       Okay. And at Paragraph 2.4.7, capital B,  
19 subparagraph 3C, continues a tandem switch termination rate  
20 is applied as set forth at 6.1.3 A and the switched --  
21 switched access non-recurring charges are applied to set  
22 forth in 6.4.B -- let me do it again, 6.4.1 capital B; is  
23 that correct?

24          A.       That's part of what it says.

25          Q.       Okay. And then there's a note that says the

1 BP is not applied to the switched access tandem switched  
2 termination rate or any nonrecurring charge; is that right?

3 A. That's the note.

4 Q. Okay. Then under subsection E for A, B, C,  
5 and D, it also talks about entrance facilities and/or  
6 multiplexing equipment.

7 A. That's the first few words of the paragraph.

8 Q. Do the whole paragraph.

9 A. When the entrance facility and/or multiplexing  
10 equipment is located within the operating territory of a  
11 telephone company participating in NECA's traffic sensitive  
12 pool, the entrance facility or multiplexing charge will  
13 apply.

14 A. That's what it says.

15 Q. Okay. And the billing percentage, the BP, is  
16 not applicable to the entrance facility and multiplexing  
17 charges?

18 A. Which is clarifying that that's not a -- a --  
19 the billing percentage is relative to transport.

20 Q. And this multiplexing equipment and entrance  
21 facility charges are not transport charges, are they?

22 A. They're not distant sensitive.

23 Q. But they're not transport charges, are they?

24 A. They may be part of the transport charge.

25 Q. They're listed separately from the transport



1 that we talked about earlier, isn't that correct? Do you  
2 need to see it again?

3 A. It's -- I would agree that it's different --  
4 it's different language.

5 Q. Okay. All right.

6 MR. BUB: I think those are all the questions  
7 I have. Mr. Biere, thank you very much for your time.

8 JUDGE THOMPSON: Thank you very much, Mr. Bub.  
9 Let's see, Mr. T-Mobile Johnson.

10 MR. MARK JOHNSON: I've been called a lot  
11 worse than that.

12 CROSS-EXAMINATION BY MR. MARK JOHNSON:

13 Q. Mr. Biere, as I understand it, we're here for  
14 one purpose today and that's to figure out what the  
15 appropriate interMTA/intraMTA allocation is for the traffic  
16 generated by my client, T-Mobile, and delivered to the  
17 exchanges served by your company; is that right?

18 A. My company and Northeast.

19 Q. Well, of course. Let's make sure we  
20 understand the methodology that you use in calculating what  
21 the interMTA factor is, okay?

22 A. Okay.

23 Q. Always nice to have a little audio aide --  
24 pardon me, visual aide. Hopefully we can all see that. Now  
25 as I understand it, you use a traffic sample; is that right?

1 That's what you started with?

2 A. That's correct, we used a traffic sample for  
3 two months' traffic that's represented in the schedule  
4 attached to my testimony.

5 Q. Right, that's Schedule 3 attached to your  
6 direct testimony?

7 A. That's correct.

8 Q. And the sample was for November and December  
9 of 2001?

10 A. That's correct.

11 Q. And that sample is used to extrapolate the  
12 traffic generated over about a four-year period; isn't that  
13 right?

14 A. That's correct, because that's the records  
15 that were available.

16 Q. Okay. And if you look at Schedule 3 to your  
17 direct testimony, and I believe you did a little while ago  
18 with Mr. -- I think it was with Staff counsel, just to make  
19 sure that we understood what this schedule consisted of, is  
20 it correct that the first column in Schedule 3 shows the NPA  
21 and NXX of the originating phone number?

22 A. That's correct.

23 Q. Would you agree with me that NPA/NXX is what  
24 we might consider -- a layperson would call the area code and  
25 the exchange?

1 A. That's correct.

2 Q. Okay. And if you look at Schedule 3 for  
3 T-Mobile, shows, for the most part, that you have 660 and 816  
4 and 785 area codes; is that right?

5 A. Those among others.

6 Q. Among others. But for the most part, that's  
7 what they are, 660, 785, 816, and you also have some 913's?

8 A. There's several others. The ones that you  
9 site are on here as well as others. 913 seems to be as many  
10 of those as there are some of the others that you mentioned.

11 Q. 913 is Suburban Kansas City on the Kansas side  
12 of the state line; is that right?

13 A. That's correct.

14 Q. Okay. 785, that's also in Kansas; is that  
15 right?

16 A. I'm not familiar with where 785 is.

17 Q. All right. And the 816 and 660, those are in  
18 the Kansas City area, right?

19 A. 816 is Kansas City area, 660 is a more out of  
20 state.

21 Q. Sedalia, for example?

22 A. Sedalia is 660, yes.

23 Q. Okay. Now, I understand that you defer to  
24 Mr. Knipp's testimony in describing how the interMTA factor  
25 was developed; is that right?

1 A. Yes.

2 Q. Okay. And for the record, your reference to  
3 Mr. Knipp's testimony appears on Line 17, Line 1, of your  
4 direct testimony; is that correct?

5 A. Yes.

6 Q. Okay. The traffic sample you used, was there  
7 any other traffic sample used in determining the interMTA  
8 factor which Chariton Valley is proposing?

9 A. Relative to your client, T-Mobile?

10 Q. To T-Mobile, yes.

11 A. I don't believe so. I think that was the  
12 actual call records that we captured from traffic terminating  
13 to our exchanges.

14 Q. Okay. Fine. And you used the NPA/NXX of the  
15 originating phone number as the originating point of the  
16 call; is that right?

17 A. That's correct.

18 Q. Okay.

19 A. Yes, that's the only information that was  
20 available.

21 Q. And then you used the number that was called  
22 as the terminating point of the telephone call; is that  
23 right?

24 A. That's also correct.

25 Q. Okay. And the terminating point, that's your

1 company's customer, right?

2 A. Yes. Yes, it is.

3 Q. And then those customers were in the exchanges  
4 served by your company; is that correct?

5 A. Yes.

6 Q. And just to -- for the record, let me point  
7 to, I believe in opening statement I did this, to the area  
8 that I believe encompasses the exchanges that your company  
9 serves. I'm pointing to an area in north central Missouri.  
10 Would you agree with me that that is the area that your  
11 company serves?

12 A. I can't exactly see your marks, but generally,  
13 that's correct.

14 Q. Let me bring it a little closer to you. I  
15 didn't come through too well, but you see the blue area?

16 A. Yes.

17 Q. Are those the exchanges that your company  
18 serves?

19 A. Like I said, it certainly looks like a good  
20 representation, yes.

21 Q. Okay. Thank you, Mr. Biere. And the phone  
22 calls originating from an 816 or 660 area code and going to a  
23 phone number served by your company in the exchanges that are  
24 in the St. Louis MTA, those are interMTA calls; is that  
25 right?

1 A. Yes.

2 Q. And calls that would go -- that went to the  
3 exchanges served by your company that lie in the Kansas City  
4 MTA are intraMTA calls; is that correct?

5 A. That's correct.

6 Q. And then you have an exchange that -- exchange  
7 or two that sits astride the MTA line?

8 A. Yes.

9 Q. And as I understand your testimony, for those  
10 exchanges, you allocated the traffic between interMTA and  
11 intraMTA based on the percentage of access lines?

12 A. Yes.

13 Q. Okay. Now, the calls that are interMTA in  
14 nature, those are subject to access charges; is that correct?

15 A. Yes.

16 Q. And your company has a tariff for intrastate  
17 access charges on file with the Commission?

18 A. Yes.

19 Q. And has had such a tariff on file and approved  
20 by the Commission for many years?

21 A. For many years.

22 Q. And years predating when this traffic was  
23 first originated back in early 1998; is that correct?

24 A. Yes, that's correct.

25 Q. Okay. But as I understand it, your company

1 did not have a wireless termination tariff during the time  
2 this traffic was generated between 1998 and 2001?

3 A. That's correct.

4 Q. But you have such a wireless termination  
5 tariff now?

6 A. No, we've filed a tariff, but it's not been  
7 approved. We have interconnect agreements that have been  
8 approved for wireless traffic.

9 Q. I understand. But with respect to an actual  
10 wireless termination traffic, you do not have one in effect  
11 today?

12 A. No.

13 Q. Do you remember when you filed that?

14 A. No, I don't.

15 Q. But it was filed after the end of 2001; is  
16 that correct?

17 A. Yes, yes.

18 Q. So to the extent the traffic in question is  
19 interMTA in nature, we know what charges apply to that.  
20 That's access charges.

21 A. That's correct.

22 Q. And that's something that the FCC decided a  
23 number of years ago, as you understand it?

24 A. Yes.

25 Q. But on the other hand, if the traffic is

1 intraMTA in nature, the situation becomes more unclear,  
2 becomes unclear as to the charges that are due?

3 A. No, I don't believe it is unclear. Lacking  
4 any other tariff rate to apply, I believe that the Chariton  
5 Valley's access tariff rates are the proper rate to apply.

6 Q. I understand that's your position. Let me ask  
7 the question this way. Would you agree with me that the  
8 parties disagree as to what charges should apply?

9 A. That I think that's evident, yes.

10 Q. Okay. So -- but the parties agree on what  
11 should -- what should apply to interMTA calls. That's access  
12 charges, right?

13 A. Yes.

14 Q. That's what the FCC has said?

15 A. Yes.

16 Q. On the other hand, if a call is intraMTA in  
17 nature, that's what this dispute is about. We don't agree  
18 with your company as to what charges should be imposed for  
19 that traffic?

20 A. That's -- the dispute is about the -- what  
21 rate to apply to that traffic and about receiving payment.

22 Q. Understood. But you talked about interMTA  
23 traffic calculating the amount that's due. Let's assume we  
24 get to some sort of agreement, whether it's imposed by the  
25 Commission or agreed to by the parties, as to what the



1 appropriate interMTA/intraMTA split is, okay?

2 A. Okay.

3 Q. Let's assume we're there.

4 A. Okay.

5 Q. If we know how much interMTA traffic there is,  
6 then it's simply an arithmetic exercise to determine how much  
7 money is owed your company for that traffic. Would you agree  
8 with me?

9 A. Yes.

10 Q. X number of minutes times Y cents per minute  
11 equals Z. The amount of money, dollars, cents, whatever,  
12 that's owed to your company for the interMTA traffic?

13 A. Yes.

14 Q. Okay. But on the other hand, if we're talking  
15 about intraMTA traffic, you might have X minutes, but it's  
16 the Y, it's the cents per minute, that's in dispute. Would  
17 you agree?

18 A. It's in dispute. I believe it's very clear  
19 what the correct rate to apply is.

20 Q. I understand your position. We can see we  
21 both have differing positions on that point. Would you agree  
22 with that?

23 A. I would agree with that.

24 Q. Okay. Thank you. Now, as I understand it,  
25 the FCC, and this I believe appears in your direct testimony,

1 the FCC has talked about three methods for determining the  
2 split between interMTA and intraMTA traffic?

3 A. That's correct.

4 Q. Three different ways of calculating it,  
5 methodologies, if you will?

6 A. That's correct.

7 Q. The first, for lack of a better way of putting  
8 it, is a negotiated resolution. Would you agree with that?

9 A. Yes.

10 Q. The second is -- the second method relies on  
11 the location of the originating cell site; is that right?

12 A. I would agree with that.

13 Q. Would you agree with me that the Staff's  
14 position is sort of a hybrid, or a modification, of the  
15 second method, because it relies on the location of the cell  
16 sites?

17 A. Actually, I believe the Staff's method is a  
18 completely different fourth method that I disagree with.

19 Q. Okay. We understand that. But it is not the  
20 second method that the FCC has approved?

21 A. It is not the second method.

22 Q. And finally, the third method is one that uses  
23 the point of interconnection between the companies as the  
24 locus, the location of the origination of the phone call?

25 A. That's the way it's described, yes.

1 Q. Okay. Now, correct me if I'm wrong, but I  
2 didn't find anywhere in your testimony that you testified  
3 that the method that your company is advocating has been --  
4 has been approved or used by the FCC or any other state  
5 Commission; is that correct?

6 A. I believe that's true. There was insufficient  
7 data. Number 1, we didn't reach -- we did not reach a  
8 negotiated agreement between our companies. And in fact,  
9 your company didn't even really try do that.

10 Q. Sir.

11 A. No pressure.

12 Q. I'm --

13 A. Number 2 --

14 Q. Let me just say if you want to open that door,  
15 I'd be happy to, but I -- have I asked you any questions  
16 about the settlement negotiations?

17 A. No, you haven't.

18 Q. Okay. Thank you.

19 A. The No. 2 method is the location and lacking  
20 the detailed records that provide that information. The  
21 closest surrogate, because we actually did have a recording  
22 of terminating calls. We did not have -- the information was  
23 not passed to us of the originating cell site. And so using  
24 a surrogate for that, which is the originating NPA/NXX, and I  
25 think it's described more fully in my testimony about why we

1 used that and how we applied it.

2 Q. Right, I understand that. But as I understand  
3 it, there's nothing in your testimony that says that the  
4 Minnesota Commission or the Iowa Commission or the Federal  
5 Communications Commission has used this methodology?

6 A. No, that's correct.

7 Q. Thank you. Now, would you agree with me that  
8 wireless phones are often referred to as mobile phones?

9 A. I've heard that term.

10 Q. And that's because mobile phones are mobile.  
11 Would you agree with me?

12 A. I've also heard that.

13 Q. Okay. So do you have a wireless phone?

14 A. Yes, I do.

15 Q. Do you have it with you right now?

16 A. Yes, I do.

17 Q. Okay. Is it correct that the methodology that  
18 you are advocating in your testimony assumes that all of the  
19 calls in question were made from the caller's home MTA?

20 A. Yes, and I go further in testimony go on to  
21 describe that there are actually two possible theoretical  
22 errors that could occur because of that methodology.

23 Q. Right, and we'll talk about those in a second,  
24 but I appreciate that. And the home MTA for all the calls in  
25 question for T-Mobile calling your company's customers, that