

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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5 TRANSCRIPT OF PROCEEDINGS
6 Arbitration Hearing
7 May 25, 2005
8 Jefferson City, Missouri
9 Volume 5
10
11 Southwestern Bell Telephone, L.P.,)
12 d/b/a SBC Missouri's Petition for)
13 Compulsory Arbitration of)
14 Unresolved Issues for a Successor) Case No. TO-2005-0336
15 Interconnection Agreement to the)
16 Missouri 271 Agreement ("M2A"))
17
18
19 KEVIN A. THOMPSON, Presiding,
20 DEPUTY CHIEF REGULATORY LAW JUDGE.
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1 P R O C E E D I N G S

2 JUDGE THOMPSON: Good morning. I think
3 we're going to take up where we left off at the close of
4 the day yesterday. As I understand, we have Mr. McPhee
5 and Mr. Price to hear from; is that correct? And which of
6 the two do you want to put up first?

7 I don't care. Let's do Mr. McPhee, then,
8 because I met him in the elevator in the parking garage.
9 He's a very nice man and I'd be happy to hear from him.
10 Not to say that Mr. Price isn't a nice man.

11 You're Price? All right. You're already
12 up there.

13 MR. PRICE: It's called a preemptive
14 strike.

15 JUDGE THOMPSON: Somebody come up and ask
16 this man questions.

17 Mr. Price, you've already been sworn, I
18 believe.

19 MR. PRICE: That is true, your Honor.

20 JUDGE THOMPSON: I'll remind you that you
21 are still under oath.

22 MR. PRICE: Thank you.

23 JUDGE THOMPSON: You may inquire.

24 MR. MORRIS: Thank you, your Honor.

25 DON PRICE, being previously sworn, testified as follows:

1 DIRECT EXAMINATION BY MR. MORRIS:

2 Q. Mr. Price, during this part of your
3 examination we'll be covering topics on NIM. Do you have
4 any corrections to your prefiled testimony?

5 A. Yes, a couple that were inadvertently
6 overlooked when we went through this the first time. In
7 my direct testimony, both the HC and the NP versions, at
8 page 148 of the direct, there's a sentence that begins at
9 line 24 and extends on to line 25, and that entire
10 sentence should be stricken. It's the last sentence in
11 the paragraph there at page 148. Similarly --

12 MR. GRYZMALA: I'm sorry. I didn't hear
13 that.

14 THE WITNESS: That's fine. I'll do it
15 again. Page 148 of my direct.

16 MR. GRYZMALA: Yes, sir.

17 THE WITNESS: At line 28 -- I'm sorry -- at
18 line 24, there is a sentence that begins and ends there at
19 lines 24 and 25. I'm striking that last sentence, that
20 one sentence there at the end of that paragraph.

21 MR. GRYZMALA: On my copy, sir, the one
22 that begins state law imposes?

23 THE WITNESS: Yes.

24 MR. GRYZMALA: Okay. Thank you.

25 THE WITNESS: Similarly at page 149 in that

1 same discussion, at line 6, I'm striking the phrase, the
2 Chicago metropolitan area, replacing that with the word
3 "Missouri." At line 7, I am striking the words "but one,"
4 and then immediately after that, adding an "S" to the word
5 instance, so it now says instances.

6 And I'm making that same change again at
7 line 9, which is to strike the words "but one" and then
8 adding an "S" to the word instance, so that it says, in
9 all instances.

10 And one other -- one other change at
11 page 127 is to note that Issue NIM 27 has been resolved.
12 NIM 27 issue extends -- that discussion in my direct
13 extends through page 129, so I don't know if we need to
14 strike that or simply note that it's been resolved.

15 MR. MORRIS: Note for the record that that
16 issue's been resolved, NIM 27.

17 JUDGE THOMPSON: I'm sorry. Can you say it
18 louder?

19 MR. MORRIS: MCI NIM 27 has been resolved.

20 JUDGE THOMPSON: Very good.

21 BY MR. MORRIS:

22 Q. Are those all your corrections, Mr. Price?

23 A. Yes, they are.

24 MR. MORRIS: With that, your Honor, I'd
25 tender the witness for cross-examination.

1 JUDGE THOMPSON: Thank you very much. And
2 who's going to be doing the cross of Mr. Price?
3 Step on up, Mr. Gryzmala, and before you
4 start, tell me how long you're going to be.
5 MR. GRYZMALA: Give me 30 seconds, please.
6 JUDGE THOMPSON: Surely you're going to
7 need longer than that.
8 MR. GRYZMALA: I would say 20 minutes.
9 JUDGE THOMPSON: 20 minutes.
10 MR. GRYZMALA: 20, 25.
11 JUDGE THOMPSON: The reason is I noticed
12 that when I look at the parties' suggestion for the amount
13 of time for today, they've got nine and a half hours. I
14 don't plan to be in this room nine and a half hours today.
15 So let's move everything along as best we can.
16 CROSS-EXAMINATION BY MR. GRYZMALA:
17 Q. Mr. Price, by way of introduction, I think
18 I would like to direct your attention or at least know
19 that you have with you the MCI NIM DPL.
20 A. I have an earlier version which sets forth
21 the parties' positions and the references to the contract
22 language, and I think for almost all purposes that should
23 be sufficient.
24 Q. Okay. I believe we were able to work
25 through that yesterday, so I'm hopeful we can do the same

1 today. My first series of questions will deal with what
2 is regarded as NIM 9 on my May 20 copy, sir, that begins
3 at page 5. Yours may differ in slight regards.

4 A. Okay.

5 Q. At page 20 -- I'm sorry. Excuse me. At
6 page 122 of your testimony, that is your direct testimony,
7 do you recall -- or if you would like to refer to your
8 testimony, I would like to focus briefly on the passages
9 that begin at pages -- or rather page 122, lines 1 through
10 3. This has to do with the point of interconnection that
11 we talked about yesterday with a couple of folks. I want
12 to talk with MCI about it. I promise I won't call you the
13 CLEC Coalition.

14 This issue is based on MCI's right to
15 establish interconnection points at any technically
16 feasible location in SBC's network. Is that what your
17 testimony says, sir?

18 A. That's a fair representation, yes.

19 Q. Okay. This is the very first word of your
20 an-- or the very first sentence of your answer when asked,
21 what is the dispute reflected by the proposed language in
22 NIM 9; is that correct?

23 A. Yes.

24 Q. I want to turn, if I may, to the NIM DPL
25 that we just talked about, and again, that would be NIM 9,

1 and I would like you -- bear with me while I get there.
2 Would you kindly read the first sentence in Section 4.4.1
3 of MCI's proposed contract language which on my copy
4 appears at page 6. Start -- yes, the first sentence. I
5 believe it begins, SBC Missouri shall provide
6 interconnection.

7 A. I agree with that. Yes, the entire
8 sentence reads, SBC -- I'm sorry. Let me start over.

9 In appendix NIM, network interconnection
10 method, at paragraph 4.4.1, there is competing language.
11 So I'm starting with the first sentence of MCI's proposed
12 language, which reads, SBC Missouri shall provide
13 interconnection at any technically feasible point by any
14 technically feasible means, including but not limited to a
15 fiber meet at one or more locations at each LATA in which
16 MCIm originates local, intraLATA toll or meet point
17 switched access traffic and interconnects with SBC
18 Missouri.

19 Q. Let me ask you to confirm that no portion
20 of that sentence, Mr. Price, refers to the passage -- or
21 rather the phrase used in your testimony that being,
22 quote, in SBC's network, end quote. Do you see that
23 phrase anywhere in that passage that you just read to me?

24 A. In that passage, no.

25 Q. Now, let me ask you, in reading that in its

1 totality, that is, that sentence in its totality, is it a
2 fair representation to say that under MCI's proposed
3 contract language, MCI could provide a POI at any
4 technically feasible point, but not necessarily limited to
5 the locations that follow in that sentence, based on the
6 words "including but not limited to"?

7 A. Mr. Gryzmala, I'm not sure I understood
8 your question.

9 Q. Let me say -- let me say it another way.
10 Is it a fair representation to suggest to you that MCI's
11 proposed language could require or authorize MCI to deploy
12 a POI in locations other than a fiber meet?

13 A. It's my understanding that the fiber meet
14 has been the architecture of choice, but I would agree
15 that is not the only method of interconnection that is
16 allowed by the FCC's rules, and there could be instances
17 in which -- in fact, I believe there are instances in
18 which MCI has interconnected by other methods,
19 notwithstanding the fact that is our architecture of
20 choice.

21 Q. Let me ask you, apart from what may be your
22 architecture of choice and apart from what may be the
23 FCC's rules on the subject, I want to refocus you, sir, on
24 your language. And isn't it a fact that this language
25 would authorize MCI to deploy a POI at other than a fiber

1 meet point?

2 A. And by your language, you're talking about
3 the specific paragraph that I read previously?

4 Q. Yes, sir. Section 4.4.1, first sentence.

5 A. Well, by focusing on that one sentence,
6 you're excluding an awful lot of additional language
7 that's in that paragraph that talks about parties'
8 agreement on implementing an architecture that creates
9 shared value facilities that provide equal investment,
10 et cetera. So, I mean, when you isolate a single word or
11 a single sentence and exclude that from the context that
12 it's in in the proposed language, I'm not sure what it is
13 that you're asking me.

14 Q. Let me try a third time, with all due
15 respect, Mr. Price. Isn't it true that with reference to
16 the first sentence, the sentence you read, MCI will be
17 authorized to deploy a POI other than at a fiber meet?

18 A. Yes.

19 Q. Thank you.

20 A. And I don't think that has any particular
21 relevance given the other language in the paragraph.

22 Q. Thank you. Now, briefly, I want to just
23 simply confirm that the next sentence, the sentence -- and
24 I presume the following passages you would like to get to,
25 but I only want to focus now on the next sentence. The

1 parties agree that the target interconnection architecture
2 is, et cetera, et cetera. Is that how the sentence
3 begins?

4 A. Yes. And I believe that's consistent with
5 my previous testimony this morning.

6 Q. That sentence, that passage I just read to
7 you does not impose a duty with respect to the
8 interconnection to be deployed. Rather, isn't it fair to
9 say that it simply states a target? Is that a fair
10 statement, a fair characterization of that first clause?

11 A. Sitting here this morning, that would be my
12 interpretation, yes.

13 Q. And let me ask you finally, with respect to
14 the entirety of the MCI proposed language at 4.4.1, is
15 there any passage in that section that states, as does
16 your direct testimony, quote, in SBC's network?

17 A. Are you asking me if that exact phrase
18 appears?

19 Q. Yes, sir, as did it appear in your direct
20 testimony, sir.

21 A. That exact phrase does not appear.

22 Q. Thank you. Now I would like to direct your
23 attention to the following page, at least on my copy,
24 which is page 7, MCI's proposed language at Section 4.5.1
25 would you confirm, Mr. Price, would say, SBC Missouri

1 shall provide any other technically feasible
2 interconnection methods requested by MCI?

3 A. Agreed.

4 Q. That sentence, fairly read, allows MCI to
5 make a unilateral decision as to where a POI would be
6 deployed so long as it is technically feasible, is that
7 not correct?

8 A. In keeping with FCC Rule 51.305, yes.

9 MR. GRYZMALA: Your Honor, I'm going to
10 move to strike the answer. We're trying desperately to
11 keep away from the law. I'm not prepared to address the
12 law as he just threw out.

13 JUDGE THOMPSON: Read the question and
14 response, Kellene.

15 THE REPORTER: "Question: That sentence,
16 fairly read, allows MCI to make a unilateral decision as
17 to where a POI would be deployed so long as it is
18 technically feasible, is that not correct?

19 Answer: In keeping with FCC Rule 51.305,
20 yes."

21 JUDGE THOMPSON: We'll strike everything
22 but yes.

23 MR. GRYZMALA: Thank you, your Honor.

24 BY MR. GRYZMALA:

25 Q. Now, let me direct you back to the prior

1 page, that being on my copy page 6. SBC's proposed
2 language, moving back up to 4.4.1, says that a fiber meet
3 point can occur, quote, at any mutually agreeable and
4 technically feasible point at an SBC Missouri tandem or
5 end office building within each LATA. Is that fair?

6 A. That's a fair reading, yes.

7 Q. That's a fair reading. Would you agree,
8 Mr. Price, that an SBC Missouri tandem or an SBC end
9 office building would be, quote, in SBC's network, as that
10 phrase is used in your testimony?

11 A. Those points would, yes. Those points
12 would be among points that would be in SBC's network, yes.
13 Those do not represent the totality of points that would
14 be within SBC's network.

15 Q. So the answer to my question -- excuse me.
16 Let me rephrase.

17 Would an SBC Missouri tandem be within
18 SBC's network?

19 A. Yes.

20 Q. Would an SBC Missouri end office building
21 be within SBC's network?

22 A. I would think so, yes.

23 Q. Thank you. I want to direct a couple of
24 questions -- excuse me. Give me just a moment.

25 JUDGE THOMPSON: Absolutely.

1 BY MR. GRYZMALA:

2 Q. You make the observation, do you not, sir,

3 in your testimony that is on your rebuttal testimony at

4 page 45, that due to the FCC's decisions in the TRRO,

5 CLECs will need to deploy even more facilities to serve

6 customers as additional UNEs are declassified. As

7 competitors deploy more of their own facilities in their

8 collocation arrangements, it is crucial for competitors to

9 be able to maximize efficiencies with regard to

10 provisioning these facilities. Do you see that passage?

11 A. The page reference again, please.

12 Q. Page 45 of your rebuttal, sir.

13 JUDGE THOMPSON: Make sure you shout so the

14 reporter can hear you.

15 THE WITNESS: That passage appears at

16 page 45 in the context of a discussion on another issue,

17 yes.

18 BY MR. GRYZMALA:

19 Q. And it does occur with respect to another

20 issue, I agree, but for purposes of the present question,

21 I simply want to confirm that, as you sit here today, it

22 remains your opinion, does it not, sir, that as a result

23 of the TRRO, CLECs are going to need to deploy even more

24 facilities to serve their customers as additional UNEs are

25 declassified; is that correct?

1 MR. MORRIS: Your Honor, Mr. Gryzmala
2 objected when Mr. Price cited to FCC Rule 51.309. Now
3 he's asking him his interpretation of the TRRO. I would
4 object on that basis.

5 JUDGE THOMPSON: Sustained.

6 BY MR. GRYZMALA:

7 Q. Is it fair to state that as a regulatory
8 policy matter, MCI has to assume that it will be required
9 to deploy more facilities now than it did one year ago?

10 A. Yes, as a general matter. And I believe
11 that was the context of the sentence you were referring to
12 in my rebuttal testimony. I wasn't referring to MCI and
13 its specific business decisions.

14 What I was speaking to was the general
15 tendency, which I believe flows from the TRO and the TRRO,
16 which says that rather than relying on a broader testify
17 initial of unbundled facilities, as had been the case in
18 the past, which gave CLECs the right to utilize more of
19 the facilities that SBC already has in the ground, that
20 they will be -- to serve the same market base, whatever
21 that is, they will have the potential to deploy more
22 facilities in order to meet that same level of consumer
23 demand.

24 Q. Thank you. I would like to turn to
25 discussion briefly, if I may, to NIM 14. I believe that

1 reference appears at page 127 of your direct testimony.
2 Is it fair to say that this issue generally has to do as
3 well with the matter of interconnection on SBC's network?
4 The statement of the issue simply reading
5 from your testimony, at least MCI's statement of the
6 issue, is that should SBC Missouri be permitted to limit
7 the methods of interconnection? Do you see that passage
8 I'm referring to?
9 A. I agree that that is MCI's statement of the
10 issue NIM 14.
11 Q. All right. Great. Thank you. Let me
12 refer you to SBC -- let me refer you to I think it would
13 be NIM 14 on the DPL, which on my copy I had noted refers
14 to page 12.
15 A. I'm there.
16 Q. Okay. Now, with respect to SBC Missouri's
17 proposed language at Section 4.4.3.2, does it not say
18 that, quote, MCI will provide fiber cable to the last
19 entrance or SBC Missouri designated manhole at the SBC
20 Missouri tandem or end office building; is that correct?
21 A. That is what my reading of SBC's language
22 is on that paragraph.
23 Q. I simply want to ask you one question about
24 that passage, sir. Would you be aware of any reason that
25 providing fiber to such a manhole would not be technically

1 feasible for MCI to do?

2 A. If you're asking me is it technically
3 feasible for a company, MCI or anyone to lay fiber, I
4 mean, how broadly should we -- should we interpret the
5 phrase technically feasible? I mean, rights of way need
6 to be acquired, and those can be time-consuming, sometimes
7 impossible to do. Without right of way, yes, it would be
8 technically infeasible.

9 Q. Of course, that same consideration applies
10 to SBC, should your view of technically feasible be a
11 location such that SBC might not also be able to secure
12 the necessary right of way; isn't that a fair statement,
13 too?

14 A. It is a fair statement in the abstract, but
15 the problem that I have with it is that the way that the
16 FCC's rules are written, it is the requesting carrier's
17 choice, and then the burden falls to SBC to prove that
18 something is not technically feasible.

19 MR. GRYZMALA: I'm going to move to strike
20 the last sentence of Mr. Price's answer as being beyond
21 the scope of what we're permitted to address.

22 JUDGE THOMPSON: Read me the question and
23 then the sentence that he wants struck.

24 THE REPORTER: "Question: Of course, that
25 same consideration applies to SBC, should your view of

1 technically feasible be a location such that SBC might not
2 also be able to secure the necessary right of way; isn't
3 that a fair statement, too?"

4 "Answer: It is a fair statement in the
5 abstract, but the problem that I have with it is that the
6 way that the FCC's rules are written, it is the requesting
7 carrier's choice, and then the burden falls to SBC to
8 prove that something is not technically feasible."

9 JUDGE THOMPSON: And what's wrong with that
10 exactly, because he references --

11 MR. GRYZMALA: We were directed not to
12 refer to the FCC's rules. I'm not prepared to cross him
13 on it, your Honor, and I didn't ask him that question
14 anyway.

15 JUDGE THOMPSON: Tell you what. You ask
16 your question again, and you answer again and try not to
17 refer to the FCC.

18 MR. GRYZMALA: And I'm sorry.

19 JUDGE THOMPSON: You can say something
20 like, in the prevailing regulatory climate, in the way we
21 typically do things, you know, some sort of circumfusion
22 like that.

23 BY MR. GRYZMALA:

24 Q. Okay. I want to focus on that passage in
25 4.4.4.3.2, and I believe you mentioned that in the

1 abstract, and if I'm paraphrasing correctly, you said that
2 in the abstract, might not be technically feasible because
3 MCI might not be able to get the necessary right of way.
4 Is that basically what your theme was?

5 A. In the previous question, yes. That's not
6 what I understood your subsequent question to be.

7 Q. Okay. My next question then will be, would
8 that same consideration not likewise apply to SBC
9 Missouri?

10 A. And my answer is, yes, but given the way
11 that my understanding of the regulatory rules or the
12 prevailing business arrangements as they have been
13 outlined by the applicable agencies, I don't believe
14 that's important or relevant.

15 Q. I just have one follow-up question, perhaps
16 two, on that. If it is, as you recognized earlier, a
17 higher probability that a CLEC is now going to have to
18 deploy more facilities today than it did a year ago, and
19 MCI has to come to the manhole of SBC, it will have to
20 negotiate rights of way, correct, to get there, correct?

21 A. Any construction of facilities requires
22 access to rights of way.

23 Q. And --

24 A. Regardless of whose facilities you're
25 talking about.

1 JUDGE THOMPSON: You've got about
2 30 seconds left.

3 MR. GRYZMALA: Oh, I'm sorry, your Honor.
4 I didn't know I ate up that much time. Can I beg
5 additional time?

6 JUDGE THOMPSON: Then everybody's going to
7 want additional time and we're going to be here Saturday.

8 MR. GRYZMALA: Well, I thought we were --

9 JUDGE THOMPSON: You want to subtract that
10 from SBC's time for today? Fine. Go as long as you want.

11 MR. GRYZMALA: Okay. I'll be really quick,
12 sir.

13 BY MR. GRYZMALA:

14 Q. You talked about the methodology for
15 measuring trunk traffic. Are you aware that SBC itself
16 uses the 20-day method to determine trunk requirements,
17 rather than the five-day method that your testimony refers
18 to?

19 A. I don't have that passage in front of me,
20 but my recollection is that, in writing my testimony, I
21 relied on representations that were made by SBC. If that
22 is incorrect, I mean, I'm certainly not here to vouch for
23 SBC's practices.

24 Q. You also object to using SBC Missouri's
25 proposed Neal-Wilkinson trunk group capacity algorithms

1 for forecasting because MCI's systems are already
2 programmed to use Erlang V statistical data. Do you
3 recall that?

4 A. Absolutely.

5 Q. Does your testimony cite any problematic
6 timetables or concrete costs to program the Neal-Wilkinson
7 algorithms in your systems?

8 A. Does my testimony provide a dollar estimate
9 of the cost?

10 Q. Does it provide any specific concrete
11 details as to the timetables or costs that MCI would
12 incur?

13 A. And the answer is no, because it would take
14 time and it would expend costs simply to do that, and that
15 is not something that a competitive carrier does lightly.

16 Q. MCI recognizes that there -- strike that.
17 Is it fair to state that MCI recognizes
18 that there are circumstances that could limit SBC's
19 ability to meet hard deadlines for augmenting trunks?

20 A. True.

21 MR. GRYZMALA: I have no further questions.

22 JUDGE THOMPSON: Thank you.

23 MR. GRYZMALA: Thank you, your Honor.

24 JUDGE THOMPSON: Ms. Dietrich, do you have
25 any questions?

1 MS. DIETRICH: No questions.

2 JUDGE THOMPSON: Mr. Johnson?

3 MR. MICK JOHNSON: No questions.

4 JUDGE THOMPSON: Mr. Scheperle?

5 MR. SCHEPERLE: No questions.

6 JUDGE THOMPSON: Mr. McKinnie?

7 MR. MCKINNIE: Just real quick.

8 JUDGE THOMPSON: Very good.

9 QUESTIONS BY MR. MCKINNIE:

10 Q. Mr. Price.

11 A. Good morning.

12 Q. Good morning. Before I ask, can you tell

13 me if the VOIP issues in MCI's recip comp DPL have been

14 settled yet? I don't want to ask about things that have

15 already been settled.

16 A. They have not, so ask away.

17 Q. Okay. How is VOIP traffic currently

18 handled in your interconnection agreement with SBC

19 Missouri?

20 A. It is not. It's silent on that issue.

21 Q. In your mind, is there a difference between

22 VOIP traffic and ISP-bound traffic?

23 A. Yes. And in responding, I cannot avoid the

24 regulatory atmosphere, if you will, because those terms

25 are terms of art in FCC rulings, for example. So when one

1 thinks in terms of ISP-bound traffic, the context of that
2 has almost always been a call that originates from an end
3 user on the PSTN and is destined for an ISP for purposes
4 of dial-up access of the sort that America Online and
5 Microsoft Network and all use for enabling their customers
6 of their services to access the Internet.

7 VOIP is a much broader term, and I believe
8 you noted in one of your questions earlier this week that
9 there are different flavors. Luckily we have some
10 guidance from the FCC as to the different flavors and some
11 explication of the different regulatory treatment.
12 Unfortunately, there's still some open questions.

13 Q. So a call to perhaps a Time Warner -- I'm
14 sorry. Are you familiar with Time Warner's --

15 A. Digital phone service?

16 Q. Yes.

17 A. Yes, I am.

18 Q. Okay. Would you consider a call to that to
19 be ISP-bound?

20 A. No, not given the history around the
21 definition of that term.

22 Q. Okay. Versus a call to a Vonage-style
23 service?

24 A. Well, I wouldn't really view that as
25 ISP-bound.

1 Q. Okay. And just one last question. In your
2 language on recip comp 17 and the MCI position, there's a
3 term "ISP-bound," and then there's a term "ISP outbound."
4 Can you just tell me real quick what ISP outbound traffic
5 is, as used in the position statement for recip comp 17 on
6 page 31 of 34?

7 A. Yes. Thank you. I apologize. I think
8 that was written perhaps in anticipation of an FCC ruling
9 one way or the other. In other words, should the FCC
10 determine in, say, the ISP-enabled services rulemaking
11 that -- that they wish to broaden their previous
12 interpretation of ISP-bound to include Vonage-style, Time
13 Warner digital-phone-style traffic, then it would be -- in
14 that sense it would be outbound traffic from a
15 Vonage-style or Time Warner digital-phone-style customer.

16 Q. So would it be safe to say that that might
17 be at least in the neighborhood or realm of IP to PSTN
18 traffic is what is meant by that phrase?

19 A. Yes. Generally, yes.

20 MR. McKINNIE: Okay. Thank you very much.

21 JUDGE THOMPSON: Thank you, Mr. McKinnie.

22 Recross?

23 MR. GRZYMALA: No, your Honor. Thank you.

24 JUDGE THOMPSON: Thank you, Mr. Gryzmala.

25 Redirect?

1 MR. MORRIS: Thank you, sir.

2 JUDGE THOMPSON: How long do you expect to

3 be?

4 MR. MORRIS: A few minutes.

5 JUDGE THOMPSON: A few minutes. Good.

6 REDIRECT EXAMINATION BY MR. MORRIS:

7 Q. Mr. Price, do you recall your discussion

8 with Mr. Gryzmala regarding Issue NIM 9 that is the mutual

9 agreement necessary for establishing methods of

10 interconnection?

11 A. Yes, I do.

12 Q. Why would MCI want to use the phrase

13 "including but not limited to" in its interconnection

14 agreement with regard to various forms of interconnection

15 as opposed to setting out specific forms?

16 A. My answer would be to give both parties

17 additional flexibility in terms of negotiating

18 arrangements that weren't expressly set out in the

19 contract.

20 Q. There was some discussion of a mid-span

21 fiber meet. With regard to fiber connections, how have

22 MCI and SBC interconnected their networks currently, under

23 the current agreement?

24 A. The -- in keeping with the phrase "target

25 architecture" that I referenced and I believe is in the

1 contract language, particularly in metropolitan areas
2 where the volume of traffic exchanged is significant, it
3 has been a particular type, if you will, of fiber meet
4 arrangement. And that particular flavor or type of meet
5 point that has been used is for each party to assume
6 responsibility for their end, their fiberoptic terminal
7 and for each party to be responsible for a fiber path from
8 their fiberoptic terminal to the other party's fiberoptic
9 terminal.

10 So in other words you would have
11 essentially an A side that SBC would construct to MCI's
12 fiberoptic terminal, and a B side that MCI would construct
13 to SBC's fiberoptic terminal. Both sides would have equal
14 investment in that arrangement, and typically those A and
15 B connections would be in physically diverse paths so that
16 you would have the ability to withstand a failure should
17 one of the -- should either the A or B facility be cut by
18 a backhoe or someone operating in a manhole.

19 Q. SBC's language -- proposed language uses
20 the term "mutually agreed upon." Would that give SBC veto
21 power over a technically feasible requested form of
22 interconnection?

23 A. Yes, I believe it would. I mean, I'm very
24 familiar with consensus-based decision-making bodies, and
25 in any such arrangement, all you have to have is one

1 naysayer and then you don't have agreement. And that's
2 certainly the concern that MCI has with the language
3 proposed by SBC.

4 Q. Do you recall the questions -- I believe
5 this is on Issue NIM 14, SBC's proposed language in
6 4.4.4.3.2, laying fiber to the manhole.

7 A. Yes, I do.

8 Q. Is that the only technically feasible way
9 to interconnect?

10 A. Certainly not.

11 Q. Regarding Issue NIM 24, that was measuring
12 trunk traffic, I believe the discussion centered around
13 MCI's methods of using the Erlang method versus a method
14 used by SBC. Given the nature of MCI's network, why is
15 the Erlang method a preferable way to measure trunk
16 traffic?

17 A. I believe part of the answer is in the
18 testimony of the relevant SBC witness, because the term I
19 believe that was used was that the Neal-Wilkinson methods
20 are better when there is less randomness, if you will, in
21 the traffic.

22 Well, when you have a network that is
23 significantly smaller than SBC's with much less history,
24 if you will, there is a lot more randomness in the
25 observations that are made. In other words, the volumes

1 of traffic can fluctuate significantly greater in the MCI
2 example than in SBC's example where they have, you know,
3 decades of statistical history as to traffic volumes in
4 their network.

5 Q. And finally, on Issue NIM 25 dealing with
6 trunk augments, I believe it's -- is it MCI's position
7 that trunk provisioning be accomplished within 30 days?

8 A. That is the language that MCI has proposed,
9 and I believe, as we heard yesterday, the underlying
10 concern is really the need to have a firm commitment in
11 the four corners of this agreement, as opposed to in an
12 external document such as the CLEC handbook over which SBC
13 has the ability to simply modify unilaterally without any
14 contact with the CLEC community.

15 MR. MORRIS: Thank you. Your Honor, that's
16 all the redirect.

17 JUDGE THOMPSON: Thank you. You may step
18 down, sir. Thank you very much for your testimony today.

19 THE WITNESS: Thank you.

20 JUDGE THOMPSON: Mr. McPhee, I apologize
21 for the earlier confusion. Come on up. Now, you have not
22 been sworn; is that correct?

23 MR. MCPHEE: I was sworn on Monday.

24 JUDGE THOMPSON: You were sworn. Very
25 well. I'll remind you you are still under oath. Please

1 take your seat and state your name for the record and
2 spell your last name for the reporter.

3 MR. MCPHEE: My name is Scott McPhee,
4 M-c-p-h-e-e.

5 JUDGE THOMPSON: You may inquire, Mr. Bub.

6 MR. BUB: Thank you, your Honor.

7 SCOTT MCPHEE testified as follows:

8 DIRECT EXAMINATION BY MR. BUB:

9 Q. Mr. McPhee, you're here to address
10 compensation issues, interconnection issues from the
11 wholesale policy perspective, are you not?

12 A. Yes, I am.

13 MR. BUB: And, your Honor, I would note
14 that yesterday Mr. Hamiter indicated that Mr. McPhee can
15 address one of the questions that you had about the
16 reasons that we're asking for separate facilities on the
17 POI for the 911 traffic, so he can address it from a
18 policy perspective.

19 JUDGE THOMPSON: Great. Thank you.

20 MR. BUB: Thank you.

21 JUDGE THOMPSON: Okay. Cross-examination,
22 Mr. Savage?

23 Mr. Magness?

24 Who else? Just you two?

25 MR. MAGNESS: Yes.

1 JUDGE THOMPSON: And if you could give me
2 just a brief idea how long you think you'll be.
3 MR. MAGNESS: 20 minutes.
4 JUDGE THOMPSON: 20 minutes. Very good.
5 You may inquire.
6 MR. MAGNESS: Thank you.
7 CROSS-EXAMINATION BY MR. MAGNESS:
8 Q. Mr. McPhee, I want to start with a couple
9 of things that have settled since filing of testimony and
10 even the filing of the final DPL as to the CLEC Coalition
11 DPL. I'll just ask if you would agree with me that we
12 have reached a settlement and do not need a Commission
13 decision on CLEC Coalition reciprocal -- or rather
14 intercarrier compensation Issue No. 6, that is, concerning
15 rebuttable presumption true-up?
16 A. Yes, that's correct.
17 Q. In addition, we have reached a settlement
18 on intercarrier compensation DPL Issue 12 for the CLEC
19 Coalition. That's a section called other
20 telecommunications traffic?
21 A. Yes, we have.
22 Q. I want to talk to you really just about one
23 topic this morning, and that's transit traffic. You have
24 testimony concerning that, do you not?
25 A. Yes, I do.

1 Q. Just to put it in context, would you agree
2 with me that when we talk about transit traffic, we're
3 talking about -- well, let me read to you. I have in
4 front of me the M2A, Attachment 12, and in Section 4.1 of
5 Attachment 12 it says, transit traffic is a switching and
6 transport function only which allows one party to send
7 local traffic as defined in Attachment 12 to a third-party
8 network through the other party's tandem. Do you have any
9 quarrel with that definition?

10 A. From the old M2A, no, I don't.

11 Q. Do you understand that to be what transit
12 traffic is about?

13 A. Transit traffic is basically a transport
14 service to connect two parties via an intermediary
15 carrier.

16 Q. So, for example, one party has originated a
17 call, and that call is to terminate on -- let's just use
18 A, B and C to keep it simple. Company A is trying to
19 terminate a call to Company C. In order to get to
20 Company C physically, it's a matter of network design,
21 they need to transit using the network of a Company B. Is
22 that fair?

23 A. They may not need to, but there are
24 arrangements that can be made such that Company B will
25 provide that service.

1 Q. Okay. And Company B in that case is the
2 transiting carrier?

3 A. That's correct.

4 Q. And the typical arrangements -- and I don't
5 think we have any quarrel here. The typical arrangement
6 is that Company A, the originator, would pay Company B for
7 at that transit service?

8 A. That's correct.

9 Q. Now, in your rebuttal testimony at page 11,
10 let me know when you're there.

11 A. Okay.

12 Q. You assert at line 7 that SBC Missouri did
13 not negotiate transit terms during negotiations of the M2A
14 successor agreements, right?

15 A. That's correct.

16 Q. Now, I don't want to tangle with you about
17 the legal issue of whether transit is Section 251 required
18 or not. Okay?

19 A. Yes.

20 Q. We understand we have a legal disagreement
21 about that?

22 A. Yes.

23 Q. Okay. But it's your contention, though, as
24 a factual matter that SBC did not negotiate transit terms
25 during the negotiations leading to this arbitration,

1 right?

2 A. That's correct. I saw Ms. Krabill's
3 testimony stating that at some point in time during the
4 M2A negotiation there was discussions regarding transit
5 services. I contacted SBC's negotiators and product
6 managers and got verifications from at least two people
7 saying that, through the course of the M2A negotiations,
8 transit service was never negotiated as part of this
9 agreement.

10 Q. Okay. So we have a factual dispute
11 concerning what happened during the negotiations, I take
12 it?

13 A. Apparently there's two different opinions
14 of what has happened.

15 Q. Then in your direct testimony, however, at
16 page 51 -- let me know when you're there.

17 A. Okay.

18 Q. Down at the bottom of the page, starting
19 with line 19, you introduce into the mix of this case what
20 you call SBC Missouri's current transit traffic service
21 attachment, which you attach to the direct testimony as
22 Schedule JSM-1; is that correct?

23 A. I see that, yes.

24 Q. And I take it that that transit traffic
25 service attachment was never negotiated with any of the

1 CLECs in this case, right?

2 A. It would be my understanding that that
3 transit traffic attachment may have been reviewed by the
4 parties, but as far as being part of the negotiations
5 within the context of the M2A negotiations, it was not
6 part of that. It's a separate -- it's a separate service
7 that's offered by SBC that perhaps a carrier may have
8 considered.

9 Q. And the contract language that you offer as
10 attachment -- or Schedule JSM-1 for your transit services
11 agreement is not included in SBC's arbitration petition or
12 response to arbitration in this case, is it?

13 A. Not within the context of the
14 interconnection agreement being disputed, no. I did
15 attach it to my testimony.

16 Q. And you don't include it in the disputed
17 language in the DPL, do you?

18 A. No.

19 Q. And yet having not negotiated with the
20 CLECs nor put it before the Commission in the DPL or the
21 petition, are you asking that the Commission approve that
22 language as transit, as the transit section?

23 A. What I'm asking the Commission to do is
24 that this Commission does indeed determine that transit
25 traffic provisions need to be included within the terms of

1 this interconnection agreement, that the Commission
2 consider SBC's contract language for the provisioning of
3 that service, and if necessary, incorporate it within the
4 agreement.

5 Q. But it's not your contention that you ever
6 negotiated that language?

7 A. No. It's a legal matter. It's not part --
8 it's SBC's position it's not part of the interconnection
9 agreement. However, in an attempt to not be thoroughly
10 silent on the issue, in the event that the Commission does
11 not agree with SBC's position, then SBC does have proposed
12 language or proposed terms and conditions from which it
13 would seek to operate.

14 Q. Now, understand that the process under
15 which we're operating is one of baseball-style arbitration
16 here?

17 A. That's my understanding.

18 Q. Are you -- as the offering from SBC, are
19 you offering this appendix or not?

20 A. I would have to consult with my counsel as
21 to how -- under what context that's being offered. As a
22 policy position, that transit traffic service agreement
23 contains SBC's preferred terms and conditions for the
24 treatment of traffic.

25 Q. Okay. Let's take a look at it, at this

1 JSM-1, which is, as we noted, attached to your direct
2 testimony.

3 A. I'm sorry. I don't have the contract
4 language attachment with me.

5 Q. Could someone maybe provide -- it was
6 attached to your testimony. Could you maybe get one? I
7 have one, but I only have one.

8 A. I have the pricing appendix. I don't have
9 this one. Thank you.

10 Q. Okay. Do you have it before you,
11 Mr. McPhee?

12 A. I do.

13 Q. Okay. In this transit traffic service
14 attachment which is Schedule JSM-1 to your direct
15 testimony, if you look in the definition section, at
16 Section 2.7, there's a definition of ISP-bound traffic,
17 correct?

18 A. Yes.

19 Q. And that definition tracks the SBC version
20 of the disputed definition of ISP-bound traffic that's in
21 Attachment 12, does it not?

22 A. I believe it does, yes.

23 Q. So if the Commission was to adopt this
24 language, it would be incorporating into transit SBC's
25 preferred resolution to another issue that actually is on

1 the DSL concerning ISP-bound traffic, right?

2 A. For purposes of transit traffic, that would
3 be the case.

4 Q. Why just for transit traffic? It would be
5 in the interconnection agreement, wouldn't it?

6 A. If the Commission were to adopt this
7 attachment in its entirety into the interconnection
8 agreement, then I suppose that could be interpreted that
9 way.

10 Q. If you turn to the next page, Section 2.14
11 of the SBC proposal or quasi-proposal, there is a
12 definition called Section 251(b) (5)/intraLATA traffic. Do
13 you see that?

14 A. Yes, I do.

15 Q. And it says, Section 251(b) (5)/intraLATA
16 traffic shall mean for purposes of this agreement, and if
17 this is in the interconnection agreement, that would be
18 the entire agreement I take it, one, Section 251(b) (5)
19 toll traffic, and then it says ISP-bound traffic. So
20 again, you would be turning ISP-bound traffic into a form
21 of toll traffic there, right?

22 A. I don't believe that that's the intent.

23 Q. What's the intent?

24 A. On a larger perspective, the intent is this
25 is a separate, stand-alone agreement, and so there are

1 definitional terms contained within the agreement in order
2 to provide completeness to this attachment. The intent of
3 this definition is, I believe, to categorize traffic that
4 would be transited through the agreement.

5 Q. But when you offered this up to the
6 Commission, you said, Commission, if you believe the
7 transit terms need to be in an interconnection agreement,
8 here's what you ought to use, right?

9 A. Perhaps I should clarify and say that the
10 transit terms are what should be used. I wouldn't see any
11 reason to duplicate definitions, especially as you point
12 out, the disputed definitions. Perhaps more appropriate
13 would be responsibilities of the parties under the transit
14 service agreement and the specific provisions dealing with
15 the treatment of transit traffic.

16 Q. Okay. So perhaps we strip the definition
17 section, if the Commission was to even look at this, and
18 that would take us to the responsibilities of the parties.
19 Now, in particular I'd ask you to look at Section 3.13 in
20 the responsibilities of the parties.

21 A. I'm sorry. My version does not have
22 Section 3.13.

23 Q. Let me see.

24 A. Oh, 3.13. Sorry. I'm there.

25 Q. Just to be clear, it is -- Mr. McPhee's

1 right, it is 3.13. I was just reading the numbers
2 individually. And this discusses the issue which actually
3 is settled between CLEC Coalition and SBC on intercarrier
4 compensation about how calling party number information is
5 to be provided, provides that it's not to be stripped or
6 modified, that sort of thing. You know we've settled
7 those issues in the Attachment 12 context, right?

8 A. That's correct.

9 Q. Now, down at the bottom, though, of this
10 section, it says, if third-party originating carrier, that
11 is this third party in the transit, is passing CPN, but
12 SBC or carrier -- that would be the CLECs involved in this
13 agreement -- is not properly receiving information,
14 carrier will work cooperatively to correct the problem.

15 Why isn't it that if there is a problem
16 with the third party, that SBC and the CLEC are not to
17 work cooperatively to solve that problem?

18 A. I would submit that the third-party
19 terminating carrier would -- would at least want to work
20 with the originating carrier for purposes of billing
21 compensation. I'm trying to read the rest of the
22 paragraph to see whether or not the transiting party would
23 also work with them to fix CPN.

24 Q. When we deal with CPN issues in the general
25 Attachment 12 intercarrier compensation world, don't we

1 agree we both have an interest in getting the CPN right
2 and we agree to work cooperatively to fix any problems?

3 A. Yes.

4 Q. Okay. I'd ask you to direct your attention
5 to Section 5 of the agreement, which is on page 6 of my
6 version of JSM-1.

7 A. Okay.

8 Q. You've got a section here called direct
9 trunking requirements, where it requires the CLEC to
10 establish some certain direct trunk group or alternative
11 transit arrangements. And you understand that direct
12 trunking is a subject of some controversy that we've heard
13 a fair amount about the past few days, correct?

14 A. That's correct.

15 Q. So you'd insert that into this, right?

16 A. Again, within the context of this being a
17 separate agreement beyond the scope of the interconnection
18 agreement, the intent is to incorporate terms and
19 conditions to make this transit service agreement a
20 complete document.

21 Q. But again, if the Commission does what you
22 told them they should do in your direct testimony, that
23 isn't what's going to happen. This would be part of the
24 interconnection agreement, right?

25 A. I suppose it would be up to the Commission

1 to determine which version of direct trunking requirements
2 would apply to the contract, whether it would be the one
3 in this separate attachment or the one being negotiated
4 and arbitrated under the interconnection agreement.

5 Q. And let me ask you kind of more generally,
6 some of the provisions in this attachment regarding CPN
7 exchange. For example, I think there's a provision
8 involving parties' responsibilities to make arrangements
9 with the third party before it can transit. Do you
10 understand what I'm talking about?

11 A. Financial arrangements?

12 Q. Yes.

13 A. Okay.

14 Q. Aren't those provisions in the CLEC
15 Coalition's language that's been offered in the context of
16 the interconnection agreements?

17 A. I believe within the context of transit
18 services, within the agreement, is that what you're
19 speaking to?

20 Q. Well, if you look at the CLEC Coalition
21 language that actually is in the DPL for transit, aren't
22 you going to find in Section 6.2 through 6.7 or 9 just
23 these sort of provisions that protect the transiting
24 carrier against, for example, CPN not being available?

25 A. Well, I think on a larger -- larger basis,

1 there may be provisions that the parties agree upon.
2 Again, it comes down to the legal argument whether or not
3 it should be incorporated into the interconnection
4 agreement. So I don't deny that there are terms of this
5 with which the parties agree.

6 Q. And so the adoption of the CLEC Coalition
7 language, which doesn't have this direct trunking stuff,
8 doesn't have your position on ISP-bound traffic, wouldn't
9 do any harm to SBC, would it?

10 A. I would have to look at the language to see
11 if it's complete in other aspects.

12 Q. Have you ever read the CLEC Coalition
13 language?

14 A. I did at one point in time, yes. I don't
15 have it committed to memory.

16 Q. But you don't have any reason to believe
17 that there's anything substantively in it that is
18 troubling, as opposed to legally troubling? Just its mere
19 existence is legally troubling to you, I understand. But
20 is there anything substantively troubling about it?

21 A. Not that I recall.

22 Q. Now, one of the features of the attachment
23 that you offer is a new rate schedule, and that is
24 incorporated in page 8 of Schedule JSM-1, that is transit
25 traffic service appendix pricing-Missouri. Are you there?

1 A. Yes, I am.

2 Q. And I think in your testimony you said, and
3 correct me if I'm wrong, that the proposed price for
4 transit is the same as that in the current M2A, right?

5 A. Yes.

6 Q. Okay.

7 A. There's a very minor difference that I
8 footnote, but yes, the prices are the same.

9 Q. Okay. Now, in the M2A, as I understand it,
10 there is a tandem switching element for transit that I'll
11 represent to you -- and I have the M2A here if you'd like
12 to look at it while we're going through this. Just trying
13 to pull it up here. There's a tandem switching element
14 for transit of \$.001231, \$.001231 minutes of use. Then
15 there is another minute of use based factor cost per
16 minute of use of \$.000155, and that's for Zone 1, urban
17 zone. And then there's a facility charge that's on a per
18 mile basis, \$.0000016 for Zone 1.

19 Now, I think if you add up the minute of
20 use, I just couldn't get to a place where what you
21 proposed for transiting Zone 1 of \$.001712 per minute of
22 use was the same. In fact, it looked to be a fair amount
23 more than what's in the current M2A.

24 A. Is there a question for me to explain the
25 difference?

1 Q. Now that's a good question, what was I
2 asking you?

3 A. Yeah, I would ask you, do you agree with me
4 what you've actually proposed is quite a bit higher than
5 what's in the M2A?

6 A. No, I don't. I don't dispute the rates you
7 just gave. I don't have them in front of me. I would
8 have to check those.

9 Q. Uh-huh.

10 A. I would submit to you that I did check the
11 M2A rates and I came up with the same numbers that are on
12 this appendix pricing in Missouri. I don't recall
13 specifically if those were contained within Attachment 12,
14 within the text of it. I know that that is the way that
15 SBC has previously proposed or incorporated transit rates
16 in these 271 agreements.

17 Q. Well, I mean, the transit rates are in
18 Attachment 12. They're just like in Attachment 12.
19 They're in Section 4. Where else should we look?

20 A. Sir, I would have to look and see. I
21 would -- I believe these rates are the exact same as have
22 been proposed in the expiring M2A.

23 Q. Okay.

24 A. I checked it before I wrote the testimony
25 on it. I don't have it in front of me to point to it, but

1 I can offer that later if you'd like.

2 JUDGE THOMPSON: You've got about

3 30 seconds, unless you want to go over your 20 minutes.

4 MR. MAGNESS: I'm going to go over it by

5 about three minutes.

6 JUDGE THOMPSON: Very good.

7 MR. MAGNESS: And I don't think I'll cause

8 any pain to Mr. Savage in the time allocations.

9 MR. SAVAGE: I'm feeling no pain, your

10 Honor.

11 JUDGE THOMPSON: Very good.

12 MR. MAGNESS: That's good to hear.

13 BY MR. MAGNESS:

14 Q. Now, the thing that you add as a concept, I

15 guess, is what is basically reverse volume discount, in

16 that if a CLEC terminates 13 million minutes of use in a

17 single point, then the rates go up substantially, right?

18 A. Yes.

19 Q. Okay. So the more -- the more the CLEC

20 terminates, the more it may cost them?

21 A. First of all, it's not a volume discount.

22 It's a financial incentive for a carrier that is passing

23 large volumes of traffic to seek direct interconnection in

24 those circumstances where there's a large community of

25 interest between two parties.

1 Q. And if the CLEC determines that that direct
2 interconnection was not in its financial interest even
3 though it was in SBC's and it wanted to get transit
4 service elsewhere, from whom would it purchase it in
5 Missouri?

6 A. In Missouri, I'm not sure specifically
7 today as to who else would be providing transport
8 services.

9 Q. Transit.

10 A. Transport, transit, anything to get from
11 one carrier to another carrier.

12 Q. Okay. Now, you testified that you think
13 this market's competitive enough to justify what you call
14 this market rate, right?

15 A. I believe I testified that transit is a
16 market-based service, not subject to cost-based rates,
17 such that it should have a market-based rate. What SBC
18 has proposed is a rate that, while not stating that it's a
19 cost-based rate, it does indeed match the expiring rates
20 of the agreement in order to continue to provide that
21 service in a, quote/unquote, market-based environment at
22 this point in time for anybody that wishes to have transit
23 services.

24 Q. So is the current TELRIC rate a market
25 rate?

1 A. Which TELRIC rate?

2 Q. The one that you say you're matching that
3 you're basing this on.

4 A. SBC's proposing market-based rates. SBC's
5 position is that TELRIC-based rates are not applicable to
6 transit services. It just so happens that the rates SBC
7 is proposing for transit service in these upcoming
8 agreements is the same rate as in the expiring M2As, which
9 under that, I believe, was labeled as a TELRIC-based rate.
10 So it's really the same rate transitioning from how we
11 look at that time from TELRIC-based to non-TELRIC-based.

12 Q. Okay. The difference, I guess, with the
13 market rate is that is it your -- well, that's a legal
14 question. Save that.

15 Now, on the 13 million minute reverse
16 volume incentive plan, whatever you want to call it, did
17 you do -- did SBC do a cost study to validate any of the
18 numbers, any of the rates for the increased rates above
19 the threshold of 13 million minutes?

20 A. You know, I believe it's probably a rounded
21 rate increase, 25 or 30 percent. What SBC did look at,
22 though, were the volumes of minutes of use and determined
23 that 13 million minutes of use was a reasonable threshold
24 for the state of Missouri.

25 And in preparing my testimony, I looked at

1 transit volumes for the state of Missouri for the year of
2 2004, and no individual carrier ever exceeded 1.7 million
3 minutes of use per month. So the 13 million minutes of
4 use is a very high threshold that would take a large
5 community of interest between two parties before a carrier
6 would be subject to considering those higher rates.

7 Q. So the method that SBC uses when it sets
8 what it considers a market-based rate is to just look at
9 some minutes and then take a swag at a 20 or 30 percent
10 increase?

11 A. I'm not sure what you mean by take a swag
12 at a 20 or 30 percent increase.

13 Q. Grab it out of the air perhaps?

14 A. I believe it's an increase, again, as a
15 financial incentive to help a carrier consider options in
16 the future for direct interconnection as opposed to SBC to
17 continue to employ -- or deploy expensive switching just
18 to serve the capacity of other parties.

19 Q. Okay. And the economic incentive is to do
20 a lot of these things that CLECs were testifying yesterday
21 cost them a lot of money, right, like deploy more
22 facilities just to interconnect with SBC, right?

23 A. I believe both parties, all parties, it
24 costs parties money to deploy network facilities.

25 Q. And these are facilities not to serve

1 customers but just to get to SBC in the transit context,
2 right?

3 A. To get to SBC. I don't know within the
4 transit context or not.

5 Q. So it's consistent with requiring more
6 trunks, more POIs, more deposits, just about everything
7 we've heard about in the last couple days, right?

8 A. Well, in these scenarios with transit
9 you're talking about these thresholds it would be for
10 those carriers who deploy facilities, again, where there's
11 a large volume of traffic between those two parties,
12 separate from SBC.

13 MR. MAGNESS: Thank you.

14 JUDGE THOMPSON: 25 minutes, 14 seconds.
15 Not bad.

16 MR. SAVAGE: Your Honor, I anticipate I
17 will need 47 minutes and 40 seconds.

18 JUDGE THOMPSON: Okay. I'm going to hold
19 you to that.

20 CROSS-EXAMINATION BY MR. SAVAGE:

21 Q. Good morning, Mr. McPhee. My name is Chris
22 Savage. I represent Charter Communications.

23 A. Good morning.

24 Q. I'm going to ask you a question. I want
25 you to listen to it very carefully. Do you know what the

1 acronym S-W-A-G, SWAG, actually stands for?

2 A. I do not.

3 Q. Good. Okay. Charter has a number of

4 different issues as between us. I'd like to start with

5 one that maybe we can clear up, and that's the issue of

6 the use of the ASRs. You know the ASR is an access

7 service request?

8 A. Yes, but it's not within my expertise. I

9 didn't testify upon it.

10 Q. Okay. You're listed as actually testifying

11 with respect to a couple of issues where the ASR is at

12 issue, but that's fine. Let me be clear, then. I have

13 you down as having at least contributed some testimony on

14 Charter ITR No. 2, which invokes this issue, and indeed I

15 think maybe is limited to this issue, and also NIM No. 2.

16 Now, if in fact Mr. Hamiter was also listed

17 for that, and if what you're saying is that you're not the

18 guy that has anything to do with the whole ASR thing,

19 that's fine.

20 A. Sir, I testified on Charter ITR Issue 2B,

21 the issue stating, should Appendix ITR contain terms and

22 conditions for reciprocal compensation?

23 Q. Okay. Then I guess we can speak with each

24 other. What do you understand Charter to be proposing

25 with respect to including anything about reciprocal

1 compensation in ITR?

2 A. Generally, it's my understanding that

3 Charter has sought to incorporate reciprocal compensation

4 terms within the appendix for interconnection trunking

5 requirements, and SBC feels that those terms and

6 conditions should be contained within a separate appendix.

7 Q. Do you have this ITR in front of you?

8 A. The DPL?

9 Q. Yes, the DPL for ITR for Charter.

10 A. I do. It will take me a moment.

11 Q. Page 5 of 14 of that.

12 A. Okay.

13 Q. Now, if you look at page 5 of 14, would you

14 agree with me that what Charter proposes to say about

15 payment obligations -- and I'm reading from sort of the

16 middle sentence, and our language is, all compensation

17 obligations as between the parties with respect to

18 interconnection arrangements, including physical

19 facilities, traffic change and trunking shall be as set

20 forth in the appendix for reciprocal compensation. Do you

21 see that?

22 A. I see that.

23 Q. What's your problem with that?

24 A. Well, because interconnection arrangements

25 and the compensation for those is not under appendix

1 reciprocal compensation. It looks -- it looks that
2 Charter is perhaps blurring distinctions between
3 interconnection obligations and traffic termination
4 obligations, so . . .

5 Q. Now, were you here yesterday when
6 Mr. Hamiter testified that with respect to physical
7 facilities, each party is completely responsible for its
8 facilities on its side of the POI?

9 A. Yes, I was.

10 Q. So in terms of charging for each other,
11 charging to each other for facilities, there aren't any
12 charges to each other for facilities because we each have
13 our facilities on respective sides of the POI, right?

14 A. For purposes of interconnection, that is
15 true. That is not the case for provision of 911 services,
16 OSDA or choke trunks.

17 Q. Okay. We'll get to those in a minute.

18 A. Okay.

19 Q. Let's put those aside.

20 A. Okay.

21 Q. With respect to ordering trunking, so that
22 if, for example, we need to establish -- you know what a
23 DEOT is?

24 A. Yes.

25 Q. So if we need to establish a DEOT from our

1 switch to some particular SBC switch where we've got
2 enough traffic to do that, you don't understand SBC to be
3 proposing that Charter would get a bill for establishing
4 that DEOT, do you?

5 A. I'm sorry. I'm not well versed in the
6 contract language between Charter and SBC with respect to
7 the provisioning of trunks.

8 Q. Okay. So --

9 A. Or the billing of trunks.

10 Q. So you're not the guy on that, but sitting
11 here today, you don't have any reason to think we would
12 get a bill, just whatever it would say?

13 A. I can't speak to it.

14 MR. BUB: Your Honor --

15 MR. SAVAGE: I'm just clarifying that he
16 has nothing to say about that.

17 MR. BUB: That he doesn't know.

18 MR. SAVAGE: Right. And therefore, has
19 nothing say about it.

20 BY MR. SAVAGE:

21 Q. Right? You have nothing to say about the
22 topic of trunk billing?

23 A. To the extent you're asking me, that's
24 correct.

25 Q. Okay. Well, I'll get to the 911 stuff in a

1 minute. I wanted to actually start with something else.
2 Could you take a look at your direct testimony at page 5,
3 lines 10 through 13, and page 6, lines 9 through 11. Do
4 you have that?

5 A. I do.

6 Q. Now, what you say there in talking about
7 these definitional issues, I'll just read to you. SBC
8 Missouri merely seeks to conform the terminology of the
9 new agreement to the most recent ruling of this Commission
10 and the FCC and so on.

11 Do I take it from that that your job
12 responsibilities include reading and being aware of FCC
13 rules, FCC rulings, the Code of Federal Regulations as
14 relates to this stuff, that that's within your purview?

15 A. To the extent that it touches my subject
16 matters, yes.

17 Q. Okay. Well, I'm not going to ask you to
18 make legal interpretations, but I am going to ask you a
19 little bit about what you did in generating some of these
20 potential definitions. And let's take a quick look at the
21 general issue of reciprocal compensation.

22 Are you aware that the FCC has promulgated
23 a specific rule that defines the traffic that's subject to
24 reciprocal compensation?

25 A. A specific rule? I'm sorry. You'd have to

1 be more specific than a specific rule. I mean, within the
2 Act or --

3 Q. Well, are you --

4 A. There's obligations for reciprocal aspect
5 as set forth by the FCC, yes.

6 Q. Right. And are you aware that in
7 particular they have promulgated a rule in the ISP Remand
8 Order that you cite that at sort of the end of that Order,
9 they have actually promulgated a specific rule detailing
10 what traffic is and is not subject to reciprocal
11 compensation? Were you aware of that when you put this
12 document together?

13 A. I'm aware that there were some rule
14 revisions within the ISP Remand Order.

15 Q. And did you in any way -- or did SBC in any
16 way consult or consider what the FCC has specifically said
17 about the scope of traffic subject to reciprocal
18 compensation in its rule in putting together SBC's
19 definitions of 251(b) (5) traffic, for example?

20 A. I believe that that's what SBC's putting
21 forth is an interpretation of those rules.

22 Q. Okay. What I'd like -- and -- well, let me
23 ask you a general question. What do you think is the
24 relationship on the one hand between the term
25 "Section 251(b) (5) traffic," which is one of the defined

1 terms in the intercarrier compensation appendix, and the
2 term "local calls or local traffic" that's one of the
3 definitions that's in dispute between our two parties?

4 A. The question is what is the difference
5 between the two?

6 Q. Yeah. What's the relationship between the
7 two, as you understand?

8 A. I think it's interpretation. I think local
9 calls is open to a broader interpretation and more dispute
10 in that Section 251(b) (5) as defined by SBC simply can be
11 characterized as a local call where two parties, the
12 calling and called parties, are actually located in the
13 same exchange, whereas some parties may seek to interpret
14 the term "local calls" to mean anything that's locally
15 dialed or looks local when, in fact, it's not a local
16 call, geographically speaking.

17 MR. SAVAGE: Okay. I put together an
18 illustrative exhibit that I'd like to show, and it
19 contains three things. One is SBC's proposed definition
20 of local calls. Two is the proposed definition of Section
21 251(b) (5) traffic. And 3 is FCC Rule 47 CFR 51.701(b)
22 that actually deals with that traffic.

23 If I could have that marked, I'll pass out
24 copies to everybody. But to the best of my scribening
25 abilities, I have simply transcribed all of these things.

1 And I'll confess I did it mostly by cutting and pasting.

2 JUDGE THOMPSON: This will be Exhibit 207.

3 (EXHIBIT NO. 207 WAS MARKED FOR

4 IDENTIFICATION BY THE REPORTER.)

5 BY MR. SAVAGE:

6 Q. We have a specific dispute about the

7 definition of local calls, which is No. 14 that I think

8 you testified to?

9 A. Okay.

10 Q. We also have a dispute in intercarrier

11 compensation, I think 1, maybe 2, and ITR about the

12 definition of switched access, which actually implicates

13 these same issues. Do you have that in front of you,

14 Mr. McPhee?

15 A. Your handout? Yes, I do.

16 Q. Okay. Would you agree with me that the --

17 and I'll represent to you that I have properly done this,

18 and obviously I'll be pilloried in the Brief if I made any

19 kind of mistakes.

20 Would you agree with me that the

21 FCC's rule defines telecommunications traffic subject to

22 Section 251(b) (5) as traffic exchanged between a LEC and a

23 telecommunications carrier other than a CMRS provider,

24 except for telecommunications traffic that is interstate

25 or intrastate exchange access, information access, or

1 exchange services for such access? Do you see that
2 language?

3 A. I do, under the parenthetical No. 1.

4 Q. Correct. Had you seen that before? Have
5 you ever looked at that?

6 A. Yes.

7 Q. So you agree with me that's what the FCC
8 rule says?

9 A. Based upon memory, yes.

10 Q. And I've got the official rule book if you
11 want to check, but I think we can move on.

12 Now, just to be real clear, you know what
13 CMRS provider is, that's like a cellular?

14 A. That's correct.

15 Q. Assume I'm not talking about that. And
16 although there's some confusion around the edges of, let's
17 say, what information access might be, we can all agree
18 that that includes calls to ISPs and maybe some VOIP stuff
19 and maybe not, but I'm not talking about that either.

20 I'm asking you to look at the notion that's
21 it's the exception that relates to interstate or
22 intrastate exchange access. Now, sitting here today, do
23 you have an understanding of what exchange access is?

24 A. I believe it's interexchange traffic,
25 crosses exchange boundaries.

1 Q. Sitting here today, or actually in the
2 course of preparing your testimony, did you review the
3 specific definition of the term "exchange access" that
4 exists in Section 3 of the Communications Act?

5 A. Specifically, no.

6 Q. Okay. So to the extent that when the FCC
7 used the term that is specifically defined in the
8 Communications Act, you didn't look at that for purposes
9 of your testimony?

10 A. For purposes of making a definition for
11 local traffic?

12 Q. Correct.

13 A. No. I looked at other things the FCC has
14 said, though, where it comports closely with what SBC has
15 proposed.

16 Q. Well, we can debate in the Briefs, frankly,
17 how closely it comports. But one thing you didn't do is
18 look at the statutory definition of exchange access?

19 A. Specific to this definition, no.

20 Q. Right. And specifically the definition of
21 Section 251(b) (5) traffic, you did not look at the
22 definition of exchange access?

23 A. I can't specifically recall picking up the
24 book and looking at that, no.

25 Q. Do you know what it is? Do you know what

1 the definition of exchange access is?

2 A. There's a lot of legalese in these
3 different definitions. I've seen it before.

4 MR. SAVAGE: Let me see if I can help you
5 with that. I can I guess mark as next -- are we 208?

6 JUDGE THOMPSON: 208 will be next.

7 BY MR. SAVAGE:

8 Q. 208. This is again simply the Sections 1,
9 2 and 3 of the Communications Act of 1934. And I will
10 represent to you that I downloaded this today from the
11 FCC's website, and I folded down the page in there a
12 little bit -- and I'll pass this out. I folded out the
13 page in there a little bit where there is a definition of
14 exchange access, and I've highlighted it in yellow for
15 you, but I believe it's subsection 16.

16 A. I see it.

17 Q. Could you read that for the record, please?

18 A. Exchange access. The term "exchange
19 access" means the offering of access to telephone exchange
20 services or facilities for the purpose of the origination
21 or termination of telephone toll services.

22 Q. Now, had you seen that before?

23 A. I believe so, yes.

24 Q. Did you ever consider it in putting
25 together any of the definitions that SBC is proposing

1 here?

2 A. I don't believe I've -- I don't believe I
3 personally have considered putting this definition in the
4 appendix, no.

5 Q. That's not what I asked. Actually, this
6 definition is already in the general terms. What I asked
7 is whether you considered this definition in putting
8 together the definitions of 251(b)(5) traffic and local
9 traffic and that sort of thing?

10 A. No, I think it's -- from my perspective,
11 it's too open to interpretation as to what it means,
12 what's a local call and what should be rated as subject to
13 reciprocal compensation versus another compensation
14 mechanism.

15 JUDGE THOMPSON: Did you have a copy of
16 that one for me?

17 MR. SAVAGE: Certainly. I apologize, your
18 Honor. I do. I am getting all ahead of myself.

19 JUDGE THOMPSON: Thank you.

20 (EXHIBIT NO. 208 WAS MARKED FOR
21 IDENTIFICATION BY THE REPORTER.)

22 BY MR. SAVAGE:

23 Q. So your interpretation is that the words
24 Congress wrote is too open to interpretation? Was that
25 what you just said?

1 A. This paragraph right here is open to
2 interpretation by different parties, yes.

3 Q. Would it help you to understand what it
4 means if you knew that the term "telephone toll service"
5 referred to in this definition is also specifically
6 defined by Congress in the Communications Act?

7 A. I don't doubt that.

8 Q. Did you know that when you gave your last
9 answer?

10 A. Yes.

11 Q. Okay. Do you know what that definition is?

12 A. Off the top of my head, no, I don't.

13 Q. Okay. I encourage you to take a look at --
14 I believe it's Section sub 48, but it's also turned down
15 and highlighted for you.

16 A. Okay.

17 Q. Now, would you agree with me that Congress
18 has defined telephone toll service to mean telephone
19 service between stations in different exchange areas for
20 which there's made a separate charge not included in the
21 contracts for exchange service? Is that a proper reading?

22 A. Yes, it is.

23 Q. Did you have trouble understanding what
24 Congress meant when it said that?

25 A. That definition, no.

1 Q. Okay. Did you attempt to incorporate or
2 apply that definition in establishing your definitions of
3 251(b) (5) and local traffic?

4 A. No. I think what we did when we went to
5 apply definitions for reciprocal compensation --

6 Q. Wait, wait, wait.

7 A. -- as a practical matter is to
8 interpret --

9 Q. The answer is no. I'm going to let you say
10 what you were going to say, but you said no, but. Did I
11 hear that correctly? No, you didn't, but now you want to
12 say what you did do?

13 A. Yes.

14 Q. All right. Go ahead.

15 A. As a practical matter, in defining
16 different call characterizations subject to different
17 forms of intercarrier compensation within the appendix
18 compensation, it has been SBC's experiences that certain
19 terms may be interpreted differently by different parties.
20 Therefore, SBC has sought to conform with the spirit and
21 intent as perceived by SBC of the various definitions and
22 their meanings for purposes of intercarrier compensation.

23 So when SBC proposed definitions for
24 traffic calling scopes, it did not go back to these
25 definitions in the Act. It sought to make it clear for

1 contractual certainty purposes.

2 Q. Okay. And just to be clear, your testimony
3 is, SBC thinks that it is unclear that the definition of
4 telephone toll service that says between stations in two
5 different exchanges for which there is a separate charge
6 is unclear. Is that your testimony?

7 A. No, that's not my testimony. Also, that's
8 not the definition of a local call.

9 Q. I didn't ask you what the definition of
10 local call was.

11 A. Okay. Well, the dispute's over the
12 definition of a local call.

13 Q. Indeed it is, but I wanted to -- so now
14 I'll get there. Do you understand what telephone exchange
15 service is?

16 A. I believe I have a reference in front of
17 me.

18 Q. You do, but before you look at it, I'm
19 wondering if, sitting here today without rereading it, you
20 have any understanding in your own mind as to what --

21 MR. BUB: Your Honor, I need to object. I
22 think this is a quiz on what the FCC's Telecom Act said,
23 what is and what isn't. We're really getting into the
24 realm of legal argument, really ought to be included in
25 the Brief. Quite a bit of this is --

1 JUDGE THOMPSON: Yeah, let's consider what
2 we're doing here.

3 MR. SAVAGE: I'll move on. What I'm trying
4 to establish is that in his testimony he says, we have
5 conformed -- we have tried to conform these definitions to
6 the latest and greatest. That's what he says in that
7 testimony. What I'm trying to establish by rubbing in his
8 face what the Congress has said and what the FCC has said
9 about these things is, in fact, they didn't do that.
10 That's what I'm trying to establish. And so that's why --

11 JUDGE THOMPSON: I understand what you're
12 trying to establish. I'm just wondering whether you can
13 do that in your Brief by comparing the language that SBC
14 is sponsoring to what Congress has said or the FCC has
15 said.

16 MR. BUB: And, your Honor, if I could
17 respond to that, he's already asked him what he did and
18 what he didn't consider. He's answered those questions.
19 I think now we're getting into a quiz on what the law
20 means.

21 MR. SAVAGE: My next question was going to
22 be, did you consider the definition of telephone exchange
23 service when you put together these definitions? That was
24 foundational, but that's fine.

25 JUDGE THOMPSON: Go ahead and answer that

1 question, if you can.

2 THE WITNESS: Myself personally, I didn't
3 consider it. I'm sure that legal counsel that SBC works
4 with when they draft this contract language had all these
5 various terms under consideration when the definitions
6 were drafted.

7 BY MR. SAVAGE:

8 Q. And in your view, I think everyone's used,
9 how well -- if I take your testimony correctly, SBC's
10 policy is to have these definitions conform to the law,
11 conform to the latest and greatest, and to the extent that
12 they did it or didn't do it, we'll brief it, and His Honor
13 will decide it; is that fair?

14 A. Is that a question?

15 Q. That is a question. Is that a fair
16 statement of SBC's policy to try to conform these
17 definitions to the law and the lawyers will brief it? Is
18 that your understanding of where we are on this issue?

19 A. Yes.

20 Q. Okay.

21 JUDGE THOMPSON: We have been going for
22 90 minutes and it's time to have break for the reporter,
23 so we'll take ten minutes at this time, and you can come
24 back and browbeat this man some more.

25 MR. SAVAGE: Excellent.

1 (A BREAK WAS TAKEN.)

2 BY MR. SAVAGE:

3 Q. Okay. Do you understand -- were you here
4 yesterday when Mr. Barber was testifying?

5 A. Yes, I was.

6 Q. And do you understand that what Charter's
7 trying to accomplish with some of its proposed
8 definitional changes is to be permitted, you know, under
9 the appropriate supervision of the Commission and so on,
10 to establish a local calling area that might be larger
11 than SBC's, and then for calls within that local calling
12 area not pay you access charges if we send them off? Do
13 you understand that's what we're trying to do?

14 A. Yeah, I understand. And in my testimony
15 I've addressed the fact that SBC has no problem with
16 Charter provisioning their retail calling plans in any
17 manner with which they seek. However, for purposes of
18 intercarrier compensation, all parties should be on even
19 playing -- an even playing field.

20 Q. But if we have one local calling area and
21 you have another one, why should it be your playing field?

22 A. I'm saying an equal playing field. If the
23 Commission deems another playing field is more equal, as
24 long as all parties are on the same playing field as far
25 as calling scopes, then I think that's the most equitable

1 result.

2 Q. Do you understand our proposal to in any
3 way restrict you from responding to what we might do
4 competitively to also expand your calling area? We
5 wouldn't --

6 A. Again, you're speaking retail services, and
7 what this contract is about is wholesale compensation. So
8 your proposal is seeking to drastically alter wholesale
9 compensation as it pertains specific to Charter, and in
10 that respect, it does harm SBC as well as any other
11 parties that enter into a Charter agreement with regard to
12 access charge that may be applicable on a traditional long
13 distance call.

14 Q. And what do you mean when you say a
15 traditional long distance call? Do you mean telephone
16 toll service?

17 A. I mean an interexchange call as established
18 by this Commission's calling scopes.

19 Q. Okay. So if Charter gets a different
20 calling scope established by this Commission, what's the
21 problem?

22 A. I advocate that all parties use the same
23 calling scopes throughout the state of Missouri so that
24 everybody's wholesale compensation, billing and rates are
25 evenly applied.

1 Q. Now, you would agree with me, would you
2 not, that if Charter provides intraLATA toll service to
3 one of its customers and hands that call off to you -- and
4 I'm talking in all cases here about a call that starts on
5 one of our networks and goes -- you know, no intervening
6 IXCs here. But if Charter has an intraLATA toll call that
7 one of its customers made that terminates on to you, kind
8 of by definition we'll be charging them a toll over and
9 above their local rate, right?

10 A. What Charter charges their retail
11 customers, I don't know.

12 Q. Okay. You think that doesn't matter to
13 this whole issue?

14 A. No. That's a retail calling plan, and what
15 Charter does, Charter can make the entire country local as
16 far as Charter sees fit. However, again, for purposes of
17 compensation, wholesale intercarrier compensation, there
18 needs to be consistent terms applied to all carriers.

19 Q. Just to be clear, you think that for
20 purpose of wholesale compensation as between these
21 parties, it doesn't matter what happens retail, is that --
22 yes or no?

23 A. SBC's not in the business of dictating
24 Charter's calling plans.

25 Q. I understand that. That's not my question.

1 My question is, do you think that it doesn't matter for
2 purposes of intercarrier compensation at what you're
3 calling wholesale what our respective retail plans are?

4 A. That's correct. That's Charter's business
5 plan to -- to obtain their retail revenues how they see
6 fit.

7 Q. We agree on that, but again -- well, you
8 answered my question. That's okay.

9 Let's talk about the whole 911 thing for a
10 minute. Just to be clear, you are not testifying about
11 what physical facilities can or should be used to
12 transport traffic from Charter customers calling 911 to
13 the 911 to the PSAP? Is that right, you're not doing
14 that?

15 A. No, I didn't submit any testimony on that.
16 However, after yesterday's conversation with Mr. Hamiter,
17 I did do a little preparation in order to help enlighten
18 the Commission as to the reasons behind SBC's position.

19 Q. Okay. Well, I will take that as then an
20 invitation to ask you about that, and if I get beyond your
21 preparation, by all means tell me.

22 A. From a high level, that's fine.

23 Q. You understand that today in Missouri and
24 particularly in St. Louis, Charter and SBC are physically
25 connected by a fiber connection that transports traffic at

1 the OC-48 level?

2 A. I understand that from yesterday's
3 testimony.

4 Q. Right. And do you have any reason to
5 believe that there's any physical or technical limitation
6 that would prevent calls to 911, mass calling, those sorts
7 of things from physically riding over that facility?

8 A. Over the interconnection facility?

9 Q. Correct.

10 A. From my perspective, I believe that that is
11 something that SBC has agreed is allowed, that those calls
12 can trans -- be transmitted via the interconnection
13 facility. The issue arises beyond that.

14 Q. Just a minute. We'll get to beyond that in
15 a minute. Given what you've just said, I guess I'll say
16 I'll hold you to it. There's some language that we have
17 in dispute that seems not have to that implication, and
18 that's good to hear if that's true.

19 A. Well, I'm basing my statements upon
20 discussions with Mr. Hamiter, who's the true expert on
21 that issue, but that's my understanding from yesterday's
22 conversations.

23 Q. Well, that was mine as well. It goes to
24 some of the specific contract language.

25 Now, then the question I suppose is, okay,

1 so one of our customers -- 911 is so dramatic. Let's say
2 they're calling to win the free Mustang on the radio
3 station, same concept, because it's the kind of traffic
4 you say should be handled separately and we say should be
5 handled more or less like any other traffic. Do you
6 understand that that's our difference on this?

7 A. Right.

8 Q. Okay. We say if one of our guys calls the
9 radio station to win the free Mustang and it goes over the
10 interconnection facility, it's yours to get to the radio
11 station and that's fine, but that's not our problem. And
12 I understand your position to be, well, no, once it hits
13 the interconnection facility, once it gets to your end of
14 it, you want to break it off onto a separate trunk group
15 that we would separate facility going there, that we would
16 actually pay for it. Is that your testimony?

17 A. The --

18 Q. For mass calling and for 911?

19 A. It's not my testimony. It's my
20 understanding that, yes, that's correct.

21 Q. If Mr. Hamiter says its -- okay, your
22 understanding. I got it.

23 And I take it -- well, I'll go wild. Why
24 should we have to pay for that?

25 A. Well, because SBC would do the same on

1 Charter's network if Charter had a high-volume customer.
2 If there is a high-volume customer that it's in the best
3 interests to the parties to keep mass calling volumes off
4 the network, SBC would request that carriers that seek to
5 reach that customer would place those facilities at their
6 cost in order to reach that customer, and in turn, SBC
7 would do the same on Charter's network if Charter, for
8 example, had a radio station.

9 Q. Well, I'm glad you say that SBC would do
10 that, but that doesn't actually answer the question.

11 A. Okay.

12 Q. The question is, let's assume for the
13 moment that we serve, you know, 45,000 residence
14 customers. We don't serve radio stations. We serve
15 people that want to call radio stations that you serve in
16 order to win the free Mustang. When you serve those radio
17 stations, they go on the air and say, call in now to win
18 the free Mustang, and our guys do exactly that, what your
19 customer wants them to do and get off the phone and call
20 the radio station. Why do we pay? Why does it make sense
21 that we should pay to get it to the radio station from
22 essentially your side of the physical interconnection
23 facility? What's the logic of that?

24 A. I think it's in the best interests of all
25 parties to make sure that the network's clear for traffic

1 such as 911 traffic to go through between parties and such
2 that switches aren't locked up.

3 Again, I'm not a technical expert; however,
4 it's my understanding that those high-volume calls can
5 essentially clog a switch or various switches in order to
6 complete calls to a radio station.

7 Q. I may --

8 A. So --

9 Q. I may be getting beyond your area here.
10 Let me just be clear. Call to the radio station starts at
11 our guy, goes over this interconnection facility. We
12 talked to Mr. Hamiter yesterday about it terminating on a
13 separate trunk on the fiberoptic terminal and coming out
14 a separate port on the back of that.

15 A. Uh-huh.

16 Q. Now, I agree with you, everybody agrees
17 with you that in order to make sure your network doesn't
18 crater, to use a term from yesterday, you want to take
19 that kind of traffic and put it in -- route it in some way
20 that it doesn't interfere with the rest of what's going on
21 in your network. Great. I'm all for it. Why should we
22 pay for that?

23 A. Because it's not part of the
24 interconnection. It's not for, quote/unquote, the mutual
25 exchange of traffic. It's for your customers to contact

1 911, OSDA or a mass calling subscriber.

2 Q. Just to be clear, I don't think Charter
3 uses your operator services or DA at all.

4 A. It's an example.

5 Q. So let's put that aside for a moment.
6 Let's talk about mass calling and 911.

7 A. Okay.

8 Q. Mass calling. The person getting called on
9 mass calling is a customer of Southwestern Bell on
10 Southwestern Bell's network that buys a service from
11 Southwestern Bell for the specific purpose of having the
12 public call them. Now, how is that not the exchange of
13 traffic when our customer calls your customer?

14 A. It's my understanding it's not the mutual
15 exchange of traffic. It's -- it's one-way traffic on a
16 call-in basis at a very high volume that essentially harms
17 the network when it happens.

18 Q. Okay. I'll grant you it's one-way traffic,
19 because radio stations make many fewer calls outbound than
20 they get inbound. Let's take that to be true. So what?
21 What does that have to do with why we should pay for when
22 your customer buys a service from you to have people call
23 them? Why should we pay so that it gets to them?

24 A. I don't believe it's contained within the
25 scope of what interconnection is, where the parties have

1 other arrangements for the deployment of facilities. I
2 believe it's a --

3 Q. What is the basis of that statement?

4 A. I believe it is an additional service
5 that's provided.

6 Q. What is the --

7 A. Ancillary service is the term.

8 Q. Okay. And what is the basis for your
9 statement that when one of my customers wants to call your
10 radio station customer, it's not included within
11 interconnection? I understand that SBC doesn't want it to
12 be, but what is the basis for that statement?

13 A. I think when there are circumstances that
14 arise where there is a huge influx of traffic from one
15 carrier to another, that's not necessarily the mutual
16 exchange of traffic contained under interconnection. That
17 is a specific circumstance or unique circumstance that
18 merits special consideration.

19 Q. Well, it certainly merits special technical
20 consideration to make sure your network doesn't crater?

21 A. That's my understanding.

22 Q. And the parties are completely agreed on
23 that. The question is, other than your statement that it
24 is a special or unique circumstance, do you have any other
25 basis on which to say that we should bear the cost of

1 getting this traffic -- you know, beyond recip comp, the
2 cost of -- the facilities cost of getting this traffic
3 from our point of interconnection to wherever this
4 customer happens to be?

5 A. Well, I don't think that that's what
6 the contract language says. I believe the contract
7 language -- and again, speaking with the network expert
8 yesterday, I believe the provision SBC seeks is that
9 Charter deploy facilities to an SBC choke tandem, which
10 aggregates high-volume traffic volumes, again, for the
11 purpose of this mass calling with various customers.

12 Q. I stand corrected. You're right. The last
13 little loop part, not tandem customer. But then, so we're
14 talking about the link from them, the point of
15 interconnection to that mass calling tandem?

16 A. Uh-huh.

17 Q. Other than the fact that you say it's an
18 exceptional circumstance, is there any policy reason as to
19 why we should pay for that trunking to get to your
20 customer as compared to you doing it?

21 A. Trunking to the customer or the facilities
22 to the choke tandem?

23 Q. What I meant is the facil-- why should we
24 pay for that?

25 A. Because it benefits your customers, and

1 it's not part of the mutual exchange of traffic between
2 the parties it's going to --

3 Q. It only benefits my customer if they win
4 the Mustang. Seriously, the benefit is to your customer
5 who is using this service in order to advertise their own
6 services and promote people to listen to their radio
7 station. My customers benefit if they win the Mustang,
8 but otherwise they don't; isn't that right? How do my
9 customers benefit?

10 A. I guess it's open to interpretation.

11 Q. Okay. I agree. Let's talk about 911.
12 Were you here yesterday when I waved around the 911 tariff
13 pursuant to which you sell 911 service to PSAPs in
14 Missouri?

15 A. I believe so.

16 Q. Okay. So you understand that at least in
17 Missouri the folks who answer the phones, the fire and so
18 on, are customers of SBC who pay for that service from
19 SBC? Would you agree with me on that?

20 A. I agree that that's a possibility. I don't
21 know for certain myself.

22 Q. Okay. Well, assume it to be true for
23 purpose of these questions, and I think I can cut a lot
24 short. Is there anything different about the 911 case in
25 your mind than the mass calling case we just talked about?

1 A. Yes. Again, it's not -- it's not
2 interconnection for purposes of a mutual exchange of
3 traffic between the two carriers. It is an ancillary
4 service that Charter seeks to provide its customers, and
5 only Charter's customers benefit by having 911 services.

6 Q. Right. But the question I asked was, in
7 your mind is there anything different about 911 as
8 compared to the mass calling stuff we've just discussed?
9 Because I don't want to have all the same questions about
10 911. I think they are the same in your mind. This is
11 something strange.

12 A. Largely the same, yes.

13 Q. Is there anything in your mind that is
14 significantly different so I can ask you about it? Bear
15 in mind, if you say no, I'll be done.

16 A. I believe they're largely the same. Again,
17 not -- not part of interconnection services. They're
18 ancillary services that a carrier can seek to provision
19 for its -- the benefit of its customers.

20 Q. And as with the mass calling, you would
21 agree that at the end of the day, whether it's properly
22 included in interconnection is a matter of interpretation?

23 A. Well, I don't know if it's a legal
24 interpretation or not. It's not part of the
25 interconnection as the mutual exchange traffic.

1 Q. As you understand that term?

2 A. Between SBC's end users and Charter's end
3 users, yes, that's correct.

4 Q. Okay. And that's -- to be clear, that's
5 because you don't think the PSAP is an end user when they
6 buy a service from you and are able to be called?

7 A. I believe it's not part of interconnection.
8 It's --

9 Q. Okay. It's all the same stuff we just did.

10 MR. SAVAGE: I have nothing further.

11 JUDGE THOMPSON: Thank you. 34 minutes and
12 18 seconds.

13 MR. SAVAGE: See, if you'd let me go on
14 with that legal stuff, it would have been 47 minutes.

15 JUDGE THOMPSON: Yeah, but I'd be dead.

16 Okay. Now it's my turn to ask you
17 questions.

18 QUESTIONS BY JUDGE THOMPSON:

19 Q. I heard a lot of testimony yesterday about
20 the technical aspects of these different types of traffic
21 and what could be carried over a facility, so now I want
22 to hear about the policy aspects.

23 A. For multiple types of traffic over
24 facilities?

25 Q. Well, at least one of the disputes involved

1 here is whether or not there need to be multiple
2 facilities or whether different types of traffic can be
3 carried over a single facility, different trunks defined
4 on that single facility, am I right about that? That's a
5 dispute with Charter. Is that also part of the MCI
6 dispute?

7 MR. MAGNESS: It's part of ours,
8 Coalition's dispute.

9 MR. MORRIS: Yes, it is, your Honor.

10 BY JUDGE THOMPSON:

11 Q. Very good. So what are the policy reasons
12 that SBC is insisting on multiple facilities?

13 A. I respectfully submit that I did not
14 testify on that, and Ms. Douglas from SBC is more well
15 versed in those issues.

16 JUDGE THOMPSON: So I should wait for
17 Ms. Douglas? Is Ms. Douglas coming today?

18 MR. SAVAGE: She's come and gone, your
19 Honor.

20 JUDGE THOMPSON: Come and gone.

21 BY JUDGE THOMPSON:

22 Q. Then you're going to have to do the best
23 you can. This is SBC's chance to pull this one out of the
24 fire. Does that perhaps motivate you to tell me what's
25 going on?

1 A. From what I can, I will. It's my
2 understanding that there are not standardized or any
3 cohesive billing systems in place to take what I would
4 call commingled traffic.

5 Q. In other words, if it's all coming over the
6 same facility, then SBC is unable to pars it into
7 different categories for billing purposes?

8 A. That is my understanding.

9 Q. Okay. And without a technical person here,
10 we really can't ask, well, gosh, can't you program your
11 switch, can't you program your facilities, right?

12 A. Yes.

13 Q. Because you don't know the answers to those
14 questions, do you?

15 A. I don't. It's my understanding some of the
16 traffic perhaps comes across with different types of call
17 information contained within them. For example, long
18 distance traffic, because it has traditionally come from
19 across different trunk groups, might not contain that
20 information.

21 JUDGE THOMPSON: Okay. If you guys can get
22 me somebody here who can answer that particular question,
23 I'd be more than happy to hear from them. Okay? And from
24 the point of view that the arbitration hearing is at least
25 in some way supposed to be helpful to me in making my

1 decision, that's something I'd like to hear about. Very
2 good.

3 BY JUDGE THOMPSON:

4 Q. Now, I also think I've heard you say things
5 about how you view some of this traffic differently than
6 the way they view it. They see it as -- well, maybe you
7 can even help me understand exactly how you view it
8 differently. Let's take this mass calling traffic, the
9 radio station traffic. You don't see that as
10 interconnection traffic. Am I right on that?

11 A. It's my understanding it's not.

12 Q. So what do you see it as?

13 A. I guess the best way to characterize it
14 would be as an ancillary service provided.

15 Q. In other words, if they want this, then
16 they're going to pay extra from a different rate sheet or
17 price sheet. This isn't what you consider normal
18 interconnection traffic, right?

19 A. Correct, not throughout the normal course
20 of exchanging traffic between carriers.

21 Q. And that normal interconnection traffic, am
22 I right that that's what you call 251(b) traffic?

23 A. That's some of it, yes, intraLATA toll
24 traffic.

25 Q. Okay. There's more of it?

1 A. There's various flavors of traffic, yes.

2 Q. It looks like this dispute is all about

3 treating different flavors of traffic differently, right?

4 A. That's -- as to compensation, yes.

5 Q. Okay. And is this fight over reciprocal

6 compensation?

7 A. There are issues with reciprocal

8 compensation and the application of rates to certain types

9 of traffic. That's separate and distinct from the

10 facilities issue with regard to --

11 Q. Yeah, I moved on from the facilities issue.

12 A. Okay. Okay.

13 Q. Because my remaining questions are

14 technical and you're not the technical guy. I mean, what

15 I heard you say with respect to that was, well, our

16 policies are technical. The basis is technical because we

17 can't bill. We can't pars the traffic and bill

18 appropriately if it all comes over one facility. That's

19 what you told me, and to me that's a technical question.

20 A. Okay.

21 Q. Can you or can you not pars the traffic and

22 bill if it comes over one facility or not? I mean, it's a

23 fact question, a technical question. It's pretty simple.

24 I just need the right person to tell me.

25 Now, with respect to this other issue,

1 treatment of different traffic in a different fashion
2 based on whether or not you consider it to be part of that
3 traffic that you're required to exchange or required to
4 treat under the reciprocal compensation rules, that's what
5 I'm trying to get at here, right? So if -- am I off
6 course?

7 A. Are you asking about reciprocal
8 compensation as it applies to mass calling, or are you
9 asking about reciprocal compensation and the various just
10 regular interconnection traffic between the parties?

11 Q. I think I'm asking about both.

12 JUDGE THOMPSON: What exactly is the nature
13 of your dispute on this issue, Mr. Savage?

14 MR. SAVAGE: There are two distinct
15 disputes. With respect to the mass calling/911, what I
16 understand Mr. Hamiter and Mr. McPhee to say today is
17 they're actually okay with using our fiber facility to get
18 it to them, which is progress.

19 JUDGE THOMPSON: It can all come over one
20 facility?

21 MR. SAVAGE: It can all come over one
22 facility on separate trunks.

23 JUDGE THOMPSON: I understand separate
24 trunks.

25 MR. SAVAGE: And then what happens is there

1 needs to be an additional both facility and trunk to
2 connect that traffic inbound from us to the particular
3 switch that they use to serve either 911 on the one hand
4 or mass calling on the other hand.

5 If it's a plain old call from one of our
6 people to one of their people, all that's on their nickel
7 because we have bill and keep for that kind of exchange.
8 But if it's a call to the radio station customer, they say
9 they want to charge us for the facility used to get from
10 essentially their end of the POI to that switch.

11 JUDGE THOMPSON: So in other words, what
12 you're saying, they don't want to treat it as subject to
13 the reciprocal compensation rules?

14 MR. SAVAGE: Correct. Well, they don't
15 want to do that and they also want to say that they can --
16 essentially, I don't care whether it's subject to
17 reciprocal compensation or not because we're bill and
18 keep. If it is, fine. If it's not, fine. What I care
19 about is that they want to charge us for a facility in
20 their network to get traffic to one of their customers to
21 Point A to Point B. If that facility --

22 JUDGE THOMPSON: Let me make sure I
23 understand this. The traffic can come from your network
24 to their network over a single facility?

25 MR. SAVAGE: Technically that's correct,

1 and that's what I understand Mr. Hamiter to say.

2 JUDGE THOMPSON: But then once it gets to
3 their facility, to their network, then you need a separate
4 facility to take it to the special switch; is that what
5 you're saying?

6 MR. SAVAGE: It is my understanding that's
7 what they are saying.

8 JUDGE THOMPSON: Okay. Is that what you
9 are saying?

10 THE WITNESS: And it's my understanding
11 that's accurate, other than I don't believe it's entirely
12 accurate to say SBC seeks to charge Charter for that
13 facility inasmuch as SBC says it's Charter's
14 responsibility to have that facility. They could get it
15 from a third party if they desired.

16 MR. SAVAGE: That facility is on our nickel
17 whether we buy it from them or buy it from somebody else.
18 And that's what we think is inappropriate.

19 BY JUDGE THOMPSON:

20 Q. Okay. Well, let me ask you this. Let's
21 say I'm an SBC customer and I want to dial 911. How does
22 my call get to the special 911 switch?

23 A. I believe across SBC's network.

24 Q. And why can't it get across SBC's network
25 on that switch after it arrives on this interconnecting

1 facility from Charter? Why does there have to be a
2 special facility to the switch to carry Charter's 911
3 traffic? Do you see what I'm saying?

4 A. I don't understand the question, because if
5 an SBC customer calls 911, it's not an intercarrier call.

6 Q. I understand, but what I'm saying is your
7 network has the capacity to deliver your subscribers' 911
8 calls to the 911 switch. So why can't your network --
9 once his 911 traffic has reached your network, why can't
10 your network deliver that traffic to the 911 service? Do
11 you see? You're doing it for your own subscribers. Why
12 can't you do it for his?

13 A. I believe we are doing it for our own
14 subscribers based upon where they're located, via special
15 trunking that we have put in place.

16 Q. So you've had to put in a special trunk
17 yourself?

18 A. That's my understanding.

19 Q. Ah-ha. See, you're helping me here. You
20 are. Just pretend I know nothing about telephones and
21 what little I know is all wrong, okay, and you'll
22 understand where I'm coming from.

23 MR. SAVAGE: But now we have to be very
24 careful about the distinction between a separate trunk and
25 a separate facility.

1 JUDGE THOMPSON: I understand that.
2 Facilities carry trunks.

3 MR. SAVAGE: So they have all these
4 facilities running from their various switches, including
5 the tandem that we connect to, to their 911 switch. And
6 so the question is, can they just take our traffic and
7 carve out a trunk on an existing facility to their 911
8 switch or can't they?

9 JUDGE THOMPSON:

10 Q. That's exactly the question. Can you
11 answer it?

12 A. I think, again not being a technical
13 expert, I think my general understanding is there are
14 places within the network, SBC's network, where there are
15 facilities and trunks specifically dedicated to handling
16 traffic or sending traffic to the appropriate 911
17 provider.

18 Q. Okay.

19 A. Charter's proposing -- and you're asking
20 why we can't carry all of Charter's customers' traffic
21 across a single aggregated point within the network.

22 Q. I'm just trying to understand what exactly
23 this dispute is and what the basis of it is, what's the
24 environment within which the dispute exists? Is it a
25 technical problem that requires a piece of fiber or piece

1 of cable or programming of a machine? Is it just a policy
2 issue that you don't want to do this for this CLEC or any
3 other CLEC but you could? I don't know. I just want to
4 understand.

5 A. I think there's several layers to it. The
6 first would be the policy issue of it's not part of within
7 the scope of interconnection as I've already described. I
8 think --

9 Q. Because you don't view 911 calls as being
10 part of normal local traffic?

11 A. That's correct.

12 Q. Okay.

13 A. It's a service above and beyond exchange of
14 normal local traffic.

15 Q. In SBC's view.

16 A. Yes.

17 Q. And SBC's lawyers are going to have an area
18 in their Brief where they're going to show me the
19 authorities for this position, right?

20 MR. LANE: Your Honor, if I may say?

21 JUDGE THOMPSON: You may.

22 MR. LANE: Ms. Chapman is our witness on
23 911 issues, and on those specifically, and she's up, I
24 think, next possibly.

25 JUDGE THOMPSON: Very good.

1 MR. LANE: So you may be able to ask her
2 some of those questions as well.

3 JUDGE THOMPSON: Okay. Well, I'll stop
4 browbeating this man, then. You're doing well. I
5 appreciate it. You're a good sport.

6 BY JUDGE THOMPSON:

7 Q. You understand what I'm --

8 A. Yes.

9 Q. I'm just a lawyer. I sue school districts,
10 and suddenly here I am arbitrating this agreement between
11 telephone companies, and I can hardly use a telephone
12 without assistance. So you have to help me understand.

13 MR. PRICE: Your Honor, just for the
14 record, there were -- these disputes were also covered in
15 my testimony as to between MCI and SBC. So to the extent
16 that I can, I'm certainly willing to answer your
17 questions.

18 JUDGE THOMPSON: I appreciate that very
19 much.

20 BY JUDGE THOMPSON:

21 Q. Okay. Talk to me about transit traffic.
22 Is it my understanding that SBC doesn't view traffic
23 transiting as part of an interconnection agreement?

24 A. It's a legal interpretation of the
25 obligations contained within the Act. It's SBC's view

1 that it's not contained within that obligation.

2 Q. Okay. Now I'm going to break my own rule

3 and ask you about the law. I know I'm evil. You're

4 allowed to hate me all you want.

5 MR. SAVAGE: Just as long as you make him

6 cry, your Honor.

7 JUDGE THOMPSON: I can only make teachers

8 cry.

9 BY JUDGE THOMPSON:

10 Q. I think I understand that the law requires

11 LECs to interconnect both directly and indirectly, doesn't

12 it?

13 A. Yes, it does.

14 Q. Okay. Now, when the law says that a LEC

15 has to interconnect indirectly, does it not necessarily

16 require that some third party be involved in that

17 interconnection?

18 A. It does, but it doesn't necessarily require

19 that a party be forced to be that intermediary party. A

20 carrier, Carrier A , can opt into an agreement with

21 Carrier B to transit traffic to Carrier C.

22 Q. Okay.

23 A. It's SBC's position that the Act does not

24 obligate or force anybody to be Carrier B unless they were

25 to so agree.

1 Q. Even though you can't have indirect
2 interconnection without a Carrier B?

3 A. Sure.

4 Q. So in other words, the Act creates this
5 obligation, but nobody's obligated?

6 A. It's my understanding --

7 Q. You see where I'm heading with this?

8 A. It's my understanding the originating party
9 has the choice to directly or indirectly interconnect with
10 the party, with the terminating carrier.

11 Q. With the terminating party?

12 A. So Carrier A has the obligation to
13 indirectly or directly connect with Carrier C.

14 Q. Let's do a hypothetical. Let's say that
15 here in Missouri we have, oh, a tiny little ILEC somewhere
16 out in the cornfields. There may or may not be such a
17 thing, but let's pretend there is. And let's pretend that
18 the only way this tiny little ILEC out in the cornfields
19 can get its traffic to the rest of the nation is through a
20 large ILEC who happens to be connected to it. And let's
21 say that this is the only connection that this little ILEC
22 has to the rest of the world.

23 Do you think that the large ILEC, then, is
24 not obligated under the law to carry the traffic between
25 this little ILEC and the rest of the world? And I know

1 you're not a lawyer, but I'm still asking you to tell me
2 yes or no, if you can.

3 A. I understand your hypothetical, and based
4 upon SBC's interpretation of the law, there is no specific
5 obligation to require that.

6 Q. Okay. Fair enough. So your answer is no,
7 they're not obligated?

8 A. That's correct.

9 Q. Okay. Now, I also heard talk about
10 different size calling scopes and whether or not access
11 would be the appropriate compensation for calls. Now, my
12 understanding of this issue is hindered a little bit by
13 the fact that I don't know a whole lot about how Charter's
14 network is configured. I understand that you want to have
15 larger calling scopes for your customers than your
16 competition provides, let's say, with the normal,
17 traditional, plain old telephone service network or
18 whatever you want to call it.

19 So I guess my question is, who's going to
20 be transporting that traffic? Let's say one of your
21 subscribers in St. Louis wants to talk to his mother who
22 lives in Moberly. I don't know if you have a facility
23 going out to Moberly or not, but normally I think access
24 would be charged for a call of that distance, right?

25 MR. SAVAGE: Yes. Your Honor, I think I

1 can help. You were --

2 JUDGE THOMPSON: Help me understand.

3 MR. SAVAGE: You were quite correct in

4 noting that this was mainly a legal issue, so let me --

5 it's more legal than factual. Let me outline the legal

6 position, and we can go forward more in the Briefs.

7 JUDGE THOMPSON: Please do.

8 MR. SAVAGE: One of the legal things I was

9 browbeating Mr. McPhee with was the definition of

10 telephone toll service.

11 JUDGE THOMPSON: Okay.

12 MR. SAVAGE: And the definition of

13 telephone toll service in the Act Congress says is, call

14 between points in two different exchanges for which there

15 is a separate toll.

16 JUDGE THOMPSON: Okay.

17 MR. SAVAGE: It follows as a matter of

18 logic that if there's not a separate toll assessed, it is

19 not telephone toll service.

20 JUDGE THOMPSON: Okay.

21 MR. SAVAGE: Okay. Now, another thing I

22 was browbeating him about --

23 JUDGE THOMPSON: Am I correct that's not a

24 conclusion that SBC concurs in?

25 MR. SAVAGE: I believe that's a matter

1 where they think people might have a disagreement about
2 how to interpret Congress' language.

3 JUDGE THOMPSON: Okay.

4 MR. LANE: Your Honor, if I may say our
5 position, I will --

6 MR. SAVAGE: I wasn't done with mine.

7 JUDGE THOMPSON: Well, let me hear his
8 right now, because we've got a lot.

9 MR. LANE: This is testifying by lawyers,
10 and if we're going to be doing that, then I will

11 MR. SAVAGE: Well, go ahead.

12 MR. LANE: I think the issue on this, your
13 Honor, is there is no debate that we are not attempting to
14 tell anyone what their local calling scope should be.
15 They can have whatever they want.

16 JUDGE THOMPSON: Okay.

17 MR. LANE: We can have it whatever we want
18 on the retail side, but there has to be some common basis
19 of a calling scope for purposes of determining when
20 wholesale compensation is owed and what is owed.

21 JUDGE THOMPSON: Okay.

22 MR. LANE: And under the proposal that's
23 out there, if Charter wants to say the state of Missouri
24 is its local calling scope, it may do so. But what it may
25 not do is say its customers in Kansas City can call to our

1 customer in St. Louis and say, well, that's bill and keep
2 for reciprocal compensation purposes because it's part of
3 our local calling scope; but on the other hand, if our
4 customer in St. Louis calls up to Kansas City, then
5 Charter would be entitled to access.

6 So we have an imbalance in terms of how
7 compensation is paid for both access purposes and
8 reciprocal compensation purposes. And our proposal is
9 that we have a common base from which that is determined,
10 and that's the entire point of what Mr. McPhee is trying
11 to get to.

12 JUDGE THOMPSON: So it's basically whose
13 definition of local calling scope is going to drive the
14 competition, right?

15 MR. SAVAGE: Not quite.

16 JUDGE THOMPSON: Not quite.

17 MR. SAVAGE: This is where I was trying to
18 walk through it.

19 JUDGE THOMPSON: Okay.

20 MR. SAVAGE: And Mr. Barber -- the
21 factials, this is Mr. Barber's written testimony. He
22 didn't get crossed on it, but there's the factual
23 underpinnings. But the legal underpinnings I was trying
24 to slip through is, the other thing I was browbeating
25 Mr. McPhee about is the definition of exchange access,

1 because Congress defined exchange access as the use of
2 their local facilities or ours for the origination or
3 termination of telephone toll service. Consequently --

4 JUDGE THOMPSON: I think I grasp your legal
5 arguments.

6 MR. SAVAGE: You see where I'm going.
7 Okay. What that means is, if someone is collecting a toll
8 from the end user, they are -- this is the economic part
9 and this is in Mr. Barber's testimony. If they're
10 collecting a toll from the end user, they are collecting
11 the revenues that make it economically feasible and
12 logical to pay an access charge. If the originating
13 carrier is not collecting a toll, then they don't have the
14 money in order to pay the access charge and they shouldn't
15 have to.

16 Now, there's additional stuff that I'm
17 going to cite in the Brief, for you to check that.

18 JUDGE THOMPSON: I just want Briefs
19 succinct, to the point.

20 MR. SAVAGE: There's one other piece.

21 JUDGE THOMPSON: Go ahead.

22 MR. SAVAGE: The other piece is the
23 physical activity that we perform or SBC performs in
24 terminating the piece of traffic is absolutely identical,
25 whether it is deemed local or toll. There's no technical

1 difference. So it's entirely an economic question.

2 JUDGE THOMPSON: Okay.

3 MR. SAVAGE: That's our point.

4 JUDGE THOMPSON: Mr. Lane?

5 MR. LANE: And the other point that we

6 would say, your Honor, that has to be complete when you're

7 determining what that calling scope ought to be and how

8 that should be used for compensation purposes is the

9 physical difficulties from a billing perspective if we

10 have to add 80 or 100 different calling scopes that are at

11 issue for determining every kind of traffic, whether it's

12 ISP, FX, local, long distance, what have you, and how can

13 that possibly even happen when it varies from carrier to

14 carrier?

15 What Charter's seeking is a radical

16 departure from how we operate today with every other CLEC

17 with whom we interconnect, period. And it's a significant

18 and substantial change that they're seeking to invoke

19 here.

20 JUDGE THOMPSON: Thank you. I appreciate

21 the lawyers for outlining this dispute so clearly.

22 MR. SAVAGE: It will be in the briefing.

23 There's more detail and obviously rebuttal to that.

24 JUDGE THOMPSON: Then I don't have any

25 further questions for you about that, now that I

1 understand what they're fighting about.

2 Ms. Dietrich, any questions?

3 MS. DIETRICH: Yes. I'm going to ask a
4 couple clarifying questions.

5 JUDGE THOMPSON: I hope you do, please.

6 QUESTIONS BY MS. DIETRICH:

7 Q. Let's take the last issue first about the
8 calling scopes. In your testimony you talked about a CLEC
9 serving a geographic area comparable to SBC's tandem
10 switch, and then I think what Mr. Lane just said that was
11 comparable calling scope for billing purposes.

12 Are we talking about the same calling scope
13 for each CLEC or is it dependent on the CLEC and where
14 they're located, or just exactly what is the comparable?

15 A. It's my understanding that the governing
16 bodies such as this Commission establishes local calling
17 areas or local exchanges throughout the state of Missouri.
18 And for purposes of wholesale intercarrier compensation,
19 carriers abide by those same defining outlines of local
20 exchange boundaries for purposes of treating traffic as to
21 whether it's local or MCA or toll traffic.

22 Q. So when you say it would be common, it
23 should be the same for all carriers?

24 A. Yes. That's correct. Yes, consistent for
25 all carriers throughout the state.

1 Q. Okay. Then I want to go back to --

2 JUDGE THOMPSON: I'm just thinking about

3 what I heard from these guys and what I heard from him in

4 response to your question, which is, you know, on the one

5 hand consistency, I can see it's important in operating

6 the business. On the other hand, does that preclude

7 innovation that might be of benefit to consumers.

8 Something to think about, I guess.

9 THE WITNESS: Well, I think there's other

10 aspects that play in this also, other underlying issues.

11 The access rate regime is also at play in this as to

12 whether or not access revenues apply between the parties

13 or in Charter's proposal. It's really more in one

14 direction, any carrier that plays by, quote/unquote, the

15 traditional calling scopes would owe Charter access

16 revenues, thereby Charter's proposal would allow them, for

17 example, to alleviate themselves of those obligations.

18 BY MS. DIETRICH:

19 Q. And how would that benefit the consumers?

20 A. Ultimately, I'm not sure that it would

21 without a larger fix to access regime. I'm not sure if

22 there are additional subsidies built into Missouri's

23 access rates that provision the rural telephone service or

24 services to hospitals or schools. Those are

25 considerations. I know in other places in the county --

1 I'm not sure specific to Missouri -- that would be at risk
2 when that mechanism is tampered with.

3 Q. I want to switch back to the mass calling
4 issue now for a second. I'm not -- I hopefully won't get
5 into anything technical. I want to clarify a couple of
6 things that you said. In the discussion about mass
7 calling, various ancillary services, I think you said,
8 could be OSDA, 911. I don't remember all the ones that
9 you listed.

10 But at one point I thought that you said
11 that carriers could seek to provision those services for
12 its customers so it would make sense for them to set up
13 the separate trunk group. Then at another point I thought
14 you said that SBC wants the carriers to set up the
15 separate trunk groups to provision. I'm just trying to
16 figure out whose point of view it's coming from.

17 A. I think the -- I think the position is it's
18 SBC's position that a carrier is responsible for the
19 provisioning of those services for their customers.

20 Q. So like, for instance, I mean, to me 911
21 and mass calling are two different things. 911's, you
22 know, you have to have it for your customers; whereas,
23 mass calling, if they're not able to call the radio
24 station, that may or may not be a good thing.

25 So does it matter what type of service

1 we're talking about or is it general policy across all the
2 services?

3 A. I believe the distinguishing factor is it's
4 not part of the interconnection for purposes of the mutual
5 exchange of traffic between the two parties' end users.

6 Q. So because it's not part of the
7 interconnection, it would be the customer or the CLEC's
8 choice as to how it provisioned, say, for instance, 911
9 and mass calling?

10 A. That's correct.

11 MS. DIETRICH: Okay. Thank you.

12 JUDGE THOMPSON: Thank you, Ms. Dietrich.

13 Mr. Johnson?

14 MR. MICK JOHNSON: No questions.

15 JUDGE THOMPSON; Mr. Scheperle?

16 MR. SCHEPERLE: No questions.

17 JUDGE THOMPSON: Mr. McKinnie?

18 MR. MCKINNIE: Yes, please.

19 JUDGE THOMPSON: Step on up.

20 QUESTIONS BY MR. MCKINNIE:

21 Q. Mr. McPhee, I have a Post-It reminding me
22 to ask you that when I talked to Mr. Constable yesterday
23 about VOIP and IP PSTN issues, he mentioned that some of
24 those things may be better to discuss with you. Do you
25 have anything to add to his response yesterday when I was

1 talking to him about those issues?

2 A. I don't remember his response specifically
3 to the advent of the Post-It note. However, I can
4 reiterate that SBC's position, whether a call is entirely
5 conducted on the public switched telephone network or
6 conducted via IP enabled technology, it is SBC's position
7 that the technology doesn't make a difference at this
8 point in time as to the application of compensation rules.

9 Q. Okay. I think that clears up that for me.
10 I have one other question about your rebuttal testimony.
11 On page -- well, let me start out on the bottom of page 3,
12 if I may.

13 A. Okay.

14 Q. On page 3 at the beginning of your answer,
15 like, on line 22, you use the term "ISP-bound traffic".

16 A. Yes.

17 Q. And then you use that again on 23 in there,
18 but when I flip over the page, you talk about ISP traffic.
19 You use that term on line 1 and line 2 of page 4.

20 A. Yes.

21 Q. Could you just explain to me what the
22 difference is between ISP traffic and ISP-bound traffic?

23 A. Well, for the purposes of agreement, SBC
24 proposes a definition for, quote/unquote, ISP-bound
25 traffic seeking to conform it to the FCC's rules and

1 orders, the ISP Remand Order, as I can testify to. So as
2 far as ISP traffic and the context I'm using it on page 4,
3 I am -- it's ISP-bound traffic but it's also not within
4 the definition of a locally originated and delivered ISP
5 call. So it says it's a non-local ISP call.

6 Q. So -- I just want to make sure I'm clear on
7 this issue. So if I use the term ISP-bound traffic to
8 discuss just for the sake of argument a customer calling
9 an ISP that's outside of their local calling area, then
10 your position would be that I may not use the term
11 "ISP-bound" to describe that call?

12 A. No. It's ISP-bound traffic. It's just --
13 I believe in my testimony here I'm conforming it to the
14 definition with the capitalization of ISP-bound traffic.
15 So it's -- maybe I should start over. They're one and the
16 same.

17 Q. Okay. That's -- so --

18 A. But with differences on how they're
19 treated, local versus non-local, subject to the ISP Remand
20 Order versus not subject to that Order.

21 Q. Okay. So let me ask this question a
22 different way, and then I'll stop. Tell me what ISP
23 traffic is that's not ISP-bound traffic.

24 A. In the context of the top of page 4 of my
25 rebuttal testimony, the order compensation scheme does not

1 apply to non-local ISP traffic. It's -- could easily say
2 non-local ISP-bound traffic.

3 Q. Okay. So when I look at that phrase at the
4 top of page 4, I should look at that as non-local ISP
5 traffic, not just ISP traffic?

6 A. Right. It's been qualified as non-local in
7 that statement.

8 MR. McKINNIE: Okay. That's what I wanted
9 to know. Thank you very much.

10 JUDGE THOMPSON: Thank you very much,
11 Mr. McKinnie.

12 Recross? Step on up, Mr. Magness. How
13 long do you expect to be?

14 MR. MAGNESS: Four minutes.

15 JUDGE THOMPSON: Very good.

16 MR. MAGNESS: And I'll say at the outset, I
17 wanted to talk to Mr. McPhee about an Order, and I can
18 have copies made of this. We can have it entered as
19 administrative notice if you like or not. I'm
20 indifferent. I'll read for the record, this
21 is Order of the Missouri Public Service Commission, Case
22 No. TK-2005-0300, styled application of Chariton Valley
23 Communications Corporation, Inc. for approval of an
24 interconnection agreement of Southwestern Bell Telephone
25 LP, d/b/a SBC Missouri, pursuant to Section 252(e) of the

1 Telecommunications Act of 1996.

2 You'd better make that six minutes. What

3 I'm going to ask him to look at is Order Rejecting

4 Interconnection Agreement which was issued on May 19,

5 2005.

6 RECROSS-EXAMINATION BY MR. MAGNESS:

7 Q. Mr. McPhee, in this Order the Missouri

8 Public Service Commission last week rejected an

9 interconnection agreement, and in that context I'm going

10 to ask you to read a bit of it.

11 MR. BUB: Bill, could I see that, please?

12 MR. MAGNESS: Sure.

13 MR. BUB: Your Honor, I would note for the

14 record that what he's handing the witness is an incomplete

15 copy of the Order. It does not have the dissenting

16 opinion of Commissioner Murray.

17 MR. MAGNESS: And, your Honor, I can

18 represent when we provide copies to the parties and offer

19 this for administrative notice, we will include the

20 dissenting opinion. This is a decision of the Commission

21 with Chairman Davis, Commissioners Gaw, Clayton and

22 Appling concurring. Commissioner Murray did indeed issue

23 a dissent, and that will be part of what we actually

24 submit as an exhibit.

25 JUDGE THOMPSON: Very well.

1 BY MR. MAGNESS:

2 Q. Now, I'm asking, Mr. McPhee, if you can
3 turn your attention to page 3, there under the heading
4 discussion, could you read that first paragraph into the
5 record?

6 A. As recognized by SBC Missouri, the
7 Telecommunications Act requires companies to indirectly
8 interconnect. If companies are required under the Act to
9 indirectly interconnect, there must be an intermediary
10 through which those companies connect indirectly. If the
11 intermediary is not required under the Act, transit, the
12 indirect traffic, then the purpose of the Act would be
13 frustrated.

14 Q. So the position that you staked out as
15 SBC's position that although there is an indirect
16 interconnection obligation on transit, that SBC is not
17 obligated to meet it, that position is at odds with what
18 the Commission's saying in that discussion section, isn't
19 it?

20 A. I believe you might have mischaracterized
21 SBC's position, but SBC largely is at odds with this
22 decision. SBC believes there's not -- while there are
23 obligations to indirectly interconnect, there's not
24 specific obligations to be the indirect interconnector.

25 Q. Okay. Could you read the next paragraph

1 into the record?

2 A. The Act requires that interconnection
3 agreements be filed for approval with the state
4 commission. An interconnection agreement is any agreement
5 negotiated or arbitrated that contains terms of
6 interconnection. Transit service falls within the
7 definition of interconnection service. SBC and CBCI have
8 an agreement covering transit service. Because the
9 transit agreement is an interconnection service, it must
10 be filed with the Commission for approval.

11 Q. Don't you think it's fairly clear there
12 that this Commission has held that transit traffic should
13 be in the Section 251/252 agreements?

14 A. The Order says what it says.

15 Q. And could you flip the page and read the
16 first two sentences of the next paragraph?

17 A. SBC and CBCI have filed an interconnection
18 agreement that does not include provisions for transiting
19 traffic. It is conceivable that an interconnection
20 agreement --

21 Q. Excuse me. Could you read that again? It
22 is what?

23 A. Conceivable.

24 Q. Okay. Go ahead.

25 A. The second sentence states, it is

1 conceivable that an interconnection agreement need not
2 contain transit services.

3 Q. Go ahead and read the next sentence.

4 A. However, in this matter, CBCI intends to
5 use transiting as its method of indirect interconnection,
6 but SBC and CBCI have failed to include transiting
7 provisions in the interconnection agreement.

8 Q. And then finally the first sentence of the
9 conclusion?

10 A. The Commission concludes that transit
11 traffic is an interconnection service and is, therefore,
12 subject to Commission approval.

13 Q. Thank you. Why are we still fighting about
14 this in Missouri?

15 A. It's a legal issue.

16 MR. MAGNESS: Okay. Thank you.

17 JUDGE THOMPSON: Thank you.

18 MR. GRYZMALA: Your Honor?

19 JUDGE THOMPSON: 5 minutes, 21 seconds.
20 I'm proud of you.

21 Yes, sir.

22 MR. GRYZMALA: Your Honor, you had several
23 questions about transit. I'd like one minute to be heard,
24 if I may, with regard to this opinion.

25 JUDGE THOMPSON: Absolutely. Step on up to

1 the podium so that our listeners in Germany can hear you.

2 MR. GRYZMALA: I don't want to cause a
3 situation where we have a lot of legal angling, just to
4 put it very briefly in perspective. The agreeem-- or the
5 opinion of the Commission in the Chariton Valley
6 TK-2005-0300 was accompanied by a cogent dissent by
7 Ms. Murray. We have a copy of the Order. We also have a
8 copy of the dissent. We can argue about what that means.

9 I would also like to point out in response
10 to your Honor's questions that the transit agreement that
11 was at issue in that case was filed as -- or was provided
12 in the Chariton Valley case, so the transit agreement was
13 provided to the Missouri Commission. It was likewise
14 filed at the FCC under Section 211 of the Act.

15 Mr. McPhee, if I recall, subject to
16 correction, has earlier testified, as we pointed out, in
17 this case and elsewhere.

18 MR. MAGNESS: Your Honor, I'm going to just
19 have to object to the way he's pre-briefing the issue.
20 There were questions about this, but there's no question
21 being directed to Mr. McPhee.

22 JUDGE THOMPSON: Okay.

23 MR. MAGNESS: If he'd like to enter that as
24 administrative notice exhibits, since he has the copy,
25 we're happy to do that. We can brief it.

1 MR. GRYZMALA: One last point. In the
2 Level 3 arbitration matter, the Commission determined that
3 when the transit agreement would be struck between Level 3
4 and SBC, the parties could argue the matter of whether
5 state commission approval is required for a transit
6 agreement in the context of 252.

7 Thank you, your Honor.

8 JUDGE THOMPSON: Very good. Thank you.

9 MR. MAGNESS: The Commission has the
10 Chariton Valley case. We'll see how that turns out. thank
11 you.

12 JUDGE THOMPSON: I mean, the Chariton
13 Valley case, I believe there's actually several cases of
14 the sort all of which say the same thing. And, you know,
15 as far as I can see at this point as an employee of this
16 Commission, that's the policy here until you get a federal
17 judge to tell the Commission that they're wrong, or you
18 convince two of Commissioner Murray's colleagues to side
19 with her on this issue, right?

20 MR. GRYZMALA: I believe that we need to do
21 some work. I believe that the time for motions for
22 rehearings has not yet run in the 0300 case.

23 JUDGE THOMPSON: Right. Absolutely.
24 That's not part of this docket.

25 I'm just saying as far as the issue of

1 whether transiting is properly part of the interconnection
2 agreement, as far as that goes for the purposes of this
3 case, I'm going to be guided by the latest decision of the
4 Commission that I'm employed by. And if you think I'm not
5 going to be, then you're going to have really an uphill
6 battle convincing me to give them a decision that
7 contradicts what they've just said. Does that make sense?

8 MR. GRYZMALA: I understand your point of
9 view, your Honor, I do. I understand your point of view.

10 JUDGE THOMPSON: Thank you. I appreciate
11 that. And it could be they're wrong. Right? It could be
12 I'm wrong, they're wrong. That's great. Get a federal
13 judge to tell them, or convince two more, two other of the
14 Commissioners to join with Commissioner Murray.

15 Okay. Let's see. I have no clue where we
16 were in this. I guess we're ready for redirect.

17 MR. BUB: That would be me, your Honor.

18 JUDGE THOMPSON: Mr. Bub.

19 REDIRECT EXAMINATION BY MR. BUB:

20 Q. Mr. McPhee, I'd like to probably start from
21 the beginning and go back, so I'm going to take you back
22 to the questions that you got concerning definitions from
23 Mr. Magness, I believe.

24 A. Mr. Savage?

25 Q. No, I think it was Mr. Magness. He was

1 asking you about some disputed definitions. I think he
2 specifically focused on a definition of ISP-bound traffic
3 and being contained in the transit agreement that you had
4 attached to your direct testimony.

5 And his concern was that that's a disputed
6 definition in this arbitration, but that's already in the
7 transit agreement. And I guess his concern was that if
8 the Commission decided to go their way on that definition,
9 what would happen with the definition of ISP-bound traffic
10 and perhaps other disputed definitions that are in your
11 attachment. Do you remember that?

12 A. Yes, I do.

13 Q. Are you aware that in prior arbitrations
14 this Commission has looked in trying to make a decision of
15 either adopting one party's position or another or in some
16 issues crafting a determination, a remedy they thought
17 appropriate? In this case where you have specific
18 disputed definition, the Commission's been asked to decide
19 what is to be put in the contract, would you believe it
20 would be a reasonable hypothetical if the Commission
21 decided to use the CLEC's definition of Internet-bound
22 traffic but wanted to adopt and include SBC's transit
23 agreement, the one that's attached, for the Commission to
24 just simply order us to use the definition that it has
25 picked in that transit agreement?

1 A. Absolutely. It would not be SBC's intent
2 to have either inconsistent or competing definitions for
3 the same terms.

4 Q. You were earlier correct. Mr. Savage also
5 asked you some questions about definitions, a different
6 series of questions. He was going into FCC definitions
7 and whether or not you knew whether a particular
8 definition was defined in the Act.

9 I recall that it was your response -- it
10 was a whole series of questions -- that putting
11 definitions in crafting SBC's proposed definitions, I
12 think these were your words, you attempted to capture the
13 spirit and intent of the definitions in the Act.

14 Could you tell me where you would find the
15 spirit and intent of definitions in the Act?

16 A. It would be in subsequent orders issued by
17 the FCC, subsequent directives from the FCC or other
18 governing bodies that would have jurisdiction over this
19 interconnection agreement. It's -- oftentimes there are
20 further adaptations or interpretations or clarifications
21 to previous vagaries or issues that have been disputed.

22 Q. Would it be fair to say that to the FCC's
23 orders, they attempted to put meat on the bones of
24 statutory definitions?

25 A. Absolutely. There's been disagreement in

1 the past, and it's my belief if we were to incorporate
2 terms, definitions such as Mr. Savage proposes from the
3 Act, I don't see that as being, quote/unquote, the latest
4 and greatest, as he had stated. There has been further
5 interpretation, and if we were to use those definitions, I
6 believe we'd be right back here disputing the application
7 of those definitions.

8 Q. Why do you find it necessary to
9 specifically define things like FX or MCA?

10 A. Because they are specific and pertinent
11 types of traffic that have arisen since the drafting of
12 the Act in 1996. They are and have been subject to
13 disputes as to the proper characterization and treatment
14 of those traffic types for purposes of compensation.

15 Q. I'd like to shift gears. This is another
16 question, series of questions that Mr. Savage had with
17 you. This had to do with 911 and mass calling facilities.
18 Do you recall those?

19 A. Yes.

20 Q. And his questions, a lot of them focused on
21 the perspective of the SBC customer that was a radio
22 station.

23 A. Yes.

24 Q. I'd like to take it from a different
25 perspective to the Charter customer.

1 A. Yes.

2 Q. What benefits do you see from that separate
3 facility for the Charter customers?

4 MR. SAVAGE: I have to object to the
5 question as being unclear. That separate facility, I want
6 to be clear which. There's so many.

7 THE WITNESS: The high-volume calling
8 facility.

9 BY MR. BUB:

10 Q. Yes. Would that help?

11 A. I believe the benefit to any customers
12 trying to get in contact with an end user that seeks mass
13 calling inward to itself would be equal -- equal
14 opportunity to win that Mustang, as has been
15 characterized, as opposed to calls becoming blocked, not
16 only also for purposes of completing to that radio
17 station, but also for purposes of the course of normal
18 telephone conversations.

19 Q. So the benefits to Charter end users that
20 they could call in to that radio station?

21 A. Yes, that's correct.

22 Q. They could call other customers on the PSTN
23 without having --

24 A. That's correct.

25 Q. -- calls blocked?

1 A. Without having them impacted by that mass
2 calling event.

3 Q. It would also allow them to make calls to
4 911?

5 A. It would, because I believe it would be on
6 different parts of the network.

7 Q. I think after our break Mr. Savage asked
8 you some questions about the dispute we're having over the
9 definition of local calling area. Does SBC have any
10 problem with Charter on the retail side establishing local
11 calling plans?

12 A. No.

13 Q. If Charter wanted to, would SBC have any
14 trouble with Charter on a retail perspective deciding to
15 offer a statewide local calling plan?

16 A. From a retail perspective, there would be
17 no problem whatsoever.

18 Q. Okay. And if they did that, under
19 Charter's proposal here, if a Charter customer in
20 St. Louis called an SBC customer in Kansas City, what does
21 Charter wish to pay SBC for that call?

22 MR. SAVAGE: I think that actually calls
23 for the application of law, in fact, rather than their
24 contention or our contention. He's asking the witness to
25 interpret our contract.

1 MR. BUB: I'm asking him to interpret your
2 position. What would your position call for?

3 JUDGE THOMPSON: I'm going to allow the
4 question. The witness can answer it, if he's able.

5 THE WITNESS: Under that scenario, for
6 example, if Charter would have a statewide local calling
7 area and they had a Charter end user in St. Louis call an
8 SBC end user in Kansas City, Missouri, Charter proposes
9 that that would be subject to reciprocal compensation or,
10 I believe, bill and keep even, but not subject to access
11 charges.

12 BY MR. BUB:

13 Q. What if that same Charter customer in
14 St. Louis wanted to call, say, a Birch customer in Kansas
15 City, what would it propose to pay Birch?

16 A. It's my understanding from testimony
17 yesterday from Mr. Barber that Charter was clear in saying
18 that their calling scope proposal is specific to its
19 agreement with SBC, so I -- it's possible that Charter and
20 Birch would have an access regime in place.

21 JUDGE THOMPSON: Could I interject a
22 question?

23 MR. BUB: Yes.

24 JUDGE THOMPSON: To make sure I understand
25 this testimony. With your example of a call from a

1 Charter customer in St. Louis to an SBC customer in Kansas
2 City, or maybe it was the other way around, at which end
3 of the call are SBC facilities going to be involved, only
4 the terminating end or both ends?

5 THE WITNESS: It depends where Charter
6 would deliver that call. If they could deliver it through
7 their OC-48 interconnection in St. Louis, I believe it's
8 very possible that SBC would carry that call.

9 JUDGE THOMPSON: Carry it the whole way
10 across the state?

11 THE WITNESS: Conceivably.

12 BY MR. BUB:

13 Q. Well, we have a LATA boundary there. Would
14 that change your view?

15 A. Perhaps an interexchange carrier would pick
16 it up, then, in St. Louis.

17 MR. BUB: I would expect, and I'm not --
18 I'm not Charter's engineer, but I would expect Charter
19 would carry the call from the St. Louis LATA to someplace
20 within the Kansas City LATA, because we can't cross that
21 boundary as the telephone company, and at that point it
22 would hand it off to SBC and we would carry it on our
23 facility to the terminating end to our customer, and --

24 JUDGE THOMPSON: So you pick it up in the
25 Kansas City LATA?

1 MR. BUB: Yes.

2 JUDGE THOMPSON: And you expect you're
3 going to get it from whom?

4 MR. BUB: Charter, or maybe they're hiring
5 somebody else.

6 JUDGE THOMPSON: Charter or an IXC?

7 MR. BUB: Charter or an IXC that Charter
8 has hired to carry it.

9 JUDGE THOMPSON: And let's say -- and our
10 hypothetical is that Charter has defined this for their
11 retail purposes as a local call, right?

12 MR. BUB: Yes.

13 JUDGE THOMPSON: Well, and your position is
14 no matter who you get it from, it's an access call?

15 MR. BUB: Yes, your Honor, and that's
16 defined by our tariffs and approved by the Commission.

17 JUDGE THOMPSON: I understand, but of
18 course, the interconnection agreement supersedes tariffs,
19 right?

20 MR. BUB: No. In our -- in our
21 interconnection agreement, if we access it, it references.

22 JUDGE THOMPSON: It references the tariff?
23 Okay. So you adopted the tariff essentially as part of
24 the agreement?

25 MR. BUB: What they're trying to do is

1 they're trying to change a definition in an attempt to
2 avoid our access charge -- our access tariff. I believe
3 they're trying to avoid the CLECs' access tariffs, and
4 also the independent LEC's access tariffs. All of them
5 have been approved by the state. And as Mr. Lane
6 explained before, it's a tremendous change, a tremendous
7 upheaval.

8 JUDGE THOMPSON: I understand, and I'm just
9 trying to understand that. Let's go back to the
10 hypothetical where we had two versions, one where you get
11 the call in the Kansas City LATA from Charter and one
12 where you get the call in the Kansas City LATA from an
13 IXC. Now, if you get the call in the Kansas City LATA
14 from an IXC, in fact, the IXC is going to pay you access,
15 isn't it? It doesn't matter how Charter has defined the
16 call.

17 MR. BUB: It probably would depend on what
18 Charter is -- their arrangement with the IXC. If they POP
19 the call out, have their customer actually -- Charter
20 customer chooses MCI --

21 JUDGE THOMPSON: Don't IXCs always pay
22 terminating access when they deliver traffic to the LEC at
23 the end of a call?

24 MR. BUB: I believe so, if it's -- if it's
25 their carriage of a call.

1 JUDGE THOMPSON: I thought that was one of
2 the few things I knew about telephones.

3 MR. BUB: What I was thinking of is that,
4 for example, IXCs also have fiber in the ground. If for
5 some reason Charter was just taking a fiber, dark fiber,
6 it would go on. And so that facility, even though it may
7 be plowed in from an IXC, if --

8 JUDGE THOMPSON: Are you talking about a
9 leased facility, that Charter is delivering it to you
10 there using a leased facility?

11 MR. BUB: As opposed to a service.

12 JUDGE THOMPSON. So that's a third
13 possibility.

14 Let's say Charter hauls the call from
15 St. Louis to Kansas City using its own facility, Charter
16 fiber facility that Charter owns. Okay?

17 MR. BUB: I think that's the most likely
18 situation.

19 JUDGE THOMPSON: That's the most likely.
20 Why would that not be a local call?

21 THE WITNESS: They would be acting as an
22 IXC in that circumstance.

23 JUDGE THOMPSON: That's your view?

24 THE WITNESS: Yes.

25 JUDGE THOMPSON: They'd be acting as an

1 IXC, because in the normal world of telephony, it would be
2 an IXC delivering that call?

3 THE WITNESS: Based upon the current
4 standards, yes.

5 JUDGE THOMPSON: But it's not. It's
6 Charter delivering that call. Charter's hauled the call,
7 like it did from its customers, it's hauled it across the
8 state, it's delivering it to you, right?

9 MR. BUB: That's correct. From their
10 retail perspective, it may be local, but from the scheme
11 that the Commission has approved that is currently being
12 examined by the FCC, that would -- it's our position it's
13 an access call.

14 JUDGE THOMPSON: Okay. Let's say it's
15 hauling it from St. Louis to one of your subscribers but
16 not -- but within the St. Louis LATA, different exchange,
17 St. Louis LATA. Is that an access call from your point of
18 view?

19 MR. BUB: Different exchange, yes.

20 JUDGE THOMPSON: So essentially what you're
21 saying is that for the purposes of compensation, it's
22 SBC's position that SBC's network architecture defines
23 what the compensation should be?

24 MR. BUB: Not the architecture, your Honor.
25 It's the exchange boundaries that have been approved by

1 the Commission, and this goes way back to when CLECs first
2 came into the -- to Missouri, everyone respected the
3 boundaries the Commission had established and not just in
4 our territories, but also if you --

5 JUDGE THOMPSON: Whoever the incumbent is.

6 MR. BUB: It could be Century, it could be
7 Sprint. It's all consistent.

8 JUDGE THOMPSON: As far as you know or
9 maybe as far as you know, since you're the witness, is
10 Charter the only CLEC that has not worked -- that is not
11 working with the traditional exchange boundaries?

12 THE WITNESS: In this proceeding, that's
13 correct.

14 MR. BUB: That's my understanding as well.

15 MR. SAVAGE: And, your Honor, if I can be
16 clear, today right now Charter's local calling areas match
17 entirely. Our concern is simply that this is going to be
18 three-year agreement and a lot can happen in three years.
19 The industry is kind of in turmoil. We're not proposing
20 it because we're doing all this stuff that's radical in
21 breaking down the bounds of civilization today. We just
22 kind of --

23 JUDGE THOMPSON: But you may want to bring
24 down the bounds of civilization --

25 MR. SAVAGE: Sometime in the next three

1 years, yes.

2 JUDGE THOMPSON: I'm just trying to

3 understand where we're going here. Thank you very much.

4 And thank you.

5 Continue your redirect.

6 BY MR. BUB:

7 Q. Switch gears again on you, Mr. McPhee. I

8 think one of the questions from the Judge -- and this is

9 where he violated his own rule against asking legal

10 questions, so I think that might give me some license to

11 redirect.

12 JUDGE THOMPSON: That certainly does.

13 Teach me to violate my own rule.

14 MR. SAVAGE: I object, your Honor. He

15 can't ask.

16 (Laughter.)

17 BY MR. BUB:

18 Q. I recall that the Judge asked you about

19 SBC's legal view that transiting is not a service that's

20 required to be provided under the Act. Do you remember

21 that?

22 A. Yes, I do.

23 Q. Okay. What FCC decision does SBC base its

24 view that transiting is not a service required to be

25 provided under the Act?

1 A. I believe that the Act itself, if not a
2 specific order based upon SBC's legal interpretation, it's
3 not part of transit. SBC also believes that because it
4 has not freely negotiated the terms of transit service, it
5 should not be -- it's not necessarily required to be
6 included within the interconnection agreement.

7 Q. Has the FCC ever been asked in an
8 arbitration to consider this issue?

9 A. Yes, I believe it has, and I believe it has
10 --

11 Q. What is that case, do you recall?

12 A. I can't -- perhaps Virginia Verizon, the
13 Verizon order in Virginia. And I believe in that, the FCC
14 has said it has not ruled upon the applicability of
15 transits under Sections 251/252.

16 Q. Do you recall in that case whether a CLEC
17 attempted to force an ILEC in that case, Verizon, to offer
18 transit as a service under the Act?

19 A. Yes.

20 Q. Do you recall whether the FCC required them
21 to provide that under the Act?

22 A. I don't recall the specifics, but I do
23 believe that it was not required under the interconnection
24 agreement.

25 MR. BUB: Thank you. Your Honor, those are

1 all the questions I have.

2 JUDGE THOMPSON: Thank you very much.

3 MR. MAGNESS: Your Honor, we have copies of
4 the Chariton Valley decision, including the dissent, that
5 we'd offer as, I believe it's 209 at this point.

6 JUDGE THOMPSON: Okay. What about 207 and
7 208, do we want those in the record?

8 MR. SAVAGE: Your Honor, they were
9 fundamentally illustrative. If people think it would
10 help, but it's law and things in the record already just
11 summarized, so I don't have any --

12 JUDGE THOMPSON: Okay. Very well.

13 (EXHIBIT NO. 209 WAS MARKED FOR
14 IDENTIFICATION BY THE REPORTER.)

15 JUDGE THOMPSON: And do you want to offer
16 209 or, again, is that just illustrative?

17 MR. MAGNESS: We'll offer 209 as an
18 administrative notice exhibit on the same basis as the
19 other Commission orders that have been offered.

20 JUDGE THOMPSON: Very well. Any
21 objections?

22 (No response.)

23 JUDGE THOMPSON: Hearing none, Exhibit
24 No. 209 is received and made a part of the record in this
25 proceeding.

1 (EXHIBIT NO. 209 WAS RECEIVED INTO
2 EVIDENCE.)

3 JUDGE THOMPSON: Okay. We are just at the
4 point where we need to take another break for the
5 reporter, and then we have a half hour roughly to the
6 lunch hour, assuming we take an hour and that we take it
7 at 12. But at this point we've finally finished
8 yesterday, is that my understanding?

9 We've been doing yesterday up until now, so
10 I'm a little bit concerned about the pace. Everything you
11 had to say was very interesting, and I'm not criticizing
12 you at all, but talking to this stable of fine attorneys
13 out here, we need to make sure we finish this hearing by
14 5 p.m. on Friday. Okay?

15 Because for the most part, the hearing,
16 after all, is for you. As arbitrator, I didn't say I want
17 to hear cross-examination on these points and then you
18 came in to give it. Instead you told me you wanted to do
19 cross-examination of these witnesses, and I'm here
20 listening to it. And I'm certainly being entertained, but
21 as the arbitrator, I can tell you I didn't need to have it
22 in order to make my decision. Okay?

23 So we've got to make sure we're done by
24 Friday at 5. I'm not going to stay late to accommodate
25 you. Okay? If you can find another judge who wants to

1 start Friday at 5, that's okay, but I plan to be done
2 Friday at 5. So let's talk about what we need to do and
3 what we can do to make sure we achieve my goal.

4 MR. MAGNESS: Your Honor, to sort of scope
5 things for the afternoon, we communicated informally
6 yesterday with all of the CLECs and agreed that we're not
7 going to have cross on UNE issues for the SBC witnesses.

8 JUDGE THOMPSON: That's what I've heard.
9 I'm happy to hear that.

10 MR. MAGNESS: We understand there may be
11 some Staff questions that should speed the plow a little
12 bit. I don't know what Mr. Lane has in --

13 JUDGE THOMPSON: Mr. Lane is standing up.

14 MR. LANE: A couple things to say, your
15 Honor. To respond to some of your questions that you were
16 asking Mr. McPhee that address the issues that you were
17 interested in particularly, one of them is the ability of
18 SBC to bill different local calling scopes under
19 compensation arrangements. Ms. Douglas is able to address
20 that, as is Mr. Constable. We can bring Ms. Douglas back
21 in the morning to be able to respond to any questions you
22 have on that.

23 JUDGE THOMPSON: Could we do it by
24 telephone? I hate to inconvenience a witness who's been
25 here and left and thought she was taking up her life.

1 MR. LANE: That would be fine, your Honor.
2 We might have her and Mr. Constable on the phone, then, to
3 address the questions that you have.
4 JUDGE THOMPSON: I wouldn't anticipate
5 having more than five to ten minutes at the most for
6 myself. Of course, we would then have an opportunity for
7 everyone else to jump in. Does anyone have any objections
8 if these witnesses were to reappear by telephone?
9 MR. SAVAGE: No, your Honor. As one of the
10 ones who would probably jump in and have a few questions
11 for them, that would be fine.
12 JUDGE THOMPSON: Okay. Great.
13 MR. LANE: I'm going to try to set a
14 particular time with them, if I may, your Honor. What
15 time is best for you?
16 JUDGE THOMPSON: Why don't we do it at
17 8:30 in the morning when we start?
18 MR. LANE: All right. I'll make
19 arrangements, make sure I've got the proper witnesses on
20 hand to address the questions.
21 JUDGE THOMPSON: Okay. Do I need to set up
22 a conference call bridge or can you guys do that?
23 MR. LANE: I don't know if we can here.
24 We'll set it up, and then you'll have a phone and be able
25 to call them.

1 JUDGE THOMPSON: I'll bring a phone, and
2 yeah, we can just dial them. Just tell me what the number
3 is.

4 MR. SAVAGE: Your Honor, let me ask a
5 question about that. Having that potential recross by
6 phone would be the only reason that I would actually need
7 to be here tomorrow, and I'm wondering whether --

8 JUDGE THOMPSON: You can recross by phone,
9 too, from Spokane or wherever it is you're going. That
10 would be fine with me.

11 MR. SAVAGE: That would be great, if that's
12 acceptable that I could ask my questions by phone.

13 JUDGE THOMPSON: I don't even need to know
14 your demeanor.

15 MR. SAVAGE: But it's so entertaining, your
16 Honor.

17 JUDGE THOMPSON: Only the demeanor of the
18 witness is of any interest to me, and all the witnesses
19 have been very professional and very assured, so I will
20 just assume that they continue to be even if I can't see
21 them.

22 So that's what we're going to do tomorrow
23 with respect to these two witnesses who can help me with
24 my questions having to do with multiple calling scope.
25 All right. Okay.

1 Ma'am?

2 MS. DIETRICH: Just to clarify, I think

3 Ms. Douglas was getting a reference for the record, so

4 perhaps she could have that tomorrow morning also.

5 JUDGE THOMPSON: I don't know if she can or

6 not. Normally those kinds of things the attorneys provide

7 after the hearing is over.

8 MS. DIETRICH: Okay.

9 JUDGE THOMPSON: Just be sure to remind

10 them what exactly the reference is that you want.

11 MR. MARK JOHNSON: On behalf of Navigator

12 Telecommunications, SBC indicated that by close of

13 yesterday's hearing -- and if we're closing yesterday's

14 hearing now, perhaps now would be the time to do it --

15 they would provide some reference that Ms. Quate was going

16 to give them to some provision to propose to Navigator for

17 agreement.

18 JUDGE THOMPSON: Is this the same reference

19 she's talking about?

20 MR. MARK JOHNSON: I don't think -- well,

21 maybe.

22 MS. DIETRICH: I think so. I think I had

23 the wrong SBC witness.

24 JUDGE THOMPSON: Okay. And the answer is?

25 MR. LANE: I have to find it, your Honor.

1 JUDGE THOMPSON: Okay. That's fine. These
2 kinds of things, as far as I'm concerned, can be provided
3 after the hearing, unless you feel you need to have it
4 before we strike our tents to assist you in
5 cross-examination.

6 MR. MARK JOHNSON: Well, Mr. LeDoux on
7 behalf of Navigator is here today, and I assume we're
8 going to reach him today.

9 JUDGE THOMPSON: I hope so.

10 MR. MARK JOHNSON: And with that in mind,
11 it would be helpful in preparing him just to have that
12 reference. Thank you.

13 JUDGE THOMPSON: Maybe you could confer
14 with Mr. Lane during the lunch break and see if he has
15 that available.

16 Now, I want to know the names and the order
17 of the witnesses we're going to take up for the rest of
18 the day, so read them off. I don't care. All chime in or
19 designate a spokesperson, however you want to do it.

20 MR. MAGNESS: Your Honor, just to kick it
21 off, I think we -- just one question I have about
22 Mr. Knox, Sprint's witness, is he --

23 MR. LEOPOLD: Mr. Knox has been excused.

24 JUDGE THOMPSON: We sent him home yesterday

25 MR. LEOPOLD: And the Judge indicated that

1 if the Staff had any questions, they would submit them to
2 Knox in writing.

3 JUDGE THOMPSON: Or if you've got something
4 you absolutely have to ask, they can get him by phone.

5 MR. MAGNESS: No. No. That being the
6 case, then it seems like we are moving into the UNE part
7 of the festivities, and that would be witness for SBC
8 Chapman.

9 JUDGE THOMPSON: Okay. So Chapman's the
10 first witness we're going to hear after lunch?

11 MR. LANE: On Chapman, he may be able to
12 answer some of the questions that you have concerning 911
13 from an operational perspective.

14 JUDGE THOMPSON: Thank you for reminding me
15 on that.

16 MR. LANE: Separate trunks and facilities,
17 what have you.

18 JUDGE THOMPSON: So we're going to have
19 Chapman, right?

20 MR. MAGNESS: According to the order in the
21 filings, we have Chapman, then Hatch.

22 JUDGE THOMPSON: Okay. Also SBC?

23 MR. MAGNESS: Yes. SBC witness Schilling.

24 MR. LANE: Hatch and Schilling, your Honor,
25 have both been waived, and both you and the Staff advisors

1 have indicated no questions and they are gone. They're
2 not going to appear.

3 JUDGE THOMPSON: Okay. So they're not
4 here. So who is here?

5 MR. LANE: Mr. Smith would be next after
6 that, and that would be collocation only. All of the
7 parties have waived any questions.

8 JUDGE THOMPSON: I'm sorry?

9 MR. LANE: Roman Smith.

10 JUDGE THOMPSON: Smith. Okay. Smith is
11 here?

12 MR. LANE: He is collocation only.

13 MR. MAGNESS: CLEC Coalition, we have no
14 questions for Mr. Smith on collocation.

15 JUDGE THOMPSON: Does anyone have any
16 questions for Mr. Smith on collocation?

17 (No response.)

18 JUDGE THOMPSON: Okay. Why don't you tell
19 Mr. Smith to go home. No offense, but I'm sure you have
20 better things to do than to be here.

21 MR. LANE: Then Mr. Silver is next, and all
22 of the parties have waived questions, but Staff has
23 indicated they have some questions for Mr. Silver, so he's
24 here and prepared to answer them.

25 JUDGE THOMPSON: Natelle?

1 MS. DIETRICH: My questions are minor, so I
2 don't have a problem with him being dismissed also.

3 MR. LANE: He's okay.

4 JUDGE THOMPSON: He's here. We might as
5 well ask them since he is here. That way we show respect
6 for the fact that he's gone out of his way to be here.
7 Who else?

8 MR. MAGNESS: Then we move on to Rhinehart
9 for AT&T.

10 JUDGE THOMPSON: Okay. Rhinehart.

11 MR. MAGNESS: We may want to inquire if
12 anyone has any questions for Mr. Rhinehart.

13 MR. LANE: Yeah, I do.

14 JUDGE THOMPSON: SBC has indicated they've
15 got questions for him.

16 MR. MAGNESS: Okay. Then we would go to
17 Cadieux, and Mr. Cadieux's testimony will be on both UNEs
18 and collocation today.

19 JUDGE THOMPSON: That's CLEC Coalition,
20 Mr. Cadieux, right?

21 MR. MAGNESS: Yes, sir. And the next CLEC
22 Coalition witness is Ms. Mulvaney-Henry, then
23 Mr. Ivanuska. And Mr. Ivanuska's testimony will be on
24 UNEs, and in addition, he was listed under the Price
25 heading, so whatever questions SBC has on his testimony.

1 JUDGE THOMPSON: Okay.

2 MR. MAGNESS: Then we're out of the CLEC

3 Coalition group for UNes.

4 JUDGE THOMPSON: Who's next?

5 MR. MORRIS: Then we're into MCI's

6 witnesses, Collins, who's also adopting Carter's

7 testimony, Lichtenberg and Price. And I believe as I

8 mentioned to the Court earlier, Mr. Collins and

9 Ms. Lichtenberg are available today only. So as we

10 proceed with this afternoon, we may need to take them out

11 of order in order for them to meet their travel

12 arrangements.

13 JUDGE THOMPSON: Okay.

14 MR. SAVAGE: Your Honor, next is Mr. LeDoux

15 on behalf of Navigator. He's also under limited

16 availability restrictions. And I understand that SBC has

17 questions for him on GTCs, and then one on -- Mr. Gryzmala

18 has a question or two on OSS issues for him.

19 JUDGE THOMPSON: Okay. Is LeDoux the last?

20 MR. SAVAGE: He's the one and only for

21 Navigator.

22 MR. GRYZMALA: Clarify one point, your

23 Honor.

24 JUDGE THOMPSON: Yes, sir.

25 MR. GRYZMALA: I have no questions of

1 Mr. LeDoux with respect to the OSS, the simple OSS matter.

2 JUDGE THOMPSON: But you have questions for

3 him on other things?

4 MR. LANE: I -- well, yes.

5 JUDGE THOMPSON: You do. Okay. You guys

6 have divided up topics, right?

7 MR. LANE: Yes.

8 JUDGE THOMPSON: I understand.

9 MR. SAVAGE: But Mr. LeDoux is really only

10 available today.

11 JUDGE THOMPSON: Okay.

12 MR. SAVAGE: Okay. We've been told to

13 bring him in today.

14 MR. LANE: Mr. Maples has been excused, the

15 last under UNEs.

16 JUDGE THOMPSON: Maples has been excused,

17 very good. Is that the end of the list for today?

18 MR. LANE: Yes, your Honor.

19 JUDGE THOMPSON: Very good. All right. So

20 let me make sure I understand. Now, we have Chapman and

21 Silver from SBC. We have CLECs that have questions for

22 Chapman but, in fact, only my staff have any questions for

23 Silver; am I right?

24 MR. MAGNESS: No CLEC questions for

25 Chapman.

1 JUDGE THOMPSON: No CLEC questions for
2 Chapman.

3 MR. MAGNESS: That's correct.

4 JUDGE THOMPSON: None of the CLECs?

5 MR. MAGNESS: No, sir.

6 MR. SAVAGE: Your Honor, I may have
7 questions for Chapman because she has been represented as
8 saying stuff about this 911 issue we care about, so it
9 will depend on what she says in response to your
10 questions.

11 MR. LANE: You had some questions, Judge,
12 about what happens if we have a 911 system where the CLECs
13 aren't responsible for sizing the network to get to the
14 911 tandem switch, and --

15 JUDGE THOMPSON: Whether we need the
16 special facility.

17 MR. LANE: She can explain that to your
18 Honor, and they may have some questions on recross based
19 on that.

20 MR. SAVAGE: I don't have any questions
21 based on her prefiled testimony.

22 JUDGE THOMPSON: Just depends on what I --
23 I hear what you're saying, so it's hard for us to estimate
24 how much time will be needed for Chapman?

25 MR. SAVAGE: I would say no more than 10 or

1 15 minutes for me, no matter what she says to you.

2 JUDGE THOMPSON: Then we have the CLEC

3 witnesses Rhinehart from AT&T. SBC, how many minutes do

4 you want to spend on Rhinehart?

5 MR. LANE: Judge, on all of the ones that

6 we have for the rest of the day, I think we reserved five

7 and a half hours.

8 JUDGE THOMPSON: But we don't have five and

9 a half hours left if we're going to finish them today. Of

10 course, do you want to run into tomorrow, if necessary,

11 with some of these witnesses?

12 MR. LANE: If we need to, yes.

13 JUDGE THOMPSON: If you need to. Okay.

14 Fine. Very good.

15 MR. SAVAGE: If that's the case, we may

16 need to take some of these folks out of order.

17 JUDGE THOMPSON: Well, I think what we

18 should do, we're going to do Chapman and Silver first,

19 because I think they are going to be short, and we'll let

20 them go. And then I think we're going to do Collins,

21 Lichtenberg and LeDoux, because I've been told they can't

22 be here after today. And then we're going to go back and

23 pick up with Rhinehart, Cadieux, Mulvaney-Henry and

24 Ivanuska. That's what I'm thinking.

25 MR. SAVAGE: Would it be possible to try

1 Silver and Chapman even before lunch?

2 JUDGE THOMPSON: Why not? I'm not saying

3 I'm leaving for lunch right now.

4 MR. MAGNESS: And Mr. Lane can correct me

5 if I'm wrong. My understanding was that on

6 Mulvaney-Henry, SBC didn't have questions. Staff had one

7 question; is that correct? If we can take her out of

8 order just

9 to --

10 MS. DIETRICH: One question and it's not

11 even necessary.

12 JUDGE THOMPSON: Okay. You guys don't have

13 questions for Mulvaney-Henry?

14 MR. MAGNESS: That's correct, your Honor.

15 JUDGE THOMPSON: Okay. See, this thing's

16 starting to take shape right here before our eyes. So why

17 don't we have Chapman then?

18 You may step away, Mr. McPhee. Thank you

19 very much for your testimony. Have a nice trip back

20 wherever you're going.

21 (Witness excused.)

22 JUDGE THOMPSON: If we can't find Chapman,

23 then send Silver up.

24 MR. LANE: She's here, your Honor.

25 JUDGE THOMPSON: Very good. One or the

1 other. I don't care.

2 How are you today?

3 MS. CHAPMAN: I'm fine.

4 JUDGE THOMPSON: Great. Have a seat. Now,

5 am I correct that you've not been sworn?

6 MS. CHAPMAN: No. I was sworn earlier.

7 JUDGE THOMPSON: You were sworn. Very

8 good. I'll remind you you're still under oath. Please

9 state your name for the reporter. I don't think you have

10 to spell it.

11 MS. CHAPMAN: My name is Carol A. Chapman.

12 JUDGE THOMPSON: You may inquire.

13 MR. LANE: Thank you, your Honor.

14 CAROL A. CHAPMAN testified as follows:

15 DIRECT EXAMINATION BY MR. LANE:

16 Q. Ms. Chapman, do you have any changes to

17 your prefiled testimony?

18 A. Yes. I have a few minor changes. In my

19 direct testimony on page 81, on line 15, that currently

20 reads hot cut and number portability issues, should have

21 read hot cut, number portability and numbering issues. On

22 the same page, page 81, on line 24, the actual pricing

23 schedule issue, it says Pricing Schedule Issue 1, it

24 should have been 31.

25 On page 86, also of my direct, it's the

1 same change on line 22 that should read numbering and
2 number portability. And on page 90 of my direct, on
3 line 14, currently says E911, 1 and 4. And it should say
4 E911, 1 and GT&C Issue 4. That issue is actually
5 resolved, but just for clarity.

6 Q. Okay.

7 A. And then for rebuttal, I just have one
8 correction. On page 40 in the footnote, Footnote No. 51,
9 currently I'm citing to MCI direct at page 33, and that
10 should be Price direct at page 33. And that's all.

11 JUDGE THOMPSON: Very good. Thank you.

12 MR. LANE: Your Honor, we tender the
13 witness for cross. I believe you were the one that had
14 questions.

15 JUDGE THOMPSON: Thank you very much,
16 Mr. Lane.

17 QUESTIONS BY JUDGE THOMPSON:

18 Q. Okay. I'm interested in knowing about
19 where separate facilities are necessary and where they're
20 not necessary.

21 A. Okay.

22 Q. Because I think I'm being called upon to
23 make a decision in that area. And I thought that I
24 understood that while traffic could come from Charter's
25 network to SBC's network over a single facility, that once

1 it got there, it needed -- if it was 911 traffic, there
2 would have to be a separate special facility, then, to
3 carry this traffic to the 911 switch?

4 A. That's correct.

5 Q. I think that's what I understood. Is there
6 a technical reason why that has to be?

7 A. Yes, there are technical reasons for these
8 requirements. And actually, some of them are discussed a
9 little bit on page 58 of my rebuttal, really on a
10 different issue.

11 Q. Just tell me what you said there right now.

12 A. Right. And basically, there is a
13 responsibility specifically for 911 for ensuring that the
14 network is designed, the CLECs' network is designed in a
15 manner that has sufficient capac-- sufficient capacity for
16 routing all the 911 traffic. And so you have to have a
17 facility with that capacity for the trunks for the 911
18 service, and actually all the CLECs have agreed to
19 language to that effect in their 911 appendix. The --

20 Q. Except evidently this one?

21 A. No, actually including this one. In the
22 911 appendix all of them say -- and this is consistent
23 with the current M2A as well -- that the CLECs are
24 responsible for maintaining facility transport capacity
25 sufficient to route 911 traffic over trunks dedicated for

1 911 interconnection between the CLEC switch and the SBC
2 13-state SR. And the SR is the selective router that
3 we're talking about getting those -- we're talking about
4 here.

5 Q. That's where 911 traffic has to get to?

6 A. Exactly.

7 Q. That router.

8 A. Exactly. It's a selective router. Now, we
9 do not require that the CLEC go directly to the selective
10 router in meeting that responsibility. They can, but they
11 can also go use the same route that they use for their
12 interconnection for their local traffic. If they choose
13 to -- to use the same, like in the instance of Charter,
14 that same OC-48 for that traffic, then once they get to
15 their collocation area, then they would need to establish
16 facilities from that collocation to the selective router.
17 They could also go directly to the selective router.

18 Q. Okay. That's very helpful to me. Now, the
19 selective router, that's not in the same building as this
20 collocation space?

21 A. It could be, but it may not be. In many
22 cases it would not be.

23 Q. Okay. And now their collocation space I
24 assume is connected in some way with SBC's network; is
25 that correct?

1 A. Typically it would be, yes.

2 Q. Okay. And in what way, if you can give

3 that to me in a way I can understand very quickly?

4 A. Well, it's going to vary by -- by CLEC. So

5 it's kind of difficult to say. They're going to --

6 Q. Okay. That's fine. What you're

7 essentially saying, I think -- and correct me if I'm

8 wrong -- is that despite or in addition to whatever kind

9 of connections they have to SBC's network at that

10 collocation space, they're going to need one additional

11 one that goes to the special router?

12 A. They're going to need to establish a

13 special facility for that, and that actually protects

14 their end users, our end users, everyone's 911 end users,

15 because all facility-based carriers have an obligation to

16 design their networks in a manner that meets the 911

17 service quality standards. And that's going to be based

18 on --

19 Q. Okay. Now --

20 A. -- their customers.

21 Q. -- is that architecture necessary to meet

22 that service quality standard?

23 A. Yes.

24 Q. That's the minimum requirements to meet

25 that service quality standard?

1 A. Well, it's part of meeting that, that
2 service quality standard. We can only --

3 Q. And the service quality standard is set by
4 who?

5 A. The -- there's some basic ones that are
6 actually -- that are actually outlined in the agreement,
7 but there -- and I don't know where the general ones are
8 located in this state.

9 Q. In other words, in part at least, it's part
10 of this agreement?

11 A. Part of it is in this agreement.

12 Q. So to the extent it's in this agreement,
13 they could agree that something else met the standard?

14 A. Well, the agreement has minimums that must
15 be met.

16 Q. But to the extent --

17 A. It also says that to the extent that a
18 particular 911 agency has established more strict
19 standards, that the parties have to comply with that
20 standard.

21 Q. Okay. This SBC building, which I assume
22 houses one or more switches where this collocation space
23 is, this also has SBC facilities that go to that router;
24 is that correct?

25 A. That's correct. And we have to size ours

1 based on our customer base to ensure that we meet these
2 quality standards as well.

3 Q. So it's partly a question of how big the
4 pipe is?

5 A. Exactly. We have an obligation to design
6 our network in a manner for our customers that ensures
7 that our customers will always have access to a certain
8 level of service for their 911 traffic.

9 Q. I understand.

10 A. And so --

11 Q. So if they were to piggyback over your
12 facility, it would have the effect of making your facility
13 inadequate to meet your customer base?

14 A. Possibly. And --

15 Q. Because they would have their own customer
16 base then added to it?

17 A. Exactly. If all CLECs had the same
18 opportunity, which technically they would, you'd have to
19 offer it to everyone.

20 Q. Right.

21 A. Then any one CLEC that did not
22 appropriately project their volumes and appropriately
23 design their network could actually impact 911 service for
24 all end users served by that facility, so it could have a
25 huge impact on everyone.

1 JUDGE THOMPSON: Thank you very much.

2 Recross?

3 RECROSS-EXAMINATION BY MR. SAVAGE:

4 Q. Good morning, Ms. Chapman. I'm Chris

5 Savage for Charter.

6 A. Good morning.

7 Q. You understand that Charter -- do you

8 understand that Charter serves a largely residential

9 customer base in the St. Louis area?

10 A. I've heard that.

11 Q. So you would agree that Charter has a very

12 strong interest in ensuring that the 911 service that its

13 customers get is fully adequate and functioning?

14 A. I'm sure that's true.

15 Q. You can't imagine Charter having any

16 motivation to do anything that would make the 911 service

17 that their customers depend on not work?

18 A. I wouldn't think that they would

19 intentionally do so. We have had experiences where CLECs

20 have not projected their volumes correctly and have caused

21 trunk blockage. We definitely would not want to see such

22 a thing happen on the 911, for 911 service for anyone.

23 Q. Sure. Assume for all the rest of my

24 questioning that Charter's interest is in making sure that

25 the 911 service that it provides indirectly to its

1 customers through you works. That is not a dispute
2 between us. I want you to assume that.

3 A. Certainly.

4 Q. Now, you mentioned that Charter -- you said
5 that in your testimony that Charter had collocation space.
6 Do you actually know that that's true?

7 A. I don't know specifically what Charter's
8 arrangements are. I was just speaking generally to the
9 collocation in the central offices, typically how this --
10 these arrangements are designed.

11 Q. Well, assume with me that Charter doesn't
12 have any collocation in any SBC end office or central
13 office or tandem office anywhere.

14 A. Okay.

15 Q. Assume that instead Charter has its own
16 network and SBC has its own network and we simply exchange
17 traffic with each other over what's at present an OC-48
18 binder facility in St. Louis. Do you understand that
19 assumption?

20 A. Yes.

21 Q. Okay.

22 JUDGE THOMPSON: Would that be a splice?

23 MR. SAVAGE: You know I wish I had
24 Mr. Cornelius still here. I don't know whether we -- I
25 think the way we do is we bring our fiber to what's called

1 manhole zero, which is the manhole right outside, and
2 leave them a length of fiber that they then pull up and
3 connect to their fiberoptic terminal. I don't --
4 JUDGE THOMPSON: But you don't know?
5 MR. SAVAGE: I don't think it's splicing.
6 JUDGE THOMPSON: That's fine. That's fine.
7 Go on.
8 BY MR. SAVAGE:
9 Q. So given that, my understanding from the
10 testimony from Mr. Hamiter and others earlier is that
11 there's no dispute between us that it's okay with SBC for
12 Charter to actually route its 911 traffic on a trunk group
13 over that OC-48 facility. Do you understand that to be
14 true?
15 A. Yes, I've heard that.
16 Q. Okay. And do you have any problem with
17 that, given your knowledge of how 911 works?
18 A. If the network people are comfortable with
19 it, then I'm comfortable with it.
20 Q. Okay. So we have put together, then, the
21 following must be true, right, that all of our 911 traffic
22 bound for you is coming over a trunk group of some defined
23 size. Maybe it's -- it's more than one DS0, but maybe
24 it's a DS1, maybe it's a DS3. It's some size of trunk
25 group that we've already dedicated the 911 traffic coming

1 over that physical facility. Do you understand that?

2 A. Yes, I do.

3 Q. And you would agree that has to be true if

4 we're sending it over that facility?

5 A. Yes, you would have to have -- you would

6 have to have some sort of trunk group, yes.

7 Q. Okay. Now, let's talk about errors that

8 Charter might make. If we have 45,000 customers and we

9 provision a trunk group consisting of one line, that's

10 going to be a problem --

11 A. Yes.

12 Q. -- right?

13 Because more than one of our customers

14 might call 911 at the same time, in which case it wouldn't

15 go through and that would be bad. But by the same token,

16 if we have by some chance underprovisioned the trunk group

17 running from our network to your network over the OC-48

18 for a 911 call, any blockage of traffic to 911 would occur

19 on our network and not on yours; isn't that correct?

20 Think about that.

21 A. I don't know that that would necessarily be

22 true. Because you have to -- you have to consider the

23 facts that it wouldn't -- if we have these provisions, it

24 wouldn't necessarily just be Charter, so you could be very

25 close to a blockage situation on your trunk group that was

1 just between us and you, and the same could occur across
2 the board for everyone else.

3 So you weren't quite meeting the
4 requirements of whether 911 network's supposed to be
5 designed. And by the time it got to our network, yours
6 combined with everyone else's, if they made similar
7 instances, could cause blockage problems.

8 Q. Do you understand Charter's position to be
9 that we want you to take our 911 traffic on our dedicated
10 911 trunk groups and just mix it in with your 911 traffic
11 on whatever trunk groups you've established for that
12 purpose? Is that what you think we're asking for?

13 A. I would have to actually look at the
14 language. I know what our language says, so I would have
15 to actually look at your language for this proposal.

16 Q. Okay. Assume with me that what our
17 language calls for is separate and distinct trunking of
18 our 911 traffic to your 911 switch, not commingling it
19 with anything else. Do you understand what I'm asking you
20 to assume?

21 A. Okay.

22 Q. And just by way of analogy, akin to, you
23 would agree, separate and distinct trunking to a DEOT if
24 there's an end office of yours that needs a bunch of
25 traffic from us, we would establish with you a separate

1 distinct trunk group to that particular end office. You
2 understand how that would work, more or less?

3 A. A little bit. That's getting out of my
4 area.

5 Q. Okay. But assume with me that what Charter
6 has in mind is establishing a separate and distinct trunk
7 group to carry Charter's 911 traffic to this SBC switch
8 that happens to be not an end office but instead your 911
9 selective router. Do you understand what I'm asking you
10 to assume?

11 A. I believe so.

12 Q. Okay. Now, if we do that, if in fact what
13 the parties do is establish a separate and distinct trunk
14 group for Charter's 911 traffic from this point of
15 interconnection to the selective router, the only traffic
16 on that trunk group would be Charter's 911 traffic, right?

17 A. Yes, that's correct.

18 Q. Now, if we set it up that way, how could
19 that possibly affect the rest of your network since that's
20 a separate and distinct trunk group for this traffic?

21 A. In that specific scenario, I don't know
22 that it -- that it would.

23 Q. It actually wouldn't, would it?

24 A. Again, I'm not a network person. I'm not
25 aware that it would in that scenario.

1 Q. Okay. Now, certainly again I would agree
2 with you, and I think you would agree with me that if we
3 just dumped all this traffic onto one big trunk group, a
4 bunch of people could dump traffic into it and that could
5 cause problems.

6 So let's assume that we're talking about a
7 separate trunk group on an SBC facility from our point of
8 interconnection to the 911 selective router, just like we
9 have a separate trunk group from that facility to an end
10 office in the case of a DEOT.

11 Do you understand what I'm asking?

12 A. I understand. I'm not sure I agree with
13 the terminology because in the case of 911, the actual
14 interconnection doesn't occur until the selective router.
15 In fact, that's in the agreed-upon language. The
16 interconnection is at the selective router.

17 Q. Okay.

18 A. So you couldn't have anything from the
19 point of interconnection to the selective router.

20 Q. We may have a disagreement about what the
21 language means, and I don't want to get into that. I've
22 been duly chastised for arguing about the law.

23 But in practical terms, if we're delivering
24 the traffic to your network at this point of
25 interconnection, is there any technical reason -- well, is

1 there any reason that you're aware of as to why Charter
2 should pay for the facility within your network between
3 the point of interconnection and the selective router
4 switch, as compared to the point of interconnection and
5 any other switch? Why should we pay that as compared to
6 you paying for that?

7 A. Well, the reason you should pay for it is
8 because you're interconnecting at the selective router.
9 What we're allowing you the option of going -- of using
10 the same facilities that you use for your other traffic
11 for this 911 traffic, but that doesn't change the fact
12 that you're responsible for interconnecting at the
13 selective router.

14 JUDGE THOMPSON: And is that a matter of
15 agreement?

16 THE WITNESS: I believe so. I believe it's
17 in the 911 appendix, if you look at some of the language I
18 referenced.

19 JUDGE THOMPSON: So it could be changed?

20 THE WITNESS: Well, they've already --
21 they've agreed to language to that effect I believe in
22 this agreement.

23 JUDGE THOMPSON: Is that correct?

24 MR. SAVAGE: I'm sure that the language
25 she's looking at as agreed is agreed. I'm sure that the

1 language that is in dispute we interpret as --

2 JUDGE THOMPSON: But isn't this issue

3 driven then by that language? I mean, if you've already

4 surrendered that --

5 MR. SAVAGE: I haven't -- I don't think

6 I've surr-- I'm trying not to get into a legal argument

7 with her. The language that we have proposed with respect

8 to responsibility for trunking and who would provide the

9 trunking in our view -- and I may be legally wrong, but in

10 our view in effect has the effect of shifting cost

11 responsibility for that length from the point of

12 interconnection to the selective router to SBC. That is

13 our intention with respect to our language. Now --

14 THE WITNESS: To shift it, yes, because

15 currently, it currently in the current agreement and all

16 our agreements across in all our states, it's not our

17 responsibility for those facilities.

18 BY MR. SAVAGE:

19 Q. That's right. And we're raising the issue

20 as to whether it ought to be your responsibility.

21 A. Okay.

22 Q. And question I had for you is, other than

23 the definition of, well, if we certainly define

24 interconnection as happening there, so on, other than that

25 definitional question, is there any reason why we ought to

1 pay for it? Why is this switch different from any other
2 switch?

3 A. Well, again, this is not -- we're not
4 talking about the local service. We're talking about
5 specifically 911 service. So it's a different -- it's a
6 different type of service than what we're talking about
7 when you're talking about making phone calls, you know,
8 between end users and that sort of thing. We're talking
9 about 911 service, which has some different requirements
10 associated with it.

11 Q. But would you agree that the PSAP is your
12 customer? I mean, they pay you to buy this service from
13 SBC? You have a tariff we talked about earlier?

14 A. The PSAP may be our customer, that is
15 correct, and basically we are providing the 911 service to
16 the CLEC to provide to that 911 customer. That's what the
17 911 appendix is about. We're providing a service, 911
18 service to the CLEC.

19 Q. I'll just let the characterization pass.
20 Other than your statement that it is a different service,
21 there's no other reason why we should have to pay for it,
22 pay for the link between the point of interconnection and
23 the selective router?

24 A. Well, again, it's not from the point of
25 interconnection.

1 Q. From the point that is the end of the fiber
2 facility, I'll try to avoid the -- where we disagree about
3 the interpretation of the contract.

4 A. Well, it's not just the interpretation of
5 the contract. It has to do with what interconnection is,
6 and part of what interconnection is applies -- is one of
7 the reasons for this, so --

8 Q. Okay. Let's take --

9 A. So it's kind of difficult to talk about
10 that without --

11 Q. Would you agree with me that what
12 interconnection is under agreed terms in our agreement is
13 the physical linking of networks for the exchange of
14 traffic? Do you understand that that's the definition of
15 interconnection that we've agreed to in the general terms
16 and conditions and that various regulatory bodies have
17 established?

18 A. Right. There are different types of
19 interconnection, but that is the definition in this
20 agreement, yes.

21 Q. And I asked you to assume, but I'll
22 represent to you again that the physical linking of the
23 networks of Charter and SBC occurs by means of this OC-48
24 fiber facility. Do you understand that?

25 A. Yes, I do.

1 Q. It was on the basis of that understanding
2 that I said, well, our interconnection is actually at this
3 OC-48. But if that term gives you trouble, the question
4 I'm asking is, let's assume that the -- that the traffic
5 bound for the 911 selective router first shows up on your
6 side of this POI, coming out the back of this fiberoptic
7 terminal for this OC-48. Do you understand what I'm
8 asking you to assume?

9 A. Yes, I do.

10 Q. Okay. Other than the fact that it is your
11 view that 911 is some different kind of service, why
12 should we have to pay to get that traffic from that point
13 to the selective router?

14 A. Well, again, one of the primary reasons
15 again is the fact that 911, unlike the things that you
16 wouldn't have to pay for, is not something that involves
17 mutual exchange of traffic at all. It is strictly one way
18 only. That's the only way it can go is to the 911 service
19 router. It is strictly one-way traffic. It is not for
20 mutual exchange of any type. We're not going to be
21 sending 911 traffic to you ever. We don't -- it's not the
22 way it works. It is not for the mutual exchange of
23 traffic.

24 Q. Are you saying that the 911 operators never
25 call somebody back?

1 A. If they call somebody back, they're not
2 going to be calling them over the 911 selective router.
3 They are going to place a phone call.

4 Q. Over a completely separate line, do you
5 think?

6 A. If they're calling them back?

7 Q. Yeah. If someone calls and says, help,
8 send the police, click, and they say, I've got to get that
9 person back on the line to see what's going on, okay, and
10 the line -- they can do that, right? I mean, you
11 understand that's a capability of a 911 operator?

12 A. I would have to look into that piece. I
13 don't believe that --

14 JUDGE THOMPSON: Let's pretend that it is.

15 THE WITNESS: Let's pretend what?

16 JUDGE THOMPSON: That they can then
17 immediately return a call to the person who had dialed in
18 on the 911 system. How does SBC rate that call?

19 MR. LANE: Your Honor, I think the
20 misunderstanding here is what facilities are used by the
21 911 provider in that case to make a call to the customer.

22 JUDGE THOMPSON: Okay.

23 MR. LANE: Different facilities than those
24 that are used to --

25 JUDGE THOMPSON: For the incoming call?

1 It's going to be different facility?

2 MR. LANE: Right.

3 JUDGE THOMPSON: And how would you rate
4 that call?

5 MR. SAVAGE: Has the witness agreed that
6 it's a different facility? I'm not sure the tariff
7 actually says that. I was looking for the tariff.

8 THE WITNESS: I mean, my understanding was
9 that it would -- that an outbound call from 911 would just
10 be a normal outbound call. I don't believe it has the
11 same -- same characteristics, but I would have to check
12 into that. That's something I would have to look at.

13 BY MR. SAVAGE:

14 Q. But either way, you would agree that your
15 PSAP customer who gets calls in when someone dials 911 is
16 capable in some way of dialing out in order make calls out
17 to people who screamed and hung up the phone?

18 A. Right, but those wouldn't go over -- I
19 don't believe those would go over the same facilities.
20 Those would go over the shared facilities. It would be
21 like if they had a phone, just a normal phone in that same
22 building and any end user could call a normal phone in
23 that where the PSAP office was, and that would be routed
24 as a local call. It's only a specific 911, you dial 911,
25 and then they're going to go over these special facilities

1 and trunks.

2 Q. But just at a high level, the PSAP
3 admittedly gets a lot more calls than it makes, but there
4 are circumstances in the course of its performing of its
5 function as a PSAP in which it makes calls back to see if
6 it was a live call or some kid playing a prank or whatever
7 it might be?

8 A. Those wouldn't be 911 calls, though. Those
9 would not be a call to 911 that goes to the selective
10 router and so forth, is what I'm trying to say. It's a
11 different type of call. It's just a regular local call.
12 It's going to be treated over the normal trunks and
13 interconnection that we have if they're just using a
14 normal phone, normal dialing and all that.

15 JUDGE THOMPSON: Are you trying to get her
16 to tell you it's going back to SBC over the same facility
17 that had carried the 911 traffic in?

18 MR. SAVAGE: Actually, I'm trying to do two
19 things: One is establish that, in fact, PSAPs make calls
20 so that --

21 JUDGE THOMPSON: She said that.

22 MR. SAVAGE: We're good on that. And then
23 second, do you know whether it would go out over the same
24 facility? Do you know it would go out over the same
25 facility?

1 THE WITNESS: My understanding is that it
2 would not, but I would have to verify it.

3 JUDGE THOMPSON: Now, she's answered that
4 one. Anything else you need to do?

5 MR. SAVAGE: No. Thank you.

6 JUDGE THOMPSON: Thank you. That was
7 17 minutes even.

8 MR. SAVAGE: I was 2 over, but I was short
9 on the other ones.

10 JUDGE THOMPSON: All right. Now we get
11 redirect on this obviously. Let me see if I can
12 short-circuit this at all. To me, in my sad, poor way, I
13 think this is governed by whatever it is you've agreed as
14 to where the point of interconnection is with 911 traffic.
15 And if you have agreed that it's somewhere else, that it's
16 at the selective router for purposes of this traffic, then
17 I'm having a hard time seeing that that doesn't control.
18 You get to argue to me that it doesn't control, of course.

19 MR. SAVAGE: Yeah. I'll save it for the
20 Brief, but the language that we have proposed to which
21 they object is language that would, in effect, undo the
22 language she's relying on. That's why we have a dispute.

23 JUDGE THOMPSON: Okay. At any rate, I'd
24 like for SBC -- do I have the language that contains this
25 agreement as to where the point of interconnection is for

1 911? Is that somewhere in this mound of paper?

2 MR. LANE: It will be in the contract. I

3 don't know whether it's in the DPL, your Honor, but it

4 would be in the contract that we filed with the Commission

5 with our petition for arbitration.

6 JUDGE THOMPSON: At the very opening of the

7 case?

8 MR. LANE: Yes, your Honor.

9 THE WITNESS: And it's cited in my

10 testimony on -- my rebuttal on page 58, if that helps you

11 find it.

12 JUDGE THOMPSON: Bless you.

13 THE WITNESS: Some of it's actually quoted.

14 JUDGE THOMPSON: Okay. I think this issue

15 has been very clearly teed up. Do you want to ask her

16 some questions?

17 MR. LANE: I think I'm reading you right.

18 I'm not going to ask any questions.

19 JUDGE THOMPSON: Very good. I can

20 guarantee you're reading me right. Okay. I have

21 somewhere to go, so we're going to take a lunch break now.

22 It's roughly 10 minutes after 12. I think we're going to

23 be need to be here by 10 minutes after 1. Is that

24 acceptable to everybody?

25 (No response.)

1 JUDGE THOMPSON: Okay. Thank you.

2 (A BREAK WAS TAKEN.)

3 JUDGE THOMPSON: I'll remind you,

4 Mr. Silver, you are still under oath.

5 MICHAEL SILVER testified as follows:

6 QUESTIONS BY MS. DIETRICH:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. I just wanted to talk to you for a minute

10 about your testimony on lawful UNE.

11 A. Okay.

12 Q. And just to clarify, I don't want to get

13 into any kind of legal discussion or what the FCC or

14 courts have or have not said. I just wanted to talk about

15 the term itself.

16 A. Okay.

17 Q. And it's my understanding that SBC is

18 proposing that that term be included in the

19 interconnection agreements; is that correct?

20 A. Actually, our original proposal was the

21 term lawful UNE, but subsequently to that, as we've been

22 going through these various arbitrations, recognizing that

23 the term "lawful" has drawn a bit of fire, we are now

24 proposing the term 251(c)(3) UNE.

25 Q. And the definition is the same as what the

1 definition was of a lawful UNE?

2 A. That's correct.

3 Q. Okay. Throughout your testimony, if I'm

4 understanding it correctly, you say that various CLECs

5 disagree on what items SBC is actually required to provide

6 as unbundled network elements and that was the reason for

7 including the term "lawful UNE" as opposed to just UNE; is

8 that correct?

9 A. That's correct.

10 Q. Can you explain to me how, in your

11 opinion -- in your opinion, adding the word "lawful"

12 removes that concern?

13 A. Well, again, 251(c)(3) now -- 251(c)(3)

14 actually makes it more clear. The key is, and without

15 getting into the differential between 251 and 271, what

16 we're really trying to do is clarify that the only

17 unbundled network elements that belong in a 251/252

18 ICA are 251(c)(3) UNEs. So whereas the CLECs argue that

19 271 UNEs should be in there, we're trying to clarify that

20 they don't.

21 Q. Okay. So the main clarification is between

22 251 and 271, not to remove any question as to whether

23 something in 251(c)(3) should be a UNE or not?

24 A. That's correct.

25 MS. DIETRICH: Okay. Thank you. That's

1 it.

2 JUDGE THOMPSON: Thank you. Let me follow

3 up a little bit.

4 QUESTIONS BY JUDGE THOMPSON:

5 Q. What is your new term again?

6 A. 251(c)(3).

7 Q. Okay. So what about 271 UNEs, where do

8 they go?

9 A. 271 UNEs, they can be obtained either

10 through a commercial agreement or we have -- we have

11 numbers of those out there, we have 271 commercial

12 agreements available. They can order 271 facilities from

13 the special access tariffs.

14 Q. Isn't it true that the M2A, which we're

15 here arbitrating the successors to, embodied the

16 concessions, if that's the right word, that SBC made in

17 order to get a favorable recommendation from the Missouri

18 Commission on the 271 issue?

19 A. The 2 -- I'm sorry. The M2As that have

20 expired included terms and conditions for 271 elements.

21 However, those were given with the understanding that

22 there was an expiration date when the 2A expired. It's

23 our --

24 Q. I just want to understand. SBC's position

25 is that, okay, they were in the M2A because the Missouri

1 Commission insisted on it, but now that the M2A has
2 expired, they're not properly part of an interconnection
3 agreement because they're not subject to 251; is that
4 right?

5 A. I don't know that the Missouri Commission
6 insisted on it. I'm not aware of that.

7 Q. Let's pretend that they did. Assuming that
8 they did, is that the position?

9 A. That's correct.

10 JUDGE THOMPSON: Mr. Lane, you agree that's
11 the position?

12 MR. LANE: No, your Honor. I think there's
13 a possible misunderstanding here. At the time the M2A was
14 entered into, there are several items that were required
15 by 251(c)(3), and local switching is -- unbundled local
16 switching is an example of that.

17 JUDGE THOMPSON: Okay.

18 MR. LANE: And we agreed in the M2A that
19 for some period of time, even if the FCC eliminated that,
20 we would continue it for the terms of the M2A.

21 JUDGE THOMPSON: I see.

22 MR. LANE: Since that time, the M2A was
23 entered into, the FCC has now issued its Order and it's
24 declassified or removed some items from 251(c)(3). Some
25 of those still have to be made available under 271, but

1 it's not a requirement that those be in an interconnection
2 agreement, is our view, or that they be priced at a
3 particular level like a TELRIC level.

4 JUDGE THOMPSON: Very good. Thank you for
5 your explanation. Thank you. That cleared up my
6 confusion.

7 Any other questions from the Staff group?
8 (No response.)

9 JUDGE THOMPSON: Okay. I guess we're ready
10 for recross. Anybody want to recross Mr. Silver?
11 (No response.)

12 JUDGE THOMPSON: That's good. I'm glad to
13 hear that. Mr. Lane, redirect?

14 MR. LANE: Just a very few, your Honor, if
15 I could.

16 JUDGE THOMPSON: Good.

17 REDIRECT EXAMINATION BY MR. LANE:

18 Q. Mr. Silver, you indicated in response to
19 questions from Ms. Dietrich that you don't believe that
20 Section 271 elements belong in an interconnection
21 agreement. Is that a correct statement?

22 A. Yes, it is.

23 Q. And part of that is a legal argument that
24 you believe that it's not required and inappropriate; is
25 that a fair statement?

1 A. Yes, it is.

2 Q. And also as a matter of policy, if it
3 weren't a legal requirement, is it your position as a
4 matter of policy those items should not be part of a
5 251 agreement?

6 A. Yes, it is.

7 Q. You had indicated that -- in response to a
8 question from the Judge that 271 elements could be made
9 available and are made available in a number of ways. Is
10 that a fair statement?

11 A. Yes, they are.

12 Q. And with regard to the commercial
13 agreements that you've described, are those agreements
14 that SBC Missouri and a CLEC voluntarily enter into?

15 A. Absolutely.

16 Q. And that would allow them to acquire those
17 Section 271 elements that are no longer part of
18 Section 251(c)(3)?

19 A. Among other ways, yes.

20 Q. And with regard to commercial agreements in
21 particular, are those -- has SBC Missouri entered into a
22 number of those?

23 A. Absolutely, a number of them.

24 Q. And how are those made known from a public
25 filing perspective?

1 A. I don't know in Missouri.

2 Q. Okay. And is it your understanding that

3 commercial agreements like that are filed with the FCC

4 pursuant to Section, I believe it is, 211?

5 A. Again, I don't know that either.

6 MR. LANE: That's all of the questions I

7 have. Thanks, Mr. Silver.

8 JUDGE THOMPSON: Thank you. You're done.

9 Have a nice trip home.

10 (Witness excused.)

11 JUDGE THOMPSON: Witness Mulvaney-Henry.

12 Ms. Mulvaney-Henry. Good afternoon, ma'am.

13 MS. MULVANEY-HENRY: Good afternoon. I've

14 not been sworn.

15 JUDGE THOMPSON: Very good. That was going

16 to be my first question.

17 (Witness sworn.)

18 JUDGE THOMPSON: Thank you. Now, do you

19 have testimony corrections?

20 MR. MAGNESS: We do. That's why we're

21 here.

22 JUDGE THOMPSON: Could I ask that from now

23 on we just do those by a filing of some kind? You can do

24 it by e-mail. I don't care. I don't want to waste the

25 hearing room minutes on corrections, okay, and if an

1 answer should be different because that's been corrected,
2 I'm sure the witness can point that out. Okay.

3 MR. MAGNESS: We'll make such a filing by
4 e-mail. Tender the witness for cross.

5 JUDGE THOMPSON: Thank you. I think we
6 just had Staff questions. Who do you work for, real
7 quick?

8 MS. MULVANEY-HENRY: Birch Telecom.

9 JUDGE THOMPSON: So you're here for CLEC
10 Coalition?

11 MS. MULVANEY-HENRY: Yes.

12 JUDGE THOMPSON: Very good.

13 ROSE MULVANEY-HENRY testified as follows:

14 QUESTIONS BY MS. DIETRICH:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. I have to say, I said I have one question,
18 but I have a follow-up. I've been up at this podium
19 asking questions too long and it's already rubbed off.

20 A. No problem.

21 Q. On page 17 of your rebuttal testimony --

22 A. I'm there.

23 Q. Okay. Beginning at the end of line 1 on to
24 line 2, you say the commingled arrangements that CLECs
25 will want in the future are the combinations that SBC

1 provides today.

2 First of all, could you give me an example
3 of what you're talking about there?

4 A. Pretty easy example would be an EEL
5 arrangement, an enhanced extended link arrangement, which
6 although obviously I'm not an engineer, quite simply it's
7 the -- it's a high capacity offering that connects a DS1
8 loop with DS1 transport, such that voice and data services
9 can be provided to an end user customer.

10 Q. And are there others that -- in addition to
11 that?

12 A. There are others that are higher capacity
13 than that, but that's probably the most common one. I
14 suppose another -- another arrangement would be -- could
15 be under a commin-- in a commingled environment, an
16 equivalent of the UNE platform.

17 Q. And these are all things that are being
18 provisioned today; is that correct?

19 A. That is correct.

20 Q. Are there any changes that are required to
21 the network to take them from a commingled environment to
22 a -- or combination environment to the commingled
23 environment?

24 A. Ms. Dietrich, although I'm not a network
25 expert, I have heard SBC's network witnesses in other

1 states testify that there would be no physical change to
2 the network that would be required.

3 Q. And would there be any change in dollar
4 amounts that the CLEC would pay for these facilities?

5 A. I'm quite certain there would be.

6 Q. Do you have any idea what that would be?

7 A. You know, I suppose it depends. We talked
8 quite a bit just moments ago about what 271 network
9 elements might look like and what 251(c)(3) network
10 elements look like. Clearly our view is that 251(c)(3)
11 elements can be -- are something that can be connected
12 with something else, which could be a 271 network element.
13 We obviously -- our position is that 271 network elements
14 have to be priced at just and reasonable rates. 251(c)(3)
15 elements are still priced using the TELRIC standards.

16 And so this Commission has not yet
17 determined what 271 just and reasonable rates are, but in
18 some subsequent proceeding if the Commission determines
19 that 271 network elements need to be repriced at just and
20 reasonable rates that wind up not being TELRIC, I think we
21 heard this morning Mr. McPhee say that the transit piece
22 just happened to match up. We don't know what those
23 prices are, and I don't know that it would be higher than
24 TELRIC.

25 Q. If you purchase commingled arrangements

1 through the interconnection agreement, if it ends up that
2 it is in the interconnection agreement, then what rates
3 would apply or where would we go for those rates?

4 A. What we have requested on an interim basis,
5 until the Commission has a permanent proceeding to set 271
6 just and reasonable rates is merely for the sake of
7 compromise, not certainly conceding that the FCC did some
8 sort of cost analysis on what they established in the TRRO
9 as the interim -- or the rates that are in place for
10 elements through March 11, 2006. On the UNE-P, it would
11 be TELRIC plus a dollar, and on high capacity loops and
12 transport, it would be the additional 15 percent.

13 And so we've requested that those rates
14 adopted by this Commission on an interim basis for new
15 circuits, if the Commission decided that we could
16 commingle 251(c)(3) elements with 271 network elements and
17 there not be a true-up either way, the Commission hasn't
18 established a higher rate or lower rate, no one benefits
19 from it. Essentially you have those rates in place until
20 a permanent rate is established by the Commission. Does
21 that make sense?

22 Q. Yes.

23 A. Okay.

24 MS. DIETRICH: I think that's it. Thank
25 you.

1 THE WITNESS: Thank you.

2 JUDGE THOMPSON: Thank you. Any other

3 questions from other members of the Staff?

4 (No response.)

5 JUDGE THOMPSON: Very well. Recross, if

6 that's the appropriate term?

7 RECROSS-EXAMINATION BY MR. LANE:

8 Q. Good afternoon.

9 A. Good afternoon, Mr. Lane.

10 Q. You had a couple of questions about 271

11 elements from Ms. Dietrich, and I wanted to address those

12 if I could.

13 You understand that it's SBC Missouri's

14 position that the FCC rules in the TRRO has made it clear

15 that those are not to be included in a 251 interconnection

16 agreement, right?

17 A. I am aware that's SBC Missouri's position.

18 Q. And this is a matter that the CLEC

19 Coalition has litigated in other areas, right?

20 A. That's correct.

21 Q. And it's fair to say that in Kansas the

22 arbitrator in that case made the decision that 271

23 elements were not to be included or subject to a 251

24 interconnection agreement?

25 A. Having been involved in that proceeding,

1 Mr. Lane, the arbitrator's decision in Phase 1 actually
2 related to the 271 issues related to the whereas clauses
3 in the general terms and conditions portion of the
4 proceeding, and the actual UNE issues with 271 are
5 addressed in Phase 2, and the arbitrator's award is not
6 out in that phase as of yet.

7 Q. But the arbitrator's language in that case
8 was very clear that no 271 elements were to be a part of a
9 251 agreement, right?

10 A. Mr. Lane, I don't have it memorized off the
11 top of my head. You're welcome to point me somewhere.

12 MR. LANE: If I may approach, your Honor?

13 JUDGE THOMPSON: You may.

14 BY MR. LANE:

15 Q. I'm going to show you the arbitrator's
16 determination of issues in the Kansas Corporation decision
17 case, Docket No. 05BTKT-365-ARB, and ask if you'd look in
18 particular on page 5, carrying over to page 6, and agree
19 with me that the arbitrator came to the conclusion that,
20 due to the independent nature of Section 251 obligations
21 vis-a-vis 271 obligations, the arbitrator finds that SWBT
22 is not required to meld Section 271 into 251 arbitrations.

23 A. That's what the language says. However, it
24 does say Section 271 and not Section 271 unbundled network
25 elements.

1 Q. And doesn't --

2 A. Which is why I tried to distinguish that

3 Phase 1, the 271 issues were -- were only the general

4 terms and conditions, 271 issues, the whereas clauses that

5 I believe you-all discussed on Monday here, and they're

6 not the 271 UNE issues.

7 Q. And it's a fair statement that the CLEC

8 Coalition in that case appealed the arbitrator's decision

9 to the full commission, right?

10 A. That is fair.

11 Q. And it's also fair to say, is it not, that

12 on appeal that the Kansas Corporation Commission reviewed

13 it and affirmed the arbitrator's decision that 271 issues

14 should not be included in the agreement?

15 A. With respect to the general terms and

16 conditions issues in the decision point list in that case,

17 yes, that is true.

18 Q. Would you agree with me that the Kansas

19 Corporation Commission didn't provide any limiting

20 language that says, this only applies to the whereas

21 clauses, but we might include Section 271 elements in the

22 agreement anyway under the UNE section?

23 A. Well, if you look -- you're obviously

24 taking piece parts of that Order, and there's a section in

25 there on the daily usage file, which the Commission

1 acknowledged was addressed in Phase 1. However, it was
2 not fully developed and briefed until Phase 2, and they
3 were going to defer their decision on that. I fully
4 expect the Commission to do the same thing with respect to
5 the 271 UNE issues.

6 Q. It's fair to say that in the appeal that
7 the Kansas Corporation Commission went even farther than
8 the arbitrator had gone and made it clear that it had no
9 authority to establish prices for services required to be
10 provided pursuant to Section 271, right?

11 A. Again, if you could point me somewhere, I'd
12 be happy to look at it.

13 Q. Sure. Showing you the Order No. 13,
14 commission order on Phase 1 in the same docket that we
15 discussed just a minute ago, and looking on page 2 of that
16 order, it's fair to say that the Commission in that case
17 said, quote, both the CLEC Coalition and AT&T provided
18 comments urging the Commission to reverse the
19 determination that 271 issues should not be included in
20 the agreement. The Commission has reviewed the arguments
21 presented by the parties and finds that it agrees with the
22 arbitrator. Is that a correct reading there?

23 A. It is.

24 Q. And further, the Kansas Corporation
25 Commission went on to say, quote, Sections 201 and 202 of

1 the Federal Act provide authority to the FCC, but provide
2 no authority to state commissions to establish prices for
3 services required to be provided pursuant to Section 271,
4 unquote. That's what they found, right?

5 A. That is what that order says that you read,
6 yes. I think the Supreme Court would probably disagree
7 with that, but I think the Iowa Utility -- the Iowa
8 Utility Board case, I think, has precedent that's
9 different than what the Commission found. And I'm sure
10 you're also aware that in Oklahoma the arbitrator's
11 decision --

12 Q. I'm not really asking a question, ma'am,
13 but thank you.

14 The remaining questions on whether 271
15 elements are required to be commingled raise essentially
16 the same question, do they not?

17 A. The same question as?

18 Q. As to the scope of the authority of a state
19 commission to require those to be included in a 271
20 interconnection agreements.

21 A. I don't really know that they raise the
22 same question. I know that -- it's my understanding SBC
23 Missouri's position is that Section 271 unbundled network
24 elements required by that section of the Federal Act are
25 not wholesale service offerings, and as such -- I don't

1 know what else they are, but as such, I believe that is
2 SBC Missouri's position, so I don't know it's a
3 jurisdictional position.

4 JUDGE THOMPSON: Is this something that
5 could just be dealt with in the Briefs?

6 MR. LANE: Sure. I was just trying to make
7 sure that --

8 JUDGE THOMPSON: There's really no
9 factual --

10 MR. LANE: I was actually going no farther
11 with that than to say the rest of it was a legal
12 conclusion. That's the factual one is what the Kansas
13 Commission had done.

14 JUDGE THOMPSON: Thank you, Mr. Lane.
15 Redirect?

16 MR. MAGNESS: Thank you, your Honor.

17 JUDGE THOMPSON: There's going to be facts
18 in this, right?

19 MR. MAGNESS: Yes, sir.

20 JUDGE THOMPSON: Okay. Fire away.

21 REDIRECT EXAMINATION BY MR. MAGNESS:

22 Q. I'll say at the top there's a lot of legal
23 disagreement with lots of things that were said by
24 Mr. Lane. Anyway, as a factual matter, just to clarify in
25 the Kansas case, you mentioned two phases?

1 A. Yes.

2 Q. Were you a witness in that case?

3 A. I believe I was a witness in both phases.

4 Q. And what issues were taken up in the second

5 phase where the Commission has not ruled yet?

6 A. Unbundled network elements, I believe

7 reciprocal compensation.

8 Q. So the Order that is out now -- and you

9 understand that the Kansas Commission did issue an Order?

10 A. I do.

11 Q. -- is on the Phase 1 issues, and that

12 included the general terms and conditions whereas clause

13 271 issues that you were referencing?

14 A. That's correct.

15 Q. And --

16 JUDGE THOMPSON: How can they get away with

17 having two phases?

18 MR. MAGNESS: Well, the Kansas, Oklahoma

19 and Texas all -- and I try not to editorialize too much,

20 but primarily because of the timing of the UNE Triennial

21 Review Remand Order, those commissions were in a position

22 where it was almost impossible kind of physically and

23 intellectually to do the UNE provisions until new orders

24 came out, so we've had interim hearings, interim rulings,

25 two phases, three phases --

1 JUDGE THOMPSON: Good enough.

2 MR. MAGNESS: The Kansas one is two phases.

3 THE WITNESS: We've gone back to a couple
4 of states twice.

5 JUDGE THOMPSON: What fun for them.

6 MR. MAGNESS: And for us all.

7 BY MR. MAGNESS:

8 Q. So just to wrap that Kansas piece up, the
9 testimony that you filed here concerning 271 checklist
10 obligations was presented to the Kansas Commission in
11 Phase 2; is that right?

12 A. That's correct.

13 Q. And those issues have been briefed but
14 await decision, correct?

15 A. That's correct.

16 Q. Now, you mentioned -- you started to
17 mention Oklahoma. Could you just tell us what you were
18 going to tell us about Oklahoma?

19 A. The arbitrator's decision in Oklahoma, in
20 fact, found for the CLEC Coalition on all 271-related
21 issues on -- with respect to unbundled network elements,
22 and that is, they found that the 271 unbundled network
23 elements must be included in Section 252 agreements.

24 Q. And that will be before the full commission
25 next month?

1 A. Next month. It was actually all ready to
2 be decided by the full commission and they deferred their
3 decision.

4 Q. And the issues concerning 271, are they
5 still pending in Texas?

6 A. Yes, they are.

7 Q. Are you familiar with the Tennessee
8 decision on this issue?

9 A. The regulatory authority decision?

10 Q. Uh-huh.

11 A. Yes, I am.

12 Q. And what was the nature of that decision?

13 A. It was in the course of an ITC Delta Comm
14 arbitration in 2004, I believe, and the regulatory
15 authority there, in fact, found that they had authority to
16 establish 271 unbundled network element prices, did in
17 fact establish specific rates for the UNE, U-N-E,
18 platform, and, in fact, concluded that 271 network
19 elements were required to be in 252 agreements.

20 Q. Are you aware that, I think since
21 testimony's been filed here, there's been an Illinois ALJ
22 decision on these issues as well?

23 A. I am.

24 Q. And finally, your testimony cites, I
25 believe, a Federal District Court decision from Minnesota

1 concerning --

2 A. The Qwest decision?

3 Q. Yes.

4 A. Yes.

5 Q. Does that relate to the necessity of having

6 Section 271 network elements in 252 agreements?

7 A. It does.

8 MR. MAGNESS: That's all I have, your

9 Honor.

10 JUDGE THOMPSON: Thank you. Three minutes

11 34 seconds. Pretty good. Okay. I think we're done,

12 ma'am. You stay step down and have a safe journey home.

13 THE WITNESS: Thank you.

14 (Witness excused.)

15 JUDGE THOMPSON: Witness Collins?

16 MR. MORRIS: Your Honor, witness Collins

17 does have some changes and deletions to his testimony.

18 I'm not going to go through those now. I'll do that by

19 e-mail. Just informing the Bench in case something comes

20 up in the course of cross.

21 JUDGE THOMPSON: Thank you very much,

22 Mr. Morris. Cross-examination, Mr. Lane?

23 MR. MORRIS: Your Honor, Mr. Collins has

24 not been sworn.

25 JUDGE THOMPSON: Thank you very much.

1 Raise your right hand, please.

2 (Witness sworn.)

3 JUDGE THOMPSON: Please state your name for

4 the reporter.

5 MR. COLLINS: Paul Collins.

6 JUDGE THOMPSON: Mr. Morris?

7 MR. LANE: He's going to do my cross for

8 me.

9 JUDGE THOMPSON: I love to see you guys

10 working together.

11 MR. MORRIS: I have just one more thing.

12 Mr. Collins is adopting the testimony of Earl Hearn, who

13 prefiled direct testimony in this matter.

14 JUDGE THOMPSON: Okay. What happened to

15 Mr. Hearn? Just curious.

16 MR. MORRIS: He has -- he has prior -- he

17 was able to testify by phone if that were -- if that could

18 have happened.

19 JUDGE THOMPSON: I appreciate that. Thank

20 you.

21 PAUL COLLINS testified as follows:

22 CROSS-EXAMINATION BY MR. LANE:

23 Q. Good afternoon, Mr. Collins.

24 A. Good afternoon.

25 Q. First I wanted to ask you about MCI's

1 general terms and conditions Issue No. 5. That issue
2 generally involves what happens upon termination of this
3 agreement that we're arbitrating now, correct?

4 A. Correct.

5 Q. And it's fair to say that MCI's provision
6 is limited to a single paragraph that essentially provides
7 that this agreement remains in place until a new one comes
8 into being, right?

9 A. Correct.

10 Q. And it's also fair to say that SBC's
11 language provides much additional detail about how the
12 parties are to handle what happens at the end of the
13 agreement and how a new one comes into place?

14 A. Well, SBC's language puts the negotiation
15 and arbitration of the successor agreement on a fast track
16 and insists that it be completed within a year of the
17 expiration of the old agreement; whereas, MCI's language
18 permits the old agreement to remain in evergreen if the
19 parties decide that that's the preferable choice three
20 years down the road.

21 Q. Let me ask a question about that. The
22 parties can always agree subsequently to keep the
23 agreement in effect if they so choose, correct?

24 A. But in SBC's case that would require an
25 amendment to the agreement.

1 Q. And under the MCI approach, the agreement
2 would remain in effect for an indefinite period of time
3 even though SBC Missouri wants to terminate the agreement
4 and move into a new one?

5 A. No, that's not true.

6 Q. Okay. Under SBC Missouri's proposal, there
7 is a definite end date to this agreement, assuming that
8 MCI wants to continue to operate in Missouri, and that
9 definite end date would be ten months after the expiration
10 date in this agreement, right?

11 A. That's correct.

12 Q. And under the MCI proposal, there's no
13 definite end date that we can point to?

14 A. But it permits either party to start the
15 renegotiation which will inevitably lead to arbitration if
16 the parties can't agree on all the issues, and that would
17 start the 252 timeline which would provide a definite end
18 date. But if the parties decide that the current
19 agreement doesn't need updating, they're free to -- free
20 to keep it in effect without any change, without any need
21 for amending the agreement.

22 Q. Doesn't the SBC Missouri proposal provide
23 that this would remain in effect on a month-to-month basis
24 if the parties so choose and don't renegotiate and don't
25 seek to terminate?

1 A. Only for that period of time, I think up to
2 ten months.

3 Q. The difference between the two proposals is
4 that SBC Missouri's has a definite end date of ten months
5 and the MCI proposal has no definite end date and is
6 subject to the vagaries of what might happen in any
7 subsequent arbitration that could be requested, right?

8 A. I disagree.

9 Q. Okay. With regard to Issue 6 of the MCI
10 general terms and conditions DPL, that deals with
11 deposits, right?

12 A. Correct, I believe.

13 Q. And is it fair to say that from SBC
14 Missouri's perspective, that MCI's financial difficulties
15 that it has had is something of a poster child for why
16 deposits are appropriate?

17 A. I can't represent what SBC thinks.

18 Q. Would you agree with me that MCI was the
19 largest bankruptcy in U.S. history?

20 A. Subject to check, I'll agree.

21 Q. It's fair to say that if the agreement had
22 permitted SBC Missouri to be able to request a deposit
23 based on MCI's deteriorating financial condition as
24 measured by various credit rating agencies, that its
25 losses may have been substantially reduced, right?

1 A. I don't know what SBC's losses were.

2 Q. If SBC Missouri had been permitted to

3 request a deposit under the circumstances of MCI's

4 deteriorating financial condition, it would have had some

5 protection against potential losses, right?

6 A. There were a number of interconnection

7 agreements in other states that permitted SBC to collect a

8 deposit under certain circumstances, and I don't think SBC

9 ever did. And I don't think it gained any protection from

10 those clauses, so bankruptcy law provides its own

11 protections against the creditors for the bankrupt.

12 A. A deposit in hand provides protection to a

13 company as well, does it not?

14 A. It could be seen that way.

15 Q. It's also fair to say that under your

16 proposed language that MCI could game the system by

17 jenning (sic) up disputes and paying only the undisputed

18 charges it felt like paying; is that correct?

19 A. Are you talking about deposits or

20 invoicing? I'm not sure how that relates to deposits.

21 Q. Well, under your proposal, isn't it true

22 that MCI would only make a deposit if it has two failures

23 to pay undisputed amounts in a year?

24 A. It's correct that MCI's proposal, the

25 triggers are late payment history.

1 Q. My question was, isn't it correct that
2 MCI's proposal is that it would require two failures to
3 pay undisputed amounts in a year before any deposit could
4 be requested?

5 A. Yes, that's part of MCI's proposal.

6 Q. And so if MCI disputes a bill, then there's
7 not a failure to pay an undisputed amount and no deposit
8 could be requested, right?

9 A. Correct.

10 Q. It's also correct that your language would
11 limit deposits to 60 days average billing cycle, fair
12 statement?

13 A. Yes.

14 Q. And also requires adjustments month by
15 month to reflect prior billings for the previous two
16 months, right?

17 A. Yes.

18 Q. It's an administratively more difficult
19 thing to do each month, is it not, because one has to look
20 at the deposit each month then?

21 A. I don't think it's any more
22 administratively difficult than SBC's proposal, which I
23 think allows adjustment of the deposit amount as well.

24 Q. But it's not a monthly adjustment, is it?

25 A. I don't have the language in front of me.

1 I'm not familiar.

2 Q. It's also correct to say that MCI's
3 language requires the return of a deposit if the
4 undisputed amounts are paid for six months in a row,
5 regardless of whether the financial condition is
6 deteriorating, right?

7 A. Right, in keeping with MCI's position that
8 deposit should be based on a late payment history.

9 Q. But under the MCI proposal, it can choose
10 to dispute any portion of the bill that it wants without
11 making any payment into escrow and eliminate the need for
12 a deposit because it hasn't failed to pay undisputed
13 amounts?

14 A. No. That's -- MCI has to have a good faith
15 basis for disputing any bill, and MCI has incentives to
16 clear those disputes up as quickly as possible, because if
17 it's resolved against MCI, we're on the hook for late
18 payment fees. So I think that's the incentive to not
19 abuse the disputed amounts provision.

20 Q. Talk about Issue 7, which involves
21 procedures for payment and dispute of bills, right?

22 A. Right.

23 Q. And SBC Missouri's proposed language
24 requires the billed party to spell out any disputes
25 utilizing a standard form that's applicable to all CLECs,

1 right?

2 A. I'll take your word for it.

3 Q. Okay. And does MCI's proposal on this

4 issue detail exactly what information it needs to provide

5 to initiate a dispute?

6 A. Are we talking about the nonpayment,

7 disconnect for nonpayment issue? Because I think the --

8 Q. Talking about Issue No. 7 of the joint DPL.

9 A. Could you read the issue statement?

10 Q. What terms and conditions should apply in

11 the event the billed party does not either pay or dispute

12 its monthly charges, is what the issue statement says, but

13 the language of it is what I'm focusing on.

14 A. The requirements -- the requirements for

15 what a party has to provide the other party when it

16 disputes a bill are set forth in the invoicing appendix.

17 They're not in this section of the GTC, so the absence of

18 them isn't dispositive of the fact that they are contained

19 elsewhere.

20 Q. All right. What we're dealing with here,

21 though, includes SBC Missouri's proposal for the

22 information that needs to be provided to dispute a bill,

23 right?

24 A. I don't think that's what's at issue here.

25 What I think is at issue here is the procedure that the

1 parties have to go through before they can stop providing
2 service to the other party.

3 Q. Have you read the language in GT&C Issue
4 No. 7?

5 A. I read it, and I wrote some of it, so yes,
6 I'm very familiar with it.

7 Q. Are you familiar with SBC's position on
8 this?

9 A. Yes, I am.

10 Q. All right. It's fair to say MCI's proposed
11 language provides for the right to discontinue service
12 only on an account-by-account basis, right?

13 A. Correct.

14 Q. It's also fair to say that MCI has
15 literally dozens of different accounts with SBC, right?

16 A. I think it's more than dozens.

17 Q. How many?

18 A. I don't have an exact number, but that's
19 part of the concern, that if MCI is late on a single
20 billing account number which may be for \$10, SBC could
21 disconnect service for billing accounts that have no
22 history of late payment that may be in the hundreds of
23 thousands of dollars each month.

24 Q. And it's fair to say that under MCI's
25 proposal, that you could run up large amounts of

1 undisputed charges unpaid, but continue to receive service
2 from SBC Missouri by ordering the same services under a
3 different account?

4 A. Absolutely not.

5 Q. Could you point to your language to tell me
6 where that is precluded?

7 A. I'm just not sure how it's possible.

8 Q. I'm sorry. I thought you said that your
9 proposal -- I understand your proposal to be that
10 discontinuance of service is on an account-by-account
11 basis, right?

12 A. Right. But your question was whether MCI
13 could use the fact of several billing account numbers to
14 gain the system, evidently shift unpaid amounts from one
15 account to another. I said the answer to that is no.

16 Q. MCI failed to pay -- it's fair to say that
17 MCI could fail to pay on a particular account and be
18 subject to termination only on that account, right?

19 A. Correct.

20 Q. And at the same time, they could continue
21 to submit orders on other accounts that MCI has with SBC
22 Missouri, right?

23 A. Correct.

24 Q. Okay. Issue No. 8 involves audit
25 requirements. We're into areas here where you're adopting

1 Ms. Hearn's testimony, right -- or Mr. Hearn's testimony?

2 A. Yeah, I believe the last two issues were

3 also from his testimony.

4 Q. Okay. It's fair to say the parties have

5 largely agreed to audit provisions but differ in a few

6 areas?

7 A. Yes, absolutely.

8 Q. And one of the disagreements involves who

9 will perform any audits that are permitted under the

10 agreement, right?

11 A. Correct.

12 Q. And SBC Missouri proposes that the auditing

13 party can perform the audit, while MCI proposes that

14 auditors be independent, right?

15 A. That's correct.

16 Q. And it's fair to say, isn't it, that SBC

17 Missouri's employees are typically better grounded in the

18 systems and knowledge of the industry, such that they can

19 be expected to be more efficient in the audit?

20 A. I don't know that to be true.

21 Q. Certainly possible, isn't it?

22 A. Lots of things are possible, yes.

23 Q. SBC Missouri also proposes that the audited

24 party be permitted to require an independent auditor, but

25 in that event has to pay 25 percent of the cost, correct?

1 A. Correct.

2 Q. And under the MCI proposal, none of the
3 costs of an independent auditor would be borne by MCI,
4 right?

5 A. Unless there's found to be an error in the
6 billing, if the audit shows a problem.

7 Q. All right. Let's talk about that
8 particular issue. It's fair to say that SBC Missouri's
9 proposal is that if the audit does show a reimbursement
10 above a designated threshold, that MCI should pay a
11 quarter of the cost of the auditor, right?

12 A. Correct.

13 Q. And you indicated that MCI would pay for
14 the auditor under that circumstance, but I didn't find
15 that in your language. Could you point that to me?

16 A. I don't have the language in front of me.
17 If you -- if you've got a copy of the language . . .

18 Q. Show you the DP&L for general terms and
19 conditions for MCI in this case with regard to Issue
20 No. 8, and ask if you could just point to me the language
21 where MCI's agreed to reimburse the costs of an audit, if
22 the audit comes out in SBC Missouri's favor?

23 A. It's this section, 13.3.

24 Q. 13.3?

25 A. Right.

1 Q. Why don't you point to that?

2 A. Actually -- it's actually 13.5, the audit
3 confirms an undercharge or overcharge of a certain amount,
4 parties will reimburse each other according to a formula
5 set forth in that paragraph.

6 Q. But that doesn't cover the expense of the
7 audit?

8 A. Of course it does.

9 Q. And you're reading from SBC Missouri's
10 language there, right?

11 A. Well, it's agreed-to language mostly.

12 Q. All right. And so your position is, is
13 that that language -- if the arbitrator adopts MCI's
14 language, that that should be interpreted to require MCI
15 to pay the cost of the independent auditor if the amount
16 is above a certain threshold, right?

17 A. It defrays the cost of the auditor, yes.

18 Q. And is it the same, then, as SBC Missouri,
19 you'd pay 25 percent of the audit?

20 A. 25 percent of the audit or 25 percent of
21 the --

22 Q. I'm sure -- I'm sure you intend to pay the
23 entire amount that's found to be due and owing for the
24 services that the audit show you didn't properly pay for,
25 right?

1 A. And I assume SBC would be willing to do the
2 same thing.

3 Q. And I'm addressing specifically the costs
4 of the audit itself. Because I don't find it in the
5 language, and I want to know what your proposal is, so
6 that if the arbitrator adopts your proposal, if we know --

7 A. If there's overcharge and undercharge above
8 a certain amount, the parties are responsible for the
9 costs to each other.

10 Q. The costs of the undercharge, right, but
11 not for the cost -- under your proposal, not for the cost
12 of the audit itself, right?

13 A. Well, if it's SBC's undertaking to do the
14 audit, I believe SBC should bear the cost for the audit.

15 Q. And that's what I understand MCI's position
16 to be.

17 A. And MCI is willing to do the same thing, if
18 MCI asks for an audit.

19 Q. And the money between SBC Missouri and MCI
20 typically flows from MCI to SBC Missouri, right?

21 A. No. It's both ways.

22 Q. I understand that monies can flow both
23 ways, but the net amount flows to SBC Missouri, right?

24 A. That's probably true.

25 Q. And SBC Missouri has a greater incentive to

1 audit than MCI does, right?

2 A. I don't necessarily understand that to be
3 true, no.

4 Q. If one party is doing the majority of
5 billing, wouldn't you agree that that party has the
6 greater incentive to ensure that the amounts are being
7 adequately paid for?

8 A. The billings are for different types of
9 services, and different business units within each company
10 may have different incentives than other business units
11 within their own company.

12 Q. Okay. But the party that has the majority
13 of the billing is likely to have the greater incentive to
14 want to do an audit, right?

15 A. I don't think that's true in all
16 situations. I think that's too broad a statement.

17 Q. In the majority of cases, the party that
18 does the audit is more likely to have the incentive
19 that's --

20 A. I just don't know that to be true.

21 Q. Issue No. 9 in the general terms and
22 conditions, the intervening law clause, would you agree
23 that the purpose of that clause is to modify the contract
24 if the law changes and describes the process for doing
25 that?

1 A. Yes.

2 Q. Example, if the FCC decides that a
3 particular element is no longer a UNE or a court reverses
4 an FCC decision that something is a UNE, the parties agree
5 that the contract should change, but the issue is how to
6 go about it, right?

7 A. Correct.

8 Q. And MCI's proposal requires written
9 notification, 60 days of notification, and then a dispute
10 resolution process, right?

11 A. Potentially.

12 Q. And the dispute resolution process doesn't
13 have a specific time frame under which it would come to an
14 end, would it?

15 A. Not necessarily.

16 Q. And at the end of that even, MCI wants to
17 have a written amendment, and the change of law wouldn't
18 take effect until then, right?

19 A. Correct.

20 Q. And it's possible that that entire process
21 could take well over a year or more, right?

22 A. With SBC involved, it's likely to take many
23 years, several times.

24 Q. So if SBC Missouri is interested in
25 affecting a change of law on an expedited basis, then MCI,

1 I take it, would be willing to do that, right?

2 A. Yes.

3 Q. And our language would call for that change
4 of law to take effect in 30 days, right?

5 A. Your language would call for it to take
6 effect without the need for an amendment. So in effect,
7 SBC would be able to impose its amendment, its proposed
8 amendment on MCI without the need for negotiation.

9 Q. Can we agree, then, that the language ought
10 to say that it will take effect within 30 days and that
11 the parties shall execute an amendment within that 30-day
12 period, would that satisfy you?

13 A. That leaves out the possibility that the
14 parties can't agree. MCI is willing to do things on an
15 expedited basis. If SBC wants to shorten the time frame
16 that MCI has in its language, it would be willing to agree
17 to that. Unfortunately, SBC hasn't made a
18 counter-proposal on those particular aspects of our
19 proposal.

20 Q. So I'm asking you now, are you willing to
21 agree to a process that says any change of law does take
22 effect in 30 days and the parties are required to execute
23 an amendment within that 30-day period?

24 A. Again, it doesn't leave open the
25 possibility that the parties won't be able to agree on an

1 appropriate amendment.

2 MR. LANE: All right. That's all I have.

3 JUDGE THOMPSON: Thank you, Mr. Lane.

4 MR. GRYZMALA: Your Honor, I have just one
5 or two OSS-related questions.

6 JUDGE THOMPSON: Come on up.

7 MR. GRYZMALA: Thank you.

8 CROSS-EXAMINATION BY MR. GRYZMALA:

9 Q. Good afternoon, Mr. Collins. Bob Gryzmala
10 for SBC. Very briefly and quickly hopefully, I would like
11 to refer your attention to OSS Issue No. 1, and I do
12 recall correctly that we have competing language there,
13 that is, MCI opposes SBC Missouri's proposed language and
14 vice versa, and that the issue has to do with the nature
15 of unauthorized -- or with the matter of unauthorized
16 entry or access by MCI to SBC Missouri's OSS systems; is
17 that correct?

18 A. I believe specifically this has to do with
19 whether one party should indemnify the other and under
20 what circumstances.

21 Q. True enough. It's an indemnification
22 matter, but the underlying matter of the indemnification
23 is the OSS systems of SBC Missouri?

24 A. That's correct.

25 Q. And is it a fair statement, Mr. Collins,

1 that only SBC's language is directed to the specific
2 matter of unauthorized entry or access into or use of our
3 OSS systems?

4 A. I don't agree with that, no.

5 Q. Can you point me to the language in the MCI
6 proposal which refers to unauthorized entry or access into
7 SBC's OSS systems?

8 A. I don't have the proposal in front of me,
9 but I think MCI's language, if I recall, requires that SBC
10 demonstrate that there was both harm and that the entry
11 was unauthorized.

12 Q. Let me represent to you what I'll read from
13 the OSS. I only have one copy.

14 A. Okay.

15 Q. If you will give me a moment. The MCI
16 proposed language that I am showing you at page 1 of 6 of
17 the May 20 MCI OSS DPL says that MCI agrees to indemnify
18 and hold SBC Missouri harmless against any claim by --
19 excuse me -- any claim made by an end user -- I'll focus
20 on that -- customer of MCI or other third party against
21 SBC Missouri caused by or related to MCI's use of any SBC
22 Missouri OSS.

23 Is that fair? I'll represent to you I read
24 it directly from the DPL.

25 A. To the extent the DPL is correct, yes.

1 Q. Thank you. Did you hear that this
2 statement only refers to claims made by an end user
3 customer or other third party?

4 A. Who else could make an indemnity claim?

5 Q. Would you not agree -- would you not agree
6 that MCI is -- that is, that SBC Missouri's language is
7 directed to the entry by an MCI -- unauthorized entry or
8 access by MCI?

9 A. But an indemnity by its nature is whether a
10 third party is suing SBC and SBC is claiming that MCI is
11 at fault and should clearly be on the hook for these
12 damages.

13 Q. I agree, but only SBC Missouri's language
14 refers specifically to the use or manipulation or entry or
15 access by MCI into SBC systems; is that not fair?

16 A. I'm not sure I understand the question.

17 Q. Is it not true that only SBC Missouri's
18 language refers specifically to unauthorized entry or
19 access into or use of or manipulation of SBC's OSS from
20 MCI's systems, work stations or terminals or MCI
21 employees?

22 A. Again, I don't have the language in front
23 of me. I haven't committed it to memory.

24 Q. Do you have any experience with use of the
25 OSS system?

1 A. Personal use?

2 Q. Yes.

3 A. No.

4 Q. Have you ever placed a pre-order inquiry?

5 A. No, I have not.

6 Q. Have you ever placed an order inquiry?

7 A. No, I have not.

8 Q. Have you ever seen an MCI employee do that?

9 A. Yes.

10 Q. Are you acquainted with any -- is it fair

11 to state that there could be harm to SBC's OSS by

12 unauthorized use of that OSS by a CLEC?

13 A. I'm not sure that I can think of a case

14 where MCI could do that.

15 Q. Do you agree that MCI is in the best

16 position to ensure that its equipment and access to the

17 OSS are not abused?

18 A. Absolutely.

19 Q. And you would likewise agree that if access

20 to SBC's OSS is gained through MCI's equipment or

21 personnel, that MCI should be held responsible for any

22 damages that may result?

23 A. To the extent that MCI causes damages and

24 those would be covered by the indemnity clause in the GT&C

25 that's agreed to by the companies and covers -- it's a

1 clause of universal application that covers any time when
2 either party is at fault and there's an indemnity
3 situation.

4 Q. So it's your testimony that if those
5 instances should occur, that MCI would be and would --
6 would regard the general indemnification language as
7 applicable?

8 A. It's a very fact-sensitive inquiry, but
9 yes, I agree that indemnity provisions in the GT&C would
10 cover indemnity issues related to the use of OSS.

11 Q. One last question. If the -- if a claim
12 should be made that there has been unauthorized entry or
13 access into or use or manipulation of SBC's OSS from MCI's
14 systems, work stations or terminals, MCI would not raise
15 as an affirmative defense in a lawsuit that the general
16 terms and conditions indemnification clause is
17 inapplicable?

18 A. That's -- without knowing more about the
19 facts of the incident involved, I wouldn't venture an
20 opinion.

21 Q. Let's assume the facts are, and it is
22 alleged in a lawsuit, that MCI committed unauthorized
23 entry or access into or use or manipulation of SBC's OSS
24 from MCI's systems, work stations or terminals or by MCI
25 employees or agents.

1 My question is, assuming that allegation in
2 a complaint directed to MCI, would you agree that it would
3 be inappropriate for MCI to raise as an affirmative
4 defense that the indemnification claim in the general
5 terms and conditions is not applicable?

6 A. I think it depends on the facts of the
7 allegations. Just because they're allegations doesn't
8 mean there's truth to the allegations. Without knowing
9 further about it, I wouldn't venture an opinion.

10 Q. You understand that for purposes of a
11 complaint the matters of allegation in a complaint are
12 regarded as true when the court is considering a motion to
13 dismiss, do you not?

14 A. I'm not a litigator.

15 Q. Well, let me ask you to assume for purposes
16 of hypothetical that the case is tried and it is proven
17 and these facts are demonstrated. Are you willing to
18 concede that the GT&C indemnification generic language
19 would be applicable and that your firm would not raise as
20 an affirmative defense the fact that it is not applicable?

21 A. The provisions in the GT&C are of universal
22 application and they apply to indemnity situations related
23 to the use of OSS.

24 Q. I would like an answer to my question,
25 Mr. Collins.

1 A. I'm not sure I understand the question, so
2 I'm not sure I can answer it.

3 Q. I want to ask you to assume once again that
4 SBC has proven that the language here that we propose
5 applies, and I want to ask you to assume that, given that
6 would be a fact, that MCI would not raise as a defense
7 that the general terms and conditions indemnification
8 language does not apply.

9 MR. MORRIS: Your Honor, I think it's been
10 asked and answered.

11 JUDGE THOMPSON: I think it's been asked,
12 but I don't think it's been answered.

13 THE WITNESS: Without knowing more about
14 the facts, I don't think it's a question that I can
15 answer, with all due respect.

16 BY MR. GRYZMALA:

17 Q. With all due respect, we don't need to know
18 anything more about the facts than what I've honestly
19 asked you to assume, and I have asked you to assume,
20 Mr. Collins, that these are the facts.

21 A. And I've said that I think the GT&C
22 indemnity clause covers abuse of OSS.

23 Q. Ergo, it assumes -- it covers these facts,
24 yes or no?

25 A. It covers OSS abuse.

1 MR. GRYZMALA: Your Honor, may I ask you to
2 direct the witness to answer my question.

3 THE WITNESS: I'm not sure -- with all due
4 respect, your Honor, I'm not sure I understand the point.

5 JUDGE THOMPSON: He said it covers OSS
6 abuse. Isn't that what you're asking?

7 MR. GRYZMALA: I'll accept that.

8 BY MR. GRYZMALA:

9 Q. I have one other related on the xDSL joint
10 DPL, Mr. Collins. This has to do with liability and
11 indemnity language for non-standard -- or non-standard use
12 of xDSL technologies deployed in connection with SBC's
13 network.

14 Once again, the point is is that the
15 comprehensive liability indemnity provisions of the
16 general terms and conditions are sufficient?

17 A. Yes.

18 Q. That's the basic issue?

19 A. Yes.

20 Q. Would you admit that there is nothing in
21 those terms and conditions, that is the indemnity
22 provisions of those general terms and conditions, that
23 specifically refers to a CLEC's use of non-standard xDSL
24 technologies?

25 A. That's -- I would agree, but that's not

1 relevant since they're written in a manner that they apply
2 universally to all portions of the contract. It's a
3 fault-based standard that applies if either party is
4 breaching an obligation under the agreement or can be
5 found otherwise to be at fault.

6 Q. So therefore, if there should be any use of
7 non-standard xDSL technologies, your firm's position would
8 be that it would be a matter within the scope of the
9 general terms and conditions?

10 A. Again, as with the OSS, the GT&C indemnity
11 provisions cover the xDSL.

12 Q. And you would not raise a defense that they
13 do not?

14 A. Again, without knowing more about the
15 particular facts, I can't answer that question.

16 Q. And would your answer change if it is
17 proven that there has been use by MCI of non-standard xDSL
18 technologies?

19 A. I'm just not willing to venture an answer
20 unless I know more about the facts and particular
21 circumstances.

22 MR. GRYZMALA: Thank you.

23 JUDGE THOMPSON: Thank you. Ms. Dietrich?

24 MS. DIETRICH: No questions.

25 JUDGE THOMPSON: Mr. Johnson?

1 MR. MICK JOHNSON: No questions.

2 JUDGE THOMPSON: Mr. Scheperle?

3 MR. SCHEPERLE: No questions.

4 JUDGE THOMPSON: Mr. McKinnie?

5 MR. MCKINNIE: No questions.

6 JUDGE THOMPSON: Redirect?

7 REDIRECT EXAMINATION BY MR. MORRIS:

8 Q. Mr. Collins, following up on the last set

9 of questions, I believe you were asked if there was

10 specific reference in MCI's proposed general

11 indemnification language that includes reference to xDSL

12 or OSS. Do you recall that?

13 A. Yes, I do.

14 Q. Is there any specific language in MCI's

15 proposed general indemnity provisions that exclude DSL?

16 A. No, there are not. I would also mention

17 that it's not just MCI's proposal. It's agreed-to

18 language that both parties have used in a number of

19 interconnection agreements over the last five years.

20 Q. Do you recall, I believe it was in

21 reference to GT&C Issue 9, intervening law, and MCI and

22 SBC are in a dispute regarding how any intervening law

23 would be implemented in the agreement?

24 A. Yes, I do.

25 Q. Given, say, the dispute over what the TRRO

1 means, and I think we can all agree that's the subject of
2 some dispute, is that -- is that one of the concerns that
3 MCI has regarding automatic implementation of change of
4 law provisions?

5 A. Yes, it is. For instance, the parties
6 negotiated diligently both the TRO and the TRRO
7 requirement in a number of states, including Missouri, and
8 have a number of principle disagreements about what the
9 orders require, and for either party to unilaterally
10 impose its view on the other just does not seem fair.

11 Q. Do you recall the testimony -- discussion
12 on GT&C 7 pertaining to bill disputes? Is it MCI's policy
13 to transfer wholesale customers from, say, one account
14 with -- from an ILEC or SBC to another CLEC in order to
15 avoid paying those charges?

16 A. Absolutely not.

17 Q. As to GT&C 6 covering deposits, do you
18 recall that line of questioning?

19 A. Yes, I do.

20 Q. And I believe there was reference to MCI
21 being a poster child --

22 A. Correct.

23 Q. -- for financial problems.

24 Is that line of questioning more
25 backward-looking or forward-looking?

1 A. I think it's backward-looking, particularly
2 in light of the fact that SBC of all companies should have
3 learned from the experience that MCI is still here. We're
4 still doing business with them. We're one of their
5 biggest customers. It's an ongoing relationship that's
6 valuable to both companies.

7 Q. And are the contracts that we're ultimately
8 going to come to as a result of this process more
9 forward-looking?

10 A. Yes.

11 Q. And finally, do you recall discussion
12 regarding GT&C Issue 5, and that was the term of the
13 agreement?

14 A. Yes, I do.

15 Q. And does MCI intend to negotiate in good
16 faith to come to a successor agreement --

17 A. Absolutely.

18 Q. -- under its proposed language?

19 A. Absolutely.

20 MR. MORRIS: Okay. I believe that's all,
21 your Honor.

22 JUDGE THOMPSON: Thank you, sir. You may
23 step down, Mr. Collins. Thank you for your testimony.

24 MR. MORRIS: Your Honor, he may be excused?

25 JUDGE THOMPSON: Absolutely. Go home.

1 Have a safe trip.

2 (Witness excused.)

3 JUDGE THOMPSON: Witness Lichtenberg. Now,

4 as far as I can tell, everything we had heard from

5 Mr. Collins had to do with what language might or might

6 not be. Is that right? Did I miss something? Were there

7 some facts there that I missed?

8 MR. LANE: I'm sorry. Your Honor, would

9 you ask that again?

10 JUDGE THOMPSON: Everything that I thought

11 that I heard with respect to the cross and then the

12 redirect and what have you with Mr. Collins seemed to be

13 based on whether language might or might not be construed

14 to meet certain circumstances, right? I mean, was there a

15 factual dispute or a factual predicate that would help

16 guide the arbitration decision there?

17 MR. LANE: I hope so, but if not --

18 JUDGE THOMPSON: I'll pour over the

19 testimony then on my own and find it.

20 MR. MORRIS: Just one thing.

21 JUDGE THOMPSON: Have you been sworn,

22 ma'am?

23 MS. LICHTENBERG: No, I have not.

24 (Witness sworn.)

25 JUDGE THOMPSON: Thank you. Please take

1 your seat, state your name for the reporter and spell your
2 last name.

3 MS. LICHTENBERG: Sherry Lichtenberg,
4 L-i-c-h-t, as in Tom, e-n-b, as in boy, e-r-g.

5 JUDGE THOMPSON: Mr. Morris?

6 MR. MORRIS: Your Honor, I just have one
7 note. There were two exhibits that were attached
8 inadvertently to Don Price's direct testimony. They were
9 Price Exhibits 5 and 6 which should have been attached to
10 Ms. Lichtenberg's. Counsel for SBC knows that. We told
11 them.

12 JUDGE THOMPSON: You can just refer to them
13 as Price Exhibits 5 and 6, since that's how they were in
14 the record, right?

15 MR. MORRIS: Yes, but I told them they were
16 filed under.

17 JUDGE THOMPSON: Okay. Very good. Thank
18 you.

19 Cross-examination, Mr. Bub?

20 MR. BUB: Thank you, your Honor.

21 JUDGE THOMPSON: Facts, lots of facts.

22 MR. BUB: We'll have some for you.

23 JUDGE THOMPSON: Make them unmistakable.

24 MR. BUB: Your Honor, could we go off the
25 record for a minute?

1 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)
2 JUDGE THOMPSON: Fire away, Mr. Bub.
3 MR. BUB: Thank you, your Honor.
4 SHERRY LICHTENBERG testified as follows:
5 CROSS-EXAMINATION BY MR. BUB:
6 Q. My name is Leo Bub, and I'm an SBC
7 attorney. And I'd like to ask you some questions in the
8 line splitting area, and I think for reference this is
9 your line splitting Issue No. 5, and it begins on page 8
10 of your direct testimony.
11 A. Yes, sir.
12 Q. Did you have a chance to look at SBC
13 witness Carol Chapman's rebuttal testimony?
14 A. Yes, I did.
15 Q. In that you saw that she had a diagram of
16 SBC's proposal and MCI's proposal, and I brought copies of
17 those.
18 A. Oh, that would be very helpful. I have our
19 proposal, and I read Ms. Chapman's. Thank you.
20 MR. BUB: Judge, I don't think we need to
21 get this marked, because it's already in testimony, but I
22 have extra copies if that would be helpful.
23 JUDGE THOMPSON: This is testimony that's
24 already been marked?
25 MR. BUB: Already been marked, filed and

1 admitted, but as far as, like, following us in our
2 discussion along the diagrams, I thought some might want
3 copies.

4 JUDGE THOMPSON: That's very helpful, but I
5 don't think we need to mark it.

6 MR. BUB: I don't think we need to mark it
7 either.

8 JUDGE THOMPSON: With respect to the line
9 splitting DPLs, do you know which one we're on?

10 MR. BUB: 5.

11 JUDGE THOMPSON: Very good. Thank you.

12 BY MR. BUB:

13 Q. Ms. Lichtenberg, you do recognize these
14 from Ms. Chapman's testimony, do you not?

15 A. Yes, I do.

16 Q. And why don't we just do a little bit of
17 background on line splitting so we all know we're talking
18 about the same thing. I don't think we have any dispute
19 about this. What the purpose of line splitting is is to
20 split the voice from the data, and that occurs in the --
21 in the data CLEC's collocation cage; is that correct?

22 A. Yes. It's to separate the high frequency
23 portion from the low frequency portion of the loop, and we
24 refer to it because we're talking about a CLEC-owned
25 switch as loop splitting to differentiate it from using

1 the SBC switch.

2 Q. As far as the terminology there, there's
3 really no dispute? You call it one thing, we call it
4 another?

5 A. I believe you also call it loop splitting
6 or -- but we're in agreement what we're discussing.

7 JUDGE THOMPSON: Do you have another copy
8 of that?

9 MR. BUB: Yes.

10 BY MR. BUB:

11 Q. And that splitting occurs in the data
12 CLEC's collocation cage; is that correct?

13 A. That is correct. There is a splitter
14 deployed there that is able to separate the signals.

15 Q. And what's in dispute here is how to get
16 the voice from the data CLEC's collocation cage to the
17 voice CLEC's collocation cage; is that correct?

18 A. In a sense, I think what's really in
19 dispute here is, since the voice CLEC is providing voice
20 and the data CLEC is going to support that offering, is
21 how we will connect -- allow that customer to receive
22 service from those two entities. Both entities start out
23 connected at SBC's main distribution frame.

24 Q. And if I could stop you right there, just
25 so everybody can follow along with what we're talking

1 about, in the bottom right-hand corner it says two-wire
2 xDSL loop. That's the loop that's coming in from the
3 customer's premise, correct?

4 A. That is correct in the drawing that you are
5 showing.

6 Q. And that goes to a rather thick line that's
7 indicated as SBC Missouri's MDF, and that stands for main
8 distribution frame?

9 A. That is correct.

10 Q. And the way that --

11 A. In the SBC depiction. There is also an MCI
12 depiction.

13 Q. We'll do the MCI one later. Now, the xDSL
14 loop comes in from the main distribution frame where it's
15 actually cross connected there, that's where the two-wire
16 xDSL line is?

17 A. Yes, but what's missing here is that this
18 customer started out, has in fact voice service, that is
19 either being provided off SBC's switch or is being
20 provided from an ILEC switch. So there is a connection
21 back to the switch.

22 Q. Okay. But --

23 A. And that's shown in the MCI diagram.

24 Q. And what we're trying to do here is split
25 the voice, get that to the voice CLEC's collocation?

1 A. Yes, but I'm only suggesting that the
2 picture here doesn't show that the customer has voice, and
3 I guess you're not offering naked DSL yet.

4 Q. No, we're not. What this shows is line
5 splitting. If I understand, that's when one CLEC provides
6 the voice, the other CLEC provides the data; is that
7 correct?

8 A. That is correct.

9 Q. And that's what our diagram page 16 of
10 Ms. Chapman's rebuttal depicts, correct?

11 A. Yes, and the depiction that you've put in
12 place.

13 Q. Let's just say --

14 JUDGE THOMPSON: The one you're referring
15 to is the one on page 15?

16 THE WITNESS: The one that I am referring
17 to would be the one in my testimony. I think it's a bit
18 easier to look at.

19 JUDGE THOMPSON: What page is that on?

20 THE WITNESS: That would be the attachment
21 DGP-5. That was actually Mr. Price's.

22 JUDGE THOMPSON: So it's attached to
23 Mr. Price's testimony?

24 THE WITNESS: That's correct. I think if
25 your Honor would like it, I have two copies.

1 MR. BUB: Your Honor, I think it's also
2 attached to her rebuttal testimony.

3 JUDGE THOMPSON: I just found it
4 electronically. Did you actually have a paper copy?

5 THE WITNESS: Yes, I do.

6 JUDGE THOMPSON: I'm a firm believer in
7 paper.

8 THE WITNESS: This is my copy. I will
9 probably have to ask my attorney for another one, but let
10 me give you this.

11 JUDGE THOMPSON: Do you have another copy
12 of this to give to her so I can have one? I appreciate
13 it. I just don't want to leave you without one.

14 MR. MARK JOHNSON: Mr. Arbitrator, I'm
15 sorry to interrupt. Mr. Lane just told me that he has no
16 questions for Mr. LeDoux.

17 JUDGE THOMPSON: No one has questions for
18 LeDoux?

19 MR. MARK JOHNSON: If you don't have
20 questions for him, could he be excused?

21 JUDGE THOMPSON: Absolutely. We stop in
22 our tracks to excuse people.

23 MR. LEDOUX: Thank you, your Honor.

24 JUDGE THOMPSON: Let Mr. LeDoux go home.
25 Good-bye. Have a nice trip.

1 Now, can I keep this copy?

2 THE WITNESS: Why don't you keep that copy

3 and I will use the other attachment from my testimony,

4 because they're the same.

5 JUDGE THOMPSON: Very good. That will help

6 me to see what's going on. Sorry to interrupt.

7 BY MR. BUB:

8 Q. Let's go back to the SBC proposal, and that

9 was page 16 of Ms. Chapman's rebuttal?

10 A. That is correct.

11 JUDGE THOMPSON: I'm going to give you

12 credit against your time for that.

13 MR. BUB: Thank you, your Honor.

14 BY MR. BUB:

15 Q. So we've established that the loop comes in

16 the main distribution frame cross connected to a facility

17 that goes to the data CLEC's collocation; is that correct?

18 A. In your proposal, yes.

19 Q. And then once it gets to the data CLEC's

20 collocation cage, our proposal -- and this is the part

21 that's in dispute -- we propose to have a cable that would

22 go from one CLEC's collocation spot, the data CLEC's

23 collocation to the voice CLEC's collocation, and that one

24 cable that we propose to get the voice to the voice CLEC?

25 A. Yes, you propose to --

1 Q. Yes is fine.

2 A. -- in your tariff offering to provide a
3 very large cable that gets cabled between those
4 facilities.

5 Q. Okay.

6 A. And they -- composed of a number of loops,
7 a number of individual DS0s, so it would all be deployed
8 in a big fashion, if you will.

9 Q. You reference a price of \$1,404.07 on
10 page 12?

11 A. Yes.

12 Q. That's the one you were talking about from
13 our tariff?

14 A. That is correct.

15 Q. And were you --

16 A. And it would, of course, have to be
17 pre-built and it would only address that one data CLEC or
18 allow only one voice CLEC to go to a data CLEC.

19 Q. And what you're talking about there is the
20 quote you have from the 1,404, that's a fiber cable
21 consists of 12 fibers; is that correct?

22 A. That is correct.

23 Q. The other number you have there, 433.86,
24 that one also from our tariff is for a coax cable and
25 that's one DS3, is it not?

1 A. Yes, that's correct. It is my
2 understanding in speaking with SBC's people that you need
3 to have a large cable, that SBC has no offering that would
4 allow us to do it on a customer-by-customer basis, which
5 of course is the reason for MCI's proposal.

6 Q. Let me show you the next page. This is
7 Ms. Chapman's depiction of the MCI proposal. If we could
8 start out by pointing out some of the things that are
9 common between the two. In this depiction, the two-wire
10 xDSL loop is still coming in, still being tied down at the
11 main distribution frame; is that correct?

12 A. That is correct.

13 Q. And let's also do a couple things as well.
14 You had a couple other quotes in your testimony at page 12
15 that was for the UNE loop at 26.07?

16 A. That is correct.

17 Q. That's the two-wire xDSL loop?

18 A. Correct.

19 Q. And then you also had a 19.96 charge at
20 line 16 for a two-wire loop cross connect without testing?

21 A. That's correct.

22 Q. And that's the cross connect that we're
23 discussing right here; is that correct?

24 A. Yes. The cross connect is a simple jumper
25 wire that goes between the CFA, the channel facility,

1 provided by the voice CLEC to the channel facility
2 provided by the data CLEC. It's an everyday jumper that's
3 used whenever unbundled loop service is provided.

4 Q. And that's in both diagrams; is that right?

5 A. It appears to be, yes.

6 Q. And so from a comparison, that's a wash;
7 would you agree with that?

8 A. From a comparison, both diagrams require
9 jumpers, yes.

10 Q. And a loop?

11 A. And a loop.

12 Q. Where we differ is how we get the voice
13 from the data CLEC's collocation cage to the voice CLEC's
14 collocation cage; is that correct?

15 A. Yes, and unfortunately, it's a very
16 significant difference.

17 Q. And in your particular proposal?

18 A. You would have a facility going from that
19 main distribution frame to the data CLEC's collocation
20 cage, right?

21 A. That is correct.

22 Q. And at that spot you'd need -- and that's
23 where the splitting would occur; is that correct?

24 A. That's correct.

25 Q. So in that collocation, the data would go

1 off into the cloud, and then you would take the voice, you
2 need to get that over to the voice CLEC's collocation
3 cage?

4 A. Yes, and that would be accomplished by a
5 very simple jumper connection between those two CFAs on
6 the frame as is done in Verizon and in Qwest.

7 Q. If you could just answer yes or no, it
8 would really make this proceeding a lot quicker. We're
9 trying to limit time. I'm trying to give you very narrow
10 questions, so if you could answer yes or no, I'd
11 appreciate that.

12 A. I'll attempt to.

13 Q. Thank you.

14 JUDGE THOMPSON: Really the explanation
15 that you might want to give should be elicited by your
16 attorney on redirect.

17 THE WITNESS: Okay.

18 BY MR. BUB:

19 Q. And you're talking about a cross connect.
20 Cross connect takes one cable to another cable; is that
21 correct?

22 A. That's correct. It actually -- it takes a
23 channel, an individual channel for that customer from one
24 to the next.

25 Q. And if you look at SBC's diagram

1 compared -- or SBC's proposal compared to the MCI
2 proposal, what SBC has in its shows one cable right here
3 (indicating). Do you see that?

4 A. Yes, but the two cables aren't comparable.

5 Q. That's what I want to explore right now.
6 In SBC's example, you have -- that was a 100 pair copper
7 cable that would be able to serve 100 DSL customers; is
8 that correct?

9 A. I know that you said it's a 100 pair copper
10 cable, but in the discussions we've had with SBC, we were
11 told that only a fiber facility could be deployed.

12 Q. Are you not mistaking fiber facility
13 between the two cables? What I'm talking about is the
14 facility between the main distribution frame and the data
15 CLEC collocation.

16 A. Yes, that -- you are correct, that is
17 a 100 pair copper cable that's already in place.

18 Q. Okay. Let's just talk about that. In this
19 case, that 100 pair cable could carry 100 DSL customers'
20 service; is that correct?

21 A. That is correct.

22 Q. In the MCI depiction, in order to achieve
23 that same 100 DSL services, do you not need two of those
24 100 pair copper cables?

25 A. I don't believe so.

1 Q. Okay. Let's look at that. What you're
2 doing is you're taking the loop into the data CLEC
3 collocation spot and out, right?

4 A. I'm not sure that I understand your
5 explanation or Ms. Chapman's.

6 Q. I'm asking -- I'm not explaining. I'm
7 asking you questions. So let's -- instead of having two
8 cables there in the MCI proposal, if it is only one, would
9 you agree with me that that one cable would only be able
10 to handle 50 DSL services, because what you're doing is
11 you're taking a loop into the collocation spot, which
12 would consume 50 of the 100 pair, and back out, which
13 would consume another 50?

14 A. MCI is not requesting an additional
15 cable --

16 Q. Okay. That's not my question.

17 A. -- to be put in place.

18 I don't understand your question.

19 Q. My question is focused on the capacity of
20 this one cable. If there was only one cable there, that
21 would only be -- under your proposal for getting the voice
22 from the collocation, from the DLEC or the data
23 collocation space to the voice CLEC collocation space. If
24 you only had one cable there, it would only be able to
25 serve 50 DSL customers, would it not?

1 A. I'm not sure I understand, and therefore, I
2 can't answer. If I could try, what MCI is saying is that
3 there is already a channel facility assignment on the main
4 distribution frame for the data CLEC. There is another
5 channel facility assignment on the main distribution frame
6 for the voice CLEC. We're asking that those two
7 facilities be connected by a jumper cable and that that
8 would provide the service.

9 So I am unsure from Ms. Chapman's testimony
10 where this additional cable is coming from.

11 Q. Well, that really wasn't answering my
12 question. My question is focused on the capacity, your
13 understanding of the capacity of that one cable. You
14 would agree with me that that cable is a 100 copper pair?

15 A. That is correct.

16 Q. And if you were to send a DSL signal from
17 you to me, we could have 100 services, correct?

18 A. Correct.

19 Q. And if we wanted to send, say, using that
20 one cable that goes from you to me, instead of just going
21 one way, it would have to go from me to you and then back,
22 so what would happen would be 50 copper pairs would handle
23 50 DSL services going from me to you, and if you'd want to
24 send it back to me, that would require another 50; is that
25 correct?

1 A. I'm sorry. You have me very confused, but
2 why don't I accept it subject to going back and looking at
3 the diagram some more?

4 Q. Okay. Well, if it's easy, let's just break
5 it down. Let's just say it's one copper wire. Would you
6 agree with me to get one copper wire, one DSL service from
7 the main distribution frame to the data CLEC's collocation
8 spot, you need one wire?

9 A. That is correct, where it is split.

10 Q. Stop right there. To get it back, you
11 can't use that same wire. You need another wire, do you
12 not?

13 A. I'm not sure why.

14 Q. Well, because when the DSL loop comes in at
15 that point, it's carrying both voice and data.

16 A. And it's split in the splitter. It's
17 split.

18 Q. The splitter?

19 A. And jumpered together on the frame. So I
20 don't understand why I need a second one.

21 Q. The splitter doesn't occur at the frame.
22 Splitter occurs at the collocation spot, does it not --

23 A. Yes.

24 Q. -- when it comes in?

25 This is one wire. When it comes in, it's

1 carrying both voice and data; is that correct? Look at
2 the diagram.

3 JUDGE THOMPSON: In other words,
4 pre-splitter.

5 THE WITNESS: I'm looking at the diagram,
6 but where it's coming into is actually to the main
7 distribution frame, and from the main distribution frame,
8 it's being carried up through the central office to the --
9 to the splitter. And what is being split is the frequency
10 of that specific loop. So I'm not sure why I would need
11 two loops.

12 BY MR. BUB:

13 Q. Okay. Stop. You don't need two loops.
14 You only need one loop, but you're going to need two
15 cables, because once you go from the main distribution
16 frame, if you can follow on the picture with my pen, main
17 distribution frame, to the collocation cage to the
18 splitter right here, that's one wire, right? And at this
19 point, this one wire is carrying both data and voice,
20 right (indicating)?

21 A. Yes.

22 Q. It's split. In your MCI proposal you're
23 going to need to send the voice over to the voice
24 collocation cage, and you do that -- you can't do that on
25 that same cable. You need another one, so the voice now,

1 the data does off this way. The voice then comes back
2 down to the distribution frame along this wire here, back
3 and then up to the voice collocation cage (indicating).
4 That's the reason for the two wires there. Do you agree
5 with me now? Do you understand it?

6 A. I think I understand what you're saying,
7 and that if I'm -- if I may, if I'm cross connecting here
8 by taking these two together, are you suggesting that I'm
9 going to need one voice pair, one data pair to come
10 across?

11 Q. This is voice and data.

12 A. Right.

13 Q. We're in agreement there?

14 A. Yes.

15 Q. It's split?

16 A. Yes.

17 Q. Data goes off that way, voice has to come
18 back. Voice cannot travel back that same cable because
19 it's -- in our example it's just one wire. Data and voice
20 are going this way (indicating) into the data CLEC's cage.
21 You need another wire to get the voice, because it's split
22 there?

23 A. I see what you're saying and I need to look
24 at MCI's actual proposal, because I think you may be
25 mischaracterizing it accidentally.

1 JUDGE THOMPSON: We've come to the point
2 where we need a break for the reporter, so we'll take ten
3 minutes and you can review whatever you need to review
4 during that period. We'll go off the record for ten
5 minutes.

6 (A BREAK WAS TAKEN.)

7 BY MR. BUB:

8 Q. Ms. Lichtenberg, if we can return to this
9 diagram, I'm actually going to walk up to the white board.

10 A. I wish you would.

11 Q. It might be easier for us. I'm going to
12 try to simplify it as much as we can. This is the DSL
13 loop, one wire, one copper wire, cross connected at the
14 main distribution frame to another wire that goes to the
15 data CLEC's collocation. Simple example would be one wire
16 that takes both data and voice to the data CLEC's
17 collocation space, where it goes into the splitter, right?

18 A. That's correct.

19 Q. The data goes off to the Internet or
20 wherever it's going to go, and then the voice has to get
21 over to the voice CLEC's collocation cage. So they have
22 to send the voice back, and that will require another
23 copper wire to get back to the main distribution frame.
24 Are we in agreement so far?

25 A. Yes, we are in agreement.

1 Q. And is the wire -- it's cross connected,
2 that cable that we just talked about from the data CLEC's
3 collocation cage, that's cross connected at the main
4 distribution frame over to another wire that goes up to
5 the voice CLEC's collocation cage?

6 A. Yes, and let's use the term wire.

7 Q. Okay.

8 A. Because when you say cable, I think of a
9 fiber facility, for instance, with multiple pairs in it,
10 and we are talking about one at a time.

11 Q. And in this particular example with real
12 simple, we're going to talk one at a time.

13 A. That is correct. So that I have a wire, I
14 jumper it, and then I jumper them together.

15 Q. Well, okay. Actually --

16 A. Wire into the -- and then back and then
17 it's -- that one coming back out, it's just a wire
18 jumpered.

19 Q. And then a wire back into the one?

20 A. And those are generally pre-defined because
21 the data CLEC has already provisioned his CFAs, as has the
22 voice CLEC.

23 Q. Would you agree with me that once that --
24 so you provision one DSL circuit, those two wires are now
25 exhausted. If you want to serve the next customer, you're

1 going to have to put in another two wires to serve that
2 next DSL customer?

3 A. I would agree with you that I would need to
4 have another wire.

5 Q. Another two wires?

6 A. Another two wires, but I would submit to
7 you that since this data CLEC and this voice CLEC want to
8 serve multiple customers, they've already provisioned all
9 of that some time ago.

10 Q. And if they haven't, they're going to need
11 to buy another two wires for each customer?

12 A. And in MCI's -- yes, that is correct.
13 However, in MCI's business plan, we have those wires in
14 place. They were put in place in order to provide the
15 CFAs that we need in order to serve our customers, as did
16 the data CLEC.

17 Q. I'd like to go to your diagram, if we
18 could, for a minute. You-all can tell why I'm a lawyer
19 and not an engineer. This is your depiction from your
20 testimony --

21 A. That is correct.

22 Q. -- of the same arrangements we were talking
23 about. Here's the customer out on the left with the
24 computer and a telephone, and it travels over one wire,
25 and that's the xDSL loop that we were talking about?

1 A. That is correct.

2 Q. To the main distribution frame. You have

3 the one wire that is at this point coming from the frame

4 to the data CLEC's collocation cage. It's carrying both

5 voice and data; is that right?

6 A. Actually, this is the voice CLEC's cage,

7 it's the MCI cage, and this is how we provide the UNE loop

8 back to our Class 5 switch.

9 Q. Okay.

10 A. And --

11 Q. So at this point it's correct that this one

12 wire between the MDF and the MCI cage has both voice and

13 data?

14 A. That is correct.

15 Q. So now you in your example send --

16 A. The voice to the --

17 Q. To the Class 5, and now you need to get the

18 data to the data CLEC. You're going to need another wire

19 in your example, are you not?

20 A. I am going to need a jumper to connect here

21 to the CFA that was established by the data CLEC who has

22 the splitter in his cage.

23 Q. A jumper connects two cables, right?

24 A. The jumper connects two of the physical

25 appearances on the main distribution frame, which we call

1 CFA, and it doesn't really connect cables. It connects
2 the individual circuits in each of those cages.

3 Q. So what I'm suggesting is we're missing one
4 wire in your example. In this example you have going from
5 the main distribution frame to your collocation cage one
6 wire that carries both voice and data.

7 A. Correct.

8 Q. We agree that that's one -- requires one
9 wire to serve one customer, and to get in this case data
10 back to the data CLEC, you're going to need another wire,
11 are you not, to go from your cage to the main distribution
12 frame where you would then jumper to your wire that's
13 shown down here (indicating)? You can't run a jumper from
14 a cage?

15 A. I'm -- a jumper from here to here.

16 Q. This one's already in use carrying both
17 data and voice, is it not?

18 A. And I'm not splitting it until I bring it
19 back. My splitter is down here in the data cage, and what
20 I'm doing is taking my voice loop, I am connecting it to
21 the loop that has the line, the wire, that has been put in
22 place to connect to the DSLAM, and I'm putting that here.
23 So I need two jumper wires, and this voice loop is being
24 connected over here to where it is going through the
25 splitter and out to the cloud. And this is the

1 configuration MCI is currently using in two other places.

2 JUDGE THOMPSON: And it works there, right?

3 THE WITNESS: Yes, it does.

4 JUDGE THOMPSON: Okay.

5 THE WITNESS: And as part of my testimony,

6 we provided the documentation from Verizon and the Verizon

7 diagram, which is surprisingly, or perhaps not

8 surprisingly, the same as ours.

9 JUDGE THOMPSON: Okay.

10 THE WITNESS: There is also an application

11 being done the same way in Qwest, and we have working

12 customers there.

13 JUDGE THOMPSON: Now, the DPL on this point

14 is somewhat vague. Talks about terms and conditions.

15 THE WITNESS: It talks about terms and

16 conditions. It talks about how we want to connect at the

17 main distribution frame, because we want to be able to

18 make a connection that is one to many, so that if I want

19 to go to data CLEC 1 or if I want to use data CLEC 2, I

20 don't have to take these big cables between here and a

21 second big cable there. And we have collaborated on this,

22 not successfully unfortunately.

23 BY MR. BUB:

24 Q. So at this point, you're taking from your

25 switch both voice and data?

1 A. That is correct.

2 Q. And then data and voice is still --

3 A. Right. It's important to recognize that

4 the voice and data are like -- are like water in a pipe,

5 and there is a sieve at the end of the pipe that's the

6 splitter, and the sieve is sieving out the data and by

7 virtue of this DSLAM is connecting it back.

8 JUDGE THOMPSON: Okay. So you don't have

9 to take out the data where you're pulling off the voice?

10 THE WITNESS: That is correct.

11 JUDGE THOMPSON: Having it on there doesn't

12 interfere?

13 THE WITNESS: Doesn't do anything. Today

14 if you do not have DSL, you still have the capability of

15 having DSL. You just haven't split it yet.

16 JUDGE THOMPSON: Okay.

17 BY MR. BUB:

18 Q. So in your case your two cross connects

19 that you're talking about are here and then again here

20 (indicating)?

21 A. That's right. And essentially what we're

22 saying in our DPL is that it is better to be able to go

23 one to many, because perhaps there are five voice CLECs

24 that all intend to buy data services from one data CLEC.

25 And instead of running cables all every which way in the

1 central office, we would be able to do it at the main
2 distribution frame or in an intermediate distribution
3 frame, which is often where the CFAs are placed, so that
4 we can connect just like we connect to anything else.

5 JUDGE THOMPSON: Assuming that works the
6 way she says it does, SBC have a problem with it?

7 MR. BUB: Your Honor, my witness on this is
8 not here. That was Ms. Chapman.

9 JUDGE THOMPSON: So are you going to, like,
10 report back to her or --

11 MR. BUB: Well, I appreciate your
12 explanation and comparison of our two.

13 THE WITNESS: Thank you.

14 MR. BUB: I think those are all the
15 questions we have, your Honor. Thank you.

16 JUDGE THOMPSON: Very good. Thank you.

17 THE WITNESS: Thank you.

18 MR. BUB: Thank you, Ms. Lichtenberg.

19 JUDGE THOMPSON: I think I've already asked
20 you my questions. Ms. Dietrich?

21 MS. DIETRICH: No questions.

22 JUDGE THOMPSON: Mr. Johnson?

23 MR. MICK JOHNSON: I'm going to pass.

24 JUDGE THOMPSON: Mr. Scheperle?

25 MR. SCHEPERLE: No questions.

1 JUDGE THOMPSON: Mr. McKinnie?

2 MR. McKINNIE: No, thank you.

3 JUDGE THOMPSON: I guess you get to recross
4 because I asked questions. Leo, you got any recross?

5 MR. BUB: I do not.

6 JUDGE THOMPSON: Very good. Redirect,
7 Mr. Morris.

8 MR. MORRIS: Just briefly.

9 REDIRECT EXAMINATION BY MR. MORRIS:

10 Q. Mrs. Lichtenberg, you refer to a CFA?

11 A. Yes.

12 Q. For the record, what is a CFA?

13 A. It's called a channel facility assignment,
14 and when you collocate as both the data CLEC has and the
15 voice CLEC has, you essentially bring your channels to the
16 main distribution frame where they're identified, and
17 that's how we cross connect for a plain old voice loop, or
18 if you were doing line splitting with an SBC-provided loop
19 it all happens at the main distribution frame.

20 Q. And in this diagram, the MCI diagram, as a
21 general matter, are CLECs interconnected to the main
22 distribution frame?

23 A. Yes. You wouldn't be able to sell a UNE
24 loop if you were not connected to the main distribution
25 frame because that's where your line from home comes in to

1 the central office.

2 MR. MORRIS: Thank you. I believe that's

3 all the questions I have, your Honor.

4 JUDGE THOMPSON: Great. One minute.

5 MR. MORRIS: Is that the record?

6 JUDGE THOMPSON: That's awful darn good, is

7 what that is.

8 MR. MORRIS: Okay.

9 JUDGE THOMPSON: Thank you,

10 Ms. Lichtenberg. You are excused.

11 (Witness excused.)

12 JUDGE THOMPSON: Witness Rhinehart.

13 MR. LANE: Your Honor, first if I may?

14 JUDGE THOMPSON: Yes, sir.

15 MR. LANE: Ms. Dietrich had asked a

16 question before of Ms. Quate about what reference that she

17 was making to in the Navigator contract.

18 JUDGE THOMPSON: I remember that.

19 MR. LANE: I advised Mr. Johnson that the

20 portions of the agreement that she was referring to that

21 are not disputed are 14.4 of the general terms and

22 conditions, including 14.4.1 and 14.4.2.

23 JUDGE THOMPSON: Everybody got that that

24 needs it.

25 MR. MARK JOHNSON: I do.

1 JUDGE THOMPSON: Okay. Have you been
2 sworn?

3 MR. RHINEHART: No, sir.

4 (Witness sworn.)

5 JUDGE THOMPSON: Thank you. Please take
6 your seat, state your name for the reporter and spell your
7 last name, if you would.

8 MR. RHINEHART: Daniel P. Rhinehart,
9 R-h-i-n-e-h-a-r-t.

10 MS. BOURIANOFF: And, your Honor, I tender
11 Mr. Rhinehart for cross-examination.

12 JUDGE THOMPSON: Thank you. SBC?

13 MR. LANE: Thank you, your Honor. I would
14 like to get an exhibit marked.

15 JUDGE THOMPSON: Very well. This will be
16 No. 210. How do you want to describe this, Mr. Lane?

17 MR. LANE: Your Honor, this is the AT&T
18 proposed pricing for UNEs in this case.

19 (EXHIBIT NO. 210 WAS MARKED FOR
20 IDENTIFICATION BY THE REPORTER.)

21 MR. LANE: I'm sorry. What exhibit number
22 was that, your Honor?

23 JUDGE THOMPSON: It's 210.

24 DANIEL RHINEHART testified as follows:

25 CROSS-EXAMINATION BY MR. LANE:

1 Q. Mr. Rhinehart, you have before you a copy
2 of an exhibit identified as 210. Would you agree with me
3 that that's the copy of proposed pricing for UNEs for AT&T
4 in which AT&T has depicted SBC's proposed prices and
5 AT&T's proposed prices?

6 A. Mr. Lane, I haven't had a chance to check
7 every little thing on it, but it does appear to be the
8 same representation of prices that I am familiar with.

9 Q. And that's what AT&T proposed in its
10 response to the arbitration petition, right?

11 A. Yes, sir, with the exception that what you
12 depicted here, Mr. Lane, is only the UNE prices and
13 doesn't include the temporary rider pricing.

14 Q. And I do have that as well if we need to
15 get into it. I'm not sure that we will, and what
16 Exhibit 210 indicates in the shaded areas indicates areas
17 where there's disagreements between AT&T and SBC, right?

18 A. Yes, it does.

19 Q. I'm going to ask a few questions about
20 certain lines in here. The first is on lines 22 through
21 25 of the exhibit. That relates to DS3 loop prices,
22 correct?

23 A. Yes, it does.

24 Q. And in general, AT&T has represented in its
25 DSL that it's proposing to utilize rates for those --

1 rates that it proposes are from existing interconnection
2 agreements, but this one's different, right?

3 A. This is in our DPL, Mr. Lane. And yes, the
4 rates that are shown here are from -- across the board are
5 from the existing AT&T/SBC interconnection agreement. The
6 shaded areas show where there is some disagreement. In
7 particular -- on these particular on these lines where
8 we're looking at DS3 loop, there is no current pricing
9 established in the M2A or AT&T's equivalent agreement. We
10 chose to select a cost-based price as adopted by the Texas
11 Commission and in the current AT&T Texas agreement.

12 Q. All right. And that's what is reflected
13 over in your comment column on the right on lines 22
14 through 25, these are Texas rates and charges, right?

15 A. Yes, sir.

16 Q. And it's fair to say that in your testimony
17 you have not presented any cost study that supports these
18 rates, right?

19 A. It is fair that I have not presented a cost
20 study. Cost studies were not a part of this case, and
21 it's our understanding and belief that the numbers
22 represented in Texas are cost based.

23 Q. All right. This Commission hasn't had the
24 opportunity to review the cost study which allegedly or
25 purportedly is the basis for the rates that are listed

1 here, right?

2 A. That's correct.

3 Q. And AT&T certainly had the ability to

4 produce in this case whatever cost studies it chose to,

5 did it not?

6 A. I wouldn't necessarily agree, Mr. Lane. I

7 think the scope of the case was targeted and wasn't

8 designed as a cost case.

9 Q. Well, it's involving the replacement

10 agreement for the M2A, right?

11 A. Yes.

12 Q. And we're dealing with prices in it, are we

13 not?

14 A. Yes, we are, Mr. Lane.

15 Q. And to the extent you're disputing prices,

16 this was your opportunity to come forward with cost

17 studies, correct?

18 A. It was an -- I could take your statement as

19 true that it would be an opportunity to present cost

20 studies.

21 Q. And there's no other proceeding scheduled

22 to do rates for the successor agreement to the M2A, is

23 there?

24 A. I'm sorry?

25 Q. There's no other proceeding or phase

1 scheduled in which we're to look at rates from the -- for
2 this successor agreement to the M2A, is there?

3 A. I'm not aware of any other phase or
4 proceeding set to establish that. I'd also note on these
5 same lines that SBC is proposing rates, and they also did
6 not present any support for these rates.

7 Q. And it's fair to say, Mr. Rhinehart, that
8 today the M2A doesn't contain any rates for DS3 loops,
9 right?

10 A. That's correct.

11 Q. And it's also fair to say that today AT&T
12 doesn't order any DS3 loops in Missouri, right?

13 A. I saw that statement by Mr. Silver in his
14 rebuttal testimony, and so I will take it at face value
15 that it's probably true. I understand that Mr. Silver's
16 changed SBC's proposal on this -- on these prices as well
17 to suggest that the pricing should be ICB instead of the
18 numbers presented in this table.

19 Q. It's fair to say that the current
20 interconnection agreement with AT&T contains a provision
21 by which AT&T can request a new UNE that it had not
22 heretofore ordered, right?

23 A. I'm not familiar with all the terms and
24 conditions of the existing ICA, but I would accept that
25 that was a logical provision that could be there.

1 Q. You're familiar generally with the BFR or
2 bona fide request process, are you not?

3 A. I know of it, yes.

4 Q. And that's a process that is in the current
5 interconnection agreement that would permit the CLEC like
6 AT&T that wants a new UNE that does not yet have a price
7 set for it to request it and go through the process to get
8 one established, right?

9 A. I know the BFR process can be used to
10 establish prices for a variety of things.

11 Q. Okay. And it could -- that BFR process is
12 also to be carried over by agreement with SBC Missouri and
13 AT&T in the new interconnection agreement, right?

14 A. Yes, sir.

15 Q. And that could be used if AT&T decides
16 sometime in the future that it wants to acquire DS3 loops
17 from SBC Missouri, right?

18 A. I don't see any reason why it couldn't.

19 Q. Okay. And would you agree with me that
20 that's the most appropriate process to utilize in this
21 case, given that neither AT&T nor SBC has proposed prices
22 that are supported by a cost study?

23 A. Not necessarily. SBC in its original base
24 five-state operating area had very similar network
25 architectures, similar costing and pricing methodologies,

1 and I don't believe it's unreasonable to adopt the prices
2 proposed by AT&T here as they have been reviewed by a
3 original five-state SBC or SWBT commission.

4 Q. There's a five-state SWBT commission?

5 A. In the original Southwestern Bell Telephone
6 five-state footprint, a commission within that five-state
7 footprint, i.e., the Texas Commission, has reviewed the
8 pricing for DS3 loops.

9 Q. That was based on Texas costs in that
10 particular proceeding, right?

11 A. Yes.

12 Q. And all of the prices for unbundled network
13 elements are set on a state-by-state basis and differ
14 state to state, do they not?

15 A. There are a number of them that vary from
16 state to state. Different states have had different
17 determinations as to rate of return and depreciation and
18 so on, though a lot of the rates are fairly representative
19 across the state, states.

20 Q. And loop rates differ significantly
21 sometimes from state to state as set by the state
22 commissions, right?

23 A. They have, yes.

24 Q. Do you have any problem with utilizing the
25 BFR process if AT&T decides it wants a DS3 loop sometime

1 in the future?

2 A. I don't personally have a problem with it.

3 The company would prefer to have rates established in the

4 interconnection agreement in order to avoid any delay

5 should we decide to order those loops.

6 Q. It's pretty clearly not a critical issue

7 with AT&T since they haven't ordered any in the eight or

8 nine years that they've been operating as a CLEC in

9 Missouri, right?

10 MS. BOURIANOFF: Objection, your Honor.

11 That calls for speculation. I think it's also pejorative.

12 There are reasons that AT&T has not ordered high-capacity

13 loops that are tied up with FCC orders and restrictions on

14 being able to commingle types of traffic.

15 JUDGE THOMPSON: Could you read back the

16 question for me?

17 THE REPORTER: "Question: It's pretty

18 clearly not a critical issue with AT&T since they haven't

19 ordered any in the eight or nine years that they've been

20 operating as a CLEC in Missouri, right?"

21 JUDGE THOMPSON: I don't see that it's

22 pejorative, and I don't see that it's speculative, given

23 that this is AT&T's witness. I mean, if he does not know,

24 he can say he doesn't know. So I'm going to overrule the

25 objection. The witness may answer, if he's able.

1 THE WITNESS: And, Mr. Lane, I have no
2 firsthand knowledge of AT&T's reasoning for not ordering
3 DS3 loops.

4 BY MR. LANE:

5 Q. All right. I'm going to switch over and
6 have you talk about lines 70 through 85.

7 A. I have those.

8 Q. That issue involves xDSL loop conditioning
9 options, right?

10 A. Yes, it does.

11 Q. And it's fair to say that the prices that
12 SBC Missouri proposes are those that were established by
13 the Commission in a Sprint arbitration and subsequently
14 reaffirmed in a Covad arbitration, right?

15 A. I'm not aware of the source of that
16 particular set of rates, Mr. Lane. However, I am familiar
17 with the Commission's establishment of comparable rates in
18 Case No. TO-2001-439 and the rates that I've displayed
19 here. While the comment column says 12/23/03 letter, in
20 fact the rates that are displayed and proposed by AT&T
21 were the result of that case.

22 Q. All right. Actually, in that case,
23 Mr. Rhinehart, isn't what the Commission did was establish
24 a price that would be charged to CLECs for every xDSL loop
25 that they ordered, regardless of whether or not it

1 required conditioning, and that that price that was paid
2 on all loops would cover any conditioning that was
3 required?

4 A. The way I read the Order, Mr. Lane, it
5 looked like there were two sets of pricing ordered. One
6 was the generic one-price-on-every-loop approach, and
7 that's reflected on line 70, and the other was the
8 specific-conditioning-on-a-per-loop-basis approach, and
9 those rates are listed on lines 71 through 85, where text
10 is actually shown.

11 Q. All right. And do you have the orders with
12 you?

13 A. From 2001-439, sir?

14 Q. Yes, sir.

15 A. Yes, I do. Actually, Mr. Lane, what I have
16 is the Staff's pricing report dated the 15th of March
17 2002.

18 Q. All right. I'll take a look at yours since
19 I can't find mine. I want to see the prices that you're
20 talking about.

21 What you've shown me is a Staff pricing
22 report as opposed to a Commission Order; is that right?

23 A. It is. And I believe that Staff pricing
24 report was produced at the behest of the Commission in an
25 Order in that case. So the Staff pricing report was

1 issued subsequent to an Order of the Commission asking the
2 Commission Staff to produce these numbers.

3 Q. But, in fact, what the Commission ordered
4 in that case was a charge of \$8.41 that would be assessed
5 on every xDSL loop that was ordered, correct?

6 A. I don't know that I can agree with you,
7 Mr. Lane. I don't have a subsequent order, and my review
8 of the record in the case didn't show that there was an
9 additional order. We were also referring to an SBC letter
10 dated the end of 2003 that incorporated identical pricing
11 to the Staff report, and it was -- the pricing was
12 available either on the price \$8 and change for every line
13 ordered or the roughly \$221 per line on a line-specific
14 basis approach.

15 Q. All right. And from your perspective, is
16 that per occurrence order, per repeater, per loop, per
17 loop coil and per bridge tap?

18 A. The titling in the Staff report and in the
19 price list here is, removal of repeaters between 12,000
20 and 17,500 feet. I can't say whether that would be a --
21 it would take just a moment to review the orders, the
22 Staff report to see whether it was per repeater.

23 Q. That's all right. In any event, we would
24 need to review the actual Order of the Commission to see
25 what it actually said in that case; is that right?

1 A. Yes.

2 Q. And you're willing to modify your proposal
3 to conform with whatever the Commission actually ordered
4 in that case as opposed to a Staff pricing report?

5 A. Our intent is to conform the pricing that
6 we're offering here and recommending to be adopted to
7 effective Commission Orders.

8 Q. All right. And so to the extent the Order
9 establishes different prices than what you reflected
10 there, that's acceptable to you?

11 A. When we started this line of questioning,
12 Mr. Lane, you represented that the numbers in your column
13 in SBC's proposed pricing were from a couple of different
14 arbitrations from the one that generated the list in
15 TO-2001-439. It's AT&T's view that the pricing from the
16 2001-439 case appears to be more straightforward and
17 simple, and from that perspective it would be a preferred
18 pricing.

19 Q. I probably wasn't precise enough with my
20 question. I don't believe the prices that you have listed
21 there were those ordered by the Commission in the 439
22 case. And my question to you is, whatever the Commission
23 ordered in that case, that's what your proposal is; is
24 that right?

25 A. That would be my intent.

1 Q. On lines 87 to 91, do you see those there?

2 A. Yes, sir.

3 Q. And do you understand that the SBC Missouri

4 proposal there is for the removal of what's called

5 non-excessive bridge tap?

6 A. The titling I see is for removal of all

7 bridge tap, and so from that situation, that's the only

8 parameter I have to try to understand your question, and

9 so I would have to say yes.

10 Q. And you understand the difference between

11 excessive bridge tap and non-excessive bridge tap in terms

12 of xDSL bridge conditioning?

13 A. I can't say that I am a technical expert on

14 the provisioning of DSL. The nomenclature would appear to

15 say that we would remove every single bridge tap under

16 SBC's proposal, whereas in the pricing schedule -- or

17 pricing that I proposed is the removal of excessive bridge

18 tap.

19 Q. Okay. And that's what I was trying to get

20 to is, the lack of anything in the column for AT&T

21 proposed pricing, is that to be taken to mean that you

22 will not order the removal of all bridge tap, including

23 non-excessive bridge tap?

24 A. From an operation standpoint, Mr. Lane, I

25 have no personal knowledge. I can't say.

1 Q. And if your pricing proposal is adopted,
2 you won't be able to order the removal of non-excessive
3 bridge tap; is that a fair statement?

4 MS. BOURIANOFF: Your Honor, I'm going to
5 object. That calls for a legal conclusion. There are
6 actual terms and conditions that are disputed in the
7 general terms and conditions about what happens if there
8 is a price listed in the pricing appendix that's blank or
9 to be determined or a dash.

10 I will also stipulate that AT&T has not
11 incorporated the removal of all bridge tap appendix in its
12 proposed ICA -- successor ICA, if that speeds this along.

13 JUDGE THOMPSON: Could you read the
14 question back?

15 (THE REQUESTED TESTIMONY WAS READ BY THE
16 REPORTER.)

17 JUDGE THOMPSON: Does your stipulation take
18 care of your objection or do you want me to rule on it?

19 MS. BOURIANOFF: I'll stipulate -- if that
20 satisfies Mr. Lane, I'll stipulate that we haven't
21 incorporated removal of all bridge tap into the successor
22 ICA.

23 JUDGE THOMPSON: Are you satisfied,
24 Mr. Lane?

25 MR. LANE: I think so. Let me just

1 clarify. You're saying that AT&T won't be able to order
2 the removal of non-excessive bridge tap?

3 MS. BOURIANOFF: Without negotiating an
4 amendment to the ICA.

5 MR. LANE: Fair enough.

6 May I approach the witness, your Honor?

7 JUDGE THOMPSON: You may.

8 MR. LANE: I want to show him the Order. I
9 finally found it. It was sitting in front of me.

10 BY MR. LANE:

11 Q. I'm going to show you a copy of
12 Commission's Report and Order in Case No. TO-2001-439 that
13 was issued on February 28th of 2002, and ask if you can
14 point to any part of the Order where it adopts the prices
15 that you propose in this case?

16 A. No, I can't, Mr. Lane. I have reviewed
17 that particular decision in the past. As you note, it was
18 dated February 28th, 2002. The Commission Staff's pricing
19 report was produced in mid March, following that Order, as
20 a result of that Order.

21 Q. Okay. And you're not aware of any
22 subsequent order, I take it, in that case?

23 A. Correct.

24 Q. Okay. The next area on line 139 deals with
25 routine network modifications.

1 A. I have that.

2 Q. And the difference in the proposals are
3 that AT&T proposes a zero price and that SBC Missouri
4 proposes an ICB price, correct?

5 A. I see that difference.

6 Q. And do you have anywhere in your testimony
7 where you've presented a cost study that demonstrates that
8 the cost is zero or that it's otherwise, costs are
9 recovered in other rates already charged by SBC?

10 A. Mr. Lane, you're familiar with my
11 testimony. On page 75, we do talk about -- and I refer
12 back to UNE Issue 18, where I did have some discussion
13 about it in the testimony. There is no cost study.
14 However, I am familiar with costing and pricing cases that
15 have proceeded in this case, and pursuant to the terms of
16 the protective orders in those prior costing cases, AT&T
17 no longer has any access to nor permission to use the cost
18 studies from those previous cases.

19 So that said, based on my personal
20 knowledge of the way those cost studies were prepared and
21 my personal recollection of how those studies were
22 prepared, I affirm that it's my belief that the costs of
23 routine network modifications generally are fully covered
24 either in the recurring costs, recurring rates or the
25 nonrecurring charges.

1 Q. And it's fair to say, is it not, that the
2 Commission itself has never made such a finding, right?

3 A. As to routine network modifications, that
4 is true. However, under the definition of what routine
5 network modification is, by its very definition, your
6 Honor, the definition incorporates the same kind of
7 day-to-day activities that I know for certain were
8 incorporated into the rates.

9 Q. All right. It's fair to say that it's a
10 matter of interpretation on your part, but that the
11 Commission itself never made the finding that these
12 routine network modification costs were actually covered
13 by other rates charged by SBC Missouri?

14 A. In those very words, Mr. Lane, no, the
15 Commission has not made that finding.

16 Q. Okay. The next one that I have is on
17 Issue No. 5 involving lines 118 to 195, and in your --
18 this involves voice grade transport in certain areas,
19 right?

20 A. Yes, it does.

21 Q. And in your rebuttal testimony, you make
22 the assertion that the -- there's never been a finding of
23 non-impairment with regard to these particular elements,
24 right?

25 A. I did make that assertion, yes.

1 Q. Okay. It's fair to say that this
2 Commission nor the FCC has ever made a finding one way or
3 the other with regard to these particular unbundled
4 network elements, as to whether they are required to be
5 provided under Section 251, right?

6 A. There are a number of decisions that are
7 relative to this, Mr. Lane, so I can't say that I -- that
8 there's been an overt finding that DS0 level transport
9 must be provided. However, as part of the M2A and all of
10 the 2A agreements across the five original Southwestern
11 Bell states, DS0 level transport was offered, was
12 incorporated, and SBC's position up to this point for
13 removing, for example, DS1 and DS3 transport has been that
14 there's been a finding of non-impairment, and the FCC has
15 not made such a finding.

16 Q. And with regard to DS0 you understand that
17 it's SBC Missouri's position that there's never been a
18 finding that CLECs are impaired without access to it,
19 right?

20 A. I understand that that is SBC's position.

21 Q. And from your perspective, is it -- I'll
22 withdraw it.

23 Let me go to Issue No. 7, which involves
24 the question of whether the interconnection agreements
25 should include the UNE rider rates.

1 A. Yes, sir.

2 Q. And to set the stage, you'd agree that the
3 FCC has determined that certain items are no longer
4 unbundled network elements under Section 251(c)(3), but
5 they are subject to a transmission plan, right?

6 A. Yes, sir.

7 Q. And the transition plan is -- essentially
8 with regard to loops and transport sets out a time frame
9 which the CLECs can continue to utilize those particular
10 unbundled network elements and sets a designated price for
11 them and sets a termination date by which the CLECs can no
12 longer have those particular unbundled network elements
13 under Section 251(c)(3), right?

14 A. And your list is a little bit incomplete.
15 It also includes UNE-P and local switching.

16 Q. And with regard to those services, the
17 Commission, the FCC set a designated end period of
18 March 10th of 2006, right?

19 A. On some elements, yes, and on other
20 elements there was an additional six months.

21 Q. On dark fiber there's an additional six
22 months?

23 A. Yes, sir.

24 Q. And in this particular issue, I guess what
25 I want to make sure we're not in disagreement on, you

1 understand that the reason that SBC Missouri wants these
2 in a separate rider is to ensure that come March 11th,
3 that the -- AT&T is no longer permitted to have those
4 elements at those prices set by the transition plan,
5 right?

6 A. Mr. Lane, are you speaking of naming of the
7 elements and describing of them or the prices? Because up
8 until the filing of Mr. Silver's rebuttal testimony, it
9 was SBC's position that the prices should not be displayed
10 at all. It's my understanding by Mr. Silver's rebuttal
11 testimony that SBC is now agreeing to a display of the
12 prices as part of the pricing appendix.

13 Q. What I was trying to understand, that your
14 concern about where these prices are located is based upon
15 a concern that we not be obligated to provide those
16 services at those prices come March 11th of 2006?

17 A. I understand that that is SBC's concern.

18 Q. And my question to you is, if your proposal
19 to include these in the appendix pricing UNE is adopted,
20 is it your contention that AT&T will be able to continue
21 to utilize those particular unbundled network elements at
22 the prices set in the agreement beyond March 11th of 2006?

23 A. No. I believe the terms of the temporary
24 rider itself specifies that the prices will only be
25 available until the last day of the transition period.

1 Q. Okay. And there will not -- AT&T is not
2 contending that when we reach that stage, that there needs
3 to be an amendment to the contract to remove those and
4 that, absent an amendment, they get to continue to order;
5 is that a fair statement?

6 A. That is a fair statement.

7 Q. I'm going to switch over into the UNE area
8 now, if I could.

9 A. Yes, sir.

10 Q. This would be involving UNE Issues 1 and 2
11 with AT&T. Part of this issue involves how to treat
12 elements that may become declassified in the future,
13 right?

14 A. Issue 1, Mr. Lane, focuses primarily on the
15 legal -- the use of the term "lawful UNE." Issue 2 is
16 more focused on the transition process, yes.

17 Q. And the difference between the two parties'
18 position is that SBC Missouri is seeking a requirement
19 that any declassified UNEs be removed 30 days after the
20 FCC's order, court's order becomes effective, right?

21 A. That is SBC's position, and that is what we
22 contend it ought not be, because we have an approved and
23 an agreed-to change of law process under the general terms
24 and conditions.

25 Q. That's what I want to make sure I

1 understand. Your position is that even if an element is
2 declassified by the FCC or as the result of a court order,
3 that you get to continue to use it until the parties go
4 through a change of law process; is that right?

5 A. Yes. But I think it's worth understanding
6 a couple of important things. From our perspective and
7 experience with the FCC's orders, it would appear that if
8 there were future delistings that there might be, it would
9 be highly likely that there would be some sort of a
10 transition period probably longer than 30 days.

11 As to a court decision, the way SBC has
12 defined effective court decision or not defined effective
13 court decision in an attachment UNE is problematic,
14 whereas in the general terms and conditions relative to
15 change of law, we do define what constitutes an effective
16 change of law.

17 Q. And actually I was going to question you on
18 some of those things, on what the FCC is likely to do.
19 It's fair to say that the actual amount of notice that
20 AT&T would have of a declassification is substantially
21 longer than 30 days because they'll know that the FCC was
22 considering declassifying and issued an Order
23 declassifying, and then the Order wouldn't take effect
24 until some period of time after it's published in the
25 Federal Register, right?

1 A. I agree. And in addition, the FCC may
2 provide, as it has in its more recent orders, an
3 opportunity for a transition period not only for CLECs to
4 continue utilizing the elements on a transitional basis,
5 but also a lengthy period of time to ensure that the
6 parties do negotiate changes to their interconnection
7 agreements.

8 Q. And SBC Missouri's proposal is that the
9 30-day period would take into account any FCC order
10 requiring a transition period, right?

11 A. It's not clear from SBC's words whatsoever.
12 It simply says that on the effective date of an FCC order
13 or other event, i.e., a vacature by a governing court,
14 that on 30 days notice after the effective date, that SBC
15 would be able to terminate access to the designated
16 elements.

17 Q. Okay. And that's -- if that language of
18 SBC Missouri is interpreted to permit the transition
19 period to run through, then that would eliminate that
20 apparent objection that you have, right?

21 A. No, not entirely, because --

22 Q. I'm not saying you won't have any other
23 objections, but that would eliminate that particular
24 objection?

25 A. No, it wouldn't, because your predicate,

1 Mr. Lane, is an FCC order that would have some sort of
2 transition, and we've seen from SBC's own interpretation a
3 description of how they would have interpreted FCC orders
4 in the TRO and the Supreme Court's -- I'm sorry -- the DC
5 Court's vacature of the FCC rules that SBC would have
6 terminated access to UNE-P well over a year ago.

7 Q. All right. The difference between the
8 parties on this issue is SBC Missouri is concerned that
9 the CLECs will try to stretch out the process, and the
10 CLECs are concerned that SBC Missouri will try to
11 accelerate the process in some aspect, right?

12 A. I think that's the fundamental tension.

13 Q. And would you agree with me that the extent
14 that the CLECs believe that SBC Missouri is incorrectly
15 asserting declassification and that they're acting in an
16 expeditious manner that isn't permitted, they can do just
17 what they did in this case and file a request with the
18 Commission to order us to continue to do it, right?

19 A. Mr. Lane, we're dealing with comparable
20 language offered by SBC across multiple states, so
21 individual state commissions may have different -- or
22 certainly have different rules and processes for handling
23 these kinds of disputes. And I personally don't know the
24 rapidity at which this Commission would be able to respond
25 to a complaint of such -- of that nature and issue a --

1 what would be equivalent of a stay.

2 Q. Are you familiar with what the Missouri
3 Commission actually did involving the TRRO in response to
4 a complaint, in terms of being able to add additional
5 customers under UNE-P?

6 A. I am not at this point yet, no.

7 Q. And you would agree with me that when we
8 look at the difference between the two proposals, that
9 AT&T's concern about an accelerated process being invoked
10 inappropriately can be met by taking the issue to the
11 Commission, but that SBC Missouri's proposal and concern
12 that it not be stretched out doesn't have a corresponding
13 remedy available to it?

14 A. I think under the -- there's no overt
15 remedy as you're speaking of. But under the general terms
16 and conditions, the negotiation period is limited, and
17 certainly under the dispute resolution process that
18 follows a maximum of 60 days negotiations, it would appear
19 to me procedurally that at that point SBC would have
20 similar remedy in that it could petition the Commission at
21 that point to cease offering or cease providing new UNEs.

22 Q. It has to go through the entire negotiating
23 period plus the entire dispute resolution period that
24 could take months and months, right?

25 A. I wouldn't necessarily agree. I don't know

1 what the -- what the --

2 Q. Well, let's look at the specifics of the
3 dispute resolution process. And you indicate that there's
4 a 60-day period before the dispute resolution process can
5 be invoked that involves negotiations?

6 A. Yes, sir.

7 Q. So you've already got two months. Now, how
8 long is the dispute resolution process? Does it have a
9 specific defined date by which it has to be ended?

10 A. I don't believe it does, but at the point
11 that you have a dispute that can be brought to the
12 Commission, I don't see that there's any prohibition from
13 SBC asking for interim relief, just as you're suggesting
14 the CLECs could ask for interim relief against SBC for
15 proposing a cessation of provision of a UNE.

16 Q. But isn't the answer to any request for
17 interim relief is that Commission -- you can't do that
18 because they have already agreed by contract that they're
19 going to go through the dispute resolution process, and
20 you've got to let it run its course?

21 MS. BOURIANOFF: Your Honor, I'm going to
22 object. We've gotten a long way from UNE and we're
23 talking about what the effect of a request for interim
24 relief is. Mr. Rhinehart's not a lawyer. I thought your
25 guidance was to steer away from cross-examination on legal

1 and contract language issues.

2 JUDGE THOMPSON: Read back the question,
3 Kellene.

4 THE REPORTER: "Question: But isn't the
5 answer to any request for interim relief is that
6 Commission -- you can't do that because they have already
7 agreed by contract that they're going to go through the
8 dispute resolution process, and you've got to let it run
9 its course?"

10 JUDGE THOMPSON: And the relevance is?

11 MR. LANE: Judge, I'm trying to point out
12 the difference between the two parties is that our concern
13 is that this process can be stretched out and we have to
14 continue providing elements, and their concern is that
15 we'll inappropriately end provision of an element. And
16 I'm trying to get him to agree, which I think it's a
17 simple question. There's a remedy on their end if we try
18 to terminate. There's not a remedy on our end because
19 it's an open-ended process.

20 MS. BOURIANOFF: Your Honor, if his point
21 is to try to elicit the basic debate is that CLECs want to
22 try and stretch this out, they're concerned that SBC will
23 jump the gun, Mr. Rhinehart was asked that several
24 questions ago and answered it. The question about whether
25 there's a remedy I think is a legal question. I would

1 object to that.

2 JUDGE THOMPSON: Well, I'm going to allow
3 the question. You may answer, if you can.

4 THE WITNESS: And I'm sorry, Mr. Lane.
5 I've lost the question.

6 JUDGE THOMPSON: It's been a couple days,
7 hasn't it?

8 MR. LANE: I'll tell you what, I think my
9 question is framed so that at least the arbitrator can
10 consider the issue. You don't need to answer it.

11 THE WITNESS: Thank you.

12 MR. LANE: And that's all the questions I
13 have.

14 JUDGE THOMPSON: Thank you, Mr. Lane.
15 Ms. Dietrich?

16 QUESTIONS BY MS. DIETRICH:

17 Q. Good afternoon, Mr. Rhinehart.

18 A. Good afternoon, Ms. Dietrich.

19 Q. I have a couple questions out of your
20 rebuttal testimony.

21 A. Okay.

22 Q. On page 7, Q and A at the bottom of the
23 page, your question is, do you have any further support
24 for AT&T's proposal in Section 1.7.7.3 that once the wire
25 center list is established, the list may not be changed

1 for the full term of the ICA?

2 And you're going through and answering, and
3 then on the top of page 8 you say, and the low likelihood
4 that SBC Missouri will add any wire centers to its list,
5 based on line counts, given SBC Missouri's continuing
6 decline in the number of lines served. Can you explain
7 that phrase, please?

8 A. Certainly. As I've been watching SBC data
9 for a number of years, they report switched access lines
10 quarterly to the investment community, both UNE lines as
11 well as retail lines on a state-by-state basis, and
12 quarter by quarter for the last two or three years. They
13 report in a rolling eight quarters base. SBC has been
14 reporting continuously reducing or continually lessening
15 of the number of access lines served. And on that basis,
16 I would not expect to see line growth to be a cause to add
17 another wire center to the delisting list.

18 Q. Isn't the issue with the wire center
19 appearing on the delisting list the fact that SBC thinks
20 there's an -- or has established that there's enough
21 competition in that particular wire center and so that
22 wire center under the FCC guidelines would no longer be
23 required to be unbundled?

24 A. That's the general -- that's the gist of
25 the rules. It's my understanding that the way the FCC is

1 allowing SBC to make their counts is to look at SBC served
2 lines out of their wire centers, including DS1 lines which
3 are counted as an equivalent of 24 DS0s or voice grade
4 lines, and also including the number of UNE lines served
5 out of the office.

6 So if you look at dial tone lines served by
7 SBC, DS1 equivalencies served by SBC and UNE lines, I'm
8 seeing at least on a statewide basis an overall decline
9 over the last several years. And I wouldn't expect to see
10 substantive amounts of growth in any given place.

11 Q. So are you saying that because SBC uses
12 their own lines to reflect the trend, then it can be
13 assumed that the CLEC lines would also be declining?

14 A. Not necessarily, no.

15 Q. Okay. Then on page 20 of your testimony --

16 A. Rebuttal?

17 Q. Yes.

18 A. I have that.

19 Q. At line 13, you say, AT&T -- or combining
20 functions would place AT&T at a competitive disadvantage.
21 Can you explain that?

22 A. Certainly. When SBC proposes to have AT&T
23 do its own combining simply because it has a collocation
24 space in the central office, SBC's own diagrams in other
25 equivalent cases that I've been in basically show that SBC

1 would have us cross connect a UNE loop into our
2 collocation space, cross connect out of the collocation
3 space to switching, and in essence, it would require
4 multiple cross connects and our own deployments of
5 technicians, when SBC is fully capable of providing the
6 cross connect service themselves.

7 It would apply to both the UNE-P
8 environment for the next several months as well as the
9 EELs-type environment today and in the future when we're
10 combining UNE loops and UNE transport of the -- that
11 continue to be available.

12 SBC's proposed language says, wherever we
13 have a collocation space, AT&T absolutely positively must
14 be the one to do the combining, and the quote that I
15 incorporate here from the Supreme Court's Verizon decision
16 has a clear caveat in there that the CLEC itself must not
17 be disadvantaged. And that's one of the parameters that
18 were acknowledged by the Supreme Court, and the Supreme
19 Court did not disturb the FCC's rules that explicitly say
20 that, on request, the incumbent local exchange carrier
21 shall combine elements for the CLECs.

22 Q. And in what you described, what exactly
23 would put AT&T at a competitive disadvantage?

24 A. Depending on the actual combination, there
25 would be the competitive disadvantage of multiple or

1 multiplication of nonrecurring charges for the placement
2 of an additional cross connect and potential
3 month-to-month increase in cost, because depending on the
4 level of the cross connects, whether we're talking voice
5 grade, DS1, DS3, there are occasionally monthly recurring
6 charges for cross connects. And so if instead of paying
7 for a single cross connect for the combination of a UNE
8 loop, call it a DS1 loop and DS1 transport of -- look in
9 the price list -- of a dollar or two, we might be looking
10 at a multiplication of that.

11 So we're looking at a nonrecurring charge
12 hinderance, as well as a monthly recurring charge cost
13 difference, and we're also looking at the cost to the
14 CLEC, AT&T in particular, to actually roll a truck, roll a
15 technician, when in fact, on our request, SBC could do a
16 cross connect with their own technicians and have it
17 covered by a single nonrecurring charge.

18 Q. Okay. And then on 23 of your rebuttal.

19 A. I have that.

20 Q. You state at line 9, the Commission should
21 find that SBC Missouri's current recurring rates and
22 nonrecurring charges adequately compensate SBC Missouri
23 for routine network modifications, and then you say SBC
24 Missouri's language at certain sections should be
25 rejected.

1 What is the basis for your statement that
2 the current recurring and nonrecurring charges adequately
3 compensate SBC Missouri?

4 A. Okay. And I would -- Ms. Dietrich, I would
5 actually refer you to some of my text in the direct
6 testimony between pages 55 and 58 where what I describe
7 there is my participation in and understanding of the UNE
8 recurring rate and nonrecurring cost or nonrecurring
9 charge process that was followed in the establishment of
10 the M2A rates, and actually subsequent to that in some
11 instances.

12 I personally looked at SBC's cost models,
13 and under that, at the front end of SBC's cost modeling
14 they used 100 percent of the dollars and cents that went
15 into their expense treatment for determining their cost
16 factor or expense factors or depreciation, whatever,
17 expenses in particular, in developing the nonrecurring
18 charges and the recurring rates that are applicable in the
19 M2A, and which for the most part SBC has accepted and
20 brought forward into the price list here.

21 Q. And those are rates that the Commission
22 approved; is that correct?

23 A. Yes, through -- I would say there's at
24 least three sets of orders, TO-97-040, TO-9 -- I forget
25 all of them, but there are a series of them that went into

1 establishing the original M2A rates, and then just this
2 spring there were some additional -- there was another
3 Order from the Commission that approved rates in a remand
4 of rates from TO-2000-438, I think, and that case was
5 TO-2005-0037. And in that case, I was our cost witness
6 and even more recently familiar with the cost
7 determination process.

8 MS. DIETRICH: Okay. Thank you.

9 JUDGE THOMPSON: Mr. Johnson?

10 MR. MICK JOHNSON: No questions.

11 JUDGE THOMPSON: Mr. Scheperle?

12 MR. SCHEPERLE: No questions.

13 JUDGE THOMPSON: Mr. McKinnie?

14 MR. MCKINNIE: No, thank you.

15 JUDGE THOMPSON: Recross?

16 RECROSS-EXAMINATION BY MR. LANE:

17 Q. On the combination of the question and
18 response to Ms. Dietrich you talked about having to do
19 multiple cross connects?

20 A. Yes.

21 Q. And to be precise, SBC would do the cross
22 connect on its side of the facilities to bring it to AT&T,
23 and then AT&T under our proposal would do the cross
24 connect inside its own collocation cage, right?

25 A. That would be one set of cross connects.

1 The way SBC proposes this, for example, in the situation
2 of an EEL, if we also had a collocation in a central
3 office where we were requesting an EEL, SBC would provide
4 a cross connect from the end user customer loop to a
5 termination point outside of AT&T's collocation space.
6 AT&T in turn would then cross connect on their side, on
7 the inside of the -- inside of the cage from that point to
8 the possibly multiplexing or other equipment inside AT&T's
9 cage.

10 We would then cross connect out of our cage
11 to another point where SBC would have at least a second
12 cross connect taking the, in essence, the loop back to put
13 on dedicated transport. So at a time there would be two
14 AT&T cross connects.

15 Q. The wire center declassification questions
16 that you received, I want to put those in context. When a
17 wire center reaches a certain size, that impacts the
18 obligation of SBC Missouri under the FCC's TRRO decision
19 to provide DS3 loops and DS3 transport, as well as other
20 unbundled network elements, right?

21 A. Depending on the classification, whether
22 it's, as is known from the TRRO decision, Tier 1,
23 Tier 2, or Tier 3. Tier 1 and 2 offices are the ones that
24 would affect the provision of DS1 and DS3 loops and
25 transport.

1 Q. Right. And without -- I'm trying to avoid
2 all the details, but we can do it if you want. Under the
3 FCC's TRRO decision, when a wire center reaches a certain
4 size, then SBC's obligation to provide those types of
5 loops and those types of transports that are impacted is
6 eliminated, right?

7 A. That's my understanding.

8 Q. And your proposal in this case is that that
9 be ignored for the term of the contract and that SBC
10 Missouri be required to continue to provide those loops
11 and that transport, even if the wire center was and
12 reached the appropriate size, right?

13 A. Our proposal is such that we would ask the
14 Commission to lock down the list.

15 Q. The answer to my question is yes?

16 A. Yes, sir.

17 Q. And with regard to routine network
18 modification charges, the background of that is that the
19 FCC has made clear now that routine network modifications
20 have to be done, but that the ILEC is permitted to charge
21 for those, right?

22 A. Mr. Lane, the FCC was very clear that the
23 ILEC may only charge where they have not already recovered
24 or the rates do not already provide for recovery of the
25 cost.

1 Q. What I'm trying to get to is that the FCC
2 provides for the potential of charges for routine network
3 modification in certain circumstances, right?

4 A. Yes, and that's part of our objection.

5 Q. And under your proposal, you've made the
6 determination up front, based on your looking at cost
7 studies that haven't been provided, that we've already
8 recovered all of the charges and that the contract
9 shouldn't permit any possibility of recovery of charges
10 for routine network modification, correct?

11 A. Our view is that --

12 Q. That's a yes answer, a yes or no answer, if
13 you can. And then we can get into the details later if
14 you want to with your counsel.

15 A. Yes, we believe that SBC has the cost of
16 routine network modifications generally built into
17 recurring rates and nonrecurring charges.

18 Q. And did you review Mr. Roman Smith's
19 testimony in which he explained that there are categories
20 of costs that were never included in the base under which
21 cost studies were performed and charges assessed for
22 unbundled network elements?

23 A. I saw Mr. Smith's testimony and saw his
24 proposal for modification of SBC's position where SBC
25 would propose to only charge in the text for a limited

1 number of changes.

2 Q. And he indicated in there that there were
3 categories of expenses that were not included in any cost
4 study on which rates were set, correct? Whether you agree
5 with it or not, that was his testimony, right?

6 A. That was his testimony, and it was a couple
7 of specific activities.

8 Q. All right. And so the difference between
9 the two parties' position on this is that AT&T says
10 they've looked at everything, there are no costs to be
11 recovered, we're not going to provide for them, and SBC
12 has said, there may be costs, if we are going to assess
13 costs, they'll be on an ICB basis, correct? That's the
14 difference between the two parties, right?

15 A. SBC's proposing ICB.

16 Q. And so if the arbitrator adopts AT&T's
17 position, we're precluded from being able to try to show
18 that there are unrecovered charges; whereas, if the
19 arbitrator adopts SBC Missouri's proposal and the CLEC
20 decides that they don't agree with the charge that's
21 assessed on an ICB basis, they can send that through
22 dispute resolution and they can take it to the Commission,
23 right?

24 A. I think that's a possibility.

25 Q. Okay. And so the difference between the

1 two is, you've precluded any recovery, ours allows
2 recovery but gives the CLEC the opportunity to protest if
3 it -- if it believes that the costs are being double
4 recovered or what have you, right?

5 A. Again, I'm not a legal -- I'm not a lawyer,
6 so I can't say what the total set of remedies would be.
7 Our -- one of our concerns is that SBC's language
8 particularly in the price list simply says routine network
9 modifications, ICB, and the price list has no designation
10 of the -- of a shortening of the list of what kind of
11 things would be included.

12 Q. But lawyer or not a lawyer, you can say
13 that it's an absolute fact that we would not be permitted
14 to recover for routine network modifications under any
15 circumstances if your language is adopted?

16 A. Correct.

17 MR. LANE: Thank you.

18 JUDGE THOMPSON: Are you done?

19 MR. LANE: Yes.

20 JUDGE THOMPSON: Redirect?

21 MS. BOURIANOFF: Yes, your Honor.

22 JUDGE THOMPSON: Yes, ma'am. Step on up.

23 REDIRECT EXAMINATION BY MS. BOURIANOFF:

24 Q. Let's start towards the end, Mr. Rhinehart.
25 Mr. Lane on recross asked you some questions about, with

1 regard to combinations, he asked you isn't it correct that
2 SBC would actually be doing some of these multiple cross
3 connects to a point outside the cage. Do you remember
4 that discussion?

5 A. I do.

6 Q. And you and Mr. Lane engaged in a colloquy.
7 Would you agree with me that any cross connect that SBC
8 performed, AT&T would have to pay for?

9 A. Yes.

10 Q. And at the very end, Mr. Lane was asking
11 you about routine network modifications. Do you recall
12 those questions?

13 A. Yes, I do.

14 Q. And he asked whether you had submitted any
15 cost studies supporting your opinion that SBC was already
16 recovering costs associated with routine network
17 modifications in its recurring and nonrecurring cost. Do
18 you recall that question?

19 A. Yes, I do.

20 Q. And he also asked you if you'd reviewed
21 Mr. Roman Smith's testimony. Do you recall that?

22 A. Yes.

23 Q. To your knowledge, did Mr. Smith submit any
24 cost studies or any sort of supporting documentation for
25 his opinion that there were elements of routine network

1 modifications that SBC was not recovering costs for in the
2 recurring and nonrecurring costs?

3 A. No, he did not.

4 Q. And do you know that you -- in responding
5 to Mr. Lane, you talked about your involvement in the
6 different UNE cost proceedings in Missouri that
7 established the UNE rates. To your knowledge, was
8 Mr. Smith a witness that testified in those proceedings?

9 A. To my knowledge, he was not.

10 Q. Okay. Let's go back to the beginning.
11 Mr. Lane started his cross-examination of you on price and
12 he asked you some questions about DS3 loop rates. Do you
13 recall those?

14 A. Yes.

15 Q. And do you have a copy of the proposed
16 Attachment 6 between AT&T and SBC in front of you?

17 A. Yes, I do.

18 Q. And specifically, Mr. Lane asked you some
19 questions about whether you agreed that the bona fide
20 request process that AT&T and SBC had agreed to would be
21 the proper way for AT&T in the future to establish DS3
22 rates. Do you recall those questions?

23 A. I do recall.

24 Q. I'd like to ask you to turn to Section 2.28
25 of Attachment 6, which is the section of the UNE

1 attachment that addresses bona fide requests.

2 A. I have that.

3 Q. And I'd like to direct you to

4 Section 2.28.1.1. Do you see that, Mr. Rhinehart?

5 A. Yes, I do.

6 Q. And does that section provide that the bona

7 fide request process is used for AT&T to gain access to

8 additional or new undefined UNEs, combinations or

9 commingling that is required to be provided by SBC

10 Missouri under the Act but is not available under this

11 agreement?

12 A. That's the text, yes.

13 Q. So if I understand the way that this

14 agreed-to BFR process works, is it something that's not

15 addressed in the agreement, then AT&T can go issue a bona

16 fide request and SBC can look at whether it will provision

17 it or not?

18 A. That's a way of reading this, yes.

19 Q. Do you know if the UNE attachment contains

20 provisions addressing DS3 loops?

21 A. Yes, it does.

22 Q. And would those provisions be in

23 Section 4.3.7 of Attachment 6?

24 A. Yes, starting with 4.3.7 and several

25 subparagraphs does define digital loop, the DS3 digital

1 loop.

2 Q. And so would you agree with me that the BFR
3 process would not be the appropriate process to use to set
4 rates for DS3 loops because DS3 loops are addressed in the
5 interconnection agreement between SBC and AT&T?

6 A. Since two -- Section 2.28.1.1 seems to
7 imply that we're only talking about new undefined UNEs
8 that would be required but are otherwise not available, it
9 would seem to preclude that.

10 Q. And given that DS3 loops are addressed in
11 the ICA in the terms and conditions that are largely
12 agreed to that you refer to in Section 4.3.7, is that the
13 reason that AT&T proposed a rate for DS3 loops in the
14 price list?

15 A. DS3 loops are clearly called for in
16 Attachment 6 UNE, and yes, we want to have rates.

17 Q. Are you aware of any precedent by the FCC
18 or this Commission in using Texas rates as a benchmark in
19 establishing rates in the 271 proceeding?

20 A. Yes, I am.

21 Q. And could you elaborate on that?

22 A. There were a variety of points where this
23 Commission used the Texas 271 or the Texas-approved rates
24 as benchmarks against which they would check rates in
25 Missouri. Loops were among them, and if you were to look

1 at the Zone 1, Zone 2 and Zone 3 pricing in -- as are
2 offered right here, the Zone 1, Zone 2 and Zone 3 pricing,
3 it's highly comparable to the Zone 1, 2 and 3 pricing from
4 Texas. Not identical, but that's just one example.

5 Q. And do you know if the FCC approved this
6 use of Texas rates as benchmarks for Missouri rates in the
7 Missouri/Arkansas 271 order?

8 A. To the best of my knowledge, yes. And in
9 fact, since SBC's 271 case for Texas went first, that
10 became a benchmark against which a number of SBC 271
11 authorizations were approved.

12 Q. And does that explain one of the reasons
13 that you looked to Texas DS3 loop rates when looking for a
14 loop rate in Missouri that had not been established by the
15 Commission?

16 A. Certainly. And as well as the knowledge
17 that the technology, the costing structure, the cost of
18 running the business was highly similar between Texas and
19 Missouri.

20 Q. Mr. Lane asked you to agree with him that
21 AT&T did not order any DS3 loops in Missouri. Do you
22 recall that question?

23 A. I do.

24 Q. Do you know if AT&T orders any DS3 circuits
25 as special access in Missouri?

1 A. I have no personal knowledge, but it would
2 surprise me greatly if we did not, given our large
3 business customer base.

4 Q. And indeed, is one of the disputed issues
5 in the UNE attachment regarding the ability of AT&T to
6 convert wholesale circuits ordered under special access to
7 UNEs?

8 A. Yes.

9 Q. Finally, Mr. Lane asked you a couple
10 questions regarding Issues 1 and 2. Do you recall those
11 questions?

12 A. Yes, I do.

13 Q. And I believe he asked ask you some
14 questions or asked you to agree that CLECs have a remedy
15 if they think SBC is jumping the gun and stopping
16 provisioning UNEs in terms of bringing a complaint or some
17 sort of dispute resolution to the Commission. Do you
18 recall that?

19 A. I do recall his statement that that would
20 be a possible remedy.

21 Q. Is there an expense to the CLEC associated
22 with bringing a complaint or dispute resolution to the
23 Commission?

24 A. Certainly. You end up having not only
25 legal costs, but you have to marshal evidence and present

1 it in such a way that you convince the Commission to act
2 properly.

3 Q. Have you ever been a witness in a complaint
4 proceeding that AT&T has brought against SBC?

5 A. Yes.

6 Q. And so witnesses are another aspect of
7 what's involved?

8 A. Witnesses are another aspect. And again,
9 part of my earlier answer linked in with what the
10 procedures were at any given situation, and there's no
11 guarantee that a commission, in fact, will act promptly.

12 Q. And finally, is the impact only to a CLEC
13 if SBC were to, as we say, jump the gun or is there also
14 an impact to end user customers?

15 A. Certainly there's an impact to end users,
16 because there will be potential delays in the provisioning
17 of service, the pricing may not be able to be as favorable
18 to the end user, and particularly with the very short time
19 frames that SBC is talking about when we're only looking
20 at 30 days. If as with, for example, the provision of
21 UNE-P, we've worked up mechanized processes and we end up
22 relying on those substantively over time and more and more
23 so over time to provide a certain kind of service. Being
24 cut off from being able to provide that service quickly
25 and efficiently via mechanized process on a 30-day notice

1 could be very disruptive.

2 Q. And would it also be difficult to provide
3 notice to end user customers?

4 A. Definitely.

5 MS. BOURIANOFF: That's all I have. Thank
6 you.

7 JUDGE THOMPSON: Thank you. You're
8 excused, sir.

9 THE WITNESS: Thank you, your Honor.

10 JUDGE THOMPSON: Okay. Witnesses Cadieux
11 and Ivanuska I think are going to have to live with the
12 fact and be back here tomorrow. I mean, we'll start with
13 Cadieux, but I don't anticipate finishing before five,
14 unless you guys are just a whole lot -- a whole lot
15 briefer than you've been.

16 Okay. Mr. Cadieux, come on back up. I
17 will remind you you're still under oath.

18 MR. CADIEUX: Yes, your Honor.

19 JUDGE THOMPSON: I guess you'd better state
20 your name and spell your last name for the reporter. I
21 don't know if your previous trip was with Kellene or with
22 the other reporter.

23 MR. CADIEUX: Edward J. Cadieux,
24 C-a-d-i-e-u-x.

25 JUDGE THOMPSON: You may inquire.

1 EDWARD J. CADIEUX testified as follows:

2 DIRECT EXAMINATION BY MR. MAGNESS:

3 Q. Good afternoon, Mr. Cadieux.

4 A. Good afternoon.

5 Q. Do you have a copy of a document entitled

6 commingling at the top with reference to the SBC website?

7 A. Yes.

8 MR. MAGNESS: I'd like a copy of this.

9 MR. LANE: Your Honor, I'm not sure that

10 this is additional redirect at this point or additional

11 direct testimony. It's not appropriate.

12 MR. MAGNESS: Your Honor, I was going to

13 offer this as an exhibit. The -- I can inquire with

14 Mr. Cadieux about what it is. The commingling

15 guidelines --

16 JUDGE THOMPSON: Why don't you talk to him

17 and tell him what it is and see if he withdraws his

18 objection?

19 MR. MAGNESS: Well, your Honor, I provided

20 it to Mr. Lane first thing this morning. I provided it to

21 Mr. Silver to check its accuracy. It's been stipulated in

22 as an exhibit in other state proceedings.

23 MR. LANE: I don't have a problem with

24 allowing it into evidence. I want to make sure that we

25 don't start some process where he can add additional

1 direct testimony. That was my concern.

2 MR. MAGNESS: Your Honor, I --

3 MR. LANE: I thought he was going to ask

4 Mr. Silver that, and that would have been fine.

5 MR. MAGNESS: Your Honor, I told Mr. Lane I

6 would be happy to do this any way procedurally that would

7 be suitable. I didn't receive any input from him until

8 just now. So however we want to do this, if I need to

9 recall Mr. Silver --

10 MR. LANE: You can just admit it into

11 evidence. I'm objecting to your additional direct

12 testimony with this witness.

13 JUDGE THOMPSON: Okay. So it's going to

14 come in, right?

15 MR. LANE: That's fine.

16 MR. MAGNESS: If this can be admitted as

17 No. 211, the commingling document from the SBC online

18 website, I have nothing more and will tender the witness

19 for cross.

20 JUDGE THOMPSON: Very good. And you call

21 this the commingling doc?

22 THE WITNESS: Your Honor, I would note for

23 the record, I know we've been doing it with all the

24 witnesses, I do have a few corrections, and we'll get with

25 counsel to submit those electronically.

1 JUDGE THOMPSON: Thank you. That would be
2 great.

3 (EXHIBIT NO. 211 WAS MARKED FOR
4 IDENTIFICATION BY THE REPORTER.)

5 JUDGE THOMPSON: Mr. Lane?

6 MR. LANE: Thank you, your Honor.

7 CROSS-EXAMINATION BY MR. LANE:

8 Q. Good afternoon, Mr. Cadieux.

9 A. Good afternoon.

10 Q. The first issue was the CLEC Coalition UNE
11 Issue 19. That generally involves network modification
12 provisions, right?

13 A. I believe so. If we're going to -- do you
14 have a DPL page?

15 Q. I'm getting it right now. Page 71. Are
16 you using the May 20 version?

17 A. Yes. Okay.

18 Q. One of the differences between the two sets
19 of languages involves the reference to DS1 loops as a
20 limiting factor, right?

21 A. Well, it did, but we've modified that, and
22 we have reinserted in our -- in my rebuttal testimony, and
23 it wouldn't -- yes, it would not have made it into the DPL
24 from the timing standpoint. It may not have. We
25 reinserted that.

1 Q. Okay. And would you tell me then where
2 that would be, because I don't believe it's in there now.
3 Would you tell me where that would be reinserted in the
4 language that you have?

5 A. Yeah. I might be able to do it best via my
6 testimony.

7 Q. It's hard to find. Let's try to shorten
8 this. This is what I'd like to ask you. Would you agree
9 with me that if the arbitrator finds in your favor on this
10 particular issue, that the intent of you offering the
11 language in the rebuttal testimony is that that actually
12 be incorporated into the language that's adopted?

13 A. Yes. The reference to DS1 would be
14 incorporated as a limiting factor.

15 Q. Okay. Still on Issue 19, this issue also
16 involves the potential for recovery of costs of routine
17 network modification, right?

18 A. Yes, that's one of the issues.

19 Q. And without repeating all that we've gone
20 through before, is it a fair statement that you
21 acknowledge under the FCC's TRRO that we're entitled to
22 recover costs for network modifications if they're not
23 otherwise recovered in rates, but your language doesn't
24 provide for the possibility of that actually occurring?

25 A. Well, our language doesn't provide one way

1 or the other, as I recall. Our position as we've stated
2 in the testimony is that SBC -- we agree SBC is entitled
3 to recover. The real question is, you know, I guess one
4 way to say it is, are the rates that currently exist the
5 nonrecurring and monthly recurring charges, do they
6 recover those routine network modification costs or do
7 they not?

8 Q. Right. And that's an issue that may get
9 debated at some point in the future if SBC Missouri sought
10 to recover for routine network modification costs that it
11 believed was not otherwise recovered in rates, correct?

12 A. Yes, I'd agree with that. Our view would
13 be, if SBC believes that there are some routine network
14 modification activities for which the costs -- for which
15 the current nonrecurring and monthly recurring costs that
16 are specified in the UNE pricing appendix do not recover
17 the costs of those activities, that SBC ought to come
18 forward and provide costing information to show that, and
19 if it succeeds in convincing the Commission of that, that
20 those rates would then go into the interconnection.

21 Q. And the SBC Missouri proposal in this case
22 is to say that those -- that the charge for those would be
23 on an ICB basis because they would have to be determined
24 if and when the situation arose, correct?

25 A. Well, I mean, we have --

1 Q. That's our position?

2 A. That's your position, and we don't believe
3 that's appropriate.

4 Q. And I understand that you don't believe
5 that there are any unrecovered costs, but to the extent
6 that there are, your language doesn't provide for the
7 possibility of recovery, right?

8 A. Not immediately, not immediate --
9 additional recovery beyond what's in the existing rates,
10 because we've seen no substantial -- cost substantiation
11 and we don't believe that ICB pricing is an appropriate
12 mechanism.

13 Q. And like I asked Mr. Rhinehart, let me try
14 to short circuit, you'd agree with me that under your
15 proposal that while the FCC has said that you can recover
16 certain routine network modification costs that aren't
17 otherwise recovered, that your language and position
18 essentially precludes that from happening, while SBC
19 Missouri's language contemplates that that could happen
20 but gives the CLECs the opportunity to not pay and dispute
21 if they think it's inappropriate?

22 A. I can't say agree with that, because I
23 won't agree with the word "preclude." I think our
24 language is neutral. The routine network modification
25 decision has been out there since October of 2003. It's

1 been final since the time the USTA-2 decision became
2 final.

3 I guess our view is if SBC believed there
4 were activities, routine network modification activities
5 that it does not recover in existing rates, it could have
6 come forward at any point and provided those cost studies.
7 So we don't believe our language precludes. We think our
8 language is neutral.

9 Q. You're saying your language is neutral and
10 doesn't preclude, then if your position on this is adopted
11 and SBC Missouri subsequently seeks to recover routine
12 network modification costs, you wouldn't point to your
13 language being adopted and say, you're precluded. You'd
14 say, okay, we need to negotiate that and work it out?

15 A. We'd say that, yes.

16 Q. Okay.

17 A. But we'd also say that it's SBC's burden to
18 demonstrate compliance with TELRIC pricing and that SBC
19 should come -- if we can't come to a negotiated rate, that
20 SBC should come forward with a cost study and support a
21 particular specific price.

22 Q. All right. And that would be debated at
23 some point in the future about what the requirements were
24 on the pricing side, right, but they would be -- at least
25 in your view, you intend your position here not to

1 preclude that, right?

2 A. We -- yes.

3 Q. Okay. And I have a similar set of

4 questions, maybe we can do it quickly as well, on entrance

5 facilities, which is CLEC Coalition UNE Issue 2B.

6 A. If you're going to go to specific language,

7 do you have a particular page reference on the DPL, or I'd

8 ask if you do because I don't have page references to the

9 issue numbers.

10 Q. Okay. I'll tell you what it is. I'm not

11 sure you're going to need to look at it, but I'll find it

12 for you.

13 A. I'm sorry. I just meant that as a

14 general -- if you're going to point me to the DPL

15 language, it would help me if I got a page, because I

16 can't cross reference the issue to the page.

17 Q. Issue 2 begins on page 7 of 241.

18 A. Okay.

19 Q. Are you there?

20 A. Yes.

21 Q. And as background, you've agreed in your

22 rebuttal testimony that the FCC has decided that entrance

23 facilities are not UNEs, right?

24 A. That, yes, entrance facilities are

25 non-impaired.

1 Q. And that entrance facilities need not be
2 available at TELRIC rates, right? That's in your rebuttal
3 testimony at page 28.

4 A. Right, not mandatory TELRIC rates.

5 Q. And my question is, where do I look in your
6 proposed language for the ability to recover charges for
7 entrance facilities under your proposal?

8 A. I'm not sure I understand the question. I
9 mean, if --

10 Q. My concern was that while you espoused
11 agreement with what the FCC had provided, that you were
12 still intending to require us to provide them in an
13 unspecified rate. And if I misunderstand your position,
14 then that's fine.

15 A. No. My belief is, is that since our
16 position is -- well, since our position is that entrance
17 facilities are de-- are non-impaired, therefore, the
18 TELRIC rates do not apply, all right? Now, by silence
19 beyond that, what's implied from our position is that
20 those facilities, therefore, are either available by other
21 means, such as a special access tariff, or -- and I know
22 we have an argument about this, so I won't -- I don't want
23 to argue the point, but there is also an issue as to
24 whether they would be available as a 271 network element
25 with pricing to be determined under a 271 pricing process.

1 Q. Okay. And so it's fair to say that it is
2 not -- your proposal and your language should not be
3 interpreted to require SBC to provide entrance facilities
4 at TELRIC rates?

5 A. That's correct.

6 Q. Okay. Now, on this issue, you also propose
7 some changes in the language in your rebuttal at page 29,
8 right?

9 A. I'm not sure if I've got the same page
10 reference. What change are you referring to?

11 Q. Your rebuttal on page 29.

12 A. Right. Something's -- are you specifically
13 referring to -- right. Okay. I'm with you. Yeah. There
14 we're talking about inter -- you're talking about the
15 paragraph that's bolded in the middle. We -- I mean, I'm
16 talking about interconnection facilities.

17 Q. Okay. And there the language that you
18 propose the revision is not actually incorporated in the
19 DPL at this point, right?

20 A. I'd have to check. I'm not sure about
21 that.

22 Q. All right. And to short circuit it again,
23 if we can, you'd agree with me that to the extent that the
24 arbitrator and the Commission ultimately approve your
25 position on this point, that your intent is, is that the

1 revised language that you're proposing on page 29 of your
2 rebuttal be incorporated into the agreement, right?

3 A. Yes.

4 Q. Okay. In your rebuttal testimony, you also
5 discuss TRRO requirements and the temporary rider?

6 A. Yes.

7 Q. And as background, that rider is designed
8 to set the prices for the elements that the FCC has
9 declassified but for which they ordered a transition plan,
10 right?

11 A. Correct.

12 Q. And the UNE-P is one example of that,
13 right?

14 A. Yes.

15 Q. And the FCC's TRRO essentially requires
16 that the CLEC continue to be permitted to utilize UNE-P
17 for existing customers, but that they transition everyone
18 off by March 11th of 2006, right?

19 A. Yes, I'd agree with that.

20 Q. And you understand that SBC Missouri's
21 position on this issue is that its concern -- that the
22 CLEC Coalition proposal is designed to permit the
23 possibility that the UNE-P arrangements would be continued
24 to be made available if they're made part of the UNE
25 appendix pricing, because the CLEC Coalition members could

1 contend that we need to go through change of law and amend
2 the agreement to remove those even after March 11 of 2006.
3 Is it a fair statement that that's not your intent?

4 A. That's a fair -- it's a fair statement that
5 that's not our intent. I understand that that's one of
6 the concerns, but we believe --

7 Q. And if your position on this particular
8 issue is adopted, then it would be with the understanding
9 that your language would not be interpreted to permit
10 CLECs to continue to utilize UNE-P under those rates that
11 are set in the -- in what we would say the rider and what
12 you would say part of the UNE appendix pricing, right?

13 A. That's correct. And I believe we've
14 achieved that in our contract language, but that certainly
15 is the intent.

16 Q. Okay. Then on page 33 of your rebuttal,
17 you've withdrawn language concerning UNE Issue 6,
18 Section 1.26, right?

19 A. Yes.

20 Q. And that's only part of what's at issue on
21 that DPL Issue 6, right, that language?

22 A. I'll have to double check. Do you have a
23 page reference? I'm just about there.

24 Q. I can get it.

25 A. It's jumping from 5 to 7.

1 Q. I just had the same problem. I think you
2 missed a number here. Again, I'll try to short circuit
3 with you.

4 A. Okay.

5 Q. Your intent is that the arbitrator's rules
6 for the CLEC Coalition on this particular aspect of it,
7 that your intent is that that particular Section 1.26 not
8 be included as part of the contract, right?

9 A. Yes.

10 Q. You also address the issue of notification
11 of network changes which concern CLEC UNE Issue No. 35,
12 right?

13 A. Right.

14 Q. And you state your proposal that CLECs
15 receive an accessible letter as notice of any network
16 modifications where it doesn't conflict with or supersede
17 the FCC rule; is that right?

18 A. Yes.

19 Q. You'd agree with me that the FCC has a rule
20 that does specify what notice has to be given by the ILEC
21 for network modifications, right?

22 A. Yes. We just see our proposal as a
23 complimentary. We don't think it conflicts. We think
24 it's complimentary and provides additional notice.

25 Q. It clearly imposes an additional

1 requirement that's not mandated by the FCC rules, right?

2 MR. MAGNESS: Your Honor, at this point I'm
3 going to object. If we're going to be getting into
4 specifically what the FCC rule requires, we seem to do
5 have crossed the line.

6 JUDGE THOMPSON: What's the purpose of your
7 question?

8 MR. LANE: I'm trying to get him to agree
9 that the language that they're proposing is going beyond
10 the FCC's rule and is additional language and additional
11 obligations. I think it's a simple answer.

12 JUDGE THOMPSON: I'll allow this question.
13 Answer if you're able.

14 THE WITNESS: It's an additional obligation
15 to the extent of providing an accessible letter which SBC
16 issues in the thousands. And we think it, you know,
17 provides greater notice. We don't think it conflicts with
18 the -- you know, with the purposes of the FCC rule.

19 MR. LANE: That's all I have. Thanks,
20 Mr. Cadieux.

21 JUDGE THOMPSON: Thank you, sir.

22 Okay. I think we have time to do questions
23 from myself and the advisory staff. I have none.

24 Do you have any, Ms. Dietrich?

25 MS. DIETRICH: No questions.

1 JUDGE THOMPSON: Mr. Johnson?
2 Mr. Scheperle? Mr. McKinnie?
3 (No response.)
4 JUDGE THOMPSON: Do you have much redirect?
5 MR. MAGNESS: No.
6 JUDGE THOMPSON: Very good. Why don't you
7 come on up and do it?
8 REDIRECT EXAMINATION BY MR. MAGNESS:
9 Q. Just real quickly, Mr. Cadieux, to avoid
10 what may be confusion -- perhaps there won't be -- but
11 when you talk about entrance facilities, you spoke of
12 entrance facilities available under Section 251(c)(3)
13 versus those available as interconnection facilities. Can
14 you just explain the distinction and what impact it has in
15 the disputed contract language?
16 A. The language on 1.2.4 on my page 29 of
17 rebuttal, that is our contract language dealing with
18 interconnection facilities, which are -- as the language
19 indicates, are available pursuant to Section 251(c)(2).
20 Interconnection facilities, as I explain in my rebuttal
21 testimony, are facilities that connect between switches
22 and exchange traffic between different LEC networks, in
23 this case a CLEC network and SBC's network, so they send
24 traffic between switches.
25 Entrance facilities as a UNE under

1 Section 251(c) (3), which I agreed with Mr. Lane the FCC
2 found are non-impaired, those are dedicated facilities
3 that connect from a CLEC switch to a point in an SBC wire
4 center but do not connect to the SBC switch. They do not
5 exchange traffic between the CLEC and the ILEC network.

6 The entrance facilities under 251(c) (3) are
7 essentially the last and most highly aggregated piece of
8 the link -- of a dedicated link that connects CLEC
9 customers to the CLEC switch to give those customers dial
10 tone. So they are different facilities. They're treated
11 differently under two different sections of the Act.

12 Q. And I think you say you reference this in
13 your testimony, but there's specific discussion in the
14 Triennial Review Remand Order concerning these different
15 treatments of entrance facilities?

16 A. Yes, and I've cited them in the testimony.
17 I'm sure we'll cite them in a Brief.

18 Q. And would you agree with me that the fact
19 that the term "entrance facilities" is used to describe
20 two different things that have two different statutory
21 treatments is just another attempt to add joy to our lives
22 in the terminological sense?

23 A. Yeah. It falls in with commingling and
24 combinations.

25 MR. MAGNESS: That's all I have, your

1 Honor. Thank you.

2 JUDGE THOMPSON: Thank you. 2 minutes, 48
3 seconds. That's excellent, noteworthy. You are excused,
4 sir.

5 We've got about 20 minutes left, and we
6 haven't started Mr. Or Ms. -- I don't recall which it is
7 either.

8 MR. MAGNESS: Your Honor, I'm very sorry.

9 JUDGE THOMPSON: You've got more?

10 MR. MAGNESS: Well, I hope not. We had
11 originally had Mr. Cadieux up once for UNEs and
12 collocation. He can be available.

13 THE WITNESS: If necessary.

14 MR. MAGNESS: If they want to do their
15 collocation cross tomorrow, we can move on to Mr. Ivanuska
16 on his issues or we could --

17 JUDGE THOMPSON: Let's go off the record
18 for a moment and clarify this point.

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

20 JUDGE THOMPSON: You're excused. Thank you
21 very much for your testimony.

22 (Witness excused.)

23 MS. BOURIANOFF: Is Mr. Rhinehart excused?

24 JUDGE THOMPSON: As far as I'm concerned,
25 he's excused. Do you have any additional questions for

1 Mr. Rhinehart?

2 MR. LANE: I think he's excusable.

3 JUDGE THOMPSON: You're excused.

4 (Witness excused.)

5 JUDGE THOMPSON: Okay. So am I right in my

6 understanding that today's list should have also included

7 Price?

8 MR. LANE: Yes.

9 JUDGE THOMPSON: Here I thought we were

10 doing great and we only had one witness left over at the

11 end of the day, but now I learn there are actually two.

12 You don't have any other hidden?

13 (No response.)

14 JUDGE THOMPSON: Okay. Very good. We'll

15 start tomorrow at 8:30 in the morning. I appreciate

16 everyone's effort to get this wrapped up as quickly and

17 succinctly as possible. See you in the morning.

18 (OFF THE RECORD.)

19 JUDGE THOMPSON: We have to go back on the

20 record, I'm advised. I'm happy to entertain any

21 objections anyone has. I might even have some myself, but

22 we are going to go back on the record briefly. Okay. And

23 we're going to do this as what, recross?

24 MR. BUB: I think this will just be

25 additional cross to clarify a mis-impression that we left.

1 JUDGE THOMPSON: Okay. There's a belief
2 that there is a mis-impression that was created, evidently
3 accidentally, because I thought your job was to create
4 mis-impressions, but evidently there was an accidental
5 mis-impression about MCI's diagram. We're going to go
6 back on the record to permit that mis-impression to be
7 dispelled. I appreciate the effort you're going to to
8 make sure I'm not confused. I don't know if it will help,
9 but I appreciate the effort.

10 MR. BUB: I think both parties have an
11 interest in getting the facts correct.

12 JUDGE THOMPSON: Absolutely. And I wanted
13 to tell you earlier that you promised me some facts and,
14 my goodness, did you deliver.

15 MR. BUB: Thank you, your Honor.

16 SHERRY LICHTENBERG testified as follows:

17 CROSS-EXAMINATION BY MR. BUB:

18 Q. During our cross-examination, we talked
19 about with this MCI diagram of a call going from the loop
20 to the main distribution frame, and I'm concerned that we
21 may have left a mis-impression that that call went
22 directly over the path directly to the MCI collocation
23 cage, and it turns out that that is not correct; is that
24 right?

25 A. Yes, Mr. Bub.

1 Q. Would you tell us about that?

2 A. I'll be happy to explain, and I'll try to

3 talk loudly enough so I can point. Diagrams are not my

4 forte.

5 If you would think of this, if we could

6 flip the words and the picture, then the mis-impression in

7 terms of the flow of the call would be corrected. The

8 customer's loop -- and it's hard to see up here, but it

9 comes into the splitter where the electrical signal for

10 the high frequency portion --

11 JUDGE THOMPSON: Let me stop you for a

12 minute. The diagram in its present form appears to show

13 that the customer's loop comes in to the MDF.

14 THE WITNESS: It is correct.

15 JUDGE THOMPSON: And does it?

16 THE WITNESS: It comes to the MDF, but the

17 mis-impression we're afraid we left is where it goes

18 first, if there is a first in a circular circle.

19 JUDGE THOMPSON: Okay.

20 THE WITNESS: And what happens is that the

21 customer's loop comes from the customer's premises and it

22 needs to be split to separate the voice and the data. And

23 so it comes into the splitter where the high frequency

24 portion of the loop is stripped off and sent out to the

25 famous cloud, and that's the data.

1 JUDGE THOMPSON: Okay.

2 THE WITNESS: It is then -- and the word
3 that we use is a "jumper". It's cross connected, if you
4 will, back to the main distribution frame so that it can
5 be cross connected to the voice portion.

6 JUDGE THOMPSON: So --

7 THE WITNESS: To the customer's loop to his
8 house.

9 JUDGE THOMPSON: Let me ask you a question.
10 When the feed reaches the voice collocation CLEC cage, has
11 the data portion been stripped away?

12 THE WITNESS: The data portion has been
13 stripped away, there is a cross connection, and it's hard
14 to see on this picture.

15 JUDGE THOMPSON: There was a definite
16 mis-impression then, because I thought you told me earlier
17 that it went to the voice CLEC with the data included and
18 that this just made no difference. But, in fact, the data
19 has been stripped out?

20 THE WITNESS: The data's been stripped
21 away.

22 JUDGE THOMPSON: Okay.

23 THE WITNESS: And the point of the
24 discussion, though, in MCI's testimony is that we are
25 placing a cross connect at the main distribution frame

1 that cross connects the customer's loop to the splitter
2 back to the MDF and back to the voice.

3 JUDGE THOMPSON: And if I'm understanding
4 correctly, the point of this dispute is whether or not
5 they need to install a separate facility between the two
6 collocation cages?

7 MR. BUB: I think so, your Honor. The
8 dispute is --

9 JUDGE THOMPSON: I'm drawing this from your
10 diagram.

11 MR. BUB: How you would get the voice from
12 the data CLEC collocation cage to the voice CLEC
13 collocation cage.

14 JUDGE THOMPSON: And how does SBC say you
15 have to do it?

16 MR. BUB: We say you go directly from one
17 cage to the other.

18 JUDGE THOMPSON: With a separate facility
19 that they need to pay for?

20 MR. BUB: Yes.

21 JUDGE THOMPSON: Okay. They say they don't
22 need that, they can do it over the MDF, no separate
23 facility necessary, just a couple of jumpers, right?

24 THE WITNESS: Yes, your Honor.

25 JUDGE THOMPSON: Have I grasped it?

1 THE WITNESS: Absolutely.

2 MR. BUB: If you were to move that computer
3 and the phone down to the bottom of the page, it would
4 look just like our picture of their proposal where you
5 have --

6 JUDGE THOMPSON: I see that.

7 MR. BUB: -- the call coming in from the
8 loop, the main distribution frame into the splitter, then
9 the voice comes back down to the frame over to the voice
10 CLEC collocation cage. This is how MCI would propose to
11 do it. We would propose to go straight across, and
12 that's --

13 JUDGE THOMPSON: Okay. Let me clarify
14 something else. Was it a mis-impression that exactly this
15 configuration that you proposed is in effect with other
16 ILECs and is functioning acceptably?

17 THE WITNESS: No, it was not a
18 mis-impression.

19 JUDGE THOMPSON: That's the truth?

20 THE WITNESS: It is in effect, and in my
21 testimony we have the Verizon diagram and the Verizon
22 ordering information.

23 JUDGE THOMPSON: Okay. One additional
24 question. If you know, to your knowledge, is there any
25 significant difference between Verizon's equipment and

1 SBC's equipment or the architecture of their central
2 office or end office or tandem or wherever it is you're
3 connected, such that the arrangement that works at Verizon
4 might not work at SBC?

5 THE WITNESS: To my knowledge, there is no
6 difference in the way that the operational support systems
7 work for ordering and the way in which the central offices
8 are built. They were all built at the same time.

9 JUDGE THOMPSON: Your position is it works
10 with Verizon, it'll work at SBC?

11 THE WITNESS: And it works at Qwest.

12 JUDGE THOMPSON: Very good. And it works
13 at Qwest. As far as I'm concerned, it's cleared up, but
14 who wants a crack at additional cross or recross or
15 redirect? Does anyone out there have any questions for
16 this lady?

17 MR. BUB: We don't, your Honor. We just
18 wanted to make sure that you and the arbitration staff
19 understood.

20 JUDGE THOMPSON: I appreciate that. There
21 certainly was a mis-impression and it has been dispelled.
22 I appreciate that greatly. It's helpful for me.

23 MR. BUB: And there is still a dispute over
24 what's the most efficient --

25 JUDGE THOMPSON: Right. You guys still

1 want it done your way; they want it done their way. I
2 understand. I just want to -- you know, we've gone back
3 on the record, we've heard some more from this witness.
4 If someone feels their client needs them to ask some
5 questions about this, this is your opportunity. So speak
6 up now, or else we're going home.

7 MR. BUB: We're done.

8 JUDGE THOMPSON: We're done. Thank you.

9 We're off the record for good this time.

10 WHEREUPON, the hearing of this case was
11 recessed until May 26, 2005.

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