

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3 TRANSCRIPT OF PROCEEDINGS
4 Hearing
5 November 6, 2003
Jefferson City, Missouri
Volume 4

6 BPS Telephone Company, Cass County)
Telephone Company, Citizens Telephone)
7 Company of Higginsville, Missouri,)
Craw-Kan Telephone Cooperative, Inc.,)
8 Fidelity Communication Services I,)
Inc., Fidelity Telephone Company,)
9 Grand River Mutual Telephone)
Corporation, Green Hills Telephone)
10 Corporation, Holway Telephone)
Company, IAMO Telephone Company,)
11 Kingdom Telephone Company, K.L.M.)
Telephone Company, Lathrop Telephone)
12 Company, and Mark Twain Rural)
Telephone Company,)
13)
Complainants,)
14)
vs.) Case No. TC-2002-1077
15)
Voicestream Wireless Corporation,)
16 Western Wireless Corp., and)
Southwestern Bell Telephone Company,)
17)
Respondents.)

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

20 STEVE GAW, Chair,
21 CONNIE MURRAY,
22 BRYAN FORBIS,
ROBERT M. CLAYTON, III,
COMMISSIONERS.

23

24 REPORTED BY: KELLENE K. FEDDERSEN, CSR, RPR, CCR
ASSOCIATED COURT REPORTERS

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Grand River Mutual Telephone
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FOR: Staff of the Missouri Public
Service Commission.

1 (EXHIBIT NOS. 1 THROUGH 6 WERE MARKED FOR
2 IDENTIFICATION BY THE REPORTER.)

3 JUDGE THOMPSON: We will start with entries of
4 appearance of counsel. You can just tell me who you are,
5 who you work for and who you represent. I do not need your
6 address. I assume you're all filling out those little
7 sheets of paper, so don't bother to repeat your address.
8 Why don't we begin with Complainants?

9 MR. ENGLAND: Thank you, your Honor. Let the
10 record reflect the appearance of W.R. England and Brian
11 McCartney on behalf of the 14 named Complainants.

12 JUDGE THOMPSON: Thank you, Mr. England. Then
13 the Respondents.

14 MR. JOHNSON: Thank you, your Honor. On
15 behalf of the Respondents, Mark Johnson of Sonnenschein,
16 Nath & Rosenthal. The Respondents are T-Mobile USA,
17 formerly known as Voicestream Wireless, and Western Wireless
18 and Aerial Communications, which is now part of T-Mobile.

19 JUDGE THOMPSON: Very good. Thank you, sir.
20 Mr. Bub.

21 MR. BUB: Thank you. I'm Leo Bub for SBC
22 Missouri.

23 JUDGE THOMPSON: Staff.

24 MR. BATES: Thank you, your Honor. Bruce H.
25 Bates on behalf of the Staff of the Missouri Public Service

1 Commission.

2 JUDGE THOMPSON: Very good. And I have
3 received a notice of nonparticipation from Public Counsel.
4 So we will not ask them.

5 Why don't we begin then with the first
6 witness, Mr. Schoonmaker, and I will get the TV broadcast
7 going.

8 (Witness sworn.)

9 JUDGE THOMPSON: Take your seat. Would you
10 spell your last name for the reporter.

11 THE WITNESS: My last name is spelled
12 S-c-h-o-o-n-m-a-k-e-r.

13 JUDGE THOMPSON: Please, Mr. England.

14 ROBERT C. SCHOONMAKER testified as follows:

15 DIRECT EXAMINATION BY MR. ENGLAND:

16 Q. Would you please state your full name for the
17 record, please.

18 A. My name is Robert C. Schoonmaker.

19 Q. And by whom are you employed and in what
20 capacity?

21 A. I'm employed by GVNW Consulting, Inc., and I
22 am president and CEO of that company.

23 Q. Mr. Schoonmaker, have you caused to be
24 prepared and filed in this docket direct testimony
25 consisting of approximately 14 pages with two attached --

1 excuse me -- three attached schedules?

2 A. Yes, I have.

3 Q. I believe it's been marked for purposes of

4 identification as Exhibit 1 in this proceeding?

5 A. That's my understanding.

6 Q. Turning your attention to that testimony, do

7 you have any changes or corrections at this point?

8 A. I do not.

9 Q. If I were to ask you the questions that appear

10 in that testimony, would your answers here today under oath

11 be the same as those appearing in that prepared direct

12 testimony?

13 A. Yes.

14 Q. And are those answers true and correct to the

15 best of your knowledge, information and belief?

16 A. Yes.

17 Q. And are those schedules prepared by you or

18 under your direct supervision?

19 A. Yes.

20 Q. And the information contained in those

21 schedules, is that true and correct to the best of your

22 information and belief?

23 A. Yes.

24 Q. Turning your attention now to a document that

25 I believe has been marked for purposes of identification as

1 Exhibit No. 2, is that rebuttal testimony prepared by you or
2 under your direct supervision?

3 A. It's surrebuttal testimony.

4 Q. I beg your pardon. Is that surrebuttal
5 testimony?

6 A. Yes, it is.

7 Q. And do you have any changes or corrections to
8 that testimony?

9 A. No, I don't.

10 Q. If I were to ask you the questions appearing
11 in that prepared surrebuttal testimony, would your answers
12 here today under oath be the same as appearing in that
13 prepared testimony?

14 A. Yes.

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

17 A. Yes, they are.

18 Q. And I believe you have a schedule attached to
19 that testimony?

20 A. That's correct.

21 Q. Was that schedule prepared by you or under
22 your direct supervision?

23 A. No.

24 Q. And what is the nature of that schedule, sir?

25 A. It's a response to a Data Request that we

1 received from Southwestern Bell Telephone Company.

2 Q. And is that a true and accurate copy of the
3 Data Request that we received?

4 A. To my knowledge, it is.

5 Q. Thank you, sir.

6 MR. ENGLAND: I have no other questions of
7 Mr. Schoonmaker at this time. I would offer Exhibits 1 and
8 2 and tender him for cross-examination.

9 JUDGE THOMPSON: Thank you, Mr. England.

10 With respect to Exhibits 1 and 2, do I hear
11 any objections to the receipt of either or both of those
12 exhibits into the record?

13 MR. BATES: No objection.

14 JUDGE THOMPSON: Hearing no objections, those
15 exhibits are received and made a part of the record of this
16 recording.

17 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO
18 EVIDENCE.)

19 JUDGE THOMPSON: Thank you, Mr. England.

20 MR. ENGLAND: Thank you.

21 JUDGE THOMPSON: Mr. Johnson, I believe you
22 are up first with cross-examination.

23 MR. JOHNSON: I believe I am, and I have no
24 questions.

25 JUDGE THOMPSON: Thank you. And let's see.

1 OPC is not participating.

2 Mr. Bates?

3 MR. BATES: Thank you, your Honor.

4 CROSS-EXAMINATION BY MR. BATES:

5 Q. Mr. Schoonmaker, good morning.

6 A. Good morning.

7 Q. I just have a couple of questions for you.

8 Can you tell me how the inter-MTA factor negotiated and

9 agreed to by the 14 Complainants in this case for wireless

10 traffic originated by Voicestream and Western and transited

11 by Southwestern Bell were negotiated?

12 A. I'm not exactly sure how to respond to that,

13 but I guess I'll -- I'll try. I mean, there were

14 discussions between the attorneys in regards to those

15 factors. We provided some information to T-Mobile about

16 factors that Complainants had agreed to with other wireless

17 carriers and which had been filed with the Commission in

18 interconnection contracts between those companies and other

19 wireless companies.

20 To my understanding, then, there were

21 discussions between, I believe, primarily Mr. England and

22 their attorneys regarding those factors, and some of the --

23 particularly the factors that are other than zero, why they

24 were in the nature of the LATA maps and the MTA maps and the

25 locations of those exchanges and so forth.

1 And I did not participate specifically in
2 those negotiations, but after that point in time, they --
3 they arrived at an agreement and a nonunanimous stipulation
4 was filed with the Commission indicating those factors that
5 both the Complainants and Respondents had agreed to.

6 Q. And do you support those factors?

7 A. Yes.

8 Q. Do you know of your own knowledge whether
9 Southwestern Bell was included in those negotiations?

10 A. I don't believe they were. I think the
11 negotiations were between the Complainants and the
12 Respondents.

13 Q. Do you have any opinion as to whether
14 Southwestern Bell should have been included in the
15 negotiations?

16 A. I guess generally I don't believe that it's
17 necessary for them to be included in those kind of
18 negotiations. The issue is primarily between the
19 Complainants and the Respondents.

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

21 JUDGE THOMPSON: Thank you, Mr. Bates.

22 Mr. Bub?

23 MR. BUB: Thank you, your Honor.

24 CROSS-EXAMINATION BY MR. BUB:

25 Q. Good morning, Mr. Schoonmaker.

1 A. Good morning, Mr. Bub. We meet again.

2 Q. It's always my pleasure.

3 Mr. Schoonmaker, I'd like to direct your

4 attention to the Oregon Farmers access tariff. This is the

5 access tariff that Complainants use; is that correct?

6 A. Most of them, but not all.

7 Q. Okay. Those that do use the Oregon Farmers

8 tariff, technically they concur in the terms and conditions

9 and each has its own individual access rate sheet; is that

10 correct?

11 A. They have a concurrence and that does concur

12 in the terms and conditions of that tariff, yes.

13 Q. Do they all have their own individual rates,

14 or do they all use the same rates?

15 A. The concurrence that they file includes rates

16 for the individual company.

17 Q. Okay. Thank you. And you're familiar with

18 these tariffs, are you not?

19 A. Yes.

20 Q. These are the tariffs that contain the rates

21 that would apply to the inter-MTA traffic in this case; is

22 that correct?

23 A. That's correct.

24 Q. Would you agree with me that these tariffs

25 provide for the joint provisioning by LECs in Missouri of

1 exchange access to other carriers?

2 A. I mean, in general terms, yes. If you want me
3 to validate that that's specific wording in tariffs, I'd
4 have to see it before I could do that.

5 Q. I can accept your general representation.

6 A. Okay.

7 Q. This generally means that if another carrier
8 like AT&T wants to terminate a long distance call to a small
9 LEC like Lathrop but doesn't have facilities that go there,
10 AT&T connects that call through another LEC like SBC?

11 A. Yes.

12 Q. And then in that instance, both SBC and the
13 small LEC would be jointly provisioning exchange access
14 service?

15 A. That's correct.

16 Q. And when they do this, the LECs also jointly
17 bill for the access services that they each provide?

18 A. No. They individually bill their respective
19 portions. They don't jointly bill. Maybe that's a
20 terminology issue.

21 Q. Would it be more correct to say they meet-
22 point bill?

23 A. There are meet-point billing provisions here
24 in Missouri. I mean, there are several different
25 alternatives of meet-point billing here in Missouri. They

1 bill using a multiple bill, multiple tariff method, which
2 means that each company bills their respective portion of
3 facilities out of their respective tariff.

4 Q. And a lot of work by all LECs went into
5 implementing meet-point billing in Missouri; would that be
6 correct?

7 A. Long time ago, yes.

8 Q. And what they did is they looked at each
9 possible route between the LECs to figure out the percentage
10 ownership of facilities between the two carriers?

11 A. Yes.

12 Q. And that's known as the billing percentage or
13 BIP, B-I-P?

14 A. Yes.

15 Q. And each would bill the originating carrier,
16 AT&T in this example, based on the BIP for that particular
17 route?

18 A. Based on the individual tariff provisions in
19 the companies, that's the case. In fact, with the Oregon
20 Farmers tariff, the local transport piece is
21 non-mileage-sensitive, and so the BIP really doesn't come
22 into the billing calculation for that tariff for switched
23 access.

24 Q. Does it for others that you represent?

25 A. Yes, BPS. It would for BPS. Probably Cass

1 County. Fidelity has a banded rate structure.

2 Q. That's okay.

3 A. The billing percentage specifically doesn't
4 come in, but there are different rates depending on the
5 mileages. I believe that's all.

6 Q. For those that use the BIPs, it's true that
7 they would have to be maintained by the LECs to ensure their
8 accuracy when the percentage of facility ownership changes;
9 is that your understanding?

10 A. They do have to be maintained. Sometimes when
11 facility ownership -- normally when facility ownership
12 changes, there are changes in those BIPs, but that's not a
13 requirement. And at the time the BIPs were developed, they
14 were not -- those were negotiated numbers and they were not
15 always based specifically on mileage calculations.

16 Q. It is true they are maintained when a facility
17 ownership changes; there's, I guess, another negotiation to
18 come up with a new BIP that both parties are comfortable
19 with?

20 A. There's a process to update those in the
21 National Exchange Carrier Association tariff.

22 Q. Does that process follow any guidelines, any
23 national guidelines or --

24 A. Basically, the primary requirement is that
25 both parties have to sign off and agree to the change before

1 NECA will change it. I'm not aware that there are any
2 specific procedures of identifying the mileage.

3 Q. And so I'm straight, those BIPs are contained
4 in the NECA tariff. Is that where they live?

5 A. There is a NECA Tariff No. 4, I believe it is,
6 that is an interconnection tariff.

7 Q. Okay. Mr. Schoonmaker, I'd like to go over an
8 example of a call. If you could assume with me that there's
9 a call from a Kansas City customer of SBC Missouri who's
10 attempting to place a call to a local exchange customer of
11 Orchard Farm Telephone Company outside of St. Louis, and if
12 you could assume for the purpose of this call that that SBC
13 customer has chosen AT&T as his PIC, P-I-C'd carrier for
14 these interLATA calls.

15 A. Okay.

16 Q. Okay. So that AT&T carries the call,
17 ultimately to SBC Missouri, where it's then transited over
18 to Orchard Farms for termination. Do you have that factual
19 pattern down?

20 A. Okay.

21 Q. Would you agree with me that this is not an
22 uncommon occurrence to have a call carried by an
23 interexchange carrier and then two or more LECs involved in
24 the termination of that call?

25 A. I would agree that's not uncommon.

1 Q. Happens frequently, does it?

2 A. Yep. Every day.

3 Q. And that's because Orchard Farm, in this

4 example, doesn't have a tandem facility themselves?

5 A. Yes, and the interexchange carrier chooses to

6 come to the tandem, not to Orchard Farm directly.

7 Q. And of the independent companies in Missouri,

8 would you agree that the majority of those don't have their

9 own tandems, so they receive terminating interexchange calls

10 that require the involvement of two or more LECs, in this

11 example we've just discussed?

12 A. That would probably be true of the majority of

13 them.

14 Q. And would you agree with me that the Oregon

15 Farmers access tariff that contemplates the meet-point

16 billing that we discussed would apply to the call, in this

17 example, from Kansas City to an Orchard Farm customer?

18 A. Yes.

19 Q. And under that billing arrangement, Orchard

20 Farm bills directly to AT&T, the interexchange carrier, and

21 not to SBC; is that correct?

22 A. That's correct.

23 Q. And also SBC, in this example, directly bills

24 AT&T for its portion of exchange access that it provides to

25 AT&T?

1 A. That's correct.

2 Q. Let's change a little bit and talk about LECs
3 that have tandems. Let's assume that call from that same
4 Kansas City end user, but this time the customer calls into
5 an exchange of a tandem LEC. Could you use an example in
6 the St. Louis LATA, could that be, like, Northeast Missouri
7 Rural? Would that be an appropriate example?

8 A. I -- I believe so. I know it is with Kingdom,
9 if that helps, and the Auxvasse exchange, if you want it.

10 Q. Okay. Let's use Kingdom instead. I think it
11 helps to have concrete examples to help us think those
12 things through. Okay. Let's look at that call from -- that
13 AT&T would go directly from Kansas City to that LEC's access
14 tandem, and in that particular instance, that call would
15 bypass Southwestern Bell's network, would it not?

16 A. Their switch network, it definitely would.

17 Q. And that's because when a LEC establishes a
18 tandem office, they normally require IXCs to bring their
19 facilities directly to that tandem?

20 A. That's correct.

21 Q. And they generally direct other LECs in the
22 state to block IXC traffic from being transited to them; is
23 that correct?

24 A. Yes.

25 Q. And in that situation, SBC is out of the

1 picture and we don't provide any switched access facilities
2 and we don't bill for any; is that correct?

3 A. That's my understanding.

4 Q. Do you also understand that there might be a
5 few exceptions to this general practice, such as Citizens
6 Telephone Company that still permits some IXC traffic to be
7 transited to them, even though they've established a tandem?

8 A. I'm not sure whether that is still the case or
9 not. It certainly was for a number of years and may be
10 still.

11 Q. An example would be to handle overflow calls
12 that otherwise wouldn't get through. Would that be an
13 example of how that traffic would --

14 A. It could be an example.

15 Q. Would you agree in those situations that the
16 intercompany compensation would be handled like the Kansas
17 City to Orchard Farm call that we just discussed?

18 A. It should be. Whether, in fact, it is, I'm
19 not sure. Certainly it should be.

20 Q. Let's change gears again and talk about an
21 intraLATA call. In this example of a new call, we have a
22 customer in Sprint Missouri's Warrensburg exchange, Sprint
23 LEC, and that customer calls a small non-tandem LEC behind
24 SBC. Would Lathrop work in this case?

25 A. As long as Warrensburg isn't in the MTA. I

1 don't remember that.

2 Q. In the LATA?

3 A. Not the MTA. The MCA calling area, I was
4 thinking of. I'm sorry. Metropolitan calling area. You're
5 in the correct LATA.

6 Q. Okay. Let's assume that they're outside the
7 MCA.

8 A. I think it is. Okay. We've got Warrensburg
9 to Lathrop.

10 Q. In this particular example, customer PICs
11 Sprint Missouri, the LEC, for their 1+ intraLATA toll calls.
12 Are you with me so far?

13 A. Okay.

14 Q. And when that person calls Lathrop, Sprint
15 transits that call through SBC's network to get to Lathrop;
16 is that correct?

17 A. That would be my understanding, yes.

18 Q. Would you agree with me that the intercompany
19 compensation on that call, again, would be handled like the
20 Kansas City to Orchard Farm call that we discussed earlier?

21 A. On the terminating end, it would be similar.

22 Q. I'm only asking about the terminating end.
23 I'm sorry.

24 A. Okay.

25 Q. So that both SBC and Lathrop bill Sprint

1 access on a meet-point bill basis?

2 A. That's correct.

3 Q. And again, that happens frequently?

4 A. Yes.

5 Q. That's essentially the way all calls from

6 Sprint Missouri to Lathrop are handled?

7 A. Yes.

8 Q. Let's change that call to terminate in a small

9 LEC that has established a tandem, if we could use

10 Mid-Missouri's Pilot Grove exchange. That's also in the

11 same LATA. Mid-Missouri in that case has a tandem; is that

12 correct?

13 A. Yes.

14 Q. But still that intraLATA toll call would still

15 be transited through SBC Missouri's network to Pilot Grove?

16 A. That's correct.

17 Q. And the intercompany compensation would be the

18 same as the Kansas City to Orchard Farm example?

19 A. It would be similar.

20 Q. SBC and Mid-Missouri bill Sprint access on a

21 meet-point bill basis?

22 A. Yes.

23 Q. And Mid-Missouri does not bill SBC for that

24 call?

25 A. No. They'd like to, but they don't.

1 Q. And again, that happens frequently every day
2 because that's how calls go?

3 A. Yes.

4 Q. Thank you.

5 JUDGE THOMPSON: Mr. Bub, let me make sure I
6 understand your last example.

7 MR. BUB: Yes, sir.

8 JUDGE THOMPSON: The call originates in
9 Warrensburg and is carried by Sprint?

10 MR. BUB: The LEC.

11 JUDGE THOMPSON: To Mid-Missouri's tandem?

12 MR. BUB: Yes, sir.

13 JUDGE THOMPSON: And the subscriber is
14 located -- is a subscriber of who, the receiving subscriber?

15 MR. BUB: The person that receives the call is
16 a Mid-Missouri telephone subscriber.

17 JUDGE THOMPSON: So how is SBC involved in
18 that call?

19 MR. BUB: We transit that call, your Honor.
20 The calls goes -- if I can go through the call path again?

21 JUDGE THOMPSON: Have Mr. Schoonmaker explain
22 the call path, if you would, because I did not follow that
23 last example.

24 THE WITNESS: Okay. The call path, it would
25 go from -- and I believe Warrensburg is a Sprint tandem

1 switch. It would go to Warrensburg. Warrensburg Sprint
2 would then take it on trunks into Southwestern Bell's Kansas
3 City McGee switch, and then it would go from Southwestern
4 Bell's Kansas City McGee switch in downtown Kansas City on
5 trunks out to Mid-Missouri.

6 And that's how Southwestern Bell gets
7 involved. It doesn't go directly from Warrensburg to Pilot
8 Grove. It goes through Kansas City and onto Southwestern
9 Bell's facilities.

10 JUDGE THOMPSON: I see. So in other words,
11 even though Mid-Missouri has their own tandem, it's
12 delivered through Southwestern Bell's tandem?

13 THE WITNESS: In that case, it is. It gets
14 into the issue that's before the Commission in other cases
15 about Feature Group C versus Feature Group D and how things
16 are switched and so forth.

17 JUDGE THOMPSON: And could you clarify who
18 bills who with respect to that call?

19 MR. BUB: On that calling both SBC Missouri
20 and Mid-Missouri Telephone Company bill exchange access on a
21 meet-point bill basis to Sprint Missouri, which is the
22 originating telephone company in this example; is that
23 correct?

24 THE WITNESS: That's correct.

25 JUDGE THOMPSON: Thank you.

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1 BY MR. BUB:

2 Q. And this is how all intraLATA toll calls get
3 to -- that are handled by LECs that go to Mid-Missouri
4 Telephone Company; is that correct?

5 A. All intraLATA toll calls that are LEC toll
6 responsibility, that would be correct.

7 Q. Okay. And that would be true for all the
8 other small LECs behind SBC Missouri?

9 A. Well, most of the small LECs that are behind
10 SBC Missouri do not provide toll service, and their calls
11 would go differently because they go -- they're the
12 responsibility of interexchange carriers.

13 Q. Talking about terminating only.

14 A. On the terminating side? Okay. On the
15 terminating side, yes, that would be correct.

16 Q. And then Sprint Missouri also has some small
17 LECs behind it; is that correct?

18 A. Yes.

19 Q. Same thing happens there; those intraLATA toll
20 calls from, like, Southwestern Bell go through Sprint
21 Missouri, Inc. They transit Sprint Missouri, Inc.'s
22 facilities to get to those small ILECs that home off Sprint
23 Missouri, Inc.'s tandem; is that correct?

24 A. That's correct.

25 Q. And in that situation, the terminating company

1 and the transiting company, Sprint in this example, would
2 bill their exchange access service on a meet-point bill
3 basis to the originating telephone company, in this new
4 example, would be SBC Missouri if it was one of our
5 customers that placed that call?

6 A. Yes.

7 JUDGE THOMPSON: Mr. Bub, is your microphone
8 on?

9 MR. BUB: Do I need to move closer to it?

10 JUDGE THOMPSON: Make sure you use it so that
11 our listeners across the globe have the benefit of hearing
12 your questions.

13 MR. BUB: I thought I was. If I wasn't, I'll
14 try to get closer.

15 JUDGE THOMPSON: That's quite all right.
16 Thank you.

17 BY MR. BUB:

18 Q. Let's shift gears a little bit. Let's talk
19 about wireless for a minute. For these questions, I'd like
20 you to assume that this factor issue is resolved, can either
21 have been resolved by negotiations between the originating
22 wireless company and the terminating LEC or perhaps by the
23 Missouri Public Service Commission setting it, which is the
24 assumption I'd like you to make, is that there is a factor
25 and that factor would be used.

1 Would you agree with me that this factor is --
2 the purpose of this factor is to determine how much of a
3 wireless carrier's calls to a particular terminating LEC are
4 inter-MTA calls?

5 A. Yes.

6 Q. And for those calls, you would bill switched
7 access rates?

8 A. That's correct.

9 Q. And those are the same switched access rates
10 that would apply to an intrastate toll call, would they not?

11 A. Yes.

12 Q. And you have clients in Missouri that have
13 actually completed agreements for the termination of
14 wireless traffic in Missouri?

15 A. Yes.

16 Q. Could you give us a few examples?

17 A. If you go to Schedule RCS-3, and each of the
18 companies under the Verizon Wireless call that have a
19 percentage, rather than NA, have agreements with Verizon
20 Wireless, and each of the companies that have a percentage
21 and not an NA under the Sprint PCS column have agreements
22 with Sprint PCS. And all those agreements have been
23 approved by the Commission.

24 Q. Are there any other wireless carriers with
25 whom your clients have agreements?

1 MR. ENGLAND: Your Honor, this isn't an
2 objection, but I -- I think for purposes of clarification,
3 when he refers to client, I assume you're referring to the
4 Complainants.

5 MR. BUB: Complainants, yes, sir.

6 THE WITNESS: In terms of the Complainants,
7 I'm aware that Grand River has a direct interconnection
8 agreement with Dobson. Citizens Telephone Company has a
9 direct interconnection agreement with Mid-Missouri Cellular.
10 Grand River has an agreement with ALLTEL Wireless. There
11 may be others. I'm specifically aware of those.

12 BY MR. BUB:

13 Q. That's fine. Do those agreements generally
14 contain inter-MTA factors?

15 A. I believe so, but I'm not certain.

16 Q. Certainly the ones you list in your testimony,
17 the Sprint and the Verizon ones do?

18 A. Yes.

19 Q. And those companies that have factors in those
20 agreements, they determine inter-MTA traffic by applying the
21 factors to the cellular minutes that SBC Missouri reports to
22 them on the cellular transiting usage report that's commonly
23 known as the CTUSR; is that correct?

24 A. If the agreement is an indirect agreement,
25 which in the case of Grand River and ALLTEL it is, that

1 would be correct. In the case of the direct agreements,
2 Grand River to Dobson, Citizens to Mid-Missouri Cellular,
3 those calls are being delivered over facilities that SBC is
4 not involved in and they're based on measurements that are
5 made by the company and not by Southwestern Bell CTUSR
6 reports.

7 Q. Just to clear those, CTUSR reports just report
8 traffic that transits SBC, is that correct, the ones you get
9 from SBC?

10 A. The ones we get from Southwestern Bell are
11 reports of traffic that wireless carriers deliver to
12 Southwestern Bell's tandem, which then Southwestern Bell
13 terminates over the network to our companies, yes.

14 Q. And for those companies that do get the CTUSR
15 and have factors in their agreements, they apply the factor
16 to the minutes in the CTUSR to come up with the inter-MTA
17 traffic; is that a correct understanding?

18 A. That's my understanding.

19 Q. And those companies are capable of billing
20 access charges to the wireless carriers on that basis?

21 A. Yes.

22 Q. And that's happening today?

23 A. As far as I know, it is.

24 Q. And they don't bill those access charges to
25 SBC Missouri whose network those calls transited; is that

1 correct?

2 A. To my knowledge, they do not.

3 MR. BUB: Excuse me a minute, your Honor.

4 JUDGE THOMPSON: Absolutely. Take as much

5 time as you need, Mr. Bub.

6 MR. BUB: I'm ready.

7 JUDGE THOMPSON: Please proceed.

8 BY MR. BUB:

9 Q. Mr. Schoonmaker, you're familiar with Newton's

10 Telecom Dictionary, are you not?

11 A. I've heard of it.

12 Q. You would agree that it's generally used by

13 people in the telecom industry for reference on the myriad

14 of terms that are used in the telephone business?

15 A. It is used by some people for that purpose,

16 yes.

17 Q. GVNW have a copy of it in their library?

18 A. We may have. I haven't seen it if we do.

19 Q. Wouldn't surprise you that somebody in your

20 office would have it?

21 A. It wouldn't surprise me. It wouldn't surprise

22 me if we don't.

23 Q. You agree with me that it is generally used in

24 the industry for definitional purposes?

25 A. It's frequently used and referred to.

1 MR. BUB: Your Honor, may I approach the
2 witness?
3 JUDGE THOMPSON: You may, as long as you have
4 no aggressive intent.
5 MR. BUB: I do not, your Honor. You know me
6 better than that.
7 JUDGE THOMPSON: Yes, sir.
8 BY MR. BUB:
9 Q. Mr. Schoonmaker, I'm going to hand you
10 Newton's Telecom Dictionary and direct your attention to
11 page 455. Could you read for us please the definition of
12 IXC.
13 MR. ENGLAND: Your Honor?
14 JUDGE THOMPSON: Sir?
15 MR. ENGLAND: I think I'm going to interpose
16 an objection or several objections at this point. First of
17 all, the document hasn't been sufficiently identified. We
18 don't know the copy --
19 JUDGE THOMPSON: Please use your microphone.
20 We can't hear you.
21 MR. ENGLAND: I have several objections.
22 JUDGE THOMPSON: All right.
23 MR. ENGLAND: We don't know the publication
24 date of that document, first of all, and it has several, if
25 not numerous, different editions. More importantly, I'm not

1 sure that a proper foundation has been laid for reading into
2 the record quotes from this book. And then finally, I guess
3 the next thing or maybe the first thing would be relevance.
4 What is the purpose of this line of questioning to put into
5 the record quotes from this book?

6 JUDGE THOMPSON: Mr. Bub?

7 MR. BUB: Your Honor, we can handle the first
8 part because I can ask Mr. Schoonmaker to read the
9 publication date and which edition it is. If that's
10 something that Mr. England would like into the record, I can
11 certainly have Mr. Schoonmaker do that.

12 As far as the foundation, we've laid the
13 foundation that it is a dictionary that's generally used in
14 the industry for reference in defining the universe of terms
15 that are used in the telephone industry.

16 As far as relevance, one of the allegations in
17 this case is that we need to pay switched access rates as if
18 we were an IXC, and I'm asking him for the definition of an
19 IXC.

20 MR. ENGLAND: Well, I don't believe there's
21 been an agreement or any evidence that this is an
22 authoritative treatise. Mr. Schoonmaker simply said that it
23 is frequently used by some, but he has not acknowledged it
24 as an authority. And, in fact, I would say the best
25 evidence of an IXC is the definition in our access tariffs,

1 which Mr. Bub queried him about earlier in his earlier line
2 of cross-examination.

3 JUDGE THOMPSON: Mr. Bub?

4 MR. BUB: This treatise, we've laid the
5 foundation that it's generally used in the industry, and
6 the -- what I'm trying to get through this dictionary is in
7 addition to what our access interexchange carrier definition
8 is in the tariff, I want to get to what an IXC is generally
9 known in the industry. So it's separate from what is in the
10 tariff.

11 JUDGE THOMPSON: Okay.

12 MR. BUB: If the Commission wants to take it
13 for what it's worth, I'll accept that.

14 JUDGE THOMPSON: Are you suggesting it goes to
15 weight rather than admissibility?

16 MR. BUB: If Mr. England's objection is to
17 that, I would agree it could go to weight. I think it
18 should be admissible as an authoritative treatise, because
19 people in the industry use it as a reference.

20 JUDGE THOMPSON: Okay. Mr. England?

21 MR. ENGLAND: Well, without belaboring it, I
22 wholeheartedly disagree. I'm familiar with this document.
23 It contains a number of editorial comments by the author
24 that I do not believe are authoritative and go beyond simple
25 definitions. So that's my baseline concern with what may or

1 may not be read into the record here.

2 JUDGE THOMPSON: Thank you, Counsel. I can
3 always count on you guys for some great objections.

4 First of all, Mr. Schoonmaker, would you
5 please find the date and edition of that document and read
6 it to me?

7 THE WITNESS: It's the 15th updated expanded
8 and much improved edition, and it is copyrighted in 1999.

9 JUDGE THOMPSON: Okay.

10 THE WITNESS: It has an August 1999 ISBN
11 number, whatever that is.

12 JUDGE THOMPSON: Sounds like there was an
13 editorial comment just even in the edition identification.

14 As to foundation, I believe that Mr. England
15 is correct that Mr. Schoonmaker testified that it is
16 frequently referred to. I don't believe that
17 Mr. Schoonmaker ever said anything that would suggest that
18 it's generally relied on or that it's authoritative. So I
19 think Mr. England is correct about that.

20 However, I do believe that you can ask him to
21 read, in fact, anything and ask him whether he agrees with
22 it or does not agree with it, and why not. So with that
23 understood, I will allow you, then, to perhaps -- first, I'm
24 going to sustain Mr. England's second objection and allow
25 you to ask perhaps other questions.

1 The first objection I think we've taken care
2 of by having Mr. Schoonmaker read the date and edition. And
3 as to the question of relevance, I think that will depend on
4 what further questions you raise, if any.

5 Please proceed.

6 MR. BUB: Thank you. So if I understand your
7 ruling, your Honor, he may read it and I may ask him after
8 that whether he agrees with it and why?

9 JUDGE THOMPSON: I believe that to be true.

10 MR. BUB: Okay.

11 JUDGE THOMPSON: And that's my ruling.

12 MR. BUB: Thank you. I just want to be
13 straight.

14 BY MR. BUB:

15 Q. Mr. Schoonmaker, could you please read that
16 definition of IXC?

17 A. IXC, interexchange carrier. Also known as
18 IEC, parentheses, interexchange carrier, closed parentheses,
19 and IC. Long haul based -- excuse me -- long haul long
20 distance carriers. IXCs include all facilities-based
21 interLATA carriers. The largest IXCs are AT&T, MCI, Sprint
22 and WorldCom. A huge number of smaller regional companies
23 also fit this definition.

24 The term generally applies to voice and data
25 carriers, but not to Internet carriers. IXC is in contrast

1 to LEC, parentheses, local exchange carrier, closed
2 parentheses, a term applied to traditional telephone
3 companies which provide local service and intraLATA toll
4 service. IXCs also provide intraLATA toll services -- toll
5 service and operate as CLECs, parentheses, competitive local
6 exchange carriers, closed parentheses, in many states.

7 Once upon a time, the non-AT&T IXCs were
8 called OCCs, parentheses, other common carriers, closed
9 parentheses, a status which they resented for understandable
10 reasons.

11 Q. Thank you, Mr. Schoonmaker. Do you agree with
12 that definition generally?

13 A. I agree that it is a semi-layman's description
14 of how the term IXCs is used in various forums in the
15 industry. It is not a technical definition of an IXC in
16 regard to tariffs and other regulatory proceedings, and
17 depending on the state and federal, parts of this definition
18 would be correct and incorrect.

19 For example, one obvious thing is it
20 identifies MCI and WorldCom as two of the four largest
21 carriers. MCI and WorldCom are the same company at this
22 point in time. So it's -- I mean, you know, I view this
23 dictionary from -- and I haven't looked at it a whole lot.
24 It's a compilation of generalized descriptions of the way
25 terms are used in the industry. It is not an authoritative

1 regulatory definition of those terms as they may be applied
2 in various states and in tariffs and so forth.

3 Q. If we can move to your tariff definition, the
4 definition you have in there isn't really for an
5 interexchange carrier, it's for an interexchange customer;
6 isn't that correct?

7 A. That's correct.

8 JUDGE THOMPSON: Are you referring now to the
9 Orchard Farm or --

10 MR. BUB: Yes, I am. Oregon Farmers.

11 JUDGE THOMPSON: Thank you.

12 BY MR. BUB:

13 Q. Mr. Schoonmaker, I just have one more area to
14 go into, and this is Complainant's answers to a set of Data
15 Requests that we had asked. Do you have a copy of those?

16 A. No, not with me.

17 MR. BUB: Your Honor, may I approach the
18 witness?

19 JUDGE THOMPSON: You may.

20 Is this something I have a copy of, Mr. Bub?

21 MR. BUB: You do not, your Honor, but I can
22 make one for you. What I was going to do is give the
23 witness a chance to look at it, and then I was going to ask
24 him a couple questions about it.

25 JUDGE THOMPSON: That would be fine. Please

1 proceed.

2 BY MR. BUB:

3 Q. Mr. Schoonmaker, I'm handing you a copy of
4 some Data Request answers that Mr. England provided to us in
5 a letter dated September 24th. I direct your attention to
6 DR No. 1, if you could take a look at that for a minute,
7 become familiar with it.

8 A. Okay.

9 Q. My question here -- Mr. Schoonmaker, my
10 question here references a statement in your testimony about
11 SBC Missouri's CTUSR report where you indicated at page 8
12 that because these records are summary reports and not
13 industry standard, individual call detail records, there is
14 no information in these reports to identify whether they are
15 between inter-MTA or intra-MTA calls.

16 And we asked you in the series of questions
17 about your statements there, and the one that I'm interested
18 in is that standard industry record that you're referring
19 to. Was that the category 110101 OBF record?

20 A. Yes.

21 Q. Would you agree with me that the category
22 110101 record also does not have a specific indicator to
23 identify whether the call is an inter-MTA or intra-MTA call?

24 A. That's correct, it doesn't have that specific
25 indicator. However, you can get some idea of whether it may

1 be inter-MTA or intra-MTA based on the calling party number,
2 which is available in that record.

3 Q. Thank you.

4 Mr. Schoonmaker, I'd also like to direct your
5 attention to your clients' answer to DR No. 6. I'll give
6 you a minute to look at that one as well.

7 A. (Witness complied.)

8 Q. Could you please for us read the question and
9 answer to that DR?

10 A. The question is, please specify the
11 statistical accuracy of the inter-MTA factors listed on
12 schedule RCS-3 that Complainants propose in this case.

13 Answer, since, as described in the direct
14 testimony, the factors listed on Schedule RCS-3 are
15 negotiated factors based on the general circumstances of the
16 two companies' networks and not on specific factual data
17 regarding the individual calls, information which is not
18 conclusively available, the statistical validity of the
19 factors cannot be determined.

20 Q. Thank you, Mr. Schoonmaker.

21 MR. BUB: Those are all the questions we have
22 at this time, your Honor.

23 JUDGE THOMPSON: Thank you, Mr. Bub.

24 QUESTIONS BY JUDGE THOMPSON:

25 Q. Mr. Schoonmaker, I have so many questions for

1 you I hardly know where to begin, and since I'm the only one
2 on the Bench right now, I get to ask them.

3 A. Fire away.

4 Q. First of all, do you know which Complainants
5 do not concur in Oregon Farmers' exchange access tariff?

6 A. I know that BPS does not. Cass County, to my
7 knowledge, does not. Fidelity Communications Services 1, my
8 guess is they don't, but I'm not certain. The rest of the
9 companies, I believe, do.

10 Q. Okay. Now, early in the series of questions
11 that Mr. Bub asked you, he asked you about joint
12 provisioning of toll traffic, and I wonder if you could
13 explain exactly what joint provisioning means.

14 JUDGE THOMPSON: Mr. Bub?

15 MR. BUB: Your Honor, this isn't an objection,
16 but more of a clarification. My -- the series of my
17 questions were for the joint provisioning of exchange access
18 service that a toll provider or long distance provider would
19 buy from the transiting and the terminating LEC. Just a
20 clarification.

21 JUDGE THOMPSON: Thank you for that
22 clarification. You can see that I need all the help I can
23 get.

24 BY JUDGE THOMPSON:

25 Q. Please explain what that joint provisioning of

1 exchange access service is.

2 A. Basically the joint provisioning is
3 recognizing that an interexchange carrier who connects at
4 the Bell tandem and wants to terminate traffic to Orchard
5 Farms Telephone Company, which we talked about in the one
6 example, it takes the facilities of both Southwestern Bell
7 and Orchard Farms in order to get that call to the ultimate
8 end user where it's to be terminated. And they, therefore,
9 jointly provision the termination of that call, each of them
10 providing a portion of the facilities necessary to make that
11 happen.

12 Q. Okay. So without having any idea what Orchard
13 Farms' terminating access charge is, let's just say it's
14 100 percent. All of it. Therefore, some percentage of that
15 exchange access -- terminating exchange access charge would
16 be assessed against Southwestern Bell and some percentage of
17 it would be assessed against the IXC. Is that your
18 testimony?

19 A. No. The joint provisioning means that both
20 Southwestern Bell and Orchard Farms are providing part of
21 the service, and they each -- under the meet-point billing
22 provisions which were mentioned, Southwestern Bell would
23 bill for their facilities, which would be a transport charge
24 between their switch and a meet point with Orchard Farm,
25 possibly a tandem switching charge.

1 And then Orchard Farm would build the
2 transport from the meet point with Southwestern Bell to
3 their switch. They would bill an end office switching
4 charge for performing the terminating switching function,
5 and then a carrier common line rate, at least out of the
6 state tariff, for transporting the call from the switch to
7 the end user's location. But both Southwestern Bell and
8 Orchard Farm would be billing AT&T if they were the
9 interexchange carrier for the call.

10 Q. Okay. And the things that you mentioned,
11 switched access and carrier common line and end office
12 termination, are those components of exchange access?

13 A. Switched access is -- is exchange access that
14 goes through a switch as a -- as compared to special access,
15 which is a dedicated facility to a specific carrier, also
16 part of exchange access. But switch access is normally what
17 you'd see on the exchange access associated with a normal
18 toll call.

19 Local transport end office switching or local
20 switching and carrier common line are rate elements and
21 subparts of that total provision of exchange access.

22 Q. Okay. So from the point of view of AT&T, in
23 the example that you're using, what they're paying partially
24 to Orchard Farms and partially to Southwestern Bell, from
25 the point of view of AT&T that adds up to their terminating

1 access charge; is that correct?

2 A. Yes.

3 Q. Now, what -- if you know, what governs this
4 meet-point billing from a legal point of view or from a
5 tariffed point of view? In other words, does Orchard Farms'
6 exchange access tariff determine who pays what in the call
7 that's provisioned in this example?

8 A. Both Southwestern Bell's and Orchard Farm's
9 access tariff have provisions for the provision of exchange
10 access service and both of them have provisions for this
11 joint provisioning and meet-point billing. So they both
12 apply each to the facilities that that particular company
13 provides in regards to that -- that service.

14 Q. Okay. Let's take AT&T out of the example, and
15 let's replace it with a wireless carrier.

16 A. Okay.

17 Q. Who pays?

18 A. Well, based on the Telecommunications Act and
19 the orders of this Commission at this point in time, the
20 access tariffs no longer apply, and so the access tariffs
21 are out of the picture.

22 What happened initially is that Southwestern
23 Bell, with whom the wireless carriers were directly
24 connecting, entered into contracts with those wireless
25 carriers because they wouldn't connect their facilities with

1 them until they entered into those contracts.

2 Once the wireless carrier had entered into
3 those contracts with Southwestern Bell and could terminate
4 traffic and put it on Southwestern Bell's tandem, they used
5 those facilities not only to put Southwestern Bell traffic
6 on them, but traffic to Orchard Farms as well. And because
7 the network was connected for access purposes, the call went
8 over the network to Orchard Farms and was terminated.

9 There -- but generally the wireless carriers
10 did not come to the small companies like Orchard Farm and
11 enter into interconnection agreements or compensation
12 agreements. And we had a series of cases over two or three
13 years, and finally, because we couldn't get them to
14 negotiate and were having difficulties, we filed the
15 wireless termination tariffs to apply to this specific set
16 of circumstances where wireless carriers were terminating
17 traffic indirectly through a Bell Operating Company tandem
18 or a Sprint tandem, if that's the case.

19 And those tariffs were approved by the
20 Commission after hearings. Most of the wireless carriers
21 now are either paying under the tariffs or have subsequently
22 negotiated contracts which supersede the tariffs. T-Mobile
23 and Western Wireless have not been paying and have refused
24 to pay under the tariffs, and that's the background of this
25 complaint and why we're in this proceeding today.

1 Q. I understand that. Now, when I asked you
2 about the tariff basis for the meet-point billing to AT&T of
3 the traffic in your example, I thought you told me that this
4 was governed partially by Orchard Farm's tariff and
5 partially by Bell's tariff; is that correct?

6 A. That's correct. Their access tariff.

7 Q. Now, when we replace AT&T with a wireless
8 carrier, I understand that the relationship of Bell to the
9 wireless carrier is now governed by an interconnection
10 agreement between Bell and that wireless carrier, correct?

11 A. Yes.

12 Q. There is no interconnection agreement, so I
13 understand, between the wireless carrier and Orchard Farm,
14 using that in our example?

15 A. Correct, with T-Mobile, yes.

16 Q. Okay. So why wouldn't Orchard Farm's tariff
17 govern in the same way that it did with AT&T?

18 A. The access tariff doesn't apply basically for
19 legal reasons. It -- in -- the wireless carriers argue
20 that, under the Telecommunications Act, the FCC set up a
21 different compensation mechanism, different from access.

22 There was a proceeding before this Commission
23 earlier, and Alma Telephone Company and some other companies
24 actually filed to put in a provision in their access tariff
25 that said the access tariff does apply to wireless carriers

1 if there's no contract interconnection agreement, and the
2 Commission did not approve that provision.

3 That led to the filing of the wireless
4 tariffs, which -- the wireless terminating tariffs, which
5 were filed to comply, we felt, with the provisions of the
6 Act that differentiated them from access tariffs, but still
7 gave a tariff basis for making those charges. And under our
8 view today, the Bell interconnection agreement would apply
9 to their portion of it, which Bell calls transiting in this
10 environment.

11 And we believe the wireless terminating
12 tariffs apply to Orchard Farm's portion of it, although
13 that's a poor example in terms of the Complainants, because
14 they are not one of the Complainants, but BPS or whoever,
15 and that, in fact, T-Mobile should be paying those tariffed
16 rates. And again, that's essentially the issue in this
17 complaint.

18 Q. I understand. I'm using Orchard Farm because
19 that was the example.

20 A. Sure.

21 Q. Perhaps that's not a good one.

22 What if the traffic in question that is -- I
23 don't know if joint provision is the right term to use. The
24 wireless traffic that is delivered to Southwestern Bell and
25 then passed by Southwestern Bell to the small ILEC, let's

1 say, rather than Orchard Farm. Let's say that traffic is
2 inter-MTA traffic and there is an interconnection agreement
3 between Bell and the wireless company and there is no
4 interconnection agreement between the wireless carrier and
5 the small ILEC.

6 In that case, do you -- is it your
7 professional opinion that the exchange access tariff of the
8 small access -- of the small ILEC would govern?

9 A. Yes, in regards to inter-MTA traffic, it
10 would. And, in fact, in Bell's interconnection agreement,
11 their interconnection agreement says that if it's inter-MTA
12 traffic, they may define it and use different percentages or
13 something. But if it's inter-MTA traffic, I believe, under
14 Bell's interconnection agreements, it certainly generally
15 is, and in the early ones it was, their access tariff would
16 apply to that inter-MTA traffic as well, rather than the
17 rates in the interconnection agreement.

18 Q. I see. So at one time, at least, even the
19 interconnection agreements between Bell and the wireless
20 carrier placed a significant -- placed significance on the
21 inter-MTA nature of certain traffic?

22 A. Yes. And I believe it's still in the
23 contracts today. I haven't reviewed them more recently for
24 that particular item.

25 Q. Okay. Now, you referred at one point to NECA

1 Tariff No. 4?

2 A. Yes.

3 Q. Would you explain what that is and why you
4 referenced it?

5 A. Okay. NECA stands for the National Exchange
6 Carrier Association. And in the early implementation of
7 access charges nationally, it was recognized there needed to
8 be some location nationally where these billing percentages
9 and how companies would bill when they were jointly
10 providing could be identified so that carriers could go and
11 verify and so forth.

12 And the National Exchange Carrier Association
13 undertook to provide a special interconnection point tariff,
14 which is essentially used by all the local exchange carriers
15 in the country, even though they're not members of NECA, for
16 settlement purposes and so forth.

17 And that is the -- the agreed-upon place
18 determined by the FCC where all local exchange companies
19 would file this kind of billing percentage information so
20 that carriers that are buying out of local exchange carrier
21 tariffs would have a reference source to go and find out
22 what the billing percentage should be.

23 Q. I see. Now, I want you to consider two
24 hypothetical situations.

25 A. Okay.

1 Q. In each case, a wireless carrier is delivering
2 traffic to Southwestern Bell, which is then passing the
3 traffic to a small ILEC. In one instance the traffic is
4 inter-MTA traffic, and in the other instance, the traffic is
5 intra-MTA traffic.

6 A. Okay.

7 Q. Now, if I can talk about both instances at
8 once, when that traffic is handed off to Bell, if that's the
9 right term, or when it arrives at Bell's tandem, is it known
10 at that point whether the traffic is inter or intra-MTA?

11 A. No, not specifically. There's nothing in the
12 information that comes over the network that Bell would be
13 able to tell whether it's -- what cell site it originated
14 in, so whether its inter- or intra-MTA. They get -- if SS7
15 signaling is being used, they generally would get the number
16 of the called party hand set, but if that person's roaming
17 outside their own area, could look like an intra-MTA call or
18 be inter-MTA or vice versa.

19 Q. So that information is not available to
20 Southwestern Bell when that traffic arrives?

21 A. To my knowledge, it's not.

22 Q. And if the interconnection agreement between
23 Bell and the originating wireless carrier places some sort
24 of section on the inter- or intra-MTA nature of the traffic,
25 how is Bell to know whether or not which provision would

1 apply to the traffic in question?

2 A. Directly at the switch, they don't know. What
3 they know is they have a total of volume contract, and this
4 is why in the industry we've typically gone to negotiated
5 factors.

6 The companies, in their interconnection
7 agreements, negotiate a factor so they can say, if I have
8 100 calls, I'm going to treat 5 percent of them, if that's
9 the factor, for compensation for inter-MTA purposes, and the
10 other 95 percent will be treated as intra-MTA calls, and the
11 compensation is that way. The calls in the network are
12 handled identically.

13 Q. So you're telling me, if I understand your
14 testimony, that it is a matter then of a negotiated factor
15 between the wireless carrier and Southwestern Bell, as far
16 as you know?

17 A. Yes.

18 Q. Okay. In either case of the two hypothetical
19 situations I asked you about, does the originating wireless
20 carrier know the inter- or intra-MTA character of the
21 traffic?

22 A. It is my understanding that when the call
23 originates and gets to the wireless carrier switch, that at
24 that point in time there is an identification of what cell
25 site it originated from, which would allow them to make that

1 identification.

2 My understanding from discussions with those
3 carriers is, although that is there at that point in time,
4 they generally do not capture that information, they do not
5 pass it along, and there are not provisions in the network
6 protocols to pass that information along the network and so
7 forth, and so that it's lost.

8 The information, to my understanding, would be
9 there at a point in time where they could do studies and
10 identify that. My impression is they generally have not
11 built systems to gather that information in a way that's
12 easy to do those studies and -- and the industry, in
13 general, has chosen to negotiate factors rather than go to
14 the cost and effort of capturing that information that might
15 be available at that point in time so that definitive
16 studies could be done.

17 Q. Now, with respect to the traffic at issue in
18 this case, are you familiar at all with the traffic in
19 question?

20 A. In general, how it moves. I'm not as familiar
21 with the quantities of individual companies that are
22 specifically there, but in terms of generally familiar with
23 how the network works and the traffic at issue.

24 Q. And is it your understanding that at the time
25 the traffic in question in this case was generated and

1 delivered, that the inter- or intra-MTA nature of that
2 traffic was not captured or recorded? Is that your
3 understanding?

4 A. That's my understanding, yes.

5 Q. And in your professional opinion, is there any
6 way now to determine what the inter- or intra-MTA nature of
7 that traffic was at the time?

8 A. My -- my impression would be no. Unless the
9 wireless carriers have kept those initial switch records for
10 three years -- and I wouldn't expect that they have -- I
11 don't think there's any way to know definitively what --
12 what the nature of those calls would be.

13 Q. Okay. And are you familiar with the wireless
14 termination tariffs that the Complainants in this case have
15 in effect?

16 A. Yes.

17 Q. In fact, you were involved in creating those
18 tariffs, were you not?

19 A. I was, and I was a witness in the case
20 supporting them.

21 Q. And if you know, do those tariffs place any
22 significance on the inter- or intra-MTA nature of the
23 traffic?

24 A. My recollection -- but it's been some time
25 since I've looked specifically at that -- is that they refer

1 specifically to the intra-MTA traffic as the traffic that
2 that tariff would apply to.

3 Q. So that even today, with respect to a small
4 ILEC Complainant that has a wireless termination tariff,
5 wireless traffic that arrives, if it is intra-MTA traffic,
6 then it is handled under the wireless termination tariff.
7 Is that your understanding?

8 A. Yes.

9 Q. What if it is inter-MTA traffic, what system
10 exists for that?

11 A. Then it would be the access tariff would be
12 applicable to that, and that's -- I don't think there's any
13 disagreement between the parties on that. I think that's
14 fairly well laid out by the FCC in their orders that access
15 tariffs do apply to inter-MTA traffic.

16 Q. So are you familiar with the term in the
17 industry POTS, plain old telephone service?

18 A. Yes.

19 Q. You've heard that?

20 A. Yes.

21 Q. So if I were to coin a term plain old long
22 distance traffic, would you agree that inter-MTA originated
23 traffic is simply plain old long distance traffic?

24 A. Yes.

25 Q. Subject to access?

1 A. Yes.

2 Q. Okay. Now, with respect to such traffic
3 generated and terminated today, even as you're testifying,
4 so far as you know, is there any way for that small ILEC to
5 know whether the traffic it receives is inter-MTA or
6 intra-MTA?

7 A. There's no way to know with certainty.

8 Q. Given that limitation of information, if you
9 know, why do the wireless termination tariffs of the
10 Complainants place significance on the inter- or intra-MTA
11 nature of the traffic?

12 A. Because jurisdictionally that traffic is
13 supposed to be treated differently and compensated
14 differently, and --

15 Q. So it has a legal significance?

16 A. It has -- it has a legal significance and it
17 has a financial significance.

18 Q. Okay. And this particular significance, was
19 the source of that the 1996 Telecommunications Act, the
20 Federal Act?

21 A. It certainly was embodied in the rules that
22 the FCC adopted in response to the Act, and there is --
23 yeah, there's some provisions in the Act that would have
24 relevance to that distinction.

25 Q. And am I correct in my understanding that the

1 FCC, pursuant to the Act, has defined the local calling
2 scope of a wireless carrier to be, in fact, the MTA?

3 A. For calls between a LEC and a CMRS provider,
4 they have so identified it. If it's a call between an IXC
5 and a CMRS provider, in my view that definition does not
6 hold.

7 Q. Okay. So it's not only the geographic area
8 within which the traffic occurs, but the nature of the
9 carriers involved in handling the traffic?

10 A. Yes.

11 Q. Very well. So that if it is an intra-MTA call
12 but is handled by an IXC, would it then be subject to
13 exchange access?

14 A. Yes.

15 Q. Okay. Now, and is it your opinion that it is
16 this definition by the FCC, the local calling scope of the
17 wireless carrier, that has resulted in the legal and
18 financial significance that you identified earlier to that
19 inter/intra-MTA distinction?

20 A. They certainly are related, yes.

21 Q. Is there another source as well for that
22 distinction?

23 A. No. That's probably the primary focus of that
24 source is the specific definition that the FCC made.

25 JUDGE THOMPSON: I think that's all the

1 questions that I have for you, Mr. Schoonmaker. Thank you
2 very much. I will not excuse you, however, because I
3 believe that the Commissioners will have questions for you
4 when they get here.

5 Why don't we go ahead and move to the next
6 witness, then. If we could go off the record for a moment.

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

8 MR. JOHNSON: Your Honor, I call Ron Williams.

9 (Witness sworn.)

10 JUDGE THOMPSON: Please be seated. You may
11 inquire.

12 MR. JOHNSON: Thank you, your Honor.

13 RON WILLIAMS testified as follows:

14 DIRECT EXAMINATION BY MR. JOHNSON:

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

17 A. Ron Williams.

18 Q. Mr. Williams, who do you work for?

19 A. I'm employed by Western Wireless Corporation.

20 Q. And what do you do for Western Wireless?

21 A. I'm the director of intercarrier relations for
22 them. I deal with any negotiation or issues with other
23 carriers that we trade traffic with.

24 Q. Thank you, sir.

25 Now, in this proceeding, Mr. Williams, are you

1 testifying for any other company other than Western
2 Wireless?

3 A. Yes, I'm also here representing T-Mobile USA.

4 Q. Thank you, sir. Did you cause to be prepared
5 and prefiled testimony which has been marked as Exhibits 3
6 and 4; in other words, direct testimony marked as Exhibit 3
7 and surrebuttal testimony marked as Exhibit 4?

8 A. Yes.

9 Q. And, sir, do you have any changes in that
10 testimony?

11 A. No, I don't.

12 Q. If I were to ask you the same questions today,
13 would your answers be the same?

14 A. Yes.

15 Q. Is the information contained in Exhibits 3 and
16 4 true and correct to the best of your knowledge and belief?

17 A. Yes.

18 MR. JOHNSON: Your Honor, I offer Exhibits 3
19 and 4 into evidence and upon their acceptance -- admission
20 into evidence, I tender the witness for cross-examination.

21 JUDGE THOMPSON: Very well. Do I hear any
22 objections to the receipt of Exhibit 3 or 4?

23 MR. BATES: No objection.

24 JUDGE THOMPSON: Very well. Exhibits 3 and 4
25 are received and made a part of the record of this

1 proceeding.

2 (EXHIBIT NOS. 3 AND 4 WERE RECEIVED INTO
3 EVIDENCE.)

4 JUDGE THOMPSON: Thank you, Mr. Johnson.

5 MR. JOHNSON: Thank you, your Honor.

6 JUDGE THOMPSON: Our first cross-examiner will
7 be Mr. England.

8 CROSS-EXAMINATION BY MR. ENGLAND:

9 Q. Good morning, Mr. Williams.

10 A. Good morning.

11 Q. Hopefully this will be brief. I believe in
12 your testimony at page 3, lines 7 and 8 -- I'm sorry -- your
13 direct testimony, you indicate that T-Mobile and Western
14 Wireless are not affiliated. Do you see that?

15 A. Yes.

16 Q. And that is true today; is that correct?

17 A. Yes.

18 Q. And if I understand your testimony, that
19 parting of the ways, if you will, occurred in approximately
20 April of 1999?

21 A. That's right. It was -- separated the stock
22 from Western Wireless.

23 Q. So I can assume that before April of 1999,
24 apparently you were affiliated, the two companies that is?

25 A. Voicestream was a wholly-owned subsidiary of

1 Western Wireless prior to April of 1999.

2 Q. Okay. For purposes of the records that the
3 small companies receive from Southwestern Bell, they've been
4 referred to as CTUSRs. Those records indicate the name of
5 the wireless carrier that's terminating traffic to the small
6 companies, and those records also indicate, I believe,
7 access customer name abbreviation or ACNA, A-C-N-A,
8 associated with that wireless carrier.

9 Are you familiar with that designation?

10 A. Yes.

11 Q. And what I'm trying to do is make sure I
12 understand who's who for purposes of those records. It's my
13 understanding that way back when, if you will, several years
14 prior to 1999 and maybe through up 'til April of '99,
15 records received from Southwestern Bell indicated that
16 traffic was coming from Western Wireless with an ACNA of WC,
17 as in Charlie, G, as in George. Would that be consistent
18 with your knowledge or --

19 A. It's consistent with my understanding.

20 Q. Okay. But if I understand correctly, after
21 the parting of the ways between Voicestream, now T-Mobile,
22 and Western, that ACNA of WCG is now associated with
23 T-Mobile traffic; is that correct?

24 A. Right. That's correct. Actually, the way it
25 evolved, when we were building the Voice -- original

1 Voicestream networks, they were assigned the ACNA of WCG.
2 The Western Wireless networks were assigned a PCF ACNA.
3 Q. Okay. P as in Paul, C as in Charlie, F as in
4 Frank?
5 A. Correct.
6 Q. So for purposes of determining responsibility,
7 if you will, financial responsibility, we ought to look more
8 at the ACNA than the name on these CTUSRs?
9 A. Be a more accurate reflection.
10 Q. So to be more specific, if the traffic
11 terminating to small companies is from a wireless carrier
12 with an ACNA of WCG, that would be T-Mobile's financial
13 responsibility, correct?
14 A. Correct.
15 Q. And if it has an ACNA of PCF, that would be
16 Western's financial responsibility?
17 A. That would be traffic associated with Western.
18 Q. Now, you also indicate in your testimony,
19 again at page 3 of your direct, that is, lines 5 and 6, that
20 Aerial Communications was acquired by T-Mobile. Do you know
21 what ACNA Aerial operates under?
22 A. I do not.
23 Q. But would it be fair to say to the extent
24 there's any traffic on the CTUSRs from Aerial, that that is
25 now the financial responsibility of T-Mobile, as opposed to

1 Western?

2 A. You know, I'm not exactly sure of what the
3 terms of acquisition from Aerial Communications was. I
4 can't speak to that.

5 Q. You do not claim it as the financial
6 responsibility of Western; is that a correct statement?

7 A. That's correct. There's never been a
8 relationship between Western and Aerial.

9 MR. ENGLAND: Thank you, sir. I think that's
10 all the questions I have.

11 JUDGE THOMPSON: Thank you, Mr. England.

12 Mr. Bates?

13 MR. BATES: Thank you, your Honor.

14 CROSS-EXAMINATION BY MR. BATES:

15 Q. Good morning again, Mr. Williams.

16 A. Good morning.

17 Q. I'll try and be brief also, and I hope you can
18 clear up some things for me.

19 Do you know how the inter-MTA factors agreed
20 to by the 14 Complainants in this case for wireless traffic
21 originated by Voicestream or T-Mobile and Western and
22 transited by Southwestern Bell were negotiated?

23 A. Yeah, I have a vague understanding of how they
24 were negotiated.

25 Q. Okay. Could you give us that understanding?

1 A. Primipally the factors were developed, I
2 think, in dialog with other wireless carriers, and they were
3 brought forward and presented to T-Mobile and Western
4 Wireless as factors that form the basis for other agreements
5 that were made, and --

6 JUDGE THOMPSON: I'll have to interrupt you
7 here. We're going to have to recess now for approximately
8 ten minutes. I have to go up to the agenda room. I
9 apologize for interrupting.

10 (A BREAK WAS TAKEN.)

11 JUDGE THOMPSON: Let's continue with
12 Mr. Bates' cross-examination of Mr. Williams. We're back on
13 the record.

14 Mr. Bates?

15 MR. BATES: Thank you, your Honor.

16 BY MR. BATES:

17 Q. Mr. Williams, you were in the middle of
18 answering a question of mine when the judge was called away.
19 Do you remember my question?

20 A. I don't.

21 Q. I'll ask it again and ask you to reanswer.

22 Can you tell me from your knowledge how the inter-MTA
23 factors agreed to by the 14 Complainants in this case for
24 wireless traffic originated by Voicestream or T-Mobile and
25 Western and transited by Southwestern Bell were negotiated?

1 A. I believe the basis for negotiation were
2 inter-MTA factors agreed to between the Complainants and
3 other wireless carriers. They were brought forward to
4 T-Mobile and Western as a starting point for negotiations.
5 T-Mobile had recommended an adjustment at least -- for at
6 least one of those rates, and Western really hasn't been
7 actively involved in negotiating the rates with the
8 exception of the single phone call.

9 Q. Did I understand you to say that you were not
10 personally involved in those negotiations?

11 A. Not personally involved in the negotiations
12 between T-Mobile and the Complainants?

13 Q. Yes.

14 A. Correct.

15 Q. But do I understand that you adopt the
16 results, you accept those?

17 A. T-Mobile has agreed to those factors for, I
18 believe, all of the Complainants, and Western has agreed to
19 those factors for the three carriers that are relevant to
20 the termination of Western traffic.

21 Q. Do you know of your own knowledge whether or
22 not Southwestern Bell was involved in those negotiations?

23 A. I believe they were not.

24 Q. Do you have an opinion as to whether or not
25 they should have been?

1 A. My opinion would be that because these are
2 negotiations between an originating and a terminating
3 carrier, that Southwestern Bell need not be a party to those
4 negotiations.

5 Q. Are Voicestream and Western committed to pay
6 for both inter-MTA traffic and intra-MTA traffic based on
7 those negotiations with Complainants?

8 A. It's a broad question. Western Wireless
9 agrees that -- that an inter-MTA factor and inter-MTA
10 traffic derived from that factor is appropriately assessed
11 at access rates and that those access rates would be due to
12 the terminating carrier.

13 Q. Do the negotiated factors apply to past
14 traffic?

15 A. That negotiation hasn't been completed.

16 Q. Okay. Do you know if the negotiated factors
17 apply to future traffic?

18 A. The negotiated factors do apply to future
19 traffic.

20 MR. BATES: Thank you. I think that's all I
21 have.

22 JUDGE THOMPSON: Thank you, Mr. Bates.
23 Mr. Bub?

24 MR. BUB: Thank you, your Honor.

25 CROSS-EXAMINATION BY MR. BUB:

1 Q. Good morning, Mr. Williams.
2 A. Good morning.
3 Q. Still morning.
4 A. Still morning.
5 Q. You support the factors that the Complainants
6 have presented in this case, do you not?
7 A. Yes. We are concurring in those factors.
8 Q. Okay. And the intent of those factors is to
9 use them to determine how much of the traffic at issue here
10 is inter-MTA; is that correct?
11 A. That's correct.
12 Q. And you do that by applying it to the minutes
13 SBC reports on its CTUSR, cellular transiting usage summary?
14 A. For indirectly routed traffic, that would be
15 correct.
16 Q. And you agree that those minutes identified by
17 your agreed-on factor as inter-MTA should be rated at
18 switched access rates?
19 A. We agree for inter-MTA traffic that that is
20 the appropriate rate.
21 Q. So for the traffic that's produced by the
22 factor, switched access rates apply?
23 A. Correct.
24 Q. I understand that you have a disagreement with
25 Complainants about the application of their wireless tariff

1 to intra-MTA traffic; is that correct?

2 A. Correct.

3 Q. And the dispute there primarily is on their
4 use of a tariff for intra-MTA traffic and the rate level; is
5 my understanding correct?

6 A. Yeah. There really -- there's a disagreement
7 in principle about the validity of a state-approved
8 termination tariff for federally regulated traffic, correct.
9 And then there's also a dispute about what is an appropriate
10 forward-looking transport and termination agreement.

11 Q. Okay. But you don't dispute that the minutes
12 are your traffic?

13 A. I don't dispute the fact that we generate
14 traffic, that that traffic is transited through SBC's
15 network and terminated to independent telephone companies.

16 Q. Thank you. And you also don't dispute that
17 you're financially responsible for paying for your own
18 customers' traffic, for the termination of that traffic?

19 A. We are responsible for determining what
20 relationships exist for the reciprocal compensation
21 associated with the exchange of traffic between ourselves
22 and another carrier.

23 Q. And in this case, it's the Complainants; is
24 that correct?

25 A. In this case, the other carriers are the

1 Complainants.

2 Q. And the dispute you have with intra-MTA
3 traffic, that doesn't apply to inter-MTA traffic, does it?

4 A. Correct.

5 Q. And focusing just on that inter-MTA traffic
6 that's identified by your agreed-on factor, you agree that
7 you're responsible for paying terminating compensation on
8 that traffic?

9 A. Western Wireless would agree with that.

10 Q. In other states you operate, it's not unusual
11 for wireless carriers to need to use a tandem LEC's
12 facilities to reach another LEC's customers; would that be a
13 true statement?

14 A. That is a true statement. We utilize a
15 transit carrier because that's the most economically
16 efficient means of delivering traffic to many different
17 telephone carriers.

18 Q. Happens all across the country?

19 A. All across the country.

20 Q. And in those situations where you need to use
21 facilities of two LECs to complete one of your customer's
22 calls, you pay both the tandem LEC and the terminating LEC
23 for the use of those facilities; is that correct?

24 A. Yes. In essence, we hire a transit provider
25 to deliver the traffic to the terminating telecommunications

1 carrier, and then depending upon what relationship we have
2 with that terminating telecommunications carrier, the
3 parties are compensated according to that.

4 Q. So on this inter-MTA traffic where access is
5 due, you would be paying access charges to the tandem LEC
6 and to the terminating LEC; would that be correct?

7 A. That's correct with respect to our
8 interconnection agreement with SBC, which has a factor
9 allocation for inter-MTA traffic, and then depending upon
10 what factor would be appropriate to an individual LEC, that
11 traffic rated as inter-MTA would, in fact, be the obligation
12 for us paying to terminate.

13 Q. And then you would pay those rates once the
14 factor's in place in this case?

15 A. That's correct.

16 MR. BUB: Thank you, Mr. Williams. Those are
17 all the questions we have.

18 JUDGE THOMPSON: Thank you, Mr. Bub.

19 QUESTIONS BY JUDGE THOMPSON:

20 Q. Mr. Williams, I understand you're testifying
21 on behalf of T-Mobile and Western Wireless, which are no
22 longer affiliated; is that correct?

23 A. Yes.

24 Q. T-Mobile used to be known as Voicestream?

25 A. Correct.

1 Q. Western Wireless used to own T-Mobile?
2 A. Voicestream, correct.
3 Q. When it was known as Voicestream?
4 A. Yes.
5 Q. Very well. And T-Mobile, formerly known as
6 Voicestream, owns Aerial?
7 A. That's correct.
8 Q. Make sure I understand these things. And
9 perhaps other carriers as well?
10 A. Correct.
11 Q. And you are employed by Western Wireless; is
12 that correct?
13 A. Yes.
14 Q. And were you employed by Western Wireless when
15 they owned T-Mobile, formerly known as Voicestream?
16 A. No. I joined the company after they were
17 separated.
18 Q. Very well. Are you familiar with the traffic
19 that's at issue in this case?
20 A. In a general sense with respect to both
21 parties, and in a specific sense with respect to Western
22 Wireless.
23 Q. So if I ask you some questions about that
24 traffic, you can at least attempt to answer them?
25 A. Oh, yeah.

1 Q. Very good. Very good. Now, I understand that
2 almost -- in fact, all of these Complainants have what are
3 called wireless termination tariffs at this time; is that
4 correct?

5 A. I believe that to be the case.

6 Q. Okay. Some of the traffic at issue in this
7 case, however, was delivered before the existence of those
8 tariffs; isn't that correct?

9 A. That's correct.

10 Q. And some of it was delivered after those
11 tariffs became effective?

12 A. Yes.

13 Q. And I understand that you have some problems
14 with those tariffs. Didn't I hear you testify that you
15 question the validity of a state tariff with respect to
16 federally regulated traffic?

17 A. That's correct.

18 Q. If I told you that the Missouri Court of
19 Appeals has upheld those tariffs, would you be surprised?

20 A. No.

21 Q. Are you aware of that?

22 A. Yes.

23 Q. Perhaps you don't agree with the court; is
24 that right? I mean, it's okay to say that.

25 A. That would be correct.

1 Q. They're not going to send a bailiff down here
2 to get you.

3 Okay. Now, with respect to the traffic that
4 was passed prior to the wireless termination tariffs, okay,
5 so we're talking about the pre-wireless termination tariffs,
6 to the extent that that traffic was intra-MTA traffic --
7 and, of course, that wasn't recorded at the time, so we
8 don't know what percentage of it was. Nonetheless, to the
9 extent that that traffic was intra-MTA traffic, who do you
10 think should pay compensation to the terminating ILEC for
11 that traffic?

12 A. Well, one must go back to the principles of
13 which traffic is exchanged.

14 Q. That's fine. I'd like to understand those
15 principles.

16 A. Traffic exchanged prior to the existence of
17 this tariff was guided by reciprocal compensation principles
18 which, in the absence of a negotiated agreement, are assumed
19 to be one party is terminating traffic of the other party's
20 origination, and that in and of itself is the mutual
21 compensation provided to each party. Bill and keep is a
22 moniker that's been attached to that.

23 Q. I understand. Very well. And to the extent
24 that this traffic was inter-MTA traffic, who should
25 compensate the terminating ILEC for that traffic?

1 A. Well, to the extent that the parties could
2 agree on what a relevant percentage was for inter-MTA
3 traffic, I think access rules would prevail.

4 Q. So access subject to a meet-point billing
5 regime?

6 A. To the extent there is a meet-point billing
7 regime in effect, yes.

8 Q. What if there isn't one?

9 A. It would probably be a -- it would not be a
10 meet-point billing arrangement. It would be single carrier
11 billing terminating access.

12 Q. And who would the single carrier that would be
13 billed? Should it be Southwestern Bell or should it be the
14 originating wireless carrier? I know who you work for, but
15 that's okay. I'm still asking the question.

16 A. The originating carrier would generally be
17 responsible.

18 Q. Okay. And what would be the rate? Would it
19 be the access rate? In other words, it would be access to
20 be paid by the originating carrier?

21 A. For inter-MTA traffic acquisition access?

22 Q. Inter-MTA.

23 A. Access rates should apply.

24 Q. And, in fact, that answer, would you agree,
25 holds whether -- before the wireless termination tariffs and

1 after, because they don't affect inter-MTA traffic, do they?

2 A. That's correct.

3 Q. Okay. So we have that settled. Now, with

4 re-- are you at all familiar with the interconnection

5 agreements between T-Mobile, formerly known as Voicestream,

6 and Western Wireless, your employer, and Southwestern Bell?

7 A. I am.

8 Q. And do those provide for indemnification to

9 Southwestern Bell for any amounts that they have to pay with

10 respect to traffic that they transit on behalf of your

11 employer or T-Mobile, formerly known as Voicestream?

12 A. I know there are indemnification provisions in

13 the agreement. I'd have to look at the precise language to

14 see what the scope of indemnification provides.

15 Q. Okay. But they might, in other words?

16 A. They certainly do provide some sort of

17 indemnification.

18 Q. You're just not sure whether that fact pattern

19 falls within the scope of that provision?

20 A. That's correct.

21 Q. Okay. Very good. But you've already agreed

22 that it should be the originating wireless carrier that

23 should pay for this inter-MTA traffic --

24 A. Yes.

25 Q. -- at the access rates?

1 So if Bell winds up having to pay any part of
2 that, would your employer, so far as you know, be willing,
3 then, to reimburse Bell, since you've agreed they ought to
4 be paying for it?

5 A. That's a legal issue I can't answer.

6 Q. Okay. Very good. I understand that, and I
7 probably shouldn't have asked you that, but I did.

8 Now, with respect to intra-MTA traffic, after
9 the wireless termination tariffs have become effective, who
10 should pay compensation to the terminating ILEC for that
11 traffic, the originating wireless carrier or Southwestern
12 Bell?

13 A. I think the -- my interpretation of the tariff
14 here in Missouri is that the -- it is the responsibility of
15 the originating carrier to pay on that.

16 Q. Very well. So now, I know you've got some
17 concern about the validity of those tariffs, and if, in
18 fact, those tariffs are eventually determined to be invalid
19 by a federal court or a higher Missouri court -- I guess
20 that's foreclosed because the Court of Appeals decision, I
21 believe, has become final -- then you believe it would be
22 reciprocal compensation, which, in the absence of an
23 agreement, would be bill and keep?

24 A. That's correct.

25 Q. Okay. Very well. Now, with respect to this

1 bill and keep, isn't that kind of a presumption that the
2 traffic is symmetrical that underlies this idea of bill and
3 keep?

4 A. Yes, that's one of the -- one of the
5 assumptions most people would make with respect to bill and
6 keep.

7 Q. And do you believe that the traffic in this
8 case is symmetrical?

9 A. Yes, I do.

10 Q. And what do you base that belief on?

11 A. Well, it's our experience that when calls are
12 routed from mobile to land and land to mobile under the MTA
13 rules as non-toll traffic, that traffic is roughly in
14 balance between a wireless carrier and a wireline carrier.

15 JUDGE THOMPSON: I see. Okay. I think that's
16 all the questions that I have for you. Thank you very much,
17 sir. You may step down until -- you'll be recalled when the
18 Commissioners get here.

19 THE WITNESS: I understand.

20 JUDGE THOMPSON: I understand that you are
21 traveling today. Could you tell me perhaps what is the
22 latest time that you need to leave here?

23 THE WITNESS: 6:30 flight out of St. Louis.

24 JUDGE THOMPSON: You need to leave here by
25 four o'clock at the latest.

1 THE WITNESS: That would be tight. Three
2 o'clock would be workable.

3 JUDGE THOMPSON: Three o'clock would be
4 better. Very well. It's very helpful for me to know that,
5 because we will recall you first before we recall
6 Mr. Schoonmaker, who is, of course, traveling tomorrow.
7 Thank you, sir.

8 Who's our next witness?

9 MR. BATES: Your Honor, I believe that would
10 be Mr. Scheperle.

11 JUDGE THOMPSON: Why don't we have
12 Mr. Scheperle on the stand, then.

13 (Witness sworn.)

14 JUDGE THOMPSON: Please be seated. Would you
15 spell your last name for the reporter.

16 THE WITNESS: Last name is S-c-h-e-p-e-r-l-e.

17 JUDGE THOMPSON: Thank you. You may inquire.

18 MR. BATES: Thank you, your Honor.

19 MICHAEL S. SCHEPERLE testified as follows:

20 DIRECT EXAMINATION BY MR. BATES:

21 Q. Mr. Scheperle, for the record, would you state
22 your full name.

23 A. Michael S. Scheperle.

24 Q. And what is your business address?

25 A. 200 Madison Street, Jefferson City, Missouri.

1 Q. And what is your position?

2 A. I'm a Regulatory Economist 2 in the

3 telecommunications department.

4 Q. And is that with the Missouri Public Service

5 Commission?

6 A. Yes, it is.

7 Q. Did you prepare and cause to be filed in this

8 matter additional rebuttal testimony that has been marked

9 for purposes of identification as Exhibit No. 5?

10 A. Yes.

11 Q. Are there any corrections, changes or

12 additions to that testimony which you would like to make at

13 this time?

14 A. No.

15 Q. If I asked you the same questions today, would

16 your answers be substantively the same?

17 A. Yes.

18 Q. Are your answers true and correct to the best

19 of your information, knowledge and belief?

20 A. Yes.

21 MR. BATES: Your Honor, at this point I move

22 the admission of Exhibit No. 5 into evidence.

23 JUDGE THOMPSON: Do I hear any objections to

24 the receipt of Exhibit No. 5?

25 (No response.)

1 JUDGE THOMPSON: Hearing none, Exhibit No. 5
2 is received and made a part of the record in this
3 proceeding.

4 (EXHIBIT NO. 5 WAS RECEIVED INTO EVIDENCE.)

5 MR. BATES: And, your Honor, I tender
6 Mr. Scheperle for cross-examination.

7 JUDGE THOMPSON: Thank you, Mr. Bates.

8 Mr. England?

9 MR. ENGLAND: No questions, thank you.

10 JUDGE THOMPSON: Mr. Johnson?

11 MR. JOHNSON: Thank you, your Honor. Just a
12 few.

13 CROSS-EXAMINATION BY MR. JOHNSON:

14 Q. Mr. Scheperle, does Staff support the concept
15 of the Complainants and Respondents negotiating the
16 inter-MTA factors?

17 A. Yes.

18 Q. And does Staff support not just the
19 negotiation but the -- but agreement between the
20 Complainants and Respondents concerning inter-MTA factors?

21 A. Yes. Yes, we do.

22 Q. And do you understand that is what T-Mobile
23 and the Complainants did, they negotiated and agreed on
24 inter-MTA factors to be applied?

25 A. That is correct.

1 Q. Does Staff agree that the negotiated factors
2 between T-Mobile and the Complainants should be adopted by
3 the Commission?

4 A. That is my recommendation.

5 Q. Now, as for Western Wireless, I believe you've
6 read Mr. Williams' surrebuttal and you've heard his live
7 testimony this morning?

8 A. Yes.

9 Q. Now, do you understand that Western Wireless
10 has adopted the T-Mobile/Complainants negotiated factors as
11 they relate to three members, three of the Complainants? Do
12 you understand that?

13 A. I understand that. There was a section in
14 there, too, where my understanding was that they were
15 adopting all of them for 14 companies also.

16 Q. With re-- assuming that to be the case, does
17 Staff recommend to the Commission that the Commission adopt
18 those factors as -- for Western Wireless and the
19 Complainants?

20 A. That is my recommendation, yes.

21 MR. JOHNSON: Your Honor, thank you very much.
22 Mr. Scheperle, thank you.

23 JUDGE THOMPSON: Thank you, Mr. Johnson.
24 Mr. Bub?

25 MR. BUB: Thank you, your Honor.

1 CROSS-EXAMINATION BY MR. BUB:

2 Q. Good morning, Mr. Scheperle.

3 A. Good morning.

4 Q. I just have a few questions. I understand
5 that you support the factors that are proposed in this case.
6 My question is, have you had a chance to review the evidence
7 that's been submitted to support the validity of those
8 factors?

9 A. I have looked at some of the evidence to
10 support them. One of the things that I look at -- when
11 Staff looks at when they're negotiated factors is whether
12 they're discriminatory to any party, and in this case
13 there's no discrimination. So we support the factors.

14 Q. And that standard is used when the Commission
15 is presented with a voluntarily negotiated interconnection
16 agreement between two parties; is that correct?

17 A. It would be the same factor discriminatory
18 purpose, but also, I believe, an interconnection agreement,
19 the public interest is another standard that's used.

20 Q. When parties negotiate interconnection
21 agreements like that, those terms that the Commission
22 approves only apply to the parties to those agreements; is
23 that correct?

24 A. That is correct.

25 Q. So when you have a wireless interconnection

1 agreement with a negotiated -- voluntarily negotiated
2 inter-MTA factor in it, that factor only applies to the
3 originating wireless carrier and the terminating LEC that's
4 a party to that agreement; is that correct?

5 A. That is correct.

6 Q. Backtrack a moment to the evidence that's been
7 submitted to the Commission by Complainants to support the
8 factors. Would you agree with Mr. Schoonmaker that
9 primarily due to the mobile nature of the wireless end of
10 the call, that it's impossible to statistically determine
11 the accuracy of those factors?

12 A. Statistically, that's probably correct. The
13 only way that you could actually know the true nature would
14 be to obtain cell site information and where the call is
15 terminated to know the true nature of the call.

16 Q. And that was not done here, was it?

17 A. That was not done here, yes.

18 Q. And primarily because these are voluntarily
19 negotiated factors; is that correct?

20 A. That is correct.

21 Q. And one of the reasons why carriers
22 voluntarily negotiate factors is to avoid having to get into
23 the deep down, dirty, complicated details of a precise
24 study, in this particular case for an inter-MTA factor?

25 A. That would be one reason, and the cost would

1 be the other reason.

2 Q. As long as the two parties agree to live with
3 that factor, the Commission and the law is okay because it
4 only applies to those two; is that your understanding?

5 A. That is my understanding.

6 MR. BUB: Thank you. We don't have any
7 further questions, your Honor.

8 JUDGE THOMPSON: Thank you, Mr. Bub.

9 QUESTIONS BY JUDGE THOMPSON:

10 Q. Mr. Scheperle, if you know, why are the three
11 factors involving BPS Telephone, Craw-Kan Telephone and Mark
12 Twain Rural Telephone, why are those factors the subject of
13 a disagreement, if you know?

14 A. My understanding is that the dispute in this
15 case is who should pay for it, whether Southwestern Bell is
16 the transiting company or whether Southwestern Bell is
17 defined as an IXC. And that's basically the dispute in the
18 case.

19 Q. The factors in question determine the
20 percentage of the traffic that's inter-MTA versus intra-MTA,
21 correct?

22 A. Correct.

23 Q. And what I heard from Mr. Williams is that if
24 it's inter-MTA, that the wireless carrier should pay for it,
25 right?

1 A. That's what I heard also.

2 Q. So, in fact, of the four types of traffic I
3 asked him about, the only kind that he seemed to feel they
4 shouldn't pay for was pre-wireless tariff intra-MTA. Is
5 that -- is that the nature of this dispute?

6 A. My understanding in this complaint case has
7 nothing -- the complaint has nothing to do with the traffic
8 prior to the wireless termination tariffs being filed. The
9 complaint case deals with traffic only since the wireless
10 termination tariffs were filed.

11 Q. So what portion of that traffic, if you know,
12 is it that is under dispute?

13 A. According to Mr. Williams and my
14 understanding, my understanding is that Mr. Williams,
15 representing Voicestream and Western, said that they would
16 be responsible for any inter-MTA traffic, which would be
17 long distance traffic. My understanding also, then, is that
18 the traffic that is in dispute is intra-MTA traffic.

19 Q. I understand. Thank you for your testimony.
20 If you know, are there interconnection agreements between
21 any of the Complainants and either T-Mobile, formerly known
22 as Voicestream, or Western Wireless?

23 A. To my understanding, there is no agreement.

24 Q. If you know, why are there --

25 A. No interconnection agreement.

1 Q. Yes, sir. I understood what you meant.

2 If you know, why are there no interconnection
3 agreements? This is if you know.

4 A. I would only be guessing, and it would only be
5 my opinion, but --

6 Q. Well, I don't want you to guess, but certainly
7 you can give me your opinion.

8 A. Okay. My opinion is that it's a lot more
9 efficient for Voicestream and Western to deal with a
10 transiting company like Southwestern Bell, where they have
11 tandem facilities and they can connect directly with them,
12 and then Southwestern Bell can connect with the Complainants
13 or the small LECs in this case.

14 JUDGE THOMPSON: Okay. That's all the
15 questions that I have for you. You may step down. I'm not
16 excusing you.

17 All right. Our last witness today is
18 Mr. Kern, and I believe we've gotten to the point where we
19 need to do our direct examination of Mr. Kern.

20 (Witness sworn.)

21 JUDGE THOMPSON: Thank you, sir. Please take
22 your seat and spell your last name for the reporter, if you
23 would.

24 THE WITNESS: Last name is Kern, K-e-r-n.

25 JUDGE THOMPSON: Thank you. You may inquire,

1 Mr. Bub.

2 MR. BUB: Thank you, your Honor.

3 ALAN G. KERN testified as follows:

4 DIRECT EXAMINATION BY MR. BUB:

5 Q. Mr. Kern, could you please state your full
6 name for the record.

7 A. Yes, it's Alan G. Kern.

8 Q. And by whom are you employed?

9 A. SBC Missouri.

10 Q. Are you the same Alan Kern that prepared and
11 filed rebuttal testimony in this case that's been marked as
12 Exhibit 6?

13 A. Yes.

14 Q. Do you have any changes or corrections to that
15 piece of testimony?

16 A. No, I don't.

17 Q. If I were to ask you the same questions today
18 that are contained in your rebuttal testimony that's been
19 marked as Exhibit 6, would your answers today be the same?

20 A. Yes, they will.

21 Q. And are the answers contained in Exhibit 6
22 true and correct to the best of your knowledge?

23 A. Yes, they are.

24 MR. BUB: Thank you, your Honor.

25 At this time I'd like to offer Exhibit 6 and

1 to tender Mr. Kern for cross-examination.

2 JUDGE THOMPSON: Thank you, Mr. Bub. Do I
3 hear any objections to the receipt of Exhibit No. 6?

4 (No response.)

5 JUDGE THOMPSON: Hearing no objections,
6 Exhibit 6 is received and made a part of the record of this
7 proceeding.

8 (EXHIBIT NO. 6 WAS RECEIVED INTO EVIDENCE.)

9 JUDGE THOMPSON: And I believe that the first
10 cross-examiner will be Mr. England.

11 MR. BUB: Thank you, your Honor.

12 JUDGE THOMPSON: Thank you, Mr. Bub.

13 MR. ENGLAND: Thank you, your Honor.

14 JUDGE THOMPSON: Yes, sir.

15 CROSS-EXAMINATION BY MR. ENGLAND:

16 Q. I guess it's now afternoon, so good afternoon,
17 Mr. Kern.

18 A. Good afternoon.

19 Q. Hopefully we can start out with some easy
20 questions where maybe you and I might have a similar
21 opinion. We'll find out.

22 Now, Southwestern Bell has an interconnection
23 agreement with both of the respondent wireless carriers,
24 T-Mobile, perhaps it's under the Voicestream name, and
25 Western Wireless; is that right?

1 A. That's correct.

2 Q. And for purpose of that interconnection
3 agreement -- and it deals with a lot of issues, but it also
4 addresses the what I will call balance of traffic between
5 the two parties, Southwestern Bell on the one hand and the
6 wireless carrier on the other side, correct?

7 A. I'm not sure what you mean by balance of
8 traffic.

9 Q. Generally speaking, there is a -- the
10 agreement deals with traffic going both ways?

11 A. Correct.

12 Q. From Southwestern Bell to the wireless
13 carrier, from the wireless carrier to Southwestern Bell?

14 A. That's correct.

15 Q. And when I'm talking about balance of traffic,
16 I'm talking about the amount of traffic going in each
17 direction. Typically some of the interconnection agreements
18 that I've seen have a factor 80/20, 70/30, that will
19 describe the balance of traffic between the two parties;
20 80 percent of the total traffic being wireless to wireline
21 and 20 percent being wireline to wireless.

22 Are you familiar with that?

23 A. Yes.

24 Q. Okay. Do you happen to know what that factor
25 is for purposes of your interconnection agreements with

1 T-Mobile and Western Wireless?

2 A. I may have that.

3 Q. Okay.

4 A. Actually, I don't see that. I'm sorry.

5 Q. Would you agree with me that in all likelihood

6 it's not 50/50?

7 A. Yes, I would.

8 Q. Okay. Now, for purposes of determining

9 Southwestern Bell's liability, if you will, for reciprocal

10 compensation for traffic it originates and terminates to

11 wireless carriers such as T-Mobile and Western, do you know

12 if you take responsibility for IXC-carried traffic from the

13 wireline customer to the wireless customer?

14 A. Well, if it would be IXC-carried traffic, I

15 don't believe SBC would be involved in that, would they? I

16 mean, I'm not -- maybe I don't understand. You're talking

17 about landline to wireless?

18 Q. Correct.

19 A. Okay. And it is a -- it's an SBC landline

20 customer?

21 Q. Correct.

22 A. And what's -- what's the situation there?

23 Q. That customer is PIC'd to an interexchange

24 carrier other than Southwestern Bell Telephone Company and

25 they use that interexchange carrier to terminate that call

1 to the wireless customer.

2 A. Okay. In that instance, I believe that SBC
3 would hand that call off to the interexchange carrier and
4 charge them for originating access.

5 Q. Would Southwestern Bell, in that situation, be
6 responsible for paying the wireless carrier terminating
7 compensation either reciprocal compensation for local or
8 access or for long distance?

9 A. In that instance, no.

10 Q. Okay. Let me bring it down to a more specific
11 example just so I make sure I understand this. Let's take a
12 customer in your Cape Girardeau exchange making a call to a
13 wireless customer in St. Louis with an NPA/NXX resident in
14 the St. Louis area.

15 A. Okay.

16 Q. Do you understand that?

17 A. Yes, wireline in Cape Girardeau, wireless
18 St. Louis.

19 Q. Correct. Now, that wireline customer of yours
20 is actually PIC'd to AT&T long distance for intraLATA toll
21 calling.

22 A. Yes.

23 Q. Okay. If they use -- if they dial 1+, that
24 call automatically gets routed to AT&T, correct?

25 A. That's correct.

1 Q. And AT&T takes care of terminating that call
2 to the wireless carrier?

3 A. Yeah. That's -- that's their job. Their
4 business is to not only haul the call but to terminate it to
5 its ultimate location.

6 Q. And AT&T then is responsible for paying the
7 terminating carrier, in this case the wireless company,
8 their terminating compensation?

9 A. That's correct.

10 Q. And Southwestern Bell in that specific example
11 would have no obligation to the wireless carrier under its
12 interconnection agreement with that wireless carrier or any
13 other agreement that it might be aware of or you might be
14 aware of?

15 A. That's correct.

16 Q. Let me take that sort of same example, but
17 let's say that Southwestern Bell customer in Cape Girardeau
18 is also a toll customer at least for intraLATA toll of
19 Southwestern Bell. Makes the call to the wireless customer
20 in St. Louis, and you carry the call.

21 Now, does Southwestern Bell in that example
22 believe it has an obligation to compensate the wireless
23 carrier for terminating that call?

24 A. We're the only carrier involved, right, I mean
25 other than the wireless carrier?

1 Q. Yes.

2 A. Yes, that's correct.

3 Q. Okay. Your arrangement with both T-Mobile and
4 Wireless is not a bill and keep but a monetary compensation
5 for traffic terminated by each company?

6 A. Western Wireless, that's correct.

7 Q. I'm sorry. Okay. Now, let's -- let me
8 focus on the inter-MTA factors that we've been talking about
9 in this case. It's my understanding that you do not have
10 any objection to the -- to 11, if you will, of the
11 14 inter-MTA factors that have been agreed to between 11 of
12 the Complainants on the one hand and T-Mobile and Western on
13 the other hand?

14 A. That's correct.

15 Q. The only objection you have are to the
16 proposed factors for BPS, which I understand is 52 percent,
17 Craw-Kan, which is 53 percent, and Mark Twain, which is also
18 53 percent?

19 A. That's correct.

20 Q. And I believe at page 4 of your -- I guess
21 it's your rebuttal testimony, lines 5 and 6 -- and I'm
22 paraphrasing here, hopefully not inaccurately -- that your
23 concern here is for the fact that the proposed inter-MTA
24 factors for these three companies will increase the dollar
25 amount of claims that the Complainants are making against

1 Southwestern Bell in this case.

2 Is that a fair characterization of your
3 testimony?

4 A. Yes.

5 Q. Would you also agree with me that to the
6 extent the inter-MTA factor for these three companies
7 increase the dollar amount of claims the Complainants have
8 against Southwestern Bell, it would also increase the amount
9 of claims they would have against T-Mobile and Western
10 Wireless?

11 A. Yes. I believe that to be true.

12 Q. So the wireless carriers would have the same
13 concern that you do in that regard?

14 A. I can't speak to their concerns.

15 Q. It would seem that way, wouldn't it, sir?

16 A. Certainly would.

17 Q. Now, you don't disagree that if wireless
18 traffic is inter-MTA, then access applies?

19 A. I agree.

20 Q. And you don't disagree, do you, that some of
21 the wireless traffic that is transited by your company on
22 behalf of these two wireless carriers is inter-MTA?

23 A. Since we're agreeing to some factors that are
24 larger than zero, I'm going to say yes.

25 Q. The fact of the matter is, I think we all

1 agree that there is some inter-MTA traffic being transited.
2 The issue is how much?
3 A. I think that's highly probable.
4 Q. For purposes of your own interconnection
5 agreement, don't you assume an inter-MTA factor of something
6 higher than zero?
7 A. No, sir. No. We have some that are zero.
8 Q. How about for T-Mobile and Western?
9 A. For Western, it is zero. I don't have
10 Voicestream, but T-Mobile is also zero.
11 Q. Would you agree with me that for some of the
12 Complainants that have agreed to a zero percent inter-MTA
13 factor, that they are nevertheless likely to receive or it
14 is possible -- excuse me -- for them to receive some amount
15 of inter-MTA traffic?
16 A. That's possible.
17 Q. And if that happens, even though they've
18 agreed to a zero percent inter-MTA factor, their claims in
19 this case against Southwestern Bell and the wireless
20 carriers would be understated, correct?
21 A. Well, no. I mean, if they've -- if they've
22 agreed to zero percent, then I think that's what they're
23 entitled to.
24 Q. But as a theoretical matter, they've agreed to
25 something less than what they're entitled to, correct?

1 A. Maybe I can -- maybe I can say this. It's --
2 if there is -- if there is any inter-MTA traffic at all,
3 then they could have negotiated and received more than
4 they're getting with the zero percent.

5 Q. By negotiating zero, they may have left some
6 money on the table, correct?

7 A. That's possible.

8 Q. By negotiating the zero percent, they may have
9 arrived at an inaccurate inter-MTA factor, correct?

10 A. Oh, yeah, you could say it's -- it's
11 inaccurate, I suppose.

12 Q. But you're not challenging the accuracy of
13 those factors, correct?

14 A. No, I'm not.

15 Q. Now, have you seen the highly confidential
16 schedules that are attached to the complaint in this case?

17 A. No, sir.

18 Q. If I were to tell you -- or assume, if you
19 will, for purposes of this question, that the total amount
20 outstanding at the time of the filing of the complaint by
21 T-Mobile and Western to the three companies that we're
22 talking about, BPS, Craw-Kan and Mark Twain, was less than
23 \$5,000. Would you still object to the proposed inter-MTA
24 factors for these three companies?

25 A. I'm sorry. I'm -- would you repeat that?

1 Q. Sure. Assume for purposes of this question
2 that the total amount of money payable to the three
3 Complainants that we're talking about, BPS, Craw-Kan and
4 Mark Twain, as of the date of the filing of the complaint
5 was less than \$5,000. Can you get that assumption firmly in
6 place?

7 A. Uh-huh.

8 Q. Are you still objecting to the inter-MTA
9 factors that these three companies have negotiated with the
10 two wireless companies?

11 A. Yes, I believe so.

12 Q. Even though the amount of additional claims
13 that you're concerned about would be roughly half of that
14 \$5,000 or \$2,500, which, if priced at access, even if access
15 was twice the wireless termination rate, would be perhaps
16 another \$2,500 in liability?

17 A. Well, Mr. England, I look at it like this:
18 It's very similar to you calling up SBC and saying, you
19 know, I don't -- I'm going to send you a bill. I haven't
20 done anything for you, but I'm going to send you a bill for
21 \$2,500. Would you mind paying it? We probably wouldn't pay
22 that bill.

23 And maybe it's more principle. I mean, if you
24 want to call it principle, that's fine, but I think we would
25 still have some concerns.

1 Q. But the analogy isn't accurate, is it, sir,
2 because we are talking about traffic that we agree, if it's
3 inter-MTA, is subject to access?

4 A. It is subject to access.

5 Q. Your only objection is that it increases your
6 liability. You're not objecting to the fact that, if it's
7 inter-MTA, it is subject to access, correct?

8 A. I'm concerned about it increasing the
9 potential liability to SBC.

10 Q. Even though that potential liability may be no
11 more than \$2,500?

12 A. Yes.

13 Q. And even though, if those factors are
14 accurate, that is an accurate billing?

15 A. Yes.

16 Q. Would you agree with me that the increased
17 time and expense Southwestern Bell alone has incurred in
18 this phase of the hearing process would exceed that \$2,500?

19 A. Very likely.

20 Q. We've decided -- or excuse me. We've
21 determined that there is some amount of inter-MTA traffic
22 that has been transited over SWBT's facilities for
23 termination to these small companies, correct?

24 A. Yes.

25 Q. Would you also agree that SWBT has no data or

1 records that would identify the amount of that inter-MTA
2 traffic?

3 A. Yes. That information is not passed on to us.

4 Q. Now, you've objected to the factors that have
5 been negotiated between BPS, Craw-Kan and Mark Twain on the
6 one hand and the two wireless carriers on the other hand,
7 but I do not see where you have offered any alternative or
8 proposed factor yourself; is that correct?

9 A. Well, I couldn't actually offer a proposed
10 factor, not knowing more information about the traffic.

11 Q. But we know that in most instances there ought
12 to be some sort of factor because we've determined that
13 there is inter-MTA factor traffic to some degree, correct?

14 A. It could be zero.

15 Q. Could be more than zero, right?

16 A. It could.

17 Q. Do you have an alternative as we sit here
18 today?

19 A. For?

20 Q. Factors for BPS, Craw-Kan and Mark Twain.

21 A. For calculating those factors or for the
22 factors themselves?

23 Q. For the factors themselves.

24 A. No, I don't.

25 Q. At page 9 of your testimony -- I think you

1 only had one piece of testimony, correct?

2 A. That's correct.

3 Q. Lines 5 through 23, you have a quote from an
4 FCC order. Do you see that?

5 A. Yes, I do.

6 Q. I want to focus on the very last sentence
7 which begins, I believe, on line 20, and I'm going to read
8 that to you. Are you with me?

9 A. Yes, I am.

10 Q. That sentence says, as an alternative, LECs
11 and CMRS providers can use the point of interconnection
12 between the two carriers at the beginning of the call to
13 determine the location of the mobile caller or called party.
14 Do you see that?

15 A. I do.

16 Q. Where does T-Mobile interconnect with
17 Southwestern Bell Telephone Company?

18 A. I can't say that I know everywhere where they
19 interconnect with us, but I do know that they interconnect
20 at least in -- at our tandems in St. Louis, Kansas City and
21 Springfield. There may be other interconnection points
22 also.

23 Q. That's fine. Let's just take those three as
24 an example.

25 A. Okay.

1 Q. First let's assume that T-Mobile has
2 interconnected with Southwestern Bell in St. Louis, and is
3 terminating traffic to the exchanges of BPS.

4 A. Okay.

5 Q. You'd agree with me that one of BPS' exchanges
6 is outside the St. Louis MTA, in fact located in the, I
7 think it's the Memphis MTA, would you not?

8 A. I would.

9 Q. If you use the alternative means of
10 determining the origination point of a mobile call as the
11 FCC has provided, would you agree with me, then, that a call
12 from St. Louis or at least the point of interconnection with
13 Southwestern Bell in St. Louis to the Steele exchange of BPS
14 is by definition an inter-MTA call?

15 A. No, I wouldn't. Let me ask this. Where did
16 the call originate?

17 Q. For purposes of the jurisdiction, I'm using
18 the alternative provided by the FCC. And it originated at
19 the connection between you and T-Mobile.

20 A. Here's my concern. If -- let's say that
21 cellular calling in general is guided by a community of
22 interest, that around Steele kids are calling other kids,
23 wife calls you on the golf course, whatever. It's generally
24 a community of interest. If calls are being originated in
25 Steele and they're being terminated in Steele, whether

1 they're -- whether they go to our tandem in St. Louis
2 doesn't make me any difference. Those are intra-MTA calls.
3 And, I mean, just because the FCC says that
4 two carriers can get together and use first point of
5 interconnection for negotiations, I mean, that's fine if you
6 use it to negotiate, but if you are using that to come to me
7 and say somehow that I'm liable for that, I don't agree with
8 using that method.
9 Q. I haven't gotten to liability, and I'm trying
10 to stay away from it --
11 A. Okay.
12 Q. -- for this line of questioning.
13 A. Okay.
14 Q. Let me try the question this way. Assume for
15 purposes of my question that the point of interconnection
16 between your network and the wireless network is the
17 origination point of the call.
18 A. Okay.
19 Q. And assume that the terminating point of the
20 call in this example is Steele, Missouri.
21 A. Uh-huh.
22 Q. Would you agree with me, then, that by
23 definition that is an inter-MTA call?
24 A. Yes. In the instance where the originating --
25 where the call is originated in St. Louis, that's where the

1 handset is, and it's terminated in Steele, that would an
2 inter-MTA call.

3 Q. I'm not even concerned where the wireless
4 caller is located. I'm just assuming that the -- for
5 purposes of the jurisdiction of the call, the originating
6 point is the point of interconnection.

7 A. Well, I can't -- I can't agree that that is an
8 appropriate origination point. If you're saying that we
9 want to use that as an origination point, then I can agree
10 that that would be -- under that circumstance and your
11 assumption, that would be an inter-MTA call.

12 Q. I'm not debating -- apparently we have a
13 different reading of the FCC or understanding of the FCC
14 order. So I'm not going to debate with you whether or not
15 you believe it says what I think it says. I'm just saying
16 assuming that that is the case.

17 A. Okay. I can assume that.

18 Q. So that, for example, that caller, the
19 wireless caller could have been in Steele, Missouri when
20 they made that call--

21 A. Uh-huh.

22 Q. -- but when T-Mobile hands it off to you, it
23 hands it off to you in St. Louis at your tandem --

24 A. Uh-huh. Okay.

25 Q. -- for termination back to Steele where the

1 line-land customer's located.

2 A. Okay.

3 Q. If your point of origination is your point of
4 interconnection, that is an inter-MTA call, correct?

5 MR. BUB: Excuse me. I need to make an
6 objection here. Your assumption is that this alternative is
7 agreed to by the parties?

8 JUDGE THOMPSON: Mr. Bub, use your microphone
9 if you would.

10 MR. BUB: Do I need to repeat that?

11 JUDGE THOMPSON: Yes, please.

12 MR. BUB: The objection I have, Trip, is with
13 your assumption, I think you're assuming a fact not in
14 evidence, but if you want to ask that this exception is
15 something that's agreed to between the parties.

16 MR. ENGLAND: Agreed to or directed by
17 arbitration, as was the case between Mid-Missouri Cellular
18 and Southwestern Bell Telephone Company several years ago?

19 THE WITNESS: Does that have any bearing here,
20 what happened between us and Mid-Missouri several years ago?

21 MR. ENGLAND: I'm --

22 JUDGE THOMPSON: Mr. Kern --

23 THE WITNESS: I'm sorry. He was looking right
24 at me. I'm sorry.

25 MR. ENGLAND; I'm clarifying the question at

1 the request of your counsel.

2 MR. BUB: Based on the assumption that it's
3 either agreed to or ordered, I'm okay with it.

4 MR. ENGLAND: Correct.

5 BY MR. ENGLAND:

6 Q. So back to my hypothetical.

7 A. Okay. I'm sorry. Could you ask it again just
8 so I'm clear?

9 Q. Sure. The wireless caller is located in
10 Steele. The call is carried by the wireless carrier, in
11 this case T-Mobile, to its point of interconnection with you
12 in St. Louis. It's transited by you from St. Louis back to
13 Steele and terminated over BPS' facilities to a BPS end user
14 customer.

15 For purposes of my question, I am assuming
16 that the point of origination of that call is the point of
17 interconnection between your facilities and T-Mobile, and
18 that has either been agreed to by the carriers or directed
19 through arbitration by the Commission.

20 A. Well, in that hypothetical, I would agree with
21 you that it is an inter-MTA call.

22 Q. And essentially, without belaboring it, it
23 would be the same if we took the example from Kansas City to
24 the Mark Twain exchanges, which are located in the Kansas
25 City LATA but the St. Louis MTA?

1 A. Certainly. Certainly. If the -- if the
2 tandem connection is on one side of the MTA and the
3 termination point is on the other side of the MTA, it's
4 going to be inter-MTA under your scenario each time.

5 Q. And finally, to complete the cycle, the same
6 with Springfield, the Springfield tandem is on the other
7 side of the MTA boundary from the Craw-Kan exchanges that
8 are within that same LATA?

9 A. That's correct.

10 Q. So if the point of interconnection is the
11 point of origination, calls transited by you from your
12 Springfield tandem to Craw-Kan's exchanges of Purcell and
13 Asbury north of Joplin would all be inter-MTA?

14 A. Again, under your hypothetical, that's
15 correct.

16 JUDGE THOMPSON: Mr. England, we're about at
17 the point for the lunch recess. Do you expect to be much
18 longer?

19 MR. ENGLAND: One question, I believe.

20 JUDGE THOMPSON: Absolutely. Proceed.

21 BY MR. ENGLAND:

22 Q. Mr. Kern, assuming SWBT is found liable for
23 some or all of this wireless traffic that it has transited
24 to the Complainants, is it SWBT's position that it does not
25 have a right of indemnification against T-Mobile and Western

1 in accordance with the terms of its interconnection
2 agreement with those carriers?

3 A. Obviously there are indem-- there is
4 indemnification language in the interconnection agreement.
5 However, I listened to Mr. Williams sit up here and explain
6 all of the things, all of the reasons that they have
7 problems with paying for some of the traffic, and I didn't
8 hear him -- not one of those was that BPS' name was on the
9 bill.

10 So I have some serious doubts that if we take
11 that bill and erased BPS' names and put SBC's name on it and
12 sent it to Mr. Williams, that he's going to pay that bill.

13 Q. That's not my question, Mr. Kern. And I
14 apologize, I don't have one last question. I'll try to ask
15 it again.

16 A. Okay.

17 Q. Is it SWBT's position that if it's found
18 liable for all or some of this traffic that it has transited
19 to the Complainants, that it does not have a right of
20 indemnification against T-Mobile and Western in accordance
21 with the interconnection agreements it has with those two
22 carriers?

23 A. There is indemnification language in our
24 interconnection agreement with those two wireless carriers.

25 Q. And it would be your opinion, would it not,

1 sir, that you are indemnified by them for any liability you
2 incur in this docket?

3 A. By indemnified you mean that we can -- I'm
4 trying to qualify your question. Clarify. I'm sorry --
5 that we can ask them to reimburse us for what you charged
6 us?

7 Q. Correct.

8 A. Yes.

9 Q. You would agree you can?

10 A. We can ask them to reimburse us.

11 MR. ENGLAND: Okay. Thank you, sir. No other
12 questions.

13 JUDGE THOMPSON: Thank you, Mr. England.

14 Thank you, sir. What are your travel plans, if I could add?

15 THE WITNESS: I'm traveling by automobile.

16 JUDGE THOMPSON: Okay. Very good.

17 THE WITNESS: So I'm here for the duration.

18 JUDGE THOMPSON: We're about to take the lunch
19 recess, but before we go, I just want to get a procedural
20 point, some input on it. I understand the Commissioners are
21 going to join us at 1:30 when we come back from lunch.

22 Would you prefer that we finish up with
23 Mr. Williams at that time, who needs to leave to catch a
24 plain, or the Commissioners may prefer to do opening
25 statements then, in which case we would take up Mr. Williams

1 after opening statements.

2 Mr. England?

3 MR. ENGLAND: I guess I'll jump in here first.
4 My preference, in light of Mr. Williams' travel constraints,
5 we're not going to get started 'til 1:30, would be to start
6 with him in an abundance of caution so hopefully we can get
7 him done by three or before so he can hit the road.

8 JUDGE THOMPSON: Is that acceptable? I will
9 do my best to convince the Commissioners that that's what
10 we'll do, and we will come back then at 1:30. Thank you.

11 (A BREAK WAS TAKEN.)

12 JUDGE THOMPSON: We're going to start with
13 questions from the Bench for Mr. Williams. If he would
14 return to the witness stand. We're going to do recross
15 based on questions from the Bench. I remind you you're
16 still under oath. Take your seat, sir.

17 Mr. England?

18 MR. ENGLAND: Thank you, your Honor.

19 RON WILLIAMS testified as follows:

20 RECROSS-EXAMINATION BY MR. ENGLAND:

21 Q. Mr. Williams, I have a few questions that I
22 think were generated by questions you received from Judge
23 Thompson.

24 First of all, I think you responded to a
25 question or two from the Bench that you believed

1 pre-tariff -- excuse me -- pre-wireless-tariff traffic was
2 involved in this complaint. Have you had an opportunity to
3 look at the complaint or visit with counsel to determine if
4 there is any pre-wireless tariff involved in this complaint?

5 A. Yes, I have, and my review indicated that it's
6 not relevant to this proceeding.

7 Q. You would agree, then, we're only talking
8 about traffic delivered by T-Mobile and Western after the
9 date these wireless tariffs became effective?

10 A. Correct.

11 Q. Thank you.

12 And then in another line of questioning, I
13 believe you indicated to Judge Thompson that, I think in a
14 series of hypothetical questions, that the originating
15 carrier would generally be responsible for -- financially
16 responsible for traffic it terminated to other carriers. Do
17 you recall that line of questioning?

18 A. Yes.

19 Q. Let me be more specific or give you a specific
20 example where that might not be the case. If, for example,
21 a wireless carrier contracted with what I'll call a
22 traditional interexchange carrier, such as AT&T or MCI or
23 Sprint Long Distance, would you agree with me that,
24 generally speaking, in those instances the interexchange
25 carrier is financially responsible for terminating

1 compensation?

2 A. Generally speaking, that's correct.

3 MR. ENGLAND: Thank you, sir. I have no other

4 questions.

5 JUDGE THOMPSON: Thank you, Mr. England.

6 Mr. Bates?

7 MR. BATES: Thank you, your Honor.

8 RECROSS-EXAMINATION BY MR. BATES:

9 Q. Mr. Williams, I just have one or two questions

10 for you. I just want to make -- clarify my understanding.

11 I believe this is generated by a question from Judge

12 Thompson.

13 Based on the negotiated inter-MTA factors

14 between T-Mobile and Western and the Complainants, does

15 T-Mobile -- excuse me -- do T-Mobile and Western agree that

16 they are responsible for payment for inter-MTA traffic

17 terminating to the Complainants?

18 A. Yes, we're responsible for the traffic

19 generated from our networks that is inter-MTA traffic that

20 is terminated to the Complainants.

21 MR. BATES: Thank you.

22 JUDGE THOMPSON: Thank you, Mr. Bates.

23 Mr. Bub?

24 MR. BUB: None, your Honor. Thank you.

25 JUDGE THOMPSON: Mr. Johnson, redirect?

1 MR. JOHNSON: Nothing, thank you, your Honor.
2 JUDGE THOMPSON: Thank you. You are excused,
3 Mr. --
4 COMMISSIONER MURRAY: Judge?
5 JUDGE THOMPSON: Yes, ma'am?
6 COMMISSIONER MURRAY: I hesitate to do this
7 when I said no before.
8 JUDGE THOMPSON: That's quite all right.
9 COMMISSIONER MURRAY: But there is something I
10 would like to ask. I apologize.
11 JUDGE THOMPSON: Yes, ma'am.
12 QUESTIONS BY COMMISSIONER MURRAY:
13 Q. Are you familiar with the testimony of
14 Mr. Scheperle from the Staff --
15 A. I am.
16 Q. -- and the recommendations that the Staff
17 made?
18 A. The five-point recommendations or the
19 recommendation to support our negotiation?
20 Q. The five-point recommendations. And you may
21 have covered this earlier. I apologize because we've been
22 otherwise occupied all day. But the first recommendation,
23 that the wireless carrier provide a listing of all cell
24 sites outlining the county of the cell site with a map
25 showing (ck) service area and the cell site locations, have

1 you done that?

2 A. I know Western Wireless had submitted that in
3 discovery, and I can't -- I can't confirm that T-Mobile
4 submitted that in discovery.

5 Q. And then how about providing an explanation of
6 how the wireless cell sites reach traffic to the mobile
7 switching center?

8 A. The same.

9 Q. And information on how each MSC routes traffic
10 to Southwestern Bell switches?

11 A. Yes, we provided that as well, although
12 there's some aspects of this I'm not sure is fully relevant
13 to the determination of inter-MTA. That would be one of
14 them. But I believe we provided that information.

15 Q. And then that No. 4, that the wireless carrier
16 identify the IXC where the wireless carrier may route
17 certain interLATA traffic detailing the number of calls,
18 terminating minutes used by the IXC for calls terminated to
19 the LEC?

20 A. We -- Western Wireless was only able to
21 identify the interexchange carrier for which we route
22 inter-MTA traffic to. We did not have data that would
23 enable us to identify what specific portions of that traffic
24 would eventually be terminated to the Complainants.

25 Q. And then No. 5 -- well, that was not a

1 recommendation for the wireless carrier.

2 COMMISSIONER MURRAY: All right. I believe
3 that's all. Thank you.

4 JUDGE THOMPSON: Thank you, Commissioner.

5 Commissioner Forbis?

6 QUESTIONS BY COMMISSIONER FORBIS:

7 Q. Mr. Williams, how are you doing?

8 A. Good, thanks.

9 Q. One question, because I'm getting caught up
10 here, too. I apologize if I missed something. I was
11 reading just quickly here your direct and surrebuttal. I
12 just want to make clear, in your direct you say that you
13 believe a negotiated settlement would serve all parties
14 because what looked to be maybe some technical problems, if
15 you will, in determining the appropriate mix of inter and
16 intraLATA.

17 Then in your surrebuttal, though, on page --
18 actually, it's one page, lines 21, 22, 23, your point there
19 is more it's just not cost effective for you to engage in
20 the exercise.

21 So I wanted to get a sense from you which --
22 is it more it's hard to figure it out or just costs too much
23 to do it given the volume of traffic you're dealing with?

24 A. The answer is yes to both of those questions.

25 Q. Well, that took care of that.

1 A. No. Some explanation. The process of getting
2 to an accurate portrayal of inter-MTA traffic requires --
3 I'll speak specifically to the Wireless circumstances -- to
4 pull call records prior to their normal processing path.
5 It's not something we can do on a real-time basis. It's
6 something we have to do prior to the time we process bills.

7 That's -- that exception process is expensive
8 and it is perishable. In other words, we can't go back and
9 rediscover data that's already been processed. We've got to
10 capture it before it gets into a certain stage of
11 processing. So it is an expensive process. It means we
12 have to capture it, means we have to process it manually.
13 And so for that reason it is a difficult hurdle to clear.

14 When you look at that in the context of the
15 amount of traffic that Western Wireless terminates to the
16 Complainants, it is clear that this forum is not the right
17 forum to expend additional corporate resources to get to an
18 absolutely accurate portrayal.

19 We believe that the inter-MTA factor is best
20 negotiated as a part of a broader spectrum of issues having
21 to do with interconnection, and in that context of broad
22 issues of interconnection, inter-MTA can best be dealt with
23 as it's valued by both parties.

24 Q. Just to make sure I understood it, then, the
25 recordkeeping process is doable, but it's difficult and it's

1 time sensitive?

2 A. It is -- it is not part of our standard
3 process, but it could be accomplished on an ad hoc basis,
4 but it is expensive to do that.

5 Q. Any -- I mean, shoot in the dark. When you
6 say expensive, how much are we talking about?

7 A. Thousands of dollars. Tens of thousands
8 probably.

9 Q. Put the software in place basically to track
10 the --

11 A. Well, the capturing mechanism and then it's
12 really, once you've captured it, how do you process it. You
13 know, none of that processing is something that we would do
14 today.

15 Q. So you're not engaged in any of this activity
16 right now at all, any of that monitoring anywhere?

17 A. No.

18 COMMISSIONER FORBIS: Thank you. Thanks,
19 Judge.

20 JUDGE THOMPSON: Other questions from the
21 Bench?

22 (No response.)

23 Recross, additional recross, Mr. England?

24 MR. ENGLAND: Thank you, your Honor.

25 FURTHER RECROSS-EXAMINATION BY MR. ENGLAND:

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1 Q. Mr. Williams, in response to some question or
2 questions from Commissioner Murray, you talk about the
3 routing of traffic to interexchange carriers, I believe
4 where it's inter-MTA?

5 A. Yes.

6 Q. And I had some questions on that. Just as a
7 practical matter, when you interconnect with a Bell
8 operating company, like Southwestern Bell Telephone Company,
9 you're limited in the area within which you can transit and
10 terminate calls to the LATA; would you agree with that?

11 A. That's correct.

12 Q. So I guess my question is, when you set up
13 your network and make your determinations as to whether or
14 not to deliver a call to the RBOC such as Southwestern Bell
15 or to the interexchange carrier for delivery and
16 termination, is it driven more by MTAs or by LATAs?

17 A. Actually, it's not driven by either. It is
18 driven by the volume of traffic we expect to terminate to a
19 specific -- terminate or trade with specific exchanges. And
20 then we look at what it will cost us to satisfy that traffic
21 termination through different means available to us, and in
22 some cases the most efficient means and volume justification
23 is for indirect termination through a transit tandem at a
24 LATA tandem.

25 There are some cases where on the periphery of

1 a -- since LATA boundaries and wireless boundaries don't --
2 aren't the same, there are some conditions where at the
3 extreme edges of a LATA or of a wireless service area, that
4 we will opt to terminate that traffic through an
5 interexchange carrier because it would be prohibitively
6 expensive for us to establish an interconnection at a LATA
7 tandem serving those exchanges. That is the case, for
8 example, with respect to the Springfield LATA.

9 MR. ENGLAND: Thank you, sir.

10 JUDGE THOMPSON: Thank you, Mr. England.

11 Mr. Bates?

12 MR. BATES: No, thank you, your Honor.

13 JUDGE THOMPSON: Thank you. Mr. Bub?

14 MR. BUB: Thank you, your Honor. Just a
15 couple.

16 RECROSS-EXAMINATION BY MR. BUB:

17 Q. Mr. Williams, you engaged in some discussion
18 with Commissioner Forbis about how hard it would be, how
19 expensive, time consuming it would be to perform a study to
20 come up with an accurate inter-MTA factor, and that in the
21 situation it's not cost effective.

22 Would you agree that in this situation here
23 where you've agreed that your company is responsible for
24 paying inter-MTA traffic that's generated by the fact that
25 you agreed to, that it's not necessary to engage in this

1 exercise of developing a factor?

2 A. Any time parties agree to a factor, there
3 really is no need to go back and -- it would be an academic
4 study at that point, and we don't have the resources to
5 justify that.

6 Q. And the factor that's been agreed to has been
7 agreed to by -- your originating company is Western Wireless
8 and T-Mobile, and the terminating company is the
9 Complainants in this case?

10 A. Right.

11 Q. And SBC, the transit company, had no
12 involvement in the negotiation of that factor; is that
13 correct?

14 A. That's to my knowledge correct.

15 Q. And in your view, that factor shouldn't have
16 any impact on us because we're not expected to pay for that
17 traffic?

18 A. Speaks to the relationship between the
19 originating and terminating carrier, not the transit
20 provider.

21 MR. BUB: Thank you. Those are all the
22 questions we have.

23 JUDGE THOMPSON: Thank you, Mr. Bub.
24 Mr. Johnson, redirect?

25 MR. JOHNSON: Nothing.

1 JUDGE THOMPSON: You're excused, sir. Have a
2 nice flight.

3 THE WITNESS: Thank you.

4 JUDGE THOMPSON: We will now have opening
5 statements. I believe that, Mr. England, you are scheduled
6 to go first. I will request the parties to try to stick to
7 the ten minutes that they have agreed, but I will not stop
8 you mid sentence.

9 MR. ENGLAND: Thank you, your Honor. May it
10 please the Commission?

11 My name is Trip England, and I represent the
12 Complainants in this case. The Complainants are 14 small
13 local exchange carriers. They have filed a complaint
14 against T-Mobile, Western Wireless and Southwestern Bell
15 Telephone Company for uncompensated wireless traffic that
16 T-Mobile and Western Wireless hand off to Southwestern Bell
17 Telephone Company, who then transits that traffic for
18 termination to the Complainants' exchanges.

19 In the first phase, if you will, of these
20 proceedings, we submitted written prepared testimony, all
21 parties did, waived cross-examination, and simply briefed
22 the issues. I believe you will find that the testimony in
23 that first phase, if you will, is unequivocal in
24 demonstrating that the wireless Respondents here do deliver
25 traffic through Southwestern Bell's facilities that is

1 terminated to the Complainants and for which they have
2 received no compensation from either Wireless or
3 Southwestern Bell Telephone.

4 Now, my understanding is that the Commission
5 reopened the record because of its concern for the
6 jurisdictional nature of this traffic. In other words, the
7 Commission wants to know what portion of the traffic is
8 inter-MTA and what portion is intra-MTA. And that is
9 important because, depending upon the jurisdiction of the
10 traffic, different tariffs apply.

11 If it is intra-MTA, we submit that our
12 intrastate wireless termination tariffs, which you-all
13 approved a number of years ago, would apply. If it is
14 inter-MTA, then I think there is no dispute among the
15 parties that our intrastate access tariffs would apply.

16 I think there is also general agreement among
17 all the parties that there is no data, information, call
18 records, whatever you want to call it, available, currently
19 available that would identify what portion of this
20 historical traffic is inter-MTA and what portion is
21 intra-MTA.

22 And as you just heard from Mr. Williams, to
23 obtain that information at least from the wireless carriers
24 who are originating this traffic is a time-consuming,
25 burdensome and very costly undertaking.

1 As a result, at one of the prehearing
2 conferences prior to this phase of the proceedings T-Mobile
3 and Western proposed that the parties attempt to negotiate
4 intra-- or excuse me -- inter-MTA factors. The Complainants
5 were willing to do so because, in fact, they had recently
6 done so with other wireless carriers, embodied those factors
7 in traffic termination agreements which they have filed with
8 you and which to date a number have been approved.

9 Once those agreements were negotiated -- or
10 excuse me -- those inter-MTA factors were agreed to between
11 the Complainants, all 14 on the one hand and T-Mobile on the
12 other, they were submitted to Southwestern Bell for their
13 input. Southwestern Bell objected.

14 We subsequently filed a nonunanimous
15 stipulation. We were not purporting that to be a unanimous
16 stipulation. We recognize that we did not have Southwestern
17 Bell's concurrence, but we also recognized that we were
18 unlikely to get their concurrence, so we felt it was
19 appropriate to tee it up with the filing of the stipulation.

20 Based on the issues list that has been
21 presented in this phase of the proceeding, I believe the
22 scope is fairly narrow, and that is, are the inter-MTA
23 factors that have been agreed to by three of the
24 Complainants on the one hand and the wireless carriers on
25 the other hand appropriate?

1 The three companies in question are BPS
2 Telephone Company, which has a negotiated factor of
3 52 percent. By the way BPS Telephone Company is a small
4 local exchange company on this map serving the extreme
5 southeast part of the state.

6 The other -- the next company rather is
7 Craw-Kan Telephone Company. Craw-Kan negotiated a
8 53 percent inter-MTA factor, and Craw-Kan serves
9 approximately six exchanges on the very westernmost side of
10 the state, two exchanges above Joplin, Asbury, Purcell, four
11 exchanges further north in the Kansas City LATA, right along
12 the state line. Actually, the bulk of Craw-Kan's operations
13 are in Kansas, but they do have a presence and, by small
14 company standards, a fairly substantial presence in the
15 state of Missouri.

16 Finally, the last company is Mark Twain Rural
17 Telecommunications Company -- or excuse me -- Telephone
18 Company, and it serves a number of exchanges in the very
19 northeast part of the state. It's the exchanges highlighted
20 in yellow on the map in the northeast corner. The factor
21 Mark Twain agreed to was 53 percent.

22 I want to note that there is no longer any
23 objection on Southwestern Bell's part, or for that matter
24 any other party that I'm aware of, to the factors that have
25 been agreed to for the other 11 Complainants. So as I said,

1 this is fairly narrow. We're just talking about three
2 companies, three factors.

3 We believe that these agreed-to factors for
4 BPS, Craw-Kan and Mark Twain are appropriate. First, they
5 are intuitive. If you will look at the map that we have and
6 look at these exchanges in relation to LATA boundaries, in
7 relation to MTA boundaries, and in relation to points of
8 interconnection between the wireless companies and
9 Southwestern Bell Telephone Company, these factors bear some
10 intuitive relationship to what you would expect to be
11 happening.

12 For example, in the BPS case, BPS serves three
13 exchanges, one of which, the Steele exchange, is located in
14 the very southeast part of the state, which is actually in
15 the Memphis MTA. Now, it's in the St. Louis LATA, so it
16 subtends Southwestern Bell's tandem in the St. Louis LATA,
17 but it is in the Memphis MTA. And approximately 52 percent
18 of BPS' total access lines in these three exchanges are in
19 the Steele exchange. So that's how we came up with the
20 52 percent factor down there.

21 If a wireless customer in St. Louis,
22 Cape Girardeau, Sikeston is making a call to a land-line
23 customer in Steele, that is going to be an inter-MTA call,
24 even though it's intraLATA.

25 With Craw-Kan, again, they are -- at least

1 their southernmost exchanges in the 417 the Springfield LATA
2 subtend to Bell tandem in Springfield. As you will see, the
3 MTA boundary bisects that LATA right down the middle. So we
4 looked at the ratio of access lines served by these two
5 exchanges versus their total access lines to come up with
6 their factor. I believe it's 53 percent.

7 And then finally Mark Twain, which is in the
8 Kansas City LATA, subtends Southwestern Bell's Kansas City
9 tandem, or at least the tandem where our wireless carriers
10 are interconnected. It is on the -- it is -- excuse me.
11 All of Mark Twain's exchanges are in the St. Louis MTA but
12 the Kansas City LATA. So any calls from Kansas City,
13 St. Joseph, in the, if you will, the western half of the
14 Kansas City LATA to their exchanges is going to be an
15 inter-MTA call.

16 So to say intuition will tell you just by
17 looking at where the exchanges are located, where the LATA
18 boundaries are located, and that tells you where
19 Southwestern Bell can deliver the traffic, where the MTA
20 boundaries are located and where the wireless carriers
21 connect with the land line system, there's obviously going
22 to be some inter-MTA traffic, and I don't think anybody
23 disputes the fact that there is some inter-MTA factor. What
24 we're fighting over is how much.

25 Another reason that these factors are

1 appropriate, they are the result of arm's length
2 negotiations between the wireless carriers who originate the
3 traffic and the Complainants who terminate the traffic.
4 Another reason that they're appropriate, these factors are
5 consistent with or similar to factors that some of these
6 Complainants have previously negotiated with other
7 unaffiliated wireless carriers, Verizon Wireless and Sprint
8 PCS.

9 And finally, in the case of Mark Twain and
10 Fidelity -- by the way, Fidelity's not at issue, but both of
11 those companies did what I will call a traffic study of
12 T-Mobile traffic terminating to their exchanges. They are
13 able to capture the calling party's NPA/NXX as it hits their
14 switch.

15 And they were able to capture all of those
16 that are associated with T-Mobile NPA/NXXs and then look at
17 those NPA/NXXs that are assigned, if you will, in the St.
18 Louis MTA and then all of those that aren't. And in the
19 Mark Twain case, they found that 70 percent roughly of the
20 calls coming from T-Mobile NPA/NXXs were originating with
21 NPA/NXXs that were outside their MTA.

22 Fidelity, for example, their study said
23 16 percent of T-Mobile NPA/NXXs were outside the MTA, which
24 is somewhat interesting, is perhaps even counterintuitive
25 because Fidelity's right in the middle of an MTA. You

1 wouldn't expect, at least we wouldn't have expected that
2 much inter-MTA or apparent inter-MTA traffic.

3 So as I said, the factors that were agreed to
4 were based on general intuition, physical location of
5 facilities, exchanges, an agreement among the parties who
6 obviously were dealing in their own self interest but
7 presumably arriving at a result that was satisfactory to
8 both, and similar to other agreements with other wireless
9 carriers.

10 We believe all of these factors will lead you
11 to believe, like we believe, that these are appropriate for
12 purposes of this case.

13 Now, let's look briefly at Southwestern Bell's
14 objection. They say they are concerned with these three
15 factors because of the increase in potential liability that
16 they may have in this case because we've included them as a
17 respondent. Access charges are generally higher than are
18 wireless charges. So to the extent this traffic is subject
19 to access, a greater cost or rate is attributable to it, and
20 in Bell's position greater potential liability that they may
21 incur.

22 I would submit a couple of things. I would
23 submit that their concern for liability is not relevant,
24 that it should be the concern for the appropriate
25 jurisdiction of the traffic. And once you've identified

1 that traffic, whatever rate applies is whatever rate
2 applies.

3 Secondly, and perhaps more importantly, their
4 concern for potential liability rings hollow when you look
5 at their interconnection agreement with Voicestream,
6 T-Mobile now, and Western Wireless, because they have
7 indemnified themselves against this liability. Those
8 agreements specifically say if they are required to pay
9 third-party carriers for terminating this traffic, such as
10 the Complainants, they have a clear right of indemnification
11 against these wireless carriers.

12 Southwestern Bell goes on to challenge the
13 accuracy of these agreed-to factors, knowing full well that
14 there is no definitive traffic study, traffic data, traffic
15 records to tell us the jurisdiction of the traffic. They
16 don't have it. The wireless carriers don't have it. We
17 don't have it. That seems to be universally agreed to in
18 this case.

19 They challenge the accuracy of these factors,
20 yet they offer no alternative. They offer no factual data
21 whatsoever to dispute or contradict these agreed-to factors.
22 They simply raise hypothetical concerns and possibilities
23 where these factors may not be appropriate or where certain
24 calls may not -- that would otherwise appear to be inter-MTA
25 may not be intra-MTA.

1 I would submit to you that, given the
2 circumstances of this case, based on the record that you
3 have before you, that there is ample support, there is ample
4 evidence to support the appropriateness of the inter-MTA
5 factors that have been agreed to between the Complainants
6 and T-Mobile and Western Wireless.

7 Thank you.

8 JUDGE THOMPSON: Thank you, Mr. England.
9 Mr. Johnson?

10 MR. JOHNSON: Thank you, Judge Thompson. May
11 it please the Commission. I'm Mark Johnson from Kansas
12 City. I'm here today on behalf of the three respondents,
13 T-Mobile USA, Incorporated, Western Wireless and Aerial
14 Communications.

15 T-Mobile and Western Wireless were part of the
16 same company until 1999, just to tell you who these
17 companies are. They're all wireless carriers. T-Mobile
18 used to be known as Voicestream. So Voicestream was a
19 subsidiary of Western Wireless until 1999 when it was spun
20 out of the company.

21 Subsequent to that, Voicestream acquired
22 Aerial Communications in the year 2000, and then in August
23 of last year Voicestream changed its name to T-Mobile USA.
24 That's how we have these, what are now two companies
25 providing wireless service in the state. That's T-Mobile

1 and Western Wireless.

2 Again, by way of introduction to tell you
3 where those companies provide service, T-Mobile is
4 essentially an urban wireless carrier while Western Wireless
5 is a rural wireless carrier. In the state of Missouri,
6 T-Mobile has operations centered in the St. Louis and the
7 Kansas City areas, but the company's footprint is actually
8 much larger than that. They cover at the end of the day
9 most of the state.

10 Western Wireless on the other hand as a rural
11 carrier has only a five-county service area, and I'll point
12 it out in a second, and it's sort of the southwest side of
13 the state, centered around Clinton and Nevada.

14 In terms of counties, their service area is
15 made up of Henry, St. Clair, Vernon, Cedar. The fifth
16 county escapes me at the moment, but it's this area right
17 around here (indicating), small service area. That's the
18 only place in the state where Western Wireless has customers

19 As outlined in the Commission's Order of
20 May 5th in this docket, the only issue before you today has
21 to do with this inter-MTA versus intra-MTA percentage. And
22 one thing that we haven't done at this point is tell you
23 what MTA is short for. That's short for major trading area.
24 It's a designation that was adopted by the Federal
25 Communications Commission a number of years ago, and the

1 company Rand McNally actually put together these MTAs
2 throughout the country.

3 And Missouri has basically two MTAs, although
4 there are two others that sort of bleed into the state a
5 little bit from the northeast and the southwest. The
6 St. Louis MTA actually goes into the state of Illinois as
7 well, and the Kansas City MTA actually takes up about half
8 of the state of Kansas as well. So we're not just talking
9 about the western part of the state and the eastern part of
10 the state. These MTAs actually extend to St. Louis to the
11 east, Kansas City to the west quite a distance.

12 Now, a number of methods are proposed in
13 the -- or are talked about in the prefiled testimony as to
14 how one could go about calculating this inter-MTA versus
15 intra-MTA percentage, but one thing that everybody agrees on
16 is that it's very difficult to do and the results you get
17 are inherently unreliable.

18 You'll see prefiled testimony from the
19 parties, and there was testimony earlier today on
20 cross-examination, everybody agrees that the numbers that
21 you get from trying to conduct some sort of a traffic study
22 or a proxy -- Mr. Scheperle proposes a proxy as to how it
23 can be calculated. In his testimony Mr. Schoonmaker does
24 the same thing. But what you come out with is a number that
25 is not statistically reliable, and the witnesses have agreed

1 on that.

2 So that's why the best thing to do, as
3 advocated by the witness that my clients have sponsored,
4 who's name is Ron Williams who you just saw a moment ago, is
5 to negotiate this, to come to some sort of a compromise that
6 the parties can live with.

7 That's how interconnect agreements are agreed
8 to is by negotiation where all of the issues relating not
9 just to exchange of traffic and how much you have to pay for
10 inter-MTA versus intra-MTA traffic and the like, but all the
11 other details of interconnection are agreed to as a package.

12 That's precisely what up to this point the
13 Complainants, Mr. England's client, and the respondents, my
14 clients, have done. They have engaged in extensive
15 discussions as to what an appropriate resolution of this
16 matter from the point of view of the MTA traffic should be.
17 That's what's been proposed to you in Mr. Williams'
18 testimony. That's what's been proposed to you in
19 Mr. Schoonmaker's testimony, and Mr. Scheperle on behalf of
20 Staff recommends that the Commission adopt those
21 percentages.

22 No one's going to say they're absolutely
23 accurate, but they are a product of compromise, and we
24 believe that that is the best way to resolve this. We could
25 be here for -- I mean, these disputes have been going on now

1 for quite some time. In August of 2002 we were here in what
2 some of us would consider to be the companion case involving
3 Craig Johnson's ILEC clients.

4 The issue of the percentages of inter-MTA
5 versus intra-MTA traffic still in dispute in that case,
6 still in dispute in this case, and what does the testimony
7 show you? Shows you that you can't precisely calculate what
8 they're going to be. That's why we think that compromise by
9 adopting a negotiated solution that's agreeable to the
10 parties is the best way to resolve this dispute.

11 Thank you.

12 JUDGE THOMPSON: Thank you, Mr. Johnson.
13 Mr. Bates?

14 MR. BATES: Thank you, your Honor. Good
15 afternoon, Commissioners. As you know, this is a complaint
16 case filed by 14 local exchange carriers, 13 ILECs and one
17 CLEC. The thrust of the case is that the 14 Complainants
18 allege that Voicestream, which is now T-Mobile, and Western
19 Wireless have not paid for terminating wireless originated
20 traffic on the Complainants' network.

21 Wireless originated traffic originates and
22 terminates either within the same major trading area, which
23 is called the inter-MTA traffic, or between various MTAs,
24 which is called inter-MTA traffic. Wireless-originated
25 inter-MTA calls are subject to access charges just like long

1 distance calls, while wireless-originated intra-MTA calls
2 are considered local calls and are subject to the respective
3 Complainant's termination rates absent an interconnection
4 agreement between the wireless provider and the respective
5 Complainant.

6 Staff witness Mike Scheperle has filed
7 rebuttal testimony in September 2002 in this case and
8 additional rebuttal tomorrow in October of this year which
9 was accepted into testimony in this hearing this morning.

10 Mr. Scheperle's additional rebuttal testimony
11 deals with identifying the jurisdiction of the wireless
12 originated traffic should a wireless carrier and the
13 Complainant not agree to inter-MTA factors. In this case,
14 Voicestream and Western have negotiated and agreed to
15 inter-MTA factors with the 14 Complainants.

16 There are two really relevant issues in this
17 hearing. The first are the unopposed MTA factors. There
18 are MTA factors negotiated between 11 Complainants and
19 respondent wireless carriers and are not opposed by any
20 party.

21 The question is, should the Commission adopt
22 these factors for the purpose of determining inter-MTA
23 traffic in this complaint case? It is Staff's position and
24 we recommend that the Commission adopt these factors
25 negotiated and agreed to by the wireless carriers and the

1 Complainants.

2 The second issue deals with contested
3 inter-MTA factors. Inter-MTA factors negotiated between
4 three Complainants and the respondent wireless carriers and
5 are opposed by SBC Missouri.

6 The question is, should the Commission adopt
7 these factors for the purpose of determining inter-MTA
8 traffic in this complaint case? And those factors or those
9 companies are for BPS telephone company 52 percent, for
10 Craw-Kan Telephone Cooperative, Incorporate 53 percent, and
11 for Mark Twain Rural Telephone Company also 53 percent.

12 It is Staff's position and we recommend
13 respectfully to the Commission that the Commission should
14 adopt these factors negotiated and agreed to by the wireless
15 carriers and the Complainants. Staff supports the inter-MTA
16 factors negotiated and agreed to by Voicestream and Western
17 and the Complainants.

18 Voicestream and Southwestern Bell
19 interconnection agreement and the Western Wireless and
20 Southwestern Bell interconnection agreements state in
21 sections 3.1.3, which is entitled traffic to third-party
22 providers, that the parties agree to enter into their own
23 agreements with third-party providers, in this case
24 Complainants.

25 From Staff's perspective, the wording agree to

1 enter into their own agreements means an agreement between
2 the wireless carriers, Voicestream or Western, and the
3 Complainants is contemplated. Southwestern Bell does not
4 need to be a party to the inter-MTA factors negotiated and
5 agreed to by the wireless carriers and the Complainants.

6 Thank you.

7 JUDGE THOMPSON: Thank you, Mr. Bates.

8 Mr. Bub?

9 MR. BUB: Thank you, your Honor. Good
10 afternoon.

11 Before I get into a discussion of the problems
12 that we have with the factors, I want to provide you some
13 background to put these factors into context so you have a
14 better understanding of why we object to some of them.

15 Now, we do agree that there is a dispute here
16 that you need to resolve, but it's strictly between the
17 Complainants and the two wireless carriers that are here in
18 this courtroom today, T-Mobile and Western Wireless. These
19 two wireless carriers sent their customers' calls to the
20 Complainants for termination and have refused to pay the
21 terminating charges.

22 And as we heard this morning, they have a
23 dispute, concerns over the lawfulness of the wireless
24 termination tariffs that the Complainants have filed which
25 applies to intra-MTA traffic. You've heard Mr. Williams

1 explain that with the inter-MTA traffic they have no
2 dispute, they agree on the rate, and they agree that they're
3 responsible for it. They've agreed to pay for it.

4 So really all this case is about is the
5 inter-MTA traffic. That's all it is and should be about.
6 It isn't about and shouldn't be about SBC. These aren't our
7 customers' calls, and the fact that they traversed our
8 network, our local LEC network as we call it, to get to the
9 Complainants' exchanges should in no way make us responsible
10 for any of the terminating charges.

11 This Commission on numerous occasions, the FCC
12 and various federal courts have all ruled that LECs that
13 merely transit another carrier's call to get to the
14 terminating LEC should not be responsible for that
15 terminating LEC's charges. Rather, that's the originating
16 carrier's responsibility. And you heard Mr. Williams affirm
17 that here.

18 Let me step back a moment and put this
19 transiting concept into perspective for some of you. I want
20 to make sure that you understand the transiting itself
21 really isn't a problem, but, in fact, it's a fact of life in
22 the telecommunications industry, and it has been from the
23 beginning.

24 That's because each telecommunications
25 company's lines, they don't go everywhere. I think an easy

1 way to understand this concept that might be clearer is if
2 we look at another industry. Let's look at the railroads.
3 Let's say a farmer hires a Union Pacific to ship a carload
4 of corn from Jefferson City, where we are, up to
5 Clarksville, Missouri, just north of St. Louis. In that
6 case, the customer, the farmer, pays Union Pacific its rates
7 to haul the corn all the way to Clarksville.

8 From the farmer's perspective, it has chosen
9 the Union Pacific, paid the Union Pacific's rates, and he
10 really doesn't care how Union Pacific gets that corn up to
11 Clarksville. Getting the corn to Clarksville, that's Union
12 Pacific's responsibility. For what it charges the farmer,
13 it's responsible for bearing its own transportation costs
14 across its tracks, and if its tracks don't go all the way to
15 Clarksville, then it's responsible for paying other
16 railroads to roll its boxcar up to Clarksville.

17 Now, in this particular example they may have
18 to send that boxcar over the St. Louis Terminal Railroad
19 Association's tracks in St. Louis so that that car can be
20 shipped to Burlington Northern's tracks that go up to
21 Clarksville. And if it does, the Union Pacific as the
22 originating carrier pays the terminating railroad and the
23 Burlington Railroad.

24 And just because the terminal railroad's
25 tracks make a connection between the Union Pacific and

1 Burlington doesn't mean that the terminal railroad has to
2 pay the Burlington Northern's charges. That's the Union
3 Pacific's responsibility as the originating carrier.

4 Remember that it was a Union Pacific that was
5 chosen by the farmer to haul the corn. The farmer paid the
6 Union Pacific, and it's up to the Union Pacific to deliver
7 the corn and bear all expenses for getting it all the way up
8 to Clarksville.

9 A similar thing happens in the
10 telecommunications industry. No telephone company's lines
11 go everywhere to make the connections that the customers
12 want and need. Telephone companies need to use other
13 telecommunications companies' lines, and in many instances,
14 as we've heard this morning, the lines of multiple carriers
15 need to be used.

16 And that's the situation that we're dealing
17 with here. Efficiency and the public interest are clearly
18 furthered by policies that favor this type of
19 interconnection and sharing of networks between carriers,
20 and that proper compensation is paid for providing this
21 function.

22 Recognizing that, this industry long ago
23 created a very fair and equitable method to make sure all
24 LECs on a call path receive appropriate compensation for use
25 of their facilities. This method is known as meet-point

1 billing. You heard Mr. Schoonmaker describe that in great
2 detail this morning. Essentially the concept is that all
3 LECs involved in terminating another carrier's call bill the
4 originating carrier for the respective portions of the
5 facilities used in handling the carrier's calls.

6 Let's think back to the railroad example.
7 St. Louis Terminal Railroad, Burlington Northern, each are
8 providing facilities that the Union Pacific needs to get its
9 corn up to Clarksville. In that case Union Pacific pays
10 both the terminal railroad and the Burlington Northern for
11 the respective portions of their track used in delivering
12 the Union Pacific boxcar to Clarksville.

13 This meet-point billing methodology was
14 developed at the national level and can generally be found
15 in all LEC federal and state access tariffs. It has been
16 this way since the access tariffs have come into existence,
17 and literally billions of dollars of meet-point bill access
18 compensation is paid every year to LECs throughout the
19 country.

20 This meet-point billing methodology is
21 included both in our access tariff and in the small
22 companies' access tariff, whether it's the Oregon Farmers
23 tariff that they concur in and Mr. Schoonmaker described or
24 in the other ones that they use. This meet-point billing
25 concept is central to the way we exchange intercompany

1 compensation and use each other's facilities.

2 Bringing this closer to home, whenever an
3 interexchange call is sent through our network to another
4 LEC for termination, SBC and the terminating LEC both bill
5 their charges to the originating carrier on this meet-point
6 bill basis. This is true regardless of whether the call was
7 originated by an IXC or AT&T or MCI or another LEC like
8 Century or Fidelity Telephone Company.

9 Some parties have been telling you that when
10 LECs perform transiting function they're acting as IXCs.
11 When they do that, you need to know, you need to realize
12 they're just blowing smoke in your face because transiting
13 is a LEC function and always has been.

14 This morning Mr. Schoonmaker described
15 provision of exchange access, and that's what's being
16 provided here by both LECs in the examples that we've used.
17 And this is both from the LEC access tariffs that we have
18 and the small LECs behind us.

19 These tariffs all call for the meet-point
20 billing of access, and, in fact, that's exactly what the
21 Complainants themselves told you in their earlier wireless
22 case, and that's what Mr. Schoonmaker confirmed to us this
23 morning.

24 Now, some might try to confuse you by pointing
25 to long distance resellers that don't have their own

1 facilities to carry long distance traffic but instead
2 contract with an AT&T to carry it. They tell you that LECs
3 don't bill the originating carrier, the reseller; they bill
4 the facilities-based carrier, AT&T, but don't confused.

5 You need to look at exactly what's being
6 provided and what the carriers are holding themselves out to
7 offer. Look at what AT&T is offering in their reseller
8 agreement. They're offering to actually carry and terminate
9 the reseller's traffic. In doing so, they are -- they agree
10 to be responsible for all the charges and getting that
11 reseller's customers call all the way to the end of the
12 line.

13 And access billing that the LECs do on that
14 call reflects this. When there are two LECs involved in
15 terminating that call, both the transiting LEC and the
16 terminating LEC both bill access to the -- to AT&T. The
17 terminating LEC does not bill the transiting LEC.

18 The wholesale offering of long distance
19 service is a completely different function from the
20 transiting services provided by a LEC. Transiting is an
21 exchange access facility that's a LEC function.

22 You need to look at what exactly is being
23 offered by each carrier, and this is critical because under
24 basic common carrier principles a carrier is only required
25 to offer what it holds itself out to offer. Facility-based

1 IXCs in this reseller example hold themselves out to offer
2 the complete call path to handle a reseller customer's call.
3 LECs on the other hand when they offer exchange access only
4 hold themselves out to offer the use of their own
5 facilities, and that's all they charge for.

6 Here in this particular example and in this
7 case SBC collects less than a third of a penny for a
8 transiting function. That's not nearly enough to cover the
9 terminating charges of the LECs that are the Complainants in
10 this case which range from 6 to 12 cents per minute, and
11 some other carriers in the state charge as high as 20 cents
12 per minute.

13 The difference in what is being offered is a
14 very fine distinction that may be hard to grasp, but it's
15 fundamental to understanding how the industry works here,
16 and it does work as we heard this morning. Each month other
17 carriers send hundreds of thousands if not millions of
18 minutes each month across our network to the Complainants,
19 and where compensation is due, it's billed on a meet-point
20 bill basis to the originating carrier, and not one minute is
21 billed to a transiting carrier.

22 We've all heard the adage that action speaks
23 louder than words, and here trying to figure out what to do,
24 I'd suggest that you look to what Complainants and others in
25 this industry are actually doing and you'll find that for

1 nearly all the traffic that transits our network to the
2 Complainants, it's handled on a meet-point billing basis.
3 And you heard Mr. Schoonmaker confirm that this morning with
4 the different types of traffic that we discussed.

5 There might be some small exceptions where we
6 might revenue share, but the point here is that terminating
7 LECs do not bill the transiting carrier. They bill the
8 originating carrier.

9 You really don't need to go any further than
10 this case. You'll see from the complaint and the testimony
11 of the Complainants they bill T-Mobile, they bill Western
12 Wireless for all the traffic that's involved in this
13 complaint case that they're seeking to recover here. They
14 do not bill SBC for one minute of that traffic.

15 The record also shows when T-Mobile and
16 Western Wireless failed to pay the bills, they made various
17 collection calls. They didn't make any collection calls to
18 SBC.

19 Also take a look at Complainant's complaint
20 that was filed in this case that T-Mobile and Western
21 Wireless are subject to their access tariffs, but they make
22 no such specific allegation against SBC. But now they're
23 telling you that we should be liable for those charges.

24 Also take a look at their wireless termination
25 tariffs. You'll see that nowhere did they mention charging

1 the transit carrier. The only mention of the transit
2 carrier is in the section that allows them to direct the
3 transit carrier to block the incoming wireless traffic when
4 payment is not made for that traffic.

5 There's nothing in that tariff that authorizes
6 them to charge the transit carrier. And you'll recall when
7 that tariff that was filed that we did not oppose the
8 proposed rate since the tariffs were presented to the
9 Commission as applying only to the transit carrier. We
10 didn't think the rates were any of our business so we didn't
11 get involved and we didn't object.

12 Needless to say, we were surprised when we got
13 this lawsuit. But we're not the only party that ought to be
14 surprised here. I think the Commission has a right to feel
15 a bit taken as well. When Complainants presented the
16 wireless termination tariff to you, they claimed they had no
17 method, no way of shutting off the wireless traffic in the
18 event of nonpayment, that it comes through the transit
19 carrier's facilities, they had no power; only the transit
20 carrier had that power.

21 Accordingly, you gave them the extraordinary
22 remedy that they sought, and that was a right to direct the
23 transit company to block the incoming wireless traffic. But
24 in bringing this lawsuit against SBC, they've completely
25 ignored the remedy that you gave them and failed to follow

1 the terms of their own tariff.

2 Instead, they now claim that they're allowed
3 to sue us under a secondary liability theory, under
4 interconnection agreements that they're not even a party to,
5 and under one of our tariffs that doesn't even apply to the
6 traffic in dispute here.

7 I'd suggest you look at the testimony of
8 Staff. They are -- they do a very good job of explaining
9 why Complainants' claim here against SBC just doesn't hold
10 water.

11 Essentially that secondary liability theory is
12 something that the Commission opposed in a 1997 order which
13 approved the transiting part of our wireless tariff. All
14 the traffic comes under an interconnection agreement, so
15 that tariff shouldn't have any bearing here.

16 But with respect to the traffic a long time
17 ago that came under that tariff, the Commission imposed a
18 secondary liability theory on the basis of a perceived
19 imbalance that just doesn't exist anymore. At that time
20 small LECs again complained that they had no ability to
21 control or block the wireless traffic coming to them from
22 our network. Accordingly, for traffic flowing under that
23 tariff, you indicated that SBC would be secondarily liable.

24 This potential imbalance, this potential
25 liability has no application here now because things have

1 completely changed with the Commission's approval of the
2 wireless termination tariff.

3 Now the Complainants have that complete remedy
4 that you gave them. When the wireless carriers send traffic
5 through to Complainant, the carriers are now given an
6 option. They're mutually exclusive. They can pay the
7 tariff rates in the tariff. If they don't like those rates,
8 they can negotiate their own individual interconnection
9 agreements with different rates with the wireless carrier,
10 with the Complainants. And if they don't do either of
11 those, then the traffic will be blocked.

12 While we didn't like the blocking idea, we
13 didn't appeal it, and we will block pursuant to those
14 tariffs when asked and, in fact, we have done it. Guess
15 what, it works. Earlier this year three small LECs came to
16 us telling us that they weren't being paid by a wireless
17 carrier. They asked us to implement blocking, and we did.

18 All we asked was 30 days notice, advance
19 notice to the wireless carrier that their traffic was going
20 to get blocked. When we gave that notice, we got a call
21 real quick from the wireless carrier. They wanted to know,
22 are you really going to do that? We told them yes, we
23 would, we are doing it pursuant to Commission order
24 approving the tariff and we were bound to do it, and unless
25 they got the Commission to either stay their order or a

1 court order that said block isn't permissible, we're going
2 to do that.

3 And within weeks the issue was resolved.
4 Literally at the 11th hour before programming implementing
5 that blocking was to go into effect, the wireless carrier
6 and the three small ILECs reached a resolution, entered into
7 an interconnection agreement that has recently been
8 presented to the Commission for approval. So it's resolved.
9 So the remedy you approved works, if it was used, and it
10 wasn't here.

11 Regardless of what one may think of that
12 wireless termination tariff that you authorized, it's clear
13 to us that it's led to the resolution of a wireless issue in
14 Missouri. Now all but three ILECs, small ILECs have
15 wireless termination tariffs. So do a couple of large LECs
16 and, with few exceptions, the wireless carriers are paying
17 charges billed under those tariffs.

18 The testimony in this case shows, the only
19 exceptions are Voicestream and Western Wireless, and that's
20 really why we're here. Normally we have -- SBC has no
21 interest in an interconnection agreement negotiated between
22 other parties. We don't have any interest in inter-MTA
23 factors. There have been scores of voluntarily negotiated
24 interconnection agreements with factors that have been filed
25 for approval here and we have not contested any of them.

1 That's because those factors are used only in calculating
2 the compensation that flows between the two parties to that
3 agreement. They're not applied at all to third parties.

4 The situation is different here because
5 Complainants are claiming SBC is somehow responsible for
6 paying Complainants terminating charges. Because of that,
7 we have an interest in the accuracy of the figure.

8 We haven't opposed the rest of the -- the rest
9 of the inter-MTA factors, only those three, and that's
10 because the ones that we didn't oppose were generally within
11 the range of what we've seen in the industry, what we have
12 in our agreements. So we didn't take issue with those.

13 But the other three factors, BPS, Craw-Kan,
14 Mark Twain, are above 50 percent. Those are so far out of
15 line with industry norms that we can't be expected to agree
16 to them. As the Complainant in this case, the Complainants
17 here have the burden of proof on these factors, but they
18 failed to carry that burden and, in fact, their own witness
19 indicated that he can't vouch that these factors are indeed
20 accurate.

21 So where does that leave you? If you agree
22 with Staff and SBC's position that it's the wireless
23 carriers that are responsible for paying terminating charges
24 on their own traffic and not SBC, I think you have all you
25 need to adopt the factor. Both Complainants and the

1 wireless companies have agreed to the factors that are in
2 dispute here, and as long as they apply only to those two
3 parties, you don't need to consider what we or anyone else
4 thinks of those factors.

5 However, as long as the Complainants are
6 permitted to press their secondary liability theory and
7 impose charges on SBC, the Complainants must prove as a
8 necessary element of their complaint that these factors that
9 they advance are accurate. And as you've seen here this
10 morning from the testimony and the opening statements, they
11 can't do that.

12 Their claim against SBC therefore must fail,
13 and we respectfully request you dismiss all charges, all
14 claims against SBC.

15 JUDGE THOMPSON: Thank you, Mr. Bub. I
16 understand there's some questions.

17 COMMISSIONER CLAYTON: Good afternoon,
18 Mr. Bub. Could you explain to me what language or terms are
19 in the interconnection agreement with the respondents, the
20 wireless companies, with regard to indemnification?

21 MR. BUB: We have indemnification in our
22 agreement, that's correct. We have that. When that
23 clause -- I don't have that language with me, but that
24 clause does give us a right of indemnification. That's a
25 real critical difference. Just because we have that

1 contract right to go after somebody else doesn't mean we're
2 going to get paid. As you heard here today, Western
3 Wireless and T-Mobile have a fundamental question about the
4 lawfulness of your tariff. It's not something we've raised.
5 It's their dispute.

6 As Alan Kern, our witness, testified this
7 morning, if we're required to pay and then required to go
8 seek charges from Western Wireless and T-Mobile if they're
9 not paying the Complainants because of a dispute about the
10 lawfulness of the tariff you approved, they're not going to
11 pay us either. All we're buying with that is another
12 lawsuit.

13 I think what the Commission did in approving
14 the wireless termination tariff has given the small LECs,
15 the Complainants in this case, the ability to enforce their
16 own tariff, and that's what they failed to do here. Sure,
17 they came here and filed the lawsuit, but if they wanted to
18 they could have told us to block and we would have. And
19 that would have given them the same leverage that we have.
20 That would be the only leverage that we have.

21 COMMISSIONER CLAYTON: There's no ambiguity in
22 your interconnection agreement with regard to
23 indemnification?

24 MR. BUB: No. We do have a right to
25 indemnification. Again, that doesn't mean we're going to

1 get paid, and that agreement does not include the
2 Complainants. It's only a two-party agreement. And those
3 type of provisions are there pretty much boilerplate, but
4 sometimes they don't give you a lot of protection even
5 though you have them.

6 COMMISSIONER CLAYTON: Does your
7 interconnection agreement authorize the collection of
8 attorneys' fees and costs in seeking indemnification?

9 MR. BUB: I don't know off the top of my head.
10 I don't think so, but I would have to check on that.

11 COMMISSIONER CLAYTON: Does the
12 interconnection agreement authorize SBC to cut off calls
13 that are made by the wireless companies into the SBC system
14 if they do not pay what is supposed to be paid under the
15 interconnection agreement?

16 MR. BUB: I think we have a dispute resolution
17 procedure. I'll have to check. I know there's a dispute
18 resolution procedure. I'm not sure whether we have that
19 clearcut right that the small companies have in their tariff
20 of disconnection.

21 I know we have a dispute resolution procedure,
22 and I think that it may -- I'll have to check, but I think
23 it may require us to come back here before we cut somebody
24 off.

25 COMMISSIONER CLAYTON: And I'm just trying to

1 understand the standing that Bell would have in this case.
2 And I understand they're a respondent, as a party that would
3 be secondarily liable, that you would certainly have an
4 interest in determining whether or not you were liable or
5 not. I understand that. I'm trying to establish what
6 standing that you have between the other two parties where
7 there would be primary liability.

8 MR. BUB: I understand, your Honor.

9 COMMISSIONER CLAYTON: Could you explain that?

10 MR. BUB: Normally, in the normal case I would
11 agree no standing at all, because normally in these
12 agreements they're between the two parties and what they
13 agree to they're basically agreeing to live with and that
14 isn't applied to any other third party.

15 What's so oddball about this case is that
16 they're trying to apply a factor that they agreed to between
17 themselves to establish liability on a third party.

18 COMMISSIONER CLAYTON: I understand that.
19 Does Bell have a position in these three exchanges as to
20 what percentage of calls are either inter or intra-MTA?
21 Does Bell have a position about what those percentages
22 should be?

23 MR. BUB: We weren't included in the
24 negotiations. If there's been data like cell site data and
25 all that exchanged between the parties, which I don't think

1 there was, we weren't privy to it.

2 COMMISSIONER CLAYTON: I don't care about the
3 settlement. Do you have a position as to what those numbers
4 should be since you haven't signed on to the settlement
5 numbers?

6 MR. BUB: We would need to see the cell site
7 data. We would need to see --

8 COMMISSIONER CLAYTON: It's kind of a yes or
9 no question. Do you-all have a position on what those
10 numbers should be or not?

11 MR. BUB: If we're to be held responsible,
12 then I think we have a right to participate and look at the
13 information that's used to develop the factor and we
14 weren't. We were only brought in at the tail end, and all
15 we got was the stipulation that said, here's the factor that
16 we agreed. We weren't part.

17 COMMISSIONER CLAYTON: I understand. So Bell
18 does not have a position about what those numbers should be?

19 MR. BUB: They ought to be -- for us to agree
20 like we did with the others, they probably need to be under
21 10 percent.

22 COMMISSIONER CLAYTON: Say that again.

23 MR. BUB: If you're asking what it would take
24 for us to agree?

25 COMMISSIONER CLAYTON: I'm not asking you to

1 agree to anything, sir. I'm asking what your -- what your
2 client's position is with regard to these figures that are
3 in dispute here today.

4 MR. BUB: They should probably be under
5 10 percent.

6 COMMISSIONER CLAYTON: They should be under
7 10 percent?

8 MR. BUB: Without having access to the data to
9 analyze further and for us to agree, our position would be
10 that it probably would be under 10 percent for us to say
11 yeah. And the reason I'm using that figure is that's the
12 range that's in our interconnection agreements and the ones
13 that we've seen in the industry.

14 For example, the ones for Voicestream and
15 Western Wireless, the MTA factors, they're zero.

16 MR. JOHNSON: Your Honor, Judge Thompson, I
17 have the language from the two interconnection agreements
18 concerning indemnification, if Commissioner Clayton would
19 like to hear it. It's just one paragraph, and the language
20 is identical in both the T-Mobile and Western Wireless
21 agreement. It's as follows: Quote, in the event that
22 carrier, that's either T-Mobile or Western Wireless, sends
23 traffic through SWBT's network to a third-party provider
24 with whom carrier does not have a traffic interchange
25 agreement, then carrier agrees to indemnify SWBT for any

1 termination charges rendered by a third party for such
2 traffic, close quotes.

3 COMMISSIONER CLAYTON: Thank you, Mr. Johnson.

4 COMMISSIONER CLAYTON: I don't have any
5 further questions.

6 JUDGE THOMPSON: Don't step away, Mr. Bub.

7 COMMISSIONER FORBIS: Can I just follow up on
8 a question of Commissioner Clayton?

9 MR. BUB: Absolutely, Commissioner.

10 COMMISSIONER FORBIS: The 10 percent, do you
11 have any information as to where that 10 percent came from?
12 You made it sound like it's almost anecdotal everybody else
13 has 10, so 10 will be okay with us. What generated the
14 10 percent number?

15 MR. BUB: Realizing I was being put on the
16 spot pretty much to come up with an agreement on the --

17 COMMISSIONER FORBIS: If you're not prepared
18 to --

19 MR. BUB: Well, we haven't had a chance to
20 look at the data, and we negotiate the factors just like any
21 other carrier does. And one of the reasons to negotiate
22 factors is to avoid having to specifically look at the data
23 and trying to figure out what exactly is right.

24 And in that situation, the standard that you
25 use to negotiate is what can you live with, and that's

1 pretty much what goes into these voluntarily negotiated
2 agreements. You've heard various witnesses talk about that.

3 COMMISSIONER FORBIS: The other parties have
4 done that here, and I heard you say earlier your company
5 would be okay with that so long as you weren't involved.

6 MR. BUB: So long as it didn't apply to us,
7 they can negotiate anything they want to, and as long as
8 it's only them that will be affected by it, I have no
9 interest. As Commissioner Clayton pointed out, I would not
10 have any standing in that, and we don't go looking for
11 fights. We don't believe we should be here.

12 But if you want to know what we would think a
13 reasonable inter-MTA factor would be, without having looked
14 at specific cell site data, I would say it would have to be
15 under 10 percent. And where I got that was knowing what
16 we've agreed to on a negotiated fact -- on a negotiated
17 basis with other carriers in the state.

18 COMMISSIONER FORBIS: So your company's
19 history has been in cases where these sort of factors have
20 been developed, they have not been based solely on traffic
21 studies but on just negotiated agreements?

22 MR. BUB: They're negotiated, I think, and as
23 part of that negotiations the negotiators would have a whole
24 lot more expertise than me, and I don't pretend to be an
25 expert. But they do have access to things like where the

1 networks interconnect, where the cellular company has their
2 cell sites, where the LATA boundaries are, where the
3 inter-MTA boundaries are. Wireless carrier will tell us how
4 they send their traffic.

5 I think when they have a better feel for it
6 they would know what the traffic flows are. I think
7 essentially from there they ballpark it and reach a number
8 that they could both live with.

9 COMMISSIONER FORBIS: Thank you.

10 MR. BUB: You're welcome.

11 JUDGE THOMPSON: Further questions from the
12 Bench. Chairman Gaw?

13 CHAIRMAN GAW: Actually, I have a question for
14 Mr. England, and then I may have a question for you.

15 JUDGE THOMPSON: Let's bring Mr. England back
16 up here.

17 CHAIRMAN GAW: Mr. England, so I can try to --
18 I want to see if I -- if there's another issue in here that
19 seems to linger around from time to time.

20 Your position on this in regard to Bell's
21 reimbursement, can you explain why that's in there from your
22 client's perspective?

23 MR. ENGLAND: I'd love to, and I was going to
24 ask for that opportunity, because apparently Leo and I are
25 in the wrong case, one of us is in the wrong case. I

1 thought the only issue was the appropriateness of the three
2 objected-to inter-MTA factors. Leo apparently thinks we're
3 going to retry the liability issue that we briefed in the
4 first case.

5 Let me first of all state our position on
6 liability. To do that I need to give you a little bit of
7 background and dispute with what Mr. Bub has just said about
8 transit traffic. Transit traffic is a term of relatively
9 recent origin. Transit traffic has not been around, at
10 least that term, for the long period of time that Mr. Bub
11 would have you believe.

12 In fact, my first dealings, if you will, with
13 transit traffic involved this indirect interconnection
14 between wireless carriers and small companies. When
15 Southwestern Bell -- and I may forget the case number, but I
16 think it was TT-97-524 -- came to you and proposed to change
17 their own wireless tariff -- yes, they do have a wireless
18 tariff by the way -- that would specifically exonerate them,
19 if you will, from any liability to third-party carriers such
20 as the small telephone companies.

21 They claimed that they were a transit carrier,
22 that they were required by the Telecommunications Act to be
23 a transit carrier for local traffic, not long distance,
24 local traffic. And they said, don't make us liable for
25 paying termination charges on this traffic that we don't

1 originate.

2 And this Commission, over the strenuous
3 objection of the small telephone companies, allowed Bell to
4 get out of the business of paying us terminating
5 compensation on that wireless traffic.

6 But they also said at that time, wireless
7 carriers don't deliver traffic to these third-party carriers
8 without an agreement to do so. And they also said to
9 Southwestern Bell, and oh, by the way, you're going to be
10 secondarily liable for this traffic, if traffic is
11 delivered, the rural small companies make an effort to bill
12 and collect for it and aren't able to do so.

13 That is the basis for our claim against
14 Southwestern Bell in this case. We are not holding them
15 primarily liable. We are holding them secondarily liable.
16 We believe, whether Southwestern Bell likes it or not, that
17 they by changing their tariff, wireless tariff, entered into
18 a regulatory bargain with you-all based on your condition
19 that they would be eliminated from primary liability for
20 this traffic but they would remain secondarily liable in the
21 event the wireless carrier didn't pay.

22 Transit traffic in my opinion applies only to
23 local traffic. You will not see that term used in anyone's
24 access tariff, to my knowledge. If it is a long distance
25 call, Southwestern Bell performs a transport function, not a

1 transit function. It is not something that has been around
2 for ages. It is a relatively new phenomena in light of the
3 Telecommunications Act, and particularly in wireless where
4 they are expanded -- excuse me -- the FCC has expanded the
5 local area to these MTAs that we've talked about.

6 So we're not trying to hold Southwestern Bell
7 primarily liable. We're trying to hold them secondarily
8 liable. We think because of their indemnification they are
9 adequately protected, and because of their direct connection
10 and their own interconnection agreement with these wireless
11 carriers, if they are not paid the indemnification that
12 they're entitled to, they have a great deal more leverage
13 than we do to make that happen.

14 CHAIRMAN GAW: The secondary liability that
15 you speak to, how is that described in the -- in the tariff?
16 Is that -- does it require small companies pursuit against
17 the original wireless carrier before there's a pursuit
18 against Bell --

19 MR. ENGLAND: First of all --

20 CHAIRMAN GAW: -- with regard to joint and
21 several liability?

22 MR. ENGLAND: It's not nearly that precise.
23 First of all, it's not in the tariff. It's in your order or
24 the Commission's order in that case, and there is obviously
25 room for interpretation. But the way I interpret it is, if

1 make good faith efforts to collect from the wireless carrier
2 and they refuse for whatever reason, that we have a
3 secondary party to hold responsible, and that is
4 Southwestern Bell Telephone Company.

5 Let me also be clear that that was in a tariff
6 case, the Southwestern Bell Wireless tariff case, and the
7 traffic they are delivering to us is pursuant to their
8 interconnection agreement. They will make a big -- draw a
9 big distinction and say that those obligations that you
10 imposed upon them back in '97 or '98 don't apply to
11 interconnection agreement traffic.

12 I think -- I think there's a -- there's a
13 certain, as I said, regulatory bargain here that they have.
14 If they're going to be out of the responsibility of paying
15 terminating carriers for this traffic, I think it's only
16 fair that they be held secondarily liable when the process
17 fails.

18 CHAIRMAN GAW: And the issue in regard to
19 Bell's liability in this, the particular cases that we now
20 have in front of us that are the subject of the nonunanimous
21 stipulation, that issue is the same in everything else
22 that's out there or not in regard to Bell's secondary
23 liability?

24 MR. ENGLAND: No. You mean in other dockets?

25 CHAIRMAN GAW: Yes.

1 MR. ENGLAND: Actually, no. Wireless is kind
2 of a special situation because of the larger local calling
3 scopes, because of some of your prior decisions.

4 CHAIRMAN GAW: Maybe I wasn't clear with my
5 question. Probably not. The three -- the three carriers
6 that we're talking about here in dealing with -- and I'm
7 only speaking as to wireless in the universe here of this
8 question. Is there any difference in regard to Bell's
9 secondary liability in what we're dealing with with these
10 three as opposed to any of the others that --

11 MR. ENGLAND: Oh, the other 11?

12 CHAIRMAN GAW: Yes.

13 MR. ENGLAND: Oh, no. I'm sorry.

14 CHAIRMAN GAW: That's what I was trying to get
15 to.

16 MR. ENGLAND: It's the same. And the only
17 reason, as I think Mr. Bub would candidly reveal to you, is
18 by agreeing to a higher factor, the amount of money at stake
19 goes up, and their potential liability goes up, and that's
20 what's got them interested.

21 CHAIRMAN GAW: So in that case it's a matter
22 of money, not just principle? If it was a matter of
23 principle, I assume they'd be contesting it in every case.

24 MR. ENGLAND: Actually, I'd say it's more
25 principle than it is money.

1 CHAIRMAN GAW: Well, it depends, I suppose,
2 how you look at it.

3 MR. ENGLAND: My cross-examination with
4 Mr. Kern, if you look at the highly confidential exhibits
5 that were filed with this case, the amount of traffic
6 terminating to these three companies in total by the two
7 wireless carriers at the time of the filing of the complaint
8 is \$5,000.

9 If half of that is subject to access charges
10 instead of wireless tariff, we're talking \$2,500. If our
11 access rates are twice our wireless tariff rates, we're
12 talking an increase in liability to Southwestern Bell
13 secondarily of \$2,500. It's a good thing I do this for free
14 because I like it so much.

15 CHAIRMAN GAW: Is there -- I want to come back
16 to Mr. Bub and let him respond in just a minute. Is there
17 any -- is there anything in this -- that's wrapped around
18 this issue that has anything to do with the identification
19 of the traffic that's coming in to your clients?

20 In other words, does the lack of
21 identification of numbers coming into your clients, is that
22 in any way tied to this issue?

23 MR. ENGLAND: I mean, it creates the problem.
24 It adds to the problem. Let me put it that way. Doesn't
25 necessarily create it. It adds to the problem, but we've

1 tried to keep that out of this case. We've got other issues
2 with that in other dockets.

3 In this case, we're billing from CTUSRs that
4 we've received from Southwestern Bell, and for purposes of
5 identifying or attempting to identify what is inter and what
6 is intra-MTA, we've negotiated factors with the wireless
7 folks to do that.

8 CHAIRMAN GAW: Do you have the numbers -- what
9 I'm trying to understand is, even if you have this go
10 through, is the traffic going to be identified to the extent
11 that you're going to be able to tell who's making calls to
12 begin with?

13 You still have to know where the calls are --
14 that it's a call coming in from a given wireless carrier, I
15 assume. Do you have -- are you going to have all of that
16 information? I realize that may not be the subject of this
17 case.

18 MR. ENGLAND: I need to kind of back up. We
19 had a situation several years ago where ALLTEL Wireless
20 contracted with at that time I think it was Southwestern
21 Bell Wireless, now Cingular, to terminate their traffic. So
22 when it -- when ALLTEL Wireless traffic went onto
23 Southwestern Bell Wireless network for termination to
24 Southwestern Bell the telephone company, Southwestern Bell
25 Telephone Company didn't know it was ALLTEL Wireless.

1 The records it created attributed it to
2 Cingular, or Southwestern Bell Wireless at that time, and
3 passed that information down the line. That would be an
4 example where you don't necessarily know who the
5 originating, true originating carrier is. And that may
6 continue today. Certainly does in the IXC environments, as
7 Mr. Bub referred to, with resale.

8 But the adequacy of the records, you know,
9 that's always an underlying issue with us, but we've tried
10 to divorce that from this case.

11 CHAIRMAN GAW: Okay. That's fair enough. I'm
12 just trying to make sure that we weren't delving into that
13 issue, or if we were I wanted to know where.

14 MR. ENGLAND: I don't want to leave the
15 misunderstanding that if we had the kind of records we
16 wanted from Southwestern Bell we'd be able to tell what's
17 inter-MTA and what's not. You might be able to have a
18 better intuitive feel, but it --

19 CHAIRMAN GAW: You still have a problem here?

20 MR. ENGLAND: Exactly.

21 CHAIRMAN GAW: Because of not knowing where
22 the call -- the caller was located when he actually makes
23 the call?

24 MR. ENGLAND: Exactly.

25 CHAIRMAN GAW: Thank you. Mr. Bub, if

1 you -- I was just -- did you want to --

2 JUDGE THOMPSON: We can have Mr. Bub come
3 back.

4 CHAIRMAN GAW: I want to let Mr. Bub, if he
5 wants to respond to that.

6 MR. BUB: Thank you, your Honor. Just a
7 couple of things. In that ALLTEL example where ALLTEL was
8 agreeing -- I think Cingular was agreeing to terminate
9 ALLTEL's traffic, with that agreement Cingular became the
10 responsible party and we billed them and they paid.

11 So that's like the reseller example where AT&T
12 agrees to be responsible for terminating the small IXCs'
13 traffic, and that's just a common occurrence, and as long as
14 bills are submitted and paid, I don't think there's any
15 harm.

16 With respect to the records, they're not an
17 issue here. I agree with Mr. England. We produced the
18 CTUSR, and we're working on providing individual Category 11
19 records similar to what we pass on with true long distance
20 traffic and have for years.

21 But even that, as Mr. Schoonmaker testified,
22 that industry standard record isn't going to tell people
23 whether it's inter or intra-MTA, and we're -- any LEC's in
24 that same position. Because of the mobile nature of a hand
25 set, you just don't know.

1 I understand the wireless carriers are working
2 on some type of system and process to help jurisdictionalize
3 their traffic on the front end, but until they do that, I
4 think we're all left with negotiating factors. The point is
5 that we do factors.

6 With respect to what we call transiting, I
7 think you have to look at it. It's the exact same thing
8 that we've been doing for years. And if you want to put a
9 different label on it, fine. Transit may be more
10 appropriate to use for local.

11 But what we do -- what we give to a wireless
12 carrier when they hand a call to us at our McGee tandem and
13 take it to Pilot Grove is the same thing that we do when
14 Sprint Missouri the LEC gives us a call. It's the same
15 thing.

16 And, in fact, on that wireless tariff that
17 Mr. England referenced our first tariff where we changed it
18 to be a transit tariff, the rates that we pulled out were
19 transport rates from our access tariff. So the function
20 really isn't the same. We may give it a different label.

21 But if you step back, I think if you want to
22 look at Mr. Schoonmaker's exchange with me, we pretty much,
23 my view, maybe have different labels, but the function that
24 we're doing, we're both giving access to local customers in
25 that exchange. And if a wireless carrier or the IXC or

1 another LEC's lines don't go there, they're going to need to
2 get there somehow.

3 Our network is there, and we've told you in
4 other cases that if people want to use it, as long as we get
5 a fair price and we're not incurring secondary liability, we
6 don't have any problem with our network being used.

7 The rate we have right now in our wireless
8 tariffs is a TELRIC-based rate, and the FCC says that we
9 don't have to do that at TELRIC-based rates. We have a
10 contract, so we'll honor that, but when that comes up again
11 we'll probably be looking to come up with a more
12 compensatory rate for transiting.

13 But it will be nowhere close to the 6, 8, 12,
14 20 cents that the small ILECs are asking for to terminate
15 traffic in their exchanges, which is their access rates.

16 Take another look at the traffic. We have two
17 different types of traffic here. We have intra-MTA traffic
18 that I agree with Mr. England is kind of new with what the
19 FCC did, but then we also have inter-MTA traffic, and that's
20 been described to you by Mr. Schoonmaker as, I think in
21 response to Judge Thompson's questions, plain old long
22 distance.

23 And in that situation, that would be classic
24 transport provided from an exchange access tariff, and that
25 is what we've been doing literally for years. So there

1 really isn't any difference there. I'll agree with
2 Mr. England that what we're doing now in the big local area
3 is now probably better classified as transit because that
4 area is local, but functionally it's the same thing we've
5 been doing for years.

6 And I guess, unfortunately for us, because of
7 that paradigm with the FCC, we wound up getting a whole lot
8 less for that than what we would otherwise collect under our
9 access tariffs, but that's another case.

10 JUDGE THOMPSON: Further questions from the
11 Bench?

12 I have a couple for you, Mr. Bub. They're
13 very basic. Now, Mr. England told us earlier that all of
14 the traffic at issue here is post wireless termination
15 tariff traffic. Is that correct?

16 MR. BUB: I believe that's true. I think it's
17 reflected on the face of our complaint. You can see it
18 there.

19 JUDGE THOMPSON: Very good. And you would
20 agree that some amount of that is inter-MTA traffic and some
21 amount of that is intra-MTA traffic; is that correct?

22 MR. BUB: I can agree that that's their
23 allegation. I can't tell you I know that.

24 JUDGE THOMPSON: Okay.

25 MR. BUB: And like I said earlier, our factor

1 that we negotiated based on our people looking --

2 JUDGE THOMPSON: I'm not into factors yet.

3 MR. BUB: Okay.

4 JUDGE THOMPSON: I'm just right up at the top.

5 MR. BUB: I can't tell you that I know.

6 JUDGE THOMPSON: Some of it might be?

7 MR. BUB: I can agree that it's possible that

8 some of it might be inter-MTA traffic, but I can't tell you

9 that I know it is.

10 JUDGE THOMPSON: Okay. That's good enough for

11 my purposes.

12 Then the traffic that we're concerned with

13 here was all originated, was it not, by Voicestream,

14 currently known as T-Mobile, by Aerial, by Western Wireless;

15 isn't that right?

16 MR. BUB: Yes, your Honor.

17 JUDGE THOMPSON: And delivered to Southwestern

18 Bell for eventual termination to Mr. England's clients;

19 isn't that correct?

20 MR. BUB: Sent across our exchange by T-Mobile

21 for termination in the Complainants' exchange, I'll agree

22 with that. I would probably quarrel with you that we

23 terminate it because we're just letting them use --

24 JUDGE THOMPSON: I said for eventual

25 termination. I didn't mean you terminated it, but it was

1 terminated by somebody somewhere?

2 MR. BUB: Yes.

3 JUDGE THOMPSON: Okay. Now, have they paid
4 any amount so far as you know with respect to a portion of
5 that that was inter-MTA traffic?

6 MR. BUB: I think in the complaint they
7 allege -- the Complainants allege that either T-Mobile or
8 Western Wireless was paying for a while and then stopped.
9 And I think what they did was when they got the bills from
10 the Complainants, which would include all traffic, they paid
11 it all.

12 So if it's possible -- assuming it's possible,
13 the Complainants are terminating inter as well as intra-MTA
14 traffic, then I would agree with you that some inter-MTA
15 traffic was paid for by respondents Western Wireless and
16 T-Mobile. If you want to give me a minute, I can look and
17 confirm. I think it's in their complaint.

18 JUDGE THOMPSON: That's okay. I'm just trying
19 to get the basic landscape down.

20 You heard Mr. Williams testify on behalf of
21 those respondents that to the extent it's inter-MTA traffic,
22 that they owe the compensation pursuant to the small ILECs'
23 access tariffs, right?

24 MR. BUB: Yes, your Honor.

25 JUDGE THOMPSON: And they --

1 MR. BUB: That's the industry standard. It
2 wasn't a surprise that he acknowledged that.

3 JUDGE THOMPSON: And they have, in fact,
4 agreed, have they not, the wireless respondents have agreed
5 with the Complainants on all of these 14 factors, even the 3
6 that Bell has not concurred in?

7 MR. BUB: Yes.

8 JUDGE THOMPSON: So as far as you know, is
9 there anything preventing them from paying that amount to
10 the Complainants?

11 MR. BUB: Absolutely not.

12 JUDGE THOMPSON: And they haven't contended
13 that they don't owe it, have they?

14 MR. BUB: No.

15 JUDGE THOMPSON: Okay. Fine. Now, what about
16 the portion of that, whatever percentage it might be, of the
17 traffic that is intra-MTA traffic? There is some such
18 traffic, correct?

19 MR. BUB: Yes.

20 JUDGE THOMPSON: Okay. Do you know, have they
21 paid any amount with respect to that traffic?

22 MR. BUB: I think they paid a portion of that
23 as well. I'd have to go back to the company and look. I
24 think some of the companies -- it may have been in some of
25 the individual company testimony -- indicated that they were

1 being paid for a while and then they stopped paying.

2 JUDGE THOMPSON: So what I'm trying to
3 understand is exactly what traffic is it that Bell is on the
4 hook for. Is it inter-MTA traffic that they have not paid
5 or is it intra-MTA traffic?

6 MR. BUB: It depends on who you ask.

7 JUDGE THOMPSON: Depends on who you ask.
8 Well, I'm asking you.

9 MR. BUB: Okay. Well, the reason I responded
10 that way, I think if you ask Complainants, they would say
11 that we're on the hook for all of it. I think if you ask
12 the wireless carriers that originated the traffic, they
13 would tell you that we're on the hook for none of it.

14 I think if you ask Staff, they would say
15 SBC's on the hook for none of it, because we're just a
16 transit carrier and we're providing a service and it's the
17 originating carrier's responsibility. We agree with Staff.

18 JUDGE THOMPSON: So am I correct in
19 understanding that this case is more about who's on the hook
20 for it than it is about them getting paid?

21 MR. BUB: From my perspective, we're being
22 brought into this case -- and I agree that they have a
23 legitimate dispute with the wireless carriers over the
24 charges for their customers' traffic. I think we're being
25 brought into this to -- an attempt to relitigate this issue

1 of liability of the transit company.

2 And from my perspective, the Commission on
3 numerous occasions has rejected it in the approval of the
4 wireless interconnection tariffs for the small companies,
5 any secondary liability that there was was extinguished by
6 that decision because they gave them complete remedy.

7 And recall back in the -- in our tariff case,
8 back '97 or whenever it was, I think 97-524 case, and they
9 made the same argument that they weren't allowed -- they had
10 no ability to block. I think they may have asked you to
11 require us to block, and we opposed that, and you didn't
12 make us block in that case.

13 But in a more recent small company wireless
14 termination tariff case, they included it in their tariff.
15 We objected to it. I'll freely admit that. You approved
16 it. It's part of the tariff. And once you approved it,
17 that was it for us. We didn't appeal that part and we're
18 living it and we're doing it when they request it. We've
19 done it once, and we're fixing to do it again on another
20 carrier.

21 And let me tell you that what we ask for in
22 charges to the small company that ask for us to block is
23 just for our straight technician labor to do it. In that
24 one case I told you, I think we quoted a charge of about
25 \$400. Because there was some on and off again work that we

1 had to do, I think the charges may have come out to like
2 \$600.

3 But given the ability that it gives them, that
4 is a very reasonable charge. So that remedy is a real one
5 that they have now that they didn't before.

6 JUDGE THOMPSON: Getting back to my question,
7 am I correct in understanding that this case is more about
8 who's on the hook than it is about them actually getting
9 paid, yes or no?

10 MR. BUB: I can give you a two-part answer. I
11 think from our perspective it's on the hook. With regard to
12 the wireless carriers, it is a getting paid question with
13 respect to the intra-MTA traffic.

14 I would expect that Western Wireless and
15 T-Mobile would live up to the commitment that they made to
16 the commission and to the other parties that they would pay
17 the inter-MTA portion of the claim.

18 JUDGE THOMPSON: Okay. We're making progress.
19 So we've established that they've agreed with the
20 Complainants how much of the traffic is inter-MTA and how
21 much is intra-MTA even though Bell hasn't signed off on all
22 of that agreement, they have agreed; isn't that correct?

23 MR. BUB: That is correct.

24 JUDGE THOMPSON: And using those factors that
25 they've agreed, can they not calculate what they owe?

1 MR. BUB: Yes.

2 JUDGE THOMPSON: Okay. They can?

3 MR. BUB: Yes.

4 JUDGE THOMPSON: And they have put on a
5 witness who has said they are, in fact, liable and should
6 pay under the access tariff of the Complainants for that
7 part that is inter-MTA, correct?

8 MR. BUB: Yes.

9 JUDGE THOMPSON: So if any of that remains
10 outstanding today, we can expect a check to be received by
11 Mr. England's clients soon, right?

12 MR. BUB: I would expect that.

13 JUDGE THOMPSON: Okay. Now, with respect to
14 the intra-MTA traffic, I understand that Mr. Johnson's
15 position is that perhaps the decision of the Missouri Court
16 of Appeals is not correct. Is that what you've heard?

17 MR. BUB: Mr. Mark Johnson?

18 JUDGE THOMPSON: That's the one I'm talking
19 about. Mr. Craig Johnson was here as a spectator, but he's
20 not in this case.

21 MR. BUB: That's, I think, the basis of
22 T-Mobile and Western Wireless' refusal to pay on the
23 intra-MTA traffic.

24 JUDGE THOMPSON: Okay. Very good.

25 MR. BUB: They dispute the validity of your

1 Order.

2 JUDGE THOMPSON: You would not suppose, would
3 you, that they're expecting this Commission to overrule the
4 Missouri Court of Appeals for the Western District?

5 MR. BUB: I think the Missouri Court of
6 Appeals for the Western District affirmed your Order.

7 JUDGE THOMPSON: That's all the questions I
8 have.

9 MR. BUB: I think your Order is final, and
10 from my understanding of Missouri law, that tariff now has
11 the force and effect of law. And I may be mistaken, but I
12 thought the appeals, further appeals were over. Trip would
13 probably have a better handle on that than I.

14 JUDGE THOMPSON: That's all I'm trying to
15 understand is who is saying who owes what to who.

16 We are at the point now where we need to take
17 a recess briefly for the reporter, so we will be in recess
18 then for ten minutes. Thank you.

19 MR. BUB: Thank you for the opportunity for
20 further discussion. I appreciate it.

21 (A BREAK WAS TAKEN.)

22 JUDGE THOMPSON: When we broke, I think we had
23 been asking questions of Mr. Bub; is that correct? Does
24 anyone have any further questions for Mr. Bub?

25 CHAIRMAN GAW: I have one, Judge. Maybe one.

1 JUDGE THOMPSON: Step forward, Mr. Bub. Back
2 on the hot seat. Let me get this turned on for our viewers
3 across the world.

4 CHAIRMAN GAW: Mr. Bub, this may not be a
5 question that has an answer to it, but after hearing the
6 dialog earlier, I'm trying to understand the root of Bell's
7 concern about this in the picture of whether or not this is
8 about principle or if it's about money.

9 MR. BUB: I'm glad you brought that up.

10 CHAIRMAN GAW: Can you please help me out with
11 that?

12 MR. BUB: I think that there I agree with
13 Mr. England, this is probably more about principle than
14 money if you just focus on the factor for these three
15 companies. I haven't done the calculations that Mr. England
16 has, but I can accept his representation. If it's only
17 about \$2,500, so be it, but that cuts both ways.

18 I'm sure just having a lawyer in a hearing
19 room all day, that money is gone through real quick. So if
20 it's just \$2,500, it's worth -- if it's just that, it should
21 be worth \$25 to the small companies just like it should be
22 worth \$2,500 to us.

23 CHAIRMAN GAW: It's okay. I mean, we're here
24 to settle disputes of principle as well. That's okay. But
25 the reason I'm asking has more to do with if it -- if it's

1 about principle with the 53 percent, why isn't it about that
2 with the 10 percent, if it's about the secondary liability
3 issue?

4 MR. BUB: We do have the secondary liability
5 issue here with all the traffic. So I don't want to leave
6 that as a misunderstanding.

7 CHAIRMAN GAW: That's my understanding.
8 That's why I'm having difficulty.

9 MR. BUB: That goes over the whole thing.
10 That goes to all the traffic. With the 53, 52, 53 percent
11 inter-MTA factors, that's an additional concern that we
12 have. Principle we have there is that those factors are so
13 far out of line with what we've agreed to ourselves, what
14 we've seen in the industry, that even though it might just
15 be 2,500, these three, you get whipsawed in negotiation by
16 other carriers that would like to have a 53 percent and --

17 CHAIRMAN GAW: Well, that's where I was trying
18 to get to is whether or not this had any ramifications for
19 things outside of this case. That's what I was trying to
20 get to.

21 MR. BUB: I don't think somebody would be able
22 to MFN -- you've heard that term before.

23 CHAIRMAN GAW: Yes.

24 MR. BUB: -- into this factor because every
25 company's supposed to have different factors. But you've

1 seen here in this case where T-Mobile and Western Wireless
2 and the Complainants got the 52, 53 percent factors, they've
3 looked to what Verizon had negotiated. So obviously they
4 were able to use what Verizon had done against carriers
5 here.

6 So where it might only be \$2,500 for us here,
7 if we were dealing with another carrier, and I'm just going
8 to pick one out of the air, maybe U.S. Cellular in some
9 other area, that 52 percent factor could be worth hundreds
10 of thousands of dollars.

11 CHAIRMAN GAW: That's what I was trying to
12 get, to make that clear to me, why the issue was important
13 to you on this -- on this beachhead.

14 MR. BUB: So I agree with Mr. England, it's
15 principle more than money. And I can tell you that we did
16 not look at the money when we looked at the factor.

17 CHAIRMAN GAW: That's all I have. Thank you.
18 Sorry.

19 JUDGE THOMPSON: That's quite all right,
20 Chairman Gaw. I think we're done with you. You have no
21 questions for Mr. Bub?

22 Well, let's get Mr. Schoonmaker back up here.
23 Mr. Schoonmaker, I'll remind you you're still under oath,
24 sir. We're ready for questions from the Bench for
25 Mr. Schoonmaker. Chairman Gaw?

1 CHAIRMAN GAW: If Commissioner Murray has any
2 questions first, that would suit me.

3 JUDGE THOMPSON: Certainly. Commissioner?

4 ROBERT SCHOONMAKER testified as follows:

5 QUESTIONS BY COMMISSIONER MURRAY:

6 Q. Good afternoon, Mr. Schoonmaker.

7 A. Good afternoon, Commissioner.

8 Q. Well, I wasn't prepared to go ahead this fast,
9 but I will ask you if -- if the carriers in question, the
10 terminating and originating carriers are in agreement as to
11 the factors, and the originating carriers have said that,
12 yes, they're responsible, why would the terminating carriers
13 insist upon the transiting carrier having secondary
14 liability?

15 A. That's probably a better question for
16 Mr. England. You should have got him while he was up here.

17 I mean, basically, it's -- I mean, we've had a
18 lot of difficulty dealing with wireless carriers, and we
19 have a tariff in place, it's a lawful tariff, it's been
20 upheld in the court, and yet these two carriers that are the
21 respondents have refused to pay those what we believe are
22 lawfully established rates that have been upheld by the
23 courts and so forth. That issue's been
24 before the courts and been determined, and we ultimately
25 would like to get paid for them. And if there's some

1 secondary liability obligation that the Commission imposed
2 on Southwestern Bell, as I look at their interconnection
3 agreement and the language which is in my testimony and my
4 surrebuttal testimony and which
5 Mr. Johnson read earlier this afternoon, Southwestern Bell
6 apparently was concerned that they had that kind of
7 secondary liability and specifically put provisions in their
8 contracts to protect themselves from it.

9 I guess I'm surprised that they're as
10 concerned about it as they are.

11 Q. Mr. Schoonmaker, what would be the rates for
12 the three carriers in question here that would apply to the
13 inter-MTA traffic?

14 A. The rates that would apply to the inter-MTA
15 traffic would be the inter-MTA access rates of the 14
16 companies -- well, or we get it down to the three companies
17 that are involved.

18 I don't have with me specifically what those
19 rates are. They tend to vary between -- for the companies
20 overall, they probably vary between 5 and 15 cents per
21 minute.

22 Q. And do you agree with the statement made
23 earlier, I can't remember who made it, that -- it was
24 probably Mr. Bub -- that the rate that his client receives
25 for transiting that traffic is about a third of a cent?

1 A. Yes, I believe that's -- it's in that range.

2 Q. How would you think that a carrier could

3 afford to transit traffic for compensation of a third of a

4 cent and then be held primarily or even secondarily liable

5 for rates up to 15 to 20 cents per minute?

6 A. Well, they couldn't if that was the only other

7 provision, the only provision that they had. But, in fact,

8 in their contracts with both T-Mobile and Western Wireless

9 they have specific provision in the contract that if a

10 wireless carrier does not have an agreement with a

11 third-party carrier and that third-party carrier comes to

12 Bell and they're required to pay, they can go back to the

13 wireless carrier and get that money.

14 So they're not going to get compensated out of

15 their third of a cent. They're going to get compensated out

16 of the indemnification provision which says that they'll get

17 it all.

18 Q. But your tariff says you'll get it all, and

19 you're contesting your ability to get it?

20 A. We haven't got it, and we didn't get it for a

21 period of a year and a half or two years before the

22 complaint was filed, and it's now been 17 months since it

23 was filed and we still don't.

24 Q. So what makes you think Bell would get it?

25 A. Well, I think the big difference with Bell is

1 that if -- if they said they were going to cut T-Mobile off
2 in St. Louis and Kansas City, they would probably get a lot
3 more attention from them than if BPS says they're going to
4 cut them off in Parma and Bernie and Steele. They have a
5 lot more at stake there.

6 But, I mean, primarily we're looking for
7 getting it from the carriers themselves, and hopefully if
8 they -- the Commission finally settles this complaint and
9 tells them that they should pay it, hopefully they will and
10 Bell won't enter into the picture at all. It's a secondary
11 liability.

12 Q. But your reference there to Bell cutting them
13 off, blocking traffic brings up another question. Why have
14 your clients not sought what they have a right to do to
15 request that Bell block the traffic that you're not being
16 paid for?

17 A. Well, you know, as I go back and look at the
18 history of it and history of several cases before the
19 Commission, there's been any number of times when we have
20 come before the Commission and been told that, you know, you
21 must not have had a problem with it because you didn't file
22 a complaint with the Commission.

23 We chose to file the complaint initially
24 because we, No. 1, thought it would be resolved much more
25 quickly than it would and that it would avoid having to

1 potentially put the customer service in risk. And, in fact,
2 we filed some complaints against some other wireless
3 carriers and, in fact, it worked out in a much shorter time
4 frame and they paid and we didn't have to do that.

5 That was sort of a strategy decision. If --
6 knowing where we are now and the fact it hasn't been still
7 settled and if we could go back 17 months ago, I think we
8 probably would have filed for blocking, and I would suspect
9 in the future if we have problems with other wireless
10 carriers, that will be the first choice rather than the
11 second.

12 Q. And you would have that option going forward
13 if the wireless carriers here did not honor their agreement
14 which they've sat here and said they would honor; is that
15 correct?

16 A. We would.

17 Q. So you have another avenue in which to get
18 paid other than having Bell absorb it first and then try to
19 collect it themselves?

20 A. That's -- that's another option.

21 Q. And that option would result in blocking fewer
22 customers than if Bell did what you suggested they do and
23 use their leverage to block traffic to a wider range of
24 customers in order to put more pressure on the wireless
25 carriers; is that right?

1 A. Yeah. I mean, I think if the amounts that are
2 at stake in this were Bell's to pay and Bell threatened to
3 disconnect them because of the much wider and much greater
4 volume of traffic they've got involved, the threat of
5 blocking would be sufficient enough to get the issue
6 resolved.

7 Q. And that would involve a significantly greater
8 number of customers potentially; is that correct?

9 A. If it came to actually doing the blocking, it
10 certainly would.

11 Q. In order to collect the same amount that your
12 clients at least in the past have been unable to collect?

13 A. Yes.

14 COMMISSIONER MURRAY: That's all the questions
15 I have. Thank you.

16 JUDGE THOMPSON: Thank you, Commissioner.
17 Commissioner Forbis?

18 COMMISSIONER FORBIS: No, your Honor.

19 JUDGE THOMPSON: Chairman Gaw?

20 CHAIRMAN GAW: Oh, I thought of a couple.
21 Thank you, Judge.

22 QUESTIONS BY CHAIRMAN GAW:

23 Q. I want to see if I understand the rationale
24 for this secondary liability a little better if I could. If
25 I -- is it true that the amount in issue here, Mr. England

1 said something about \$2,500 or so in some of these
2 exchanges. Do you recall what the amount might be
3 approximately? Did you look at that?

4 A. The total amount in the case is much greater
5 than that. I don't remember exactly, but I think the total
6 amount is well into the hundreds of thousands of dollars.

7 The \$2,500 number that Mr. England was talking
8 about was the three companies where there are disputed
9 factors, and those companies out of the 14 of the
10 Complainants tend to have some of the smaller amounts that
11 are due under the complaint.

12 Q. That's the only portion that's still in
13 dispute, though, isn't it?

14 A. That's the only portion that's in dispute in
15 regards to the inter-MTA factor. I mean, all of it's in
16 dispute as to whether it should be paid or not, and T-Mobile
17 and Western Wireless have not paid us for any of the total
18 amounts that are in dispute.

19 Q. Is this -- does the -- does the agreement that
20 the parties have entered into, except for this one portion,
21 resolve the other issues?

22 A. No. The nonunanimous stipulation that was
23 filed only had to do with what inter-MTA factors would apply
24 to the total volume of minutes. We do not have agreement
25 from them that they're going to write us checks.

1 Q. Okay. Is that still in front of the
2 Commission or is it in front of the Commission?

3 A. That's -- that's the major issue in the
4 complaint. It's been briefed, but it's still in front of
5 the Commission. It hasn't been decided because the hearing
6 was reopened to address specifically this inter-MTA factor
7 issue.

8 Q. But on this portion of it, this \$2,500 or so
9 that we're discussing on intra-MTA matters between these
10 three companies and the wireless carriers in this case, if
11 we're trying to determine why it's important to be some
12 secondary liability with Bell in getting paid from your
13 clients' perspective, would it be fair to say that there's a
14 different amount of leverage that can be applied from
15 Southwestern Bell to the wireless carriers as opposed to the
16 small companies to the wireless carriers in the event of
17 nonpayment?

18 A. I believe there is, and --

19 Q. It's a fairly significant difference in the
20 amount of leverage, isn't it?

21 A. Right. I don't know the specific numbers, but
22 I would guess that they have tens, maybe even -- I don't
23 know if it's hundreds of thousands of customers in the
24 Kansas City and St. Louis area, all that would be subject to
25 disruption if Southwestern Bell blocked, as opposed to a

1 relatively small number of customers if they blocked
2 terminating traffic to each of our exchanges.

3 Q. If you're looking at it from the wireless
4 carriers' perspective, if they were -- they're being told
5 that they might have wireless traffic blocked in one of
6 these -- one of these small rural districts that's still in
7 controversy on the intraLATA -- intra-MTA factor, how many
8 customers do you think they're likely to lose as a result of
9 that?

10 A. Not very many. I mean, some of those
11 companies have very small amounts of terminating traffic.
12 It's calls that are originated probably in some other part
13 of the state where their customers are really located but
14 happen to be calling Steele or Bernie or Parma or whatever.

15 Q. So it's not a big factor in the scope of their
16 business if you look at what we know here, is it, I mean,
17 these calls that their customers may be making into those
18 particular areas?

19 A. No. And that's why the respondents and the
20 Complainants were able to agree on what those factors should
21 be. It was only Southwestern Bell that disagrees with those
22 three factors.

23 Q. Well, if you had -- looking at it again from
24 the wireless carriers' perspective and their customers, if
25 they were going to lose the ability to call in to

1 Southwestern Bell territory in Missouri, do you think that
2 might impact the number of customers interested in staying
3 with that wireless carrier in a different way?

4 A. Certainly.

5 Q. In what way is that?

6 A. Well, if that -- I mean, if they --
7 Southwestern Bell were to disconnect them and they stayed
8 disconnected very long, people would say, gee, my phone's
9 not -- it's not worth anything for what I bought. Many of
10 them would -- probably their primary focus of calling is
11 Southwestern Bell customers or almost exclusively, and
12 they'd go to Sprint or somebody else to get service.

13 Q. Are the small carriers in this case attempting
14 to take advantage of Bell's ability to have leverage to
15 collect the money in a -- in a fashion that's easier and
16 perhaps is more likely to lead to a collection than without
17 it?

18 A. Well, I think what we're looking for is a
19 fall-back position. I mean, we have not said Bell should be
20 primarily liable for it. We've not said that's where we
21 want to go first. We've said we'll -- we need to go to the
22 wireless carriers first. They are the -- they are the
23 primary ones that ought to pay. But if they continue to
24 refuse, then as part of -- as Mr. England explained it
25 earlier, as part of the regulatory agreement that was made

1 at the time the Commission changed Bell's tariff, which
2 before that time said we will terminate this traffic
3 anywhere in the state, including in the independents' areas,
4 and the Commission held that's what Bell is offering and
5 Bell said, gee, we want to change that, we don't want to do
6 that anymore, and we fought vigorously against that saying
7 Bell's got the right business relationship, they're the one
8 that's dealing with the carriers, they should do it, and if
9 they need to change their rate to accommodate additional
10 revenues to cover the charges they pay for us, that would be
11 entirely appropriate.

12 The Commission chose to let them change the
13 business relationship and no longer be responsible for
14 terminating, but in doing so, as Mr. England explained, in
15 that Order they said, although we're going to let you
16 primarily off the hook, we're going to make you secondarily
17 liable in case the carriers don't enter into agreements as
18 they said they would and as Bell's contract said they had to
19 do before they terminated traffic to us, which all of them
20 have ignored.

21 I mean, we've had a long, hard fight with
22 several cases before this Commission, with complaints before
23 the FCC trying to get paid for it.

24 Q. Is the amount of business between Southwestern
25 Bell or SBC and the independents that are involved in this

1 case more significant than the amount of business between
2 those rural carriers and the wireless carriers in this case?
3 Is there more business between --

4 A. There's probably more intraLATA terminating
5 minutes from Southwestern Bell than there are wireless
6 terminating minutes. Although that may not be the truth,
7 the case for all the companies, but I would guess in general
8 it is, and certainly over the 14 of them I would think it
9 would be.

10 Q. Well, in particular in regard to the three
11 carriers in the intra-MTA issue that's been described as
12 being worth somewhere around \$2,500.

13 A. In regard to those three specifically, they
14 would have greater financial payments from Southwestern Bell
15 for intraLATA terminating traffic, I would think, than are
16 at stake in regards to the traffic from T-Mobile
17 specifically.

18 Q. So there's more -- and is there more business
19 contact and inter-relationship there between Bell and the
20 independent -- or excuse me -- and the rural carriers than
21 there is between the wireless carrier and the rural carrier?

22 A. Very much so, much more longer established
23 relationships and contacts and so forth than there are with
24 the wireless carriers.

25 CHAIRMAN GAW: That's all I have, Judge.

1 Thanks.

2 JUDGE THOMPSON: Yes, ma'am, Commissioner
3 Murray.

4 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

5 Q. Mr. Schoonmaker, in terms of the relationship
6 between your clients and Bell, Bell has to carry your
7 clients' traffic, does it not?

8 A. I believe so. I think so. I hope so.

9 Q. And that's by law, they don't have a choice?

10 A. As far as I know, that's the case. If you
11 asked me to cite a specific paragraph and stuff, I'd have to
12 think a little bit. I guess it would go back to the
13 provisions in state law where the Commission regulates
14 interconnection between companies.

15 Q. Okay. That's good enough.

16 Did you seek the ability to block traffic when
17 you were before us in one of your many other cases before
18 us?

19 A. We did in the wireless tariff case. I mean,
20 we sought the authority that Mr. Bub described to have
21 provisions in the tariff so that -- I mean, because we
22 physically can't do it at our end of the trunk, we
23 specifically asked that that provision be put in the tariff
24 so that we could ask Bell to do it.

25 Q. And I believe as we ordered there, that if you

1 did ask for blocking, you would pay for it; is that correct?

2 A. That's correct.

3 Q. And if the indemnification provision were

4 employed, who would pay the expenses of collection?

5 A. I mean, as I read this specific provision in

6 the contract, it seems to talk about Bell would be

7 indemnified for the charges that the third party rendered

8 them. The provision in that contract doesn't speak to

9 collection charges. So whether Bell would be able to

10 collect collection charges or not, I don't know.

11 Q. So when you say they would get back anything

12 they'd have to pay, it might be less the expenses of

13 collection; is that right?

14 A. It might be.

15 Q. And that's assuming they got it, that's

16 assuming they were ultimately successful?

17 A. Yes.

18 Q. When you had a discussion with Chair Gaw about

19 the ability, the different amount of leverage that would be

20 provided if Southwestern Bell were to threaten blockage or

21 to block a significant number of carriers, you indicated

22 that that provided a lot more leverage, correct?

23 A. Yes.

24 Q. Which I think is intuitive. But don't you

25 think that in order to get around the -- don't you think

1 that word would get around if a wireless carrier were unable
2 to deliver calls to any group of customers if -- I mean,
3 obviously there are people, there are customers in your
4 clients' territories, and if word got around that a wireless
5 carrier were unable to deliver traffic to anybody, don't you
6 think that would affect the wireless carrier's business?

7 A. Well, yeah. I guess I'm not sure if BPS asked
8 Bell to block T-Mobile's traffic to their three exchanges
9 and they have, you know, a few hundred minutes a month, it
10 would take a long time for the word to get around that there
11 was any problem. If Bell was blocking all 50 or 100,000
12 customers or whatever it is in St. Louis or in Kansas City,
13 it probably would make the front page of the papers the next
14 day.

15 And so the word would get around a lot faster
16 if there's a big group of customers impacted than if there's
17 a very small group of customers who are located a long way
18 from the major calling area where T-Mobile's customers are
19 calling.

20 Q. And in order to do that, if Bell were to block
21 that significant number of customers that you talk about,
22 that -- would you agree that that would involve blocking
23 calls to customers for whom the wireless carriers may have
24 paid termination?

25 A. I mean, I guess if the wireless carriers paid

1 part of their bill but all of it -- not all of it, then they
2 would have paid for part of the calls but not all of them.

3 Q. Okay.

4 A. I don't know if that's responding to your
5 question or not. I mean, if -- if they owe Bell \$100,000
6 today and they pay 60,000 of it and paid \$60,000 a month and
7 it got to some point in time where Bell decided to block
8 them and cut them off based on their own traffic, they would
9 cut off all their traffic even though they had paid for part
10 of it but not all of it.

11 And I guess it would be a similar -- similar
12 thing in this case. I mean, realistically, I mean,
13 hopefully Western Wireless and T-Mobile will finally pay
14 their bills and we won't get into this scenario on either
15 side.

16 And I would think particularly if it was Bell
17 that was blocking, if they were so obstinate they wouldn't
18 pay us and we had to go to the extent of billing Bell for it
19 and Bell then billed them, all of that's going to take a lot
20 of time, and it seems to me that they've made some pretty --
21 if we got into that scenario where Bell actually blocked
22 them, they would have made some pretty significant decisions
23 on their own that they were -- they were willing to take
24 that risk.

25 I mean, these things don't happen overnight.

1 The blocking provisions require notification and time to go
2 by, and I just -- I think it would be very unlikely that
3 T-Mobile would risk its business in this state to not pay
4 Bell those amounts, but I guess that would be their business
5 decision if we get to that point.

6 Q. And as you say, those things don't happen
7 overnight and there are costs involved in doing it, right?

8 A. There are.

9 Q. Which your clients are not willing to pay, I
10 guess, at this point because they haven't asked for the
11 blocking which they're allowed to ask for?

12 A. Well, as I mentioned earlier, we made a
13 decision a year and a half ago to pursue the complaint route
14 because it had been suggested to us that we ought to bring
15 complaints, and we'd been told that if, you know, people
16 don't pay we have the opportunity to complain to the
17 Commission and that will get resolved.

18 In hindsight, it probably would have been much
19 cheaper and much quicker had we chosen the blocking route.
20 I guess that's what we'll do in the future. Since we're in
21 the middle of the complaint, I think we have concerns about
22 blocking at this point in time because we've taken this
23 action and it's before the Commission for decision.

24 Q. Is the bottom line that you don't trust the
25 wireless carriers to pay you?

1 A. In the case of T-Mobile and Western Wireless,
2 they haven't at this point in time. We talked to them
3 before we filed the complaint. We let them know we were
4 going to. We filed the complaint 17 months ago. They
5 haven't paid. We've had interconnection contract
6 negotiations. They've gone extremely slow. They seem to be
7 quite happy to drag things out as long as possible.

8 Q. I just want to run through something here, and
9 I'm sort of thinking out loud in terms of how this would
10 work. If you run into a situation where you're not getting
11 paid for the calls that Western Wireless wants to deliver to
12 you, rather than ask Bell to block and pay for that
13 blocking, you say, no, Bell you just pay us and then you go
14 get it, which is what you're asking us to say that you can
15 do, and if you did that and Bell paid you, and then Bell
16 attempted to collect, why would Bell have any incentive to
17 block anything other than your customers?

18 Why wouldn't they just be content to block
19 your customers so they'd no longer have to pay for those
20 things that they're transiting and being charged
21 tremendously more for?

22 A. You know, I don't know how Bell might respond
23 to that. I suppose that's something that they could
24 undertake. I mean, I think the up-front scenario you paint
25 is not one we would pursue. We didn't start by going after

1 Bell. We were not seeking to go after Bell initially here.
2 We've taken an awful lot of steps to try to collect this
3 money, including informal steps before it was filed with the
4 Commission, including filing a complaint.

5 But, I mean, how Bell would choose to do the
6 collection if they paid it, I guess it would be up to their
7 business decisions as to how they might approach that.

8 Q. Do you have any reason to think that they
9 would want to block more than the traffic that is costing
10 them to deliver?

11 A. Well, if I were in their shoes, I would use
12 the maximum leverage that I had to convince T-Mobile to pay
13 their bills, and shutting off the terminating traffic to BPS
14 wouldn't get their attention if Bell did it nearly as much
15 as threatening to cut off all of their customers. That
16 would be Bell's business decision.

17 Q. If it were only a \$2,500 amount that you were
18 talking about, do you think that Bell would want to irritate
19 many of their customers, a wide range of their customers by
20 blocking traffic from a wireless carrier just to collect
21 that \$2,500?

22 A. You know, Bell would rather not, and I'm
23 certain that -- and T-Mobile would rather not as well, and
24 if it was only \$2,500 at stake, which it's not, it's a whole
25 lot more than that --

1 MR. JOHNSON: Judge, I'm going to object to
2 this testimony. He's speculating. This is rankest
3 speculation on the witness' part as to what my clients are
4 thinking.

5 MR. ENGLAND: Well, the witness is trying to
6 answer the question, your Honor. If the objection is to
7 speculation, perhaps it ought to go to the question, not the
8 answer.

9 JUDGE THOMPSON: We done? Anybody else want
10 to jump in there? The objection's overruled. You may
11 answer if you can.

12 THE WITNESS: I'm afraid I'll have to -- I
13 don't remember exactly where we were in the question at this
14 point in time.

15 JUDGE THOMPSON: Kellene, can you read it
16 back?

17 THE REPORTER: "Question: If it were only a
18 \$2,500 amount that you were talking about, do you think that
19 Bell would want to irritate many of their customers, a wide
20 range of their customers by blocking traffic from a wireless
21 carrier just to collect that \$2,500?

22 Answer: You know, Bell would rather not, and
23 I'm certain that -- and T-Mobile would rather not as well,
24 and if it was only \$2,500 at stake, which it's not, it's a
25 whole lot more than that --"

1 THE WITNESS: Those would obviously be
2 business decisions those companies would have to make, and
3 let me just stop there.

4 BY COMMISSIONER MURRAY:

5 Q. From your perspective, would it be a
6 reasonable business decision to say delivering traffic to
7 those carriers, to those carriers' customers is costing us
8 money? They can't collect from the wireless carrier. We
9 were forced to pay it. Now if we get reimbursed we have to
10 go through the process of collecting and the expense of
11 collecting. Therefore, we'll just block it and we won't
12 worry about this in the future, rather than go through that
13 process of trying to collect it.

14 A. If I were in their shoes, that wouldn't be my
15 decision.

16 Q. Would that be an economic decision or based on
17 some other --

18 A. I think it would be an economic decision. I
19 mean, no carrier undertakes blocking lightly, and
20 particularly permanent blocking.

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

23 JUDGE THOMPSON: Thank you, Commissioner.

24 I think we're ready for recross based on
25 questions from the Bench. Let's see. Mr. Johnson?

1 MR. JOHNSON: I have nothing. Thank you.
2 JUDGE THOMPSON: Mr. Bates?
3 MR. BATES: No, thank you.
4 JUDGE THOMPSON: Mr. Bub?
5 MR. BUB: I have a few, your Honor.
6 JUDGE THOMPSON: Please step forward.
7 MR. BUB: Thank you.
8 RECROSS-EXAMINATION BY MR. BUB:
9 Q. Good afternoon, Mr. Schoonmaker.
10 A. Good afternoon.
11 Q. Probably within the last half hour you've had
12 a lot of discussion with various Commissioners, Commissioner
13 Gaw, I believe, Commissioner Murray, about the relative
14 leverage that SBC would have over a wireless carrier versus
15 the leverage that a small company, one of the Complainants
16 would have against a wireless carrier that didn't pay a
17 bill. Do you recall those questions?
18 A. I recall the general nature of the discussion
19 certainly. There's been a lot of it.
20 Q. Okay. And for the most part that discussion's
21 been hypothetical, hasn't it, here with the Commissioners?
22 A. Yes.
23 Q. We've been relying on things like I believe
24 what might happen or intuition. What I'd like to do is talk
25 about a real factual situation, something that happened

1 within the last couple of months that I would expect you
2 would be aware of. Certainly your -- early in my
3 discussions with Chairman Gaw alluded to us being asked by
4 three small companies to block. You're aware of that
5 situation?

6 A. Yes.

7 Q. Okay. That's Goodman, Seneca and Ozark,
8 right?

9 A. That's correct.

10 Q. They're three small single exchange LECs,
11 right?

12 A. Yes. No, not single exchange. At least two
13 of them -- I think all three of them have more than one
14 exchange, but they're certainly small companies.

15 Q. They don't have their own tandem?

16 A. Not in regards to wireless traffic. Actually,
17 Seneca does have a tandem in regards to IXC traffic.

18 Q. The wireless all comes from Bell?

19 A. Wireless comes from Southwestern Bell.

20 Q. And you would include those three in the group
21 that wouldn't have any theoretical leverage?

22 A. I didn't say they wouldn't have any. I said
23 they wouldn't have as much as Southwestern Bell would.

24 Q. Let's talk about what actually happened with
25 them. They weren't being paid by a particular wireless

1 carrier, and it was T-Mobile in this real life actual
2 example, wasn't it?

3 A. Yes.

4 Q. And when you asked us to block, we quoted you
5 \$400. Do you recall that?

6 A. I don't know specifically the number. It was
7 certainly somewhere in that range.

8 Q. Within a reasonable enough range that you guys
9 accepted the offer and directed us to block?

10 A. Yes.

11 Q. And you're aware that as a result of that
12 pressure that was put on, the negotiations got serious?

13 A. Yes.

14 Q. And led to the real life interconnection
15 agreement between those three companies?

16 A. Yes, it did.

17 Q. Filed with the Commission and approved?

18 A. Two or three delays in the blocking date to
19 get it done, but it did.

20 Q. When you asked us here, I think you had a long
21 discussion with Commissioner Murray about, I guess, the
22 merits and equities of forcing unpaid charges on SBC so that
23 we'd have to pay you for somebody else's charges and then
24 we'd be left to go see if we couldn't collect them from the
25 true originating party. Do you recall that line of

1 discussion?

2 A. Yes.

3 Q. In that situation, wouldn't you just -- in
4 that situation, you wouldn't be able to collect on those
5 charges, you'd be asking us essentially to be your
6 collection agent, right?

7 A. We would be asking the Commission to uphold
8 the Order that they said that you were secondarily liable in
9 cases where companies didn't honor their interconnection
10 agreements with you and terminated this traffic to us and
11 wouldn't pay.

12 Q. Let's be real specific, Mr. Schoonmaker. That
13 Order about secondary liability, that wasn't mentioned at
14 all in the Order -- Commission's Order approving your
15 wireless interconnection tariffs, was it?

16 A. Not that I recall.

17 Q. And it wasn't in the language of the
18 Commission's Order approving Southwestern Bell's
19 interconnection agreements with T-Mobile or Western
20 Wireless, was it?

21 A. I don't know, because I haven't reviewed those
22 orders specifically. It wouldn't surprise me if it's not.

23 Q. And that language appeared in a 1997 Order
24 approving our wireless tariff, correct, wireless termination
25 service tariff?

1 A. Yes.

2 Q. And in that case, you asked the Commission --

3 you opposed that tariff's being approved, right?

4 A. We do.

5 Q. And one of the basis was that you didn't have

6 the ability to stop the traffic that would be transiting

7 through us to you, and in that case you specifically asked

8 for the authority to direct us to block. Do you recall

9 that?

10 A. I believe we did.

11 Q. And the Commission at that point --

12 A. Denied it.

13 Q. -- denied it. And Staff, SBC and the

14 Commission all indicated that wasn't appropriate. Time has

15 passed since then, hasn't it, things have changed, and now

16 you have that specific?

17 A. Yes, it has passed, and what we foresaw at

18 that point in time has very much come to pass, and this case

19 is a direct result of the kind of concerns we expressed at

20 that time.

21 Q. And in response to that, they gave you the

22 remedy that you requested, over our objection?

23 A. In the wireless tariff case, they did give us

24 that.

25 Q. In asking -- even though you have that remedy,

1 in this particular case you didn't use it, right?

2 A. That's correct, we didn't. We decided to go
3 the route of filing a complaint instead.

4 Q. And asking us, if you can't get the money out
5 of Western Wireless and T-Mobile, to make us pay and be your
6 collection agent?

7 A. We asked primarily that T-Mobile and Western
8 Wireless pay us, but yes, secondarily, if they don't pay us,
9 then we'd like it from you.

10 Q. When I was -- I had a different Bell job, I
11 worked for a small arm of our company that sold small
12 business telephone sets, and every once in a while our
13 customers for whatever reason wouldn't pay and we'd have to
14 hire collection agents.

15 My recollection of those agreements, and
16 probably pretty standard, that we would have to pay a
17 portion of whatever -- let them keep a portion of whatever
18 they collected. Usually was something in the nature of a
19 third of the charges if they just collected it, but if they
20 had to go actually to court, then they got to keep half of
21 what they collected.

22 Would you be willing to --

23 MR. ENGLAND: Objection, your Honor. Is this
24 a question --

25 MR. BUB: Yes, it's a question.

1 MR. ENGLAND: -- or is this testimony?

2 MR. BUB: You haven't let me finish.

3 BY MR. BUB:

4 Q. Would you and your clients in the situation

5 where you're asking us to be your collection agent be

6 willing to let us keep a third of the charges, or if we have

7 to go to some extraordinary remedy, perhaps keep half of

8 them?

9 A. We haven't proposed that at this point in

10 time.

11 Q. Let's follow up on that. If we have to pay

12 your charges so you're made whole, we have to go try and

13 collect from the wireless carrier like T-Mobile that doesn't

14 pay and we're forced to block, and maybe we do the

15 mega-blocking of all the St. Louis traffic, all the Kansas

16 City traffic, you agree that there's going to be a cost to

17 SBC to implement that program and to do that blocking?

18 A. Yeah. Probably less than what it cost for you

19 to set up blocking for one of our exchanges.

20 Q. Are you willing to bear the cost of that

21 blocking when we're trying to collect debt that wasn't paid

22 to you so that we can get made whole? Be fair, wouldn't it?

23 A. You know, I haven't consulted with my clients.

24 I would guess that they probably would, because -- because

25 my guess is it would be less than the \$400 that it would

1 cost you to set up blocking for Seneca, Ozark and Goodman,
2 because all you have to do is go and shut off the trunk and
3 it's blocked.

4 Q. So you would be willing to bear that cost if
5 that was the remedy that --

6 A. I would think so.

7 Q. Mr. Schoonmaker, this is kind of a legal
8 concept of exhaustion of remedy, but I think you're aware of
9 it because it factors into a lot of Commission proceedings.
10 Like, there's a rule that before you can go to circuit court
11 down the street when you don't like a ruling of the Missouri
12 Public Service Commission, there's rules you have to exhaust
13 your remedies here by asking for rehearing or
14 reconsideration before you can qualify to go to court.

15 You're kind of familiar with those exhaustion
16 of remedies concepts?

17 A. Not -- I mean, I understand the concept you're
18 saying. In terms of the legal ramifications of it, no, I'm
19 not.

20 Q. Since the Commission's given you this remedy
21 in our own wireless tariff, do you believe it would be
22 appropriate for you to exhaust those remedies that the
23 Commission gave you before you try to stick another carrier
24 with those charges?

25 A. You know, we sought a remedy which you had in

1 many cases told us we ought to seek and that other people
2 had criticized us for not seeking, and we filed a formal
3 complaint with the Commission, and we really would like to
4 get this resolved.

5 The Commission will have to decide whether
6 they're -- how and where they're going to resolve it.
7 Hopefully if they determine that T-Mobile and Western
8 Wireless will pay, they'll pay and we won't have to worry
9 about that.

10 If they don't, I guess then we'll have to see
11 where we go next, and blocking is one of those choices.

12 Q. My question was, do you believe it would be
13 fair and appropriate for you to be required to exhaust the
14 remedies that the Commission gave you under your contract
15 before you try and stick another carrier with those charges
16 that are in dispute here?

17 A. I don't think I can answer that. I mean, I
18 think it's manifestly unfair that we've gone four years and
19 we haven't been paid for terminating the traffic, and I
20 guess that's all I've got to say on it.

21 Q. Since the Commission gave you the remedy of
22 blocking, SBC has not refused to perform that blocking, has
23 it?

24 A. No.

25 Q. Thank you.

1 MR. BUB: We don't have any further questions,
2 your Honor.

3 JUDGE THOMPSON: Thank you, Mr. Bub.
4 Redirect, Mr. England?

5 MR. ENGLAND: Thank you, your Honor.

6 REDIRECT EXAMINATION BY MR. ENGLAND:

7 Q. Kind of work my way from the back to the front
8 here. With respect to Seneca, Goodman, Ozark, they now have
9 a traffic termination agreement with T-Mobile; is that your
10 testimony?

11 A. The agreement's been filed. I'm not sure it's
12 been approved.

13 Q. Do you know if they've yet been paid according
14 to that tariff -- or excuse me -- that traffic termination
15 agreement?

16 A. My understanding is that they have not, and
17 it's been, what, 45 to 60 days since we reached the
18 agreement and were going to do that and we dropped the
19 blocking option.

20 Q. So the jury's still out on whether that was an
21 effective effort or not, right?

22 A. Yes.

23 Q. Let's talk about this transit traffic. Do we
24 really care if Southwestern Bell sends us transit traffic,
25 wireless in this case?

1 A. I'm not sure that I understand your question.

2 Q. Well, let me ask, did we want it in the first

3 place?

4 A. What we wanted was for Bell to take the

5 position that they'd taken under their tariff for eight

6 years and be responsible for terminating it throughout the

7 LATA.

8 Q. And once that arrangement was terminated and

9 it became apparent that we were responsible to look to the

10 originating carrier to get paid, didn't we oppose the

11 transiting and continue to oppose the transiting

12 relationship?

13 A. Yes, we have.

14 Q. We didn't ask for this traffic, did we?

15 A. No.

16 Q. My next question is, why should we have to pay

17 Bell to block the traffic that we never wanted in the first

18 place?

19 A. Good question.

20 Q. Would you believe that we've done a sufficient

21 job of exhausting our remedies to date in trying to recover

22 this money from the wireless carriers?

23 A. We have certainly expended considerable effort

24 in trying to recover that money.

25 Q. Let me switch gears on you. In

1 cross-examination by the Staff witness, you were asked about
2 the negotiation process and some of the information that --
3 excuse me -- the, I think, factors or information that was
4 discussed among the parties.

5 Were you also given some proprietary network
6 information by T-Mobile?

7 A. We were given some information describing
8 their general network situation, how they switched traffic
9 inter-MTA and so forth.

10 Q. Once those agreements -- or excuse me. Once
11 those factors were agreed to among the Complainants and
12 T-Mobile, did we offer to bring Southwestern Bell into the
13 process at that time?

14 A. My understanding, yes, we did. I know I've
15 seen e-mails discussing that and we shared information with
16 them about how we'd arrived at the factors and so forth.

17 Q. And didn't we essentially give Southwestern
18 Bell the same information that's in your testimony today?

19 A. Basically, yes.

20 Q. All before we filed our nonunanimous
21 stipulation; is that correct?

22 A. Yes.

23 Q. Let me ask you, were we included in the
24 negotiations between Southwestern Bell and T-Mobile and I
25 guess at that time Voicestream and Western Wireless when

1 they negotiated their interconnection agreement?

2 A. No.

3 Q. Let me switch gears on you and talk about the
4 access tariff. I believe you indicated in response to a
5 question from Judge Thompson that several of the carriers do
6 not -- several of the Complainants, excuse me, do not concur
7 in the Oregon Farmers access tariff. Do you recall that?

8 A. Yes.

9 Q. Do they have their own intrastate access
10 tariffs on file with and approved by this Commission?

11 A. Yes.

12 Q. What do those access tariffs provide when a
13 customer seeks to obtain access services from the
14 Complainants generally?

15 A. There are provisions in the tariff that
16 require them to issue an order to us that's called an Access
17 Service Request that provides us with information, and even
18 if they are going to make this interconnection through the
19 Bell tandem they're required to provide us information,
20 provide us billing information, contact information and so
21 forth before that service is implemented.

22 Q. And what regular, I'll call it exchange access
23 traffic comes through the Southwestern Bell tandem, what
24 kind of records do we receive from Southwestern Bell
25 regarding that traffic?

1 A. For terminating interexchange carrier traffic,
2 which is exchange access traffic for us, we receive a
3 detailed call record, a category 1101 record that provides
4 information specifically about the call, who it was from,
5 the time of day, the length of the call and so forth.

6 Q. Now, contrast that, if you will, with the
7 wireless traffic that's transited to us. What, if any,
8 similarity is there for -- in the way that the access tariff
9 applies?

10 A. The way the access tariff applies in terms of
11 the ordering provisions, since the access tariff applies or
12 doesn't apply, we receive no notification from Bell that
13 they have reached an agreement with a new carrier and are
14 starting to terminate traffic. We receive no information
15 from the carrier itself indicating that they're going to
16 terminate traffic to us or where we should send bills.

17 And really the only way that we know that that
18 traffic is started is we get a monthly report from Bell, the
19 CTUSR report that's been referred to, and it would -- a new
20 carrier name would show up on that record with a list of the
21 number of minutes that were terminated to each of our
22 exchanges during the month.

23 Q. Now, if it's inter-MTA wireless traffic,
24 presumably our access tariff applies; is that right?

25 A. That's correct.

1 Q. But if I understand your testimony, we don't
2 get an access order?

3 A. That's correct.

4 Q. We don't get billing name and information, we
5 don't get the same records that we would if it was access
6 traffic?

7 A. That's correct.

8 Q. Is there anything else that's dissimilar even
9 though it's supposed to be subject to our access tariff
10 about wireless traffic that you can identify?

11 A. Well, I guess another thing that's dissimilar
12 is that the wireless carriers have maintained, and
13 Mr. Williams mentioned today in his testimony, that they
14 think bill and keep applies until -- until they decide to
15 come get an interconnection agreement with us or they comply
16 with the terms of our wireless tariff.

17 And there is provisions in the
18 Telecommunications Act for a Commission in an arbitration
19 proceeding to order a bill and keep provision. There's no
20 provisions that say that a carrier can unilaterally decide
21 that's what they want the compensation mechanism to be when
22 they start sending traffic.

23 Q. Under our access tariff, is the originating
24 carrier always responsible for the payment of terminating
25 access charges?

1 A. No. No, they're not. In fact, it's the
2 carrier that terminates it to the Bell tandem or the tandem
3 switch that's responsible, and in a number of different
4 circumstances that carrier is not necessarily the
5 originating carrier.

6 Q. Do our access tariffs refer to the function
7 known or that we've discussed here today as transit?

8 A. No, they do not.

9 MR. ENGLAND: Thank you, your Honor. Thank
10 you, Mr. Schoonmaker.

11 JUDGE THOMPSON: Thank you, Mr. England.

12 Commissioner Murray?

13 COMMISSIONER MURRAY: Thank you.

14 QUESTIONS BY COMMISSIONER MURRAY:

15 Q. This may lead to more questioning, but
16 Mr. England asked you a question that I feel I need to know
17 the answer to.

18 Do your clients' customers know that your
19 clients don't want to deliver wireless traffic to them?

20 A. No.

21 Q. If they did, do you think they would agree
22 with that position?

23 A. I don't know. Probably not. They probably
24 want to receive those calls.

25 Q. So it really would affect your clients'

1 customers?

2 A. Yes.

3 COMMISSIONER MURRAY: Thank you. That's all I

4 have.

5 JUDGE THOMPSON: Okay. Redirect -- excuse me.

6 Recross based on additional questions from the Bench,

7 Mr. Johnson?

8 MR. JOHNSON: I'll leave it alone, thank you.

9 JUDGE THOMPSON: Mr. Bates?

10 MR. BATES: No, thank you.

11 JUDGE THOMPSON: Mr. Bub?

12 MR. BUB: No, thank you, your Honor.

13 JUDGE THOMPSON: Redirect, Mr. England?

14 MR. ENGLAND: Unfortunately, I can't leave it

15 alone, your Honor.

16 FURTHER REDIRECT EXAMINATION BY MR. ENGLAND:

17 Q. Mr. Schoonmaker, if Southwestern Bell doesn't

18 transit this wireless traffic to us, does that mean it still

19 won't get it to us?

20 A. No.

21 Q. Aren't there other ways for them to get to us?

22 A. Yes. And wireless carriers use those ways

23 today to get parts of their traffic to us for a variety of

24 reasons. Transiting -- purchasing a terminating service

25 through interexchange carriers is a method that's frequently

1 used. It was mentioned earlier in the discussion today that
2 one wireless carrier for a number of years used the services
3 of another wireless carrier to terminate traffic.

4 Q. So simply by stopping transiting traffic won't
5 necessarily result in the blockage, if you will, of this
6 traffic?

7 A. That's correct.

8 MR. ENGLAND: Thank you.

9 JUDGE THOMPSON: Thank you. You may step
10 down, Mr. Schoonmaker.

11 Counsel, I'm wondering at this point whether
12 we should simply stop now for today and come back tomorrow
13 at nine o'clock. We have 35 minutes 'til the five o'clock
14 hour. What do you think? Are we likely to get -- we have
15 questions from the Bench, then recross and redirect for
16 Mr. Scheperle. We need to finish cross-examination of
17 Mr. Kern, and then we have questions from the Bench, recross
18 and redirect.

19 MR. ENGLAND: I'm willing to push on for at
20 least another 30 minutes to see how much we can get
21 accomplished. Just be less we have to do tomorrow.

22 JUDGE THOMPSON: Mr. Bub?

23 MR. BUB: Your Honor, for what it's worth, we
24 are as well. I can tell you that, obviously, Mr. Kern is
25 one of our witnesses, but I don't have any redirect for

1 Mr. Scheperle, so that might impact your decision to speed
2 things along.

3 JUDGE THOMPSON: All right. Mr. Scheperle,
4 why don't you retake the stand? I'll remind you that you're
5 still under oath. Better find out if there's any questions
6 before you bring all your stuff up.

7 Okay. Questions from the Bench, Chairman Gaw?

8 CHAIRMAN GAW: Not at the moment.

9 JUDGE THOMPSON: Commissioner Murray?

10 COMMISSIONER MURRAY: You did it again.

11 CHAIRMAN GAW: I know. Sorry.

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Good afternoon, Mr. Scheperle.

14 A. Good afternoon, Commissioner.

15 Q. Just give me a minute to see if I have any
16 questions for you.

17 Correct me if I'm wrong, but I think the
18 position that Staff has ultimately taken in this matter is
19 that the Commission should approve the agreements between
20 the originating and terminating carriers and that Bell
21 should not be secondarily liable; is that correct?

22 A. That is correct.

23 Q. And I'm wishing that I had asked this question
24 of Mr. Williams when he was here, but I didn't think of it
25 in time. But perhaps you have an opinion, and if you don't,

1 just feel free to say so, because it has puzzled me over
2 time why a wireless carrier or how a wireless carrier could
3 afford basically to deliver traffic into areas in which it's
4 costing them 15 to 20 cents per minute, because they're
5 certainly not charging those kind of rates to their
6 customers, at least not to my knowledge.

7 So how -- how do you think a wireless carrier
8 can afford to pay those kinds of terminating fees?

9 A. In my opinion, the wireless carrier is paying
10 from the wireless termination tariff, they'd be paying 5 to
11 7 1/2 cents, and since there's probably, I'd say, a small
12 amount of traffic in the overall scheme that they are
13 willing to pay the 5 to 7 1/2 cents to terminate traffic all
14 over the state.

15 Q. So there are certain exchanges in which they
16 probably lose money, would you think that's the case?

17 A. They possibly could, but like I said, in some
18 of these instances where I looked at, there's not a lot of
19 traffic, and they -- they could lose a little bit of money
20 there.

21 Q. And do you think they're willing to do that in
22 order that their customers can call wherever they want?

23 A. Well, I think that's why the wireless carriers
24 have the interconnection agreement with Southwestern Bell.
25 Then they can terminate all over the state, and that's a --

1 a benefit to their customers to call all over the state and
2 not have areas where you cannot call.

3 Q. Okay. In terms of that, Mr. England in his
4 questioning of Mr. Schoonmaker brought out a point that they
5 want -- they would prefer that wireless traffic be delivered
6 other than through SBC. Now, do you understand what he's
7 saying there, why they would take that position?

8 A. There's many factors. I think what
9 Mr. England was saying there at the last was that if Bell
10 did not transit the traffic to the small -- to the small
11 ILECs, that the wireless would have the option of basically
12 sending their traffic through an IXC and actually getting it
13 to the small companies instead. There's other options, or
14 they could actually have an interconnection agreement with
15 the small companies, would be another option that they would
16 have.

17 Q. And in order to do that, they have to directly
18 connect somehow; is that correct?

19 A. In the interconnect, that would be one option
20 that they directly connect, but there's also been
21 interconnection agreements approved by this Commission with
22 wireless carriers where there's an indirect interconnection
23 which allows Southwestern Bell basically to be the
24 transiting company in that arrangement.

25 Q. And are there indirect interconnection

1 agreements with anybody else other than Southwestern Bell?

2 A. I'm not aware of any.

3 Q. So if a wireless carrier wanted to connect to
4 the customers of the three carriers here that are -- where
5 the issues are still before us, what are the -- what are the
6 options that they would have to do that?

7 A. In my opinion, if I was T-Mobile and Western
8 Wireless, and they blocked my traffic, I would send my
9 traffic over an interexchange carrier and pay terminating
10 access. It's -- for the small traffic that's coming to some
11 of these companies, it would be to their benefit to do that.

12 Q. And what would that cost them?

13 A. That would cost them the switched access
14 tariffs, but I've actually done a little research on that,
15 and I -- just a moment. For BPS, I -- if it crossed an MTA
16 boundary or -- well, it would be 11.78 cents. For Craw-Kan,
17 it would be 7.19 cents, and for Mark Twain it would be
18 9.70 cents. So you have a low of 7.19 for Craw-Kan and a
19 high of 11.78 for BPS.

20 Q. And that's as --

21 A. That would be at switched access rates.

22 Q. That's as opposed to the 5 to 7 1/2 cents that
23 it's currently costing?

24 A. That's correct.

25 Q. But what incentive would the wireless carrier

1 have to switch to an IXC when it's going to cost them more?

2 A. In my opinion, the only time I would do that
3 is if my traffic was blocked. If it wasn't blocked, I would
4 send it the way they're sending it right now.

5 Q. Okay. Then I have another question for you,
6 if you know the answer. If Craw-Kan, for example, held Bell
7 liable for -- secondarily liable for an uncollected amount
8 from Western Wireless, could Bell -- rather than attempt to
9 collect that, could Bell just block any more traffic from
10 wireless, Western Wireless into Craw-Kan?

11 A. I don't believe I know that answer.

12 Q. Do you have any reason to believe that the
13 wireless companies here are not intending to pay terminating
14 charges that they've agreed to in this proceeding?

15 A. I'm not sure I understand the question.

16 Q. Okay. I didn't phrase it very well. The
17 wireless carriers have agreed to factors with every carrier
18 who's filed a complaint, right?

19 A. Yes.

20 Q. Do you have any reason to believe that those
21 wireless carriers will attempt to send traffic and then not
22 pay for it, based on those factors?

23 A. The only thing that earlier this morning
24 Mr. Williams, and I believe it was this afternoon, for
25 representing Western Wireless and T-Mobile stated that they

1 would pay for inter-MTA traffic. That's the only indication
2 I have that they would actually pay for it, but that would
3 be -- have to be seen.

4 Q. And if they did not, is it true that the
5 Complainants have the remedy of being able to ask Bell to
6 block the traffic?

7 A. They do have that remedy.

8 COMMISSIONER MURRAY: I believe that's all.
9 Thank you, Judge.

10 JUDGE THOMPSON: Thank you, Commissioner
11 Murray. Commissioner Forbis?

12 QUESTIONS BY COMMISSIONER FORBIS:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. I may wander around and this might make no
16 sense, but what the heck.

17 Reading in your additional rebuttal
18 testimony --

19 A. Okay.

20 Q. -- you say if the parties cannot agree -- on
21 page 7, line 14, you say if the parties cannot agree to an
22 inter-MTA factor, then Staff will have information available
23 for development of an inter-MTA factor. Okay. So -- and
24 then you go on and say that traffic study isn't sufficient
25 and there's all this problem about the handsets are mobile

1 and you can't track them and so on.

2 If the parties cannot agree to an MTA factor,
3 Staff -- with information available, what role do you think
4 Staff should play in determining what that factor should be
5 for the parties? Do you think Staff should set that factor,
6 provide information to the parties who are negotiating?
7 What do you think an appropriate role would be?

8 A. Okay. The reason I filed this additional
9 rebuttal testimony in this instance, when I filed this
10 additional rebuttal testimony there was an agreement between
11 T-Mobile and the Complainants for factors. There was no
12 agreement between Western Wireless and the Complainants at
13 that time.

14 And from my perspective, we have to know the
15 traffic to know which tariff to apply the correct traffic
16 to. So if -- basically, if Western would not agree to
17 factors that, based on the information that I requested,
18 that I could possibly come up with factors myself.

19 Q. Because I probably didn't state that too
20 clear, because there's been some argument that perhaps the
21 negotiation process hasn't -- that resulted in these factors
22 wasn't sufficient, if that's fair. At least that's kind of
23 my impression. So you think Staff could get enough
24 information to come up with another set of factors?

25 A. I could, but the first -- my first preference

1 would be that the parties would work out factors themselves.
2 And then as long as it was not discriminatory to any party,
3 then I would be -- I would accept those factors.

4 Q. Okay. There's a list of information here, I
5 gather, on page 10 that you would need in order to develop
6 your own factors?

7 A. That is correct.

8 Q. Mr. Williams, I think, talked about how
9 expensive and difficult that might be, from his perspective
10 earlier today, if I have -- I believe it was Mr. Williams.
11 So to try to develop something on your own or on Staff's
12 own, absent accepting a negotiated set of factors, you would
13 agree or disagree that it's very complicated, expensive,
14 time consuming and so on, and it would be a challenge maybe
15 for the companies to provide it?

16 A. Not these five recommendations. In fact, I
17 sent out Data Requests to get information on these -- on
18 this information, and they have been supplied to me.

19 What Mr. Williams, I believe, was stating,
20 that if you went to the cell site, the original location of
21 the call and they had to get that information in a record to
22 actually know then where each call -- where it had
23 originated from and where it terminated from, that would be
24 very expensive.

25 No, this information here is the same

1 information that basically is used in any interconnection
2 negotiation agreement that -- that's -- where factors are
3 developed.

4 Q. So Staff could create, if you will, another
5 set of factors by using the same approach you're talking
6 about now through the negotiation process?

7 A. Yes, if -- if they didn't agree to factors.

8 Q. Yes. Okay.

9 COMMISSIONER FORBIS: That's all I have.
10 Thank you.

11 JUDGE THOMPSON: Thank you, Commissioner
12 Forbis. Chairman Gaw?

13 QUESTIONS BY CHAIRMAN GAW:

14 Q. Mr. Scheperle, where in your testimony do I
15 find where the Staff -- where you supported Staff's position
16 that Bell not be held secondarily liable?

17 A. It's in my additional rebuttal testimony, but
18 that's only a summary of rebuttal testimony that I filed
19 last September of 2002. It's my original rebuttal
20 testimony, and that's already been submitted into evidence
21 and briefed and Reply Briefs based on that.

22 Q. Can you give me -- can you give me the page
23 number or page numbers that that position is shown in?

24 A. Are you talking about my rebuttal or
25 additional rebuttal? I have two sets.

1 Q. I want to know where your explanation is as to
2 that position. If it's in the original and rebuttal, that's
3 fine with me.

4 A. Actually, it starts on probably page 5,
5 line 20 -- line 22's the question. But with secondary
6 liability, it might be on page 5, starting with line 31
7 where I ask myself that direct question, and this probably
8 continues for the next four or five pages on there. It
9 actually concludes on page 8, line 3.

10 Q. I'll look at that again. Where is -- if this
11 Commission is examining whether or not there's support for
12 the agreement that has been reached by the parties in the
13 nonunanimous stipulation filed in this case, on the factors
14 involving the three companies, independent of that agreement
15 which is nonunanimous, what would this Commission rely upon
16 in supporting that as an appropriate methodology for
17 determining those factors to be appropriate?

18 What is there in this -- in the record that
19 would allow this Commission to suggest to a court on review
20 that those -- that those factors are the right factors or
21 appropriate factor?

22 A. Okay. My answer would be, I would go back to
23 the original complaint in there, and it has to do with
24 traffic to third-party providers. There's a section in
25 there in the interconnection agreement between T-Mobile, or

1 Voicestream at that time, and Southwestern Bell, and there's
2 a section traffic to third-party providers in the Western
3 Wireless and Southwestern Bell interconnection agreements.
4 I believe it's Section 3.1.3. I don't know if anybody has
5 the original complaint, but I believe it's on page 10, and
6 it's language in there. Let me get that.

7 I'm reading from the interconnection agreement
8 between Western Wireless and Southwestern Bell Telephone
9 Company, but it's the same exact language that's in the
10 interconnection agreement between Voicestream and
11 Southwestern Bell. And what it is, is traffic to
12 third-party providers, which is what this case is about. It
13 says, quote, carrier and Southwestern Bell shall compensate
14 each other for traffic that transits their respective
15 systems to any third-party provider as specified in appendix
16 pricing.

17 To specifically answer your question, this
18 next sentence says, the parties agree to enter into their
19 own agreements with third-party providers. To us, that
20 means that the parties agree -- in this case that is
21 Voicestream and Western Wireless -- agree to enter their own
22 agreements with third-party providers.

23 To me that means that that should just be
24 between those two companies, which is the -- which is the
25 wireless carrier and small LEC or each individual small --

1 or Complainant in this case. And Southwestern Bell does not
2 need to be involved in that negotiation.

3 Q. Is that the rationale -- I'm a little
4 confused. Is that your rationale for why Southwestern Bell
5 shouldn't be held secondarily liable or is that your
6 rationale for why these factors are the appropriate factors?

7 A. That's why the factors are the appropriate
8 factors and they're not discriminatory to any party. It has
9 nothing to do with the secondary liability issue.

10 Q. Okay. Well, if there was -- barring an
11 agreement in this case, would Staff support these factors as
12 the appropriate factors that you have sufficient information
13 in the record to say that these factors are the appropriate
14 factors?

15 A. I believe the only factors that are basically
16 in the record are the ones that were filed as the
17 nonunanimous stip. And I would support those factors,
18 because each party is looking out for themselves, and
19 they're not really discriminatory to any other party.

20 Q. You've seen the testimony that was filed in
21 this case or this portion of the case, Mr. Scheperle?

22 A. Yes.

23 Q. And you've seen the rationale that's been
24 given by the witnesses about why those factors ought to be
25 appropriate factors or within the range of appropriate

1 factors, haven't you?

2 A. Yes.

3 Q. In regard to where the LATAs are located and
4 where the MTA areas are located, where the calls might be
5 coming from, did you analyze any of that? Did you take into
6 account any of that in coming to the conclusion that these
7 factors are appropriate?

8 A. Yes, I did do some analysis myself on those.

9 Q. Well, what did you think of it?

10 A. I'm fine with it. I mean, some of the factors
11 may be high, but I've looked at the volume of traffic that
12 was for -- that was coming from these wireless carriers to
13 these three carriers.

14 In some cases, from my Data Requests that I
15 sent out, in a couple cases Western Wireless for the last
16 five months has not terminated any traffic through
17 Southwestern Bell to these companies. So if they agree to
18 53 percent, there's no traffic. It's basically being
19 carried by an IXC. So they agreed to it, but it's --
20 there -- there's no money involved here. So I don't -- I
21 support that. And each carrier is looking out for their own
22 self interest.

23 Q. I understand that, but that's going back to
24 that -- as I understand it, to a deference given to the
25 agreement between these parties as they negotiated it. What

1 I'm asking you is the rationale that was in the testimony
2 about how they might come to this as an appropriate factor
3 and that I had -- that is in the testimony and that's been
4 filed in the record, is that consistent with what you think
5 should be analyzed with what information is available in the
6 record in concluding that those are the right factors or a
7 factor that's acceptable, or did you analyze that?

8 A. I'm not sure I'm understanding the question.

9 Q. Well, my question is -- my question is whether
10 or not the only consideration that you have given to
11 approving this is because the two parties decided they were
12 going to agree to it, or whether it was more than that?

13 A. I've actually analyzed some of the traffic
14 that was going to some of these parties, and but the -- the
15 basic criteria was that when they agreed to the factors,
16 that I supported them.

17 Q. Well, let me ask you this: If they had said
18 if one -- in a couple of cases they have 53 percent factor,
19 correct?

20 A. Yes.

21 Q. If they'd agree to 100 percent, would you
22 think that was okay?

23 A. Actually, for BPS, for where Western Wireless
24 cell sites are, it could have been 95 percent and I would
25 have thought it would have been appropriate.

1 Q. And why? Why is that?

2 A. Because basically, like, Western Wireless in

3 Missouri has 11 cell sites; 9 of them are in the Kansas City

4 MTA and 2 are in the St. Louis MTA. But they're -- they're

5 just barely in the St. Louis MTA, but they're still in the

6 St. Louis MTA. And traffic that would be going to the

7 southeast corner of the state, except for those two

8 exchanges out of the 11, all of it would cross an MTA

9 boundary and it would be inter-MTA traffic.

10 Q. Well, it looks look nearly all of it should be

11 inter-MTA traffic?

12 A. That is correct.

13 Q. But they've decided on a factor that was

14 53 percent?

15 A. 53 percent, yes.

16 Q. So you think, if anything, it's -- that's on

17 the low side?

18 A. In that case, I would say it's on the low

19 side.

20 Q. All right. That's a start. How about the

21 rest of it?

22 A. Okay. The one for Craw-Kan, I believe they

23 adopted 53 percent for Western Wireless. That's way too

24 high, but I also looked at --

25 Q. Wait a minute.

1 A. Okay.

2 Q. Don't go too far ahead of me. Why is that way
3 too high, in your opinion?

4 A. Because all of Craw-Kan exchanges are in the
5 Kansas City MTA. And most of Western Wireless cell sites
6 are in the Kansas City MTA. In Missouri, most of them are,
7 and they have a big presence in Kansas. So there would
8 be -- 53 percent is too high.

9 Q. What do you think is a more appropriate
10 figure?

11 A. Probably would be -- I still have out Data
12 Requests to understand some more information, but it would
13 be -- I don't know, but let me answer it this way. That for
14 Craw-Kan from Western Wireless I analyzed, like, the last
15 five months. Okay. They averaged 35 minutes per month
16 that's terminated. Okay. There's only, like, 1.67 cents
17 difference between the switched access rate and their
18 wireless termination rate, so when you did that, there's,
19 like, 58 cents different.

20 Now, if you applied 53 percent factoring,
21 you're talking about 31 cents a month. To me, that's just
22 not worth fighting over, so I -- if the parties are willing
23 to agree to 53, I'm fine with it. And Mr. Williams alluded
24 that it wasn't worth the effort to get it lowered, and I
25 understand that.

1 Q. Because -- because financially it doesn't make
2 that much difference?

3 A. That is correct and -- that is correct.

4 Q. Okay. We've got two. What have we got left?
5 What's left?

6 A. Well, BPS Telephone and Mark Twain from
7 Western Wireless for the last five months had zero traffic
8 going there. So whether you try 52 or 53 percent, it
9 doesn't make any difference. Now, Voicestream has --
10 Voicestream --

11 Q. Wait a minute now. Don't go too fast.

12 A. Okay.

13 Q. I have to catch up. Okay. There's no traffic
14 there. You don't have any history to go by. Is that what
15 you're saying?

16 A. No history. I --

17 Q. No track record of where the calls are coming
18 from in that five months, because there's no calls?

19 A. Let's just put it this way. From the CTUSR
20 reports, I know that Southwestern Bell is not transiting the
21 traffic there, which is at issue. Now, whether they are
22 popping some of that traffic out to an IXC that's not part
23 of this complaint case, so some traffic may go there, but
24 it's being carried by an IXC.

25 Q. All right. What's a factor that they agreed

1 to there?

2 A. Well, for BPS it was 52 percent. For Craw-Kan
3 and Mark Twain they agreed to 53 percent.

4 Q. All right. Do you have an opinion about
5 whether that's too high or too low?

6 A. Well, I've already stated on the record I
7 think for Craw-Kan for Western Wireless, I think that's way
8 too high.

9 Q. What about Mark Twain?

10 A. You'll have to -- I had worked up some papers.

11 Q. That's all right.

12 A. Mark Twain -- it's a lot more complicated, but
13 to answer your question, Mark Twain has 15 exchanges.
14 11 exchanges are in the Kansas City LATA and 4 exchanges are
15 in the St. Louis LATA, but the LATA really doesn't have that
16 much to do with it.

17 Of the 15 exchanges, they have 12 exchanges in
18 the St. Louis MTA and they've got 3 exchanges that are in
19 both the St. Louis MTA and the Des Moines, Iowa MTA. So it
20 gets -- it gets a little more complicated for that.

21 For Western Wireless, it looked like for Mark
22 Twain that the percent may be -- the 53 percent they agreed
23 to may be a little low. But like I said, there's zero
24 traffic coming there in the last five months.

25 Q. You don't have anything to read off of it

1 because you don't have any traffic, but you think it may be
2 too low. Why? Again, I think you've just said, but I want
3 you to --

4 A. Well, for Western Wireless, just looking at
5 their cell sites in Missouri, they have 11 cell sites;
6 9 are in the Kansas City MTA and 2 are in the St. Louis MTA,
7 and basically all 15 exchanges of Mark Twain are not in the
8 Kansas City MTA, they're in the St. Louis or Des Moines,
9 Iowa area.

10 So the percent would be very high. I mean,
11 everything crosses an MTA boundary except for the traffic
12 from the 2 exchanges that are actually in the St. Louis --
13 the 2 cell sites that are actually in the St. Louis MTA.

14 Q. What did we leave out? Have we got another
15 one?

16 A. I don't believe so. I mean, I'm dealing
17 strictly mostly with Western Wireless here. Now,
18 Voicestream has got a presence all over the state. And
19 since the company's agreed to the factors up front, I really
20 didn't do a comparison where Voicestream cell sites are
21 actually located, but I do know that they have a presence
22 all over the state.

23 Q. And how does that impact your analysis when
24 you do one, when you have more cell sites?

25 A. Well, you would take into account it basically

1 comes back to my 5-point recommendation if they can't work
2 out an agreement.

3 It's basically you have to look where the
4 small LEC's exchanges are located and what MTA area they're
5 located and where the cell sites of all this traffic is
6 located, how they route the traffic to these small LECs,
7 even though the routing of the traffic isn't important.
8 It's the original cell site location where it jumps on the
9 system. But how each one would be routed so I could
10 understand that.

11 Q. You don't have that information?

12 A. I do not.

13 Q. So it's hard for you to render an opinion
14 about whether those factors are too high or too low when
15 you're dealing with -- is it Voicestream?

16 A. Voicestream. That is correct. I knew up
17 front that -- early on before testimony was filed that there
18 was a nonunanimous stip where they'd agreed to that, to
19 those factors, and basically that's what Staff supports is
20 the parties work out an agreement for the factors
21 themselves.

22 So I knew that, but for Western Wireless, I
23 did not know that until they filed surrebuttal
24 testimony.

25 CHAIRMAN GAW: I think I'm done. Thank you,

1 Judge.

2 JUDGE THOMPSON: We're going to stop now for
3 the day and we will return tomorrow at nine a.m. I'll see
4 you at that time.

5 Thank you very much.

6 WHEREUPON, the hearing of this case was
7 recessed until November 7, 2003.

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