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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

HEARING

September 13, 2002
Jefferson City, Missouri
Volume 6

In the Matter of an Investigation)
of the Actual Costs Incurred in)
Providing Exchange Access Service) Case
and the Access Rates to be Charged) No. TR-2001-65
by Competitive Local Exchange)
Telecommunications Companies in)
the State of Missouri.)

BEFORE:

KEVIN A. THOMPSON, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.
CONNIE MURRAY,
SHEILA LUMPE,
STEVE GAW,
BRYAN FORBIS,
COMMISSIONERS.

REPORTED BY:

KRISTAL R. MURPHY, CSR, RPR, CCR
ASSOCIATED COURT REPORTERS

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P R O C E E D I N G S

JUDGE THOMPSON: Okay. We'll come to order now.

I believe the next witness is Mr. Kohly. Is that correct?

Do you want to go ahead and put Mr. Brandon's stuff in?

Why don't we do that? I apologize.

MR. DANDINO: Where is he?

JUDGE THOMPSON: Do you have some exhibits to mark?

MR. DORITY: We do. Thank you, Judge.

We have two pieces of testimony, Mr. Brandon's Direct Testimony, and it had a highly confidential schedule A attached. And, I guess, to be consistent with how we handled these yesterday, I believe we're ready for Exhibit 44.

JUDGE THOMPSON: Mr. Brandon's Direct Testimony will be marked as Exhibit 44. Highly confidential Schedule A will be marked as Exhibit 45.

MR. DORITY: And we have Rebuttal Testimony as well.

JUDGE THOMPSON: And that will be marked as Exhibit 46.

(EXHIBIT NOS. 44, 45-HC, AND 46 WERE MARKED

1 FOR IDENTIFICATION.)

2 MR. DORITY: Thank you.

3 And as you're aware, your Honor, the parties
4 have waived cross-examination of Mr. Brandon. It's my
5 understanding that the Commissioners have indicated
6 they have no questions. And on behalf of ALLTEL, I
7 want to express our appreciation for not having to
8 bring Mr. Brandon up here for the hearing. Thank you.

9 JUDGE THOMPSON: That's quite all right,
10 Mr. Dority.

11 Do I hear any objection to the receipt of
12 Exhibits 44, 45, or 46?

13 (No response.)

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

17 (EXHIBIT NOS. 44, 45-HC, AND 46 WERE
18 RECEIVED INTO EVIDENCE.)

19 JUDGE THOMPSON: Ms. DeCook?

20 Please spell your name for the reporter.

21 THE WITNESS: It's Matt Kohly, K-o-h-l-y.

22 JUDGE THOMPSON: Raise your right hand.

23 (Witness sworn.)

24 JUDGE THOMPSON: Thank you.

25 Please proceed.

1 MS. DeCOOK: We have some exhibits to mark.

2 JUDGE THOMPSON: Okay.

3 MS. DeCOOK: We will have Mr. Kohly's
4 Direct, which I understand will be marked as 47.

5 JUDGE THOMPSON: That's correct.

6 MS. DeCOOK: Mr. Kohly's Surrebuttal marked
7 as 48.

8 JUDGE THOMPSON: Very well.

9 MS. DeCOOK: And then we have an errata
10 sheet for Mr. Kohly's Surrebuttal. And we apologize
11 for Mr. Kohly's typing skills, and perhaps others.

12 (EXHIBIT NO. 47, 48, AND 49 WERE MARKED FOR
13 IDENTIFICATION.)

14 R. MATTHEW KOHLY testified as follows:

15 DIRECT EXAMINATION BY MS. DeCOOK:

16 Q. Could you state your name and business
17 address for the record?

18 A. My name is Matt Kohly, and that's K-o-h-l-y.
19 My business address is 101 West McCarty, Suite 216.

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

22 A. I'm employed by AT&T. I'm here representing
23 AT&T Communications of the Southwest, TCG St. Louis,
24 and TCG Kansas City.

25 Q. And did you cause to have prefiled what's

1 been marked as Exhibits 47, 48, and 49, and that would
2 be your Direct, Surrebuttal and the errata sheet?

3 A. Yes, I did.

4 Q. And the errata sheet represents changes that
5 you've made to your Surrebuttal?

6 A. Yes.

7 Q. And if I were to ask you the questions
8 contained in Exhibits 47 and 48 with the revisions
9 reflected in Exhibit 49, would your answers here today
10 under oath be the same as they were in that testimony?

11 A. Yes, they would.

12 Q. And is that testimony true and accurate --
13 is it true and accurate to the best of your knowledge,
14 information and belief?

15 A. Yes, it is.

16 MS. DeCOOK: With that I would move the
17 admission of Exhibits 47, 48, and 49.

18 JUDGE THOMPSON: Do I hear any objections to
19 the receipt of Exhibits 47, 48, or 49?

20 MR. LANE: Yes, your Honor. Southwestern
21 Bell has an objection to portions of the Surrebuttal
22 testimony of Mr. Kohly.

23 JUDGE THOMPSON: Exhibit 48.

24 MR. LANE: Exhibit 48, to portions of that.

25 First would be the Surrebuttal Testimony

1 that begins on page 7, line 1, and goes through to
2 page 9, line 15. And then the second piece would be
3 from the Surrebuttal Testimony beginning page 9,
4 line 16 to page 12, line 15.

5 MS. DeCOOK: I'm sorry. Could you repeat
6 the second one?

7 MR. LANE: Page 9, line 16 through page 12,
8 line 15.

9 MS. DeCOOK: And the first one was
10 line (sic) 7, line 1 through line 15.

11 MR. LANE: Page 7, line 1 through page 9,
12 line 15.

13 JUDGE THOMPSON: Do you have an extra copy
14 of Mr. Kohly's Surrebuttal?

15 MS. DeCOOK: I don't believe so, your Honor.

16 MR. DANDINO: Here, I have it.

17 MS. DeCOOK: My other witness would, but
18 he's not here.

19 JUDGE THOMPSON: What is the basis of your
20 objection, Mr. Lane?

21 MR. LANE: With regard to the portion of the
22 Surrebuttal Testimony that begins on page 7, line 1
23 and goes through page 9, line 15, our objection would
24 be that this is not proper Surrebuttal Testimony under
25 the Commission's rules and that it's not responsive to

1 any Rebuttal Testimony filed by a party to this case.

2 Mr. Kohly cites in his question that he asks
3 himself, "Some parties have argued that monopoly
4 switched access providers have no incentive to
5 discriminate against long distance competitors because
6 they would lose the profit they are making on access
7 as a result."

8 There is no Rebuttal Testimony of any party
9 to this case that makes that argument. Mr. Kohly is
10 cobbling from arguments that were made in other cases
11 before this Commission. It's not responsive to any
12 Rebuttal Testimony in this case. The parties are
13 prejudiced by their inability to respond to an
14 argument that's made for the first time in Surrebuttal
15 Testimony.

16 Do you want me to do the second one now,
17 Judge?

18 JUDGE THOMPSON: Yes, please.

19 MR. LANE: With regard to Surrebuttal
20 Testimony, page 9, line 16 to page 12, line 15,
21 Mr. Kohly purports to present TSLRIC estimates of cost
22 of switched access in Missouri for a group of several
23 companies including Verizon, Southwestern Bell,
24 Sprint, Spectra, Orchard Farm, New London, and
25 Stoutland, and gives his rationale for this.

1 This case was established to look at the
2 access -- the cost of providing access. This
3 information could have been presented in Direct
4 Testimony had Mr. Kohly chosen to do so. It could
5 have been presented in Rebuttal Testimony as a
6 response to the cost studies that were filed by Staff,
7 Sprint, or by Southwestern Bell. But Mr. Kohly chose
8 not to do so.

9 Presenting it now in Surrebuttal Testimony,
10 the parties don't have an opportunity to respond to it
11 and are prejudiced thereby, and it's improper under
12 the Commission's rule in that it is not responsive to
13 Rebuttal Testimony. If it's responsive to anything,
14 it's responsive to Direct.

15 JUDGE THOMPSON: And what particular
16 Commission rule are you citing?

17 MR. LANE: It would be 4 CSR 240-2.130,
18 subsections 7 and 8.

19 JUDGE THOMPSON: Okay.

20 MR. LANE: Subsection 7 identifies what
21 proper Direct, Rebuttal, and Surrebuttal Testimony is.
22 It says specifically under subpart D of subsection 7,
23 "Surrebuttal Testimony should be limited to material
24 which is responsive to matters raised in another
25 party's Rebuttal Testimony."

1 JUDGE THOMPSON: So your objection in both
2 cases to both excerpts is the same, that it's not
3 proper Surrebuttal?

4 MR. LANE: Yes, your Honor.

5 JUDGE THOMPSON: Okay. Do you have a
6 response, Ms. DeCook?

7 MR. ENGLAND: Excuse me, your Honor.

8 JUDGE THOMPSON: Yes, Mr. England.

9 MR. ENGLAND: I would like to join in that
10 objection and would like to do so before Ms. DeCook
11 has the opportunity to respond.

12 As I said, I concur with Mr. Lane's
13 objection. Frankly, I think he's being judicious in
14 his selective -- or selection of that portion of
15 Mr. Kohly's Surrebuttal that is not properly couched,
16 in my opinion, as Surrebuttal Testimony. So I'm
17 willing to stand on Mr. Lane's excerpts.

18 In the Order Establishing Procedural
19 Schedule in this case, I believe that was issued
20 March 14th this year, at least in the copy I have,
21 page 10 -- excuse me -- page 12, there is an
22 enumerated paragraph No. 2. It says, "The parties
23 shall comply with the following conditions." This is
24 after you set out the procedural schedule.

25 "Commission will require the prefiling of

1 testimony as defined in 4 CSR 240-2.130. All parties
2 shall comply with this rule, including the requirement
3 that testimony be filed on lined, numbered pages."
4 And then this is some of your regular boiler plate in
5 my experience, but I want to emphasize the second
6 sentence, because I think it's the heart of Mr. Lane's
7 objection, certainly my concurrence.

8 This practice of prefiling testimony is
9 designed to give parties notice of the claims,
10 contentions, and evidence in issue and to avoid
11 unnecessary objections and delays caused by
12 allegations of unfair surprise at the hearing. That's
13 exactly what we have here.

14 If you look at the testimony that Mr. Lane
15 has identified in Mr. Kohly's Surrebuttal Testimony,
16 as he indicated, the first excerpt is clearly not
17 responsive to anything in Rebuttal Testimony. And the
18 second portion, while it could be argued it is
19 responsive to Rebuttal Testimony, is clearly an
20 affirmative position of this party as to what is an
21 appropriate -- and I say hesitate to say cost, because
22 I believe it is a surrogate as opposed to a cost, but
23 I'll give AT&T the benefit of the doubt and call it
24 cost.

25 The procedural schedule in this case made it

1 pretty darn clear that people were to notify the
2 Commission and the parties if they intended to produce
3 their own cost study and to file same with Direct
4 Testimony on July 1, which, obviously, did not happen
5 here. We now have a new proposal for costing access,
6 if you will, in the Surrebuttal Testimony of this case
7 filed not much more than a week before hearing.

8 I believe there is a great deal of surprise
9 and prejudice involved in this tactic and would
10 therefore concur in Mr. Lane's objection.

11 JUDGE THOMPSON: Well, before we hear from
12 Ms. DeCook, is there anyone else who would like to
13 join in the objection or raise an objection of their
14 own?

15 (No response.)

16 JUDGE THOMPSON: Okay. And also before we
17 hear from Ms. DeCook, I would like to hear exactly
18 what the prejudice is?

19 MR. LANE: Your Honor --

20 JUDGE THOMPSON: Mr. Lane?

21 MR. LANE: -- on the first piece of it, he
22 raises arguments that -- responses to arguments that
23 weren't made in this docket, and if the Commission
24 relies on it, they do so without having given the
25 other parties to the case, especially Southwestern

1 Bell whom I represent, the opportunity to present an
2 opposing view. It's also true with regard to the
3 second part of it where he raises surrogate costs.

4 After Surrebuttal Testimony is filed there
5 is no other opportunity to file testimony in the case
6 and the parties don't have an opportunity to respond
7 to point out in their own affirmative case the
8 problems with the proposal advanced by AT&T. All
9 we're left with if it were to be admitted would be an
10 opportunity to cross-examine, which is not the same as
11 the opportunity to present your own witnesses with
12 their own views in response to the testimony.

13 JUDGE THOMPSON: Could you not have moved
14 for an opportunity to supplement?

15 MR. LANE: Your Honor, I think the rule
16 doesn't permit that.

17 JUDGE THOMPSON: I think rule 8 specifically
18 permits that, subsection 8 of rule 130.

19 MR. LANE: Well, your Honor, if the
20 Surrebuttal Testimony itself is improper, the proper
21 motion in my opinion is to have that not admitted into
22 evidence as violation of the rules. It's not
23 incumbent upon Southwestern Bell or the other parties
24 to this case to try to seek a remedy for one other
25 party's violation of the Commission's order and the

1 Commission's rule.

2 JUDGE THOMPSON: Very well. Ms. DeCook, do
3 you have a response?

4 MS. DeCOOK: I do, your Honor.

5 Let me take the first segment first, and
6 that is arguments that Mr. Kohly made that relate to
7 argument that were made by parties in the past as to
8 why TSLRIC is not the appropriate cost standard, why
9 other cost standards are more appropriate, and what
10 the incentives are of the parties if cost-- costing
11 and pricing is not based on a TSLRIC standard.

12 One of the issues that was agreed to as an
13 issue in this case is what is the appropriate cost
14 standard. Mr. Kohly's testimony is in direct response
15 to testimony and opinions -- testimonies filed and
16 opinions rendered by parties in this case that some
17 cost standard other than TSLRIC is the relevant cost
18 standard. Those arguments were predominantly
19 crystalized in the Rebuttal Testimony of the Small
20 Independent Companies and the OPC in their Rebuttal
21 round. So I think this is fully appropriate
22 Rebuttal -- Surrebuttal Testimony.

23 And I was going to say, as you indicated,
24 that there is an opportunity at any point in the
25 proceeding for counsel to request an opportunity to

1 supplement if they believe that there is a new issue
2 that's been raised in Surrebuttal Testimony that they
3 feel they have been deprived the opportunity to
4 address. They chose not to do that; instead to wait
5 and to move to strike Mr. Kohly's testimony. I think
6 that's equally inappropriate.

7 The proper procedure would have been for
8 them to seek to supplement. If you had denied that
9 request, then perhaps they would have an argument, but
10 since they did not make that request, I think they
11 have essentially waived their argument at this point
12 of prejudice.

13 To address the second issue, which is the
14 testimony that AT&T -- Mr. Kohly puts in regarding the
15 cost of switched access, I think AT&T has been in a
16 fairly unique position in this case, and, in part,
17 with all due respect to the Court, I think our
18 positions in this case have been driven by the fact
19 that we don't have access to the cost studies of SWBT
20 and the other parties that have designated their cost
21 studies as highly confidential.

22 And I find it ironic that -- that it is SWBT
23 here who is propounding this motion, given that we
24 have not been able to see their cost study, and their
25 cost study was the primary vehicle that was used by

1 Dr. Johnson in his analysis in this case.

2 We were ever hopeful that we would get a
3 ruling from the Bench before we filed our testimony.
4 Given that there was no ruling forthcoming, we
5 presented to you what we have as our only information
6 as to a benchmark that the Commission can use to
7 determine whether the studies that have been presented
8 by many of the companies in their Rebuttal round have
9 any basis, legitimate basis, from a TSLRIC standpoint.

10 So it wasn't until the Rebuttal round that
11 most parties put in their actual numbers, and we had
12 some numbers that we could compare and provide a
13 contrasting position to.

14 So on that basis, I believe that this is
15 proper Surrebuttal Testimony.

16 JUDGE THOMPSON: Mr. England?

17 MR. ENGLAND: Thank you, your Honor.

18 Just for the record, the small ILECs
19 presented their direct cost study, which I feel pretty
20 confident AT&T doesn't believe in it being a fully
21 allocated or fully distributed cost study, but,
22 nevertheless, we did on July 1 and at least marked the
23 summary pages of that cost study proprietary as well
24 as the results. So I think that was available to
25 AT&T. Whether they liked it or not, of course, is a

1 different matter.

2 I think the guts of the -- of the problem,
3 though, is that the information -- regardless of
4 AT&T's posture and difficulty in reviewing certain
5 highly confidential information, the guts of
6 Mr. Kohly's presentation is a proposal that the
7 Commission accept as surrogate certain rates that are
8 contained in interconnection agreement with
9 competitive local exchange carriers, as I understand,
10 or with wireless companies.

11 That information and that position could
12 have been articulated on July 1. There is -- there is
13 no inability on AT&T's part to make that presentation
14 or that suggestion at that point in time, and even if
15 we were still debating at that point in time their
16 access to highly confidential information, certainly
17 that was resolved by, I believe, your order sometime
18 in July not modifying the protective order, so we all
19 knew where we stood at that point. And certainly this
20 presentation could have been made in Rebuttal, giving
21 us an opportunity to respond.

22 And I do think it's -- it's not fair for us
23 to have to respond immediately with a motion to
24 supplement when AT&T, we believe, hasn't complied with
25 the rules. I think the first questions is, Have they

1 complied with the rules? And if not, the appropriate
2 sanction is to strike that portion of the testimony
3 that doesn't apply.

4 JUDGE THOMPSON: Thank you, Mr. England.
5 Mr. Lane?

6 MR. LANE: And I'll be real brief, your
7 Honor.

8 The second part of the objection where AT&T
9 lays out the surrogate costs for several companies, I
10 think Ms. DeCook probably inaccurately stated that
11 that information from the other companies wasn't
12 presented until Rebuttal. It was actually presented
13 in Direct by all of the parties.

14 Sprint proposed its cost studies in its
15 Direct Testimony. So did Southwestern Bell. So did
16 the Small Telephone Company Group. So did the Staff
17 on behalf of the others.

18 With regard to the first objection about the
19 "price squeeze-type argument," I think probably it's
20 most instructive to look at the -- at the question
21 itself. Some parties have argued, as the judge is
22 aware and the Commissioners are aware, that the
23 parties typically cite to who said it in their
24 Rebuttal and where they said it in their Rebuttal.
25 The fact that it's not here is a pretty strong

1 indication that it wasn't part of Rebuttal Testimony,
2 and Ms. DeCook hasn't cited any particular Rebuttal
3 Testimony where a price squeeze argument was raised at
4 all.

5 JUDGE THOMPSON: Okay. Ms. DeCook, further
6 comments?

7 MS. DeCOOK: Well, with respect to the price
8 squeeze argument, I think the fact that there isn't a
9 specific reference to a particular witness ignores the
10 fact that this was -- the impact of pricing at TSLRIC
11 versus some other cost standard was directly addressed
12 by many parties in their Rebuttal Testimony, and I
13 think it's entirely proper for a witness responding in
14 Rebuttal -- Surrebuttal round to provide their full
15 explanation as to why they believe that TSLRIC is the
16 appropriate cost standard and the impact of adopting
17 another cost standard.

18 So the fact that there isn't an explicit
19 reference does not -- is not fatal in my opinion to
20 whether this testimony is permitted or not.

21 JUDGE THOMPSON: Okay. Here's what we're
22 going to do: I am fully cognizant of the surprise
23 that the objectors are citing with respect to seeing
24 something in Surrebuttal for the first time. There is
25 also however an element of surprise that AT&T is

1 facing this objection today without having seen it in
2 writing prior to the start of the hearing.

3 So what I'm going to do is recess the
4 hearing for one hour. I'm going to allow Ms. DeCook
5 to go through the various pieces of Rebuttal
6 Testimony, and when we come back, you can show me
7 exactly what it is that these portions of Mr. Kohly's
8 testimony are responding to. And I think then we will
9 rule based on what you are able to show me at that
10 time.

11 So we will be in recess until five minutes
12 to 10:00.

13 (A recess was taken.)

14 JUDGE THOMPSON: Ms. DeCook is back, so
15 we'll go ahead and go back on the record at this time.

16 Ms. DeCook, have you done your homework
17 assignment?

18 MS. DeCOOK: In the hour permitted, we did
19 our best.

20 JUDGE THOMPSON: Do you need more time?

21 MS. DeCOOK: Working through pink paper was
22 a challenge since our witnesses can't look at pink
23 paper.

24 Starting with the issue of the -- I don't
25 have Mr. Kohly's testimony in front of me -- the

1 issues raised in pages 9 through 12 on the TSLRIC
2 surrogates, first, I would note that -- just a second.

3 JUDGE THOMPSON: All right.

4 MS. DeCOOK: First, I would note that these
5 are not AT&T's cost studies. They are surrogates.
6 They were never offered as cost studies. They don't
7 serve that purpose. Rather, they serve the purpose of
8 assisting the Commission in determining the impact of
9 moving to TSLRIC.

10 And, second, they were offered for the
11 purpose of evaluating -- allowing the Commission to
12 evaluate the various TSLRIC proposals that have been
13 made by other parties.

14 The reason why they were offered in Rebuttal
15 specifically was because Mr. Kohly, not being privy to
16 any of the TSLRIC studies or the results, the first
17 evidence that he had of any TSLRIC numbers were
18 averages that appeared in Mr. Warinner's testimony --
19 and let me pull that -- in his Rebuttal Testimony in
20 two spots, page 13. In the response, it appears page
21 (sic) 7 through page (sic) 21, where Mr. Warinner is
22 providing the forward-looking cost estimates of
23 Holway.

24 JUDGE THOMPSON: Okay. Hang on a moment.

25 Page 13 and pages 7 through 2?

1 MS. DeCOOK: Page 13, lines 7 through 21 --

2 JUDGE THOMPSON: Okay. Very good.

3 MS. DeCOOK: -- which is where he presents
4 the Holway cost results -- he labels them rates, but I
5 believe they were costs.

6 JUDGE THOMPSON: Very good.

7 MS. DeCOOK: Also on page 18, where he
8 identifies the average TSLRIC cost for small
9 companies, the range, which is on page 18, and the
10 testimony that starts on page -- on line 13 and
11 continues on through 19.

12 And from Mr. Kohly's perspective, that's the
13 only numbers, TSLRIC numbers, he's seen, and that was
14 what was relevant to him responding to provide the
15 Commission a surrogate or a proxy that they could use
16 for benchmarking the rates that have been proposed by
17 other parties.

18 I would also note that the other aspect that
19 sparked Mr. Kohly to provide the testimony on pages 9
20 through 12 is the various criticisms that were leveled
21 by the various large LECs against Ben Johnson TSLRIC
22 results. He hasn't seen those, but the only way that
23 he could provide the Commission with any benchmark
24 from which to assess and evaluate the criticisms of
25 the various companies was to provide what he believed

1 to be an appropriate TSLRIC surrogate so they could
2 see whether the results of Mr. Johnson were --
3 Dr. Johnson were in the range of reasonableness. And
4 that was the purpose for which -- at least one of the
5 purposes for which the TSLRIC surrogate was proffered.

6 JUDGE THOMPSON: And these criticisms about
7 Dr. Johnson's study, these appear primarily in
8 Rebuttal Testimony?

9 MS. DeCOOK: They did. And I can kind of go
10 through what we were able to pull together --

11 JUDGE THOMPSON: Okay.

12 MS. DeCOOK: -- in the hour. And this is,
13 Mr. Barch criticizes Staff TSLRIC -- Dr. Johnson's
14 TSLRIC in his Rebuttal, pages 2 through 14.
15 Mr. Schoonmaker also criticizes the various TSLRIC
16 studies throughout his Rebuttal Testimony, including
17 specifically criticizes Dr. Johnson's TSLRIC study
18 results at page -- towards -- from about seven to the
19 end of his testimo-- Rebuttal Testimony.

20 Mr. Warinner is contrasting the SWBT,
21 Sprint, and Johnson TSLRICs in his Rebuttal Testimony.
22 He's criticizing all of them. He's also got specific
23 criticisms of Dr. Johnson's at pages 12 and 13, and he
24 also criticizes in general the use of TSLRIC studies
25 at pages 14 through 16.

1 JUDGE THOMPSON: Very well.

2 MS. DeCOOK: And Ms. Meisenheimer in her
3 Rebuttal at page 16 criticizes the use in general of
4 TSLRIC or forward-looking economic costs.

5 And we didn't get to Sprint, so --

6 JUDGE THOMPSON: Okay. Do the objectors
7 want to weigh in one last time before I rule?

8 MR. ENGLAND: I guess I'll go first, your
9 Honor, since Mr. Warinner is mentioned first.

10 Apparently, the -- first of all, I would
11 remark that I think the effort to bootstrap based on
12 these cites in Mr. Warinner's testimony are tenuous at
13 best.

14 The first was his reference to a
15 forward-looking incremental cost model prepared by one
16 of the Small Telephone Companies for another matter
17 and he simply offered that to show that different
18 models produce different results. And it only has to
19 do with Holway Telephone Company. For AT&T then to
20 bootstrap into providing a surrogate TSLRIC proposal
21 for every other party to the case to me seems a little
22 overbroad and far-reaching.

23 The second reference had to do with, I
24 believe, Mr. Warinner's reference of average rates
25 produced by Johnson's -- excuse me -- Dr. Johnson's

1 study. That was later in his -- in his Rebuttal
2 Testimony, but that's simply a reiteration of what he
3 said in his Direct. He -- he talks about those
4 averages in his Direct Testimony, pages 7 and 8 and
5 other places. So that information was -- that was not
6 revealed for the first time in his Rebuttal Testimony.
7 That was also in his Direct Testimony.

8 I think the critical question is, What
9 information did Mr. Kohly not possess prior to the
10 filing of Rebuttal Testimony in this case that became
11 available in Rebuttal Testimony that allowed him to
12 then make his presentation regarding surrogates? And
13 I submit to you that all of that information was
14 information that existed well prior to the filing of
15 Rebuttal Testimony, Direct Testimony in this case and
16 could have been presented at any time prior to the
17 Surrebuttal. Thank you.

18 JUDGE THOMPSON: Thank you.

19 Mr. Lane?

20 MR. LANE: I would concur with what
21 Mr. England said, and I'd point out that the table
22 that Mr. Kohly presents on page 11 of his testimony
23 where it goes Verizon, Southwestern Bell, Sprint
24 Spectra, Orchard Farm, New London, and Stoutland, all
25 of those companies had produced their cost studies and

1 their -- in their Direct Testimony that was filed in
2 the case, and that this information is responsive, if
3 at all, to that Direct Testimony and could have been
4 presented in Rebuttal -- should have been presented in
5 Rebuttal Testimony, if not Direct.

6 And I would concur with Mr. England that all
7 of the information is presented in the Surrebuttal
8 Testimony was "publicly available" information that
9 was obviously available at the time the Rebuttal was
10 filed as well, if not Direct.

11 JUDGE THOMPSON: Thank you.

12 With respect to the passage objected to
13 that's on pages 9 through 12 -- page 9, starting at
14 line 16, running through to page 12, ending at
15 line 15, I find that the testimony is proper
16 Surrebuttal Testimony and overrule the objection.

17 Would you like to speak to the other
18 passage?

19 MS. DeCOOK: Yes, your Honor. I think that
20 one will be quicker.

21 The second passage relates to Mr. Kohly's
22 rationale for why it's appropriate to not just base
23 your pricing decision on TSLRIC but to price at
24 TSLRIC, and his -- the testimony that is -- the
25 parties seek to strike is his -- at least part of his

1 rationale as to why it's appropriate to price at
2 TSLRIC, and that is in direct response to Mr. Barch's
3 testimony in his Rebuttal where he says that TSLRIC is
4 appropriate for use in pricing decisions.

5 And he is responding to say that it's not
6 just that you base pricing decisions on TSLRIC, but
7 you actually should be pricing the TSLRIC. And that
8 was in his Rebuttal in the Conclusion at page 18.

9 JUDGE THOMPSON: Okay. Anything else?

10 MS. DeCOOK: Just -- you will note that on
11 page 6, starting at line 8 is where the discussion
12 about -- of Mr. Kohly's testimony is where the
13 discussion begins about the concept of pricing at
14 access as opposed to just simply looking at TSLRIC
15 costs.

16 That's all I have for now.

17 JUDGE THOMPSON: Okay. Mr. England?

18 MR. ENGLAND: I don't have a dog in the
19 fight on this one, your Honor. I think it's more
20 Mr. Lane's. I'll let him respond.

21 JUDGE THOMPSON: Thank you.

22 Mr. Lane?

23 MR. LANE: I'll be the dog.

24 If you'll look, your Honor, on page 7 of
25 Mr. Kohly's Surrebuttal Testimony, the question that

1 he asks is, "Some parties have argued that monopoly
2 switched access providers have no incentive to
3 discriminate against long distance competitors because
4 they would lose the profit they are making on access
5 as a result."

6 The passage that's cited by Ms. DeCook in
7 her response, nowhere is the argument made in
8 Mr. Barch's Rebuttal Testimony that monopoly switched
9 access providers have no incentive to discriminate
10 against long distance competitors because they would
11 lose the profit they are making on access.

12 This is an argument that was raised and
13 debated in front of the Commission in Case
14 No. GO-99-227 which was Southwestern Bell's
15 application for 271 authority. Mr. Kohly made those
16 arguments in that case. They were responded to by
17 Mr. Brandon and by -- well, Mr. Brandon was the one
18 who was primarily responding to that. No arguments
19 were advanced on that issue in this case, period.

20 JUDGE THOMPSON: Okay. I find that the
21 objected to material beginning on page 7 at line 1 and
22 continuing until page 9 at line 15 is improper
23 Surrebuttal and will be stricken.

24 MS. DeCOOK: Mr. Kohly is available for
25 cross.

1 JUDGE THOMPSON: Exhibits 47 and 49 are
2 received and made a part of the record of this
3 proceeding.

4 (EXHIBIT NOS. 47 AND 49 WERE RECEIVED INTO
5 EVIDENCE.)

6 JUDGE THOMPSON: Exhibit 48 is received and
7 made a part of the record of this proceeding except
8 for the passage beginning on page 7 at line 1 and
9 ending on line -- page 9 at line 15, which has been
10 stricken.

11 (EXHIBIT NO. 48 WAS RECEIVED INTO EVIDENCE.)

12 JUDGE THOMPSON: Cross-examination.

13 Mr. Morris?

14 MR. MORRIS: No questions, your Honor.

15 JUDGE THOMPSON: Mr. Stock?

16 MR. STOCK: No questions, your Honor.

17 JUDGE THOMPSON: Mr. Poston?

18 MR. POSTON: Thank you.

19 CROSS-EXAMINATION BY MR. POSTON:

20 Q. Good morning.

21 A. Good morning.

22 Q. First, I'd like to clarify. Are you
23 testifying today on behalf of the AT&T CLEC companies,
24 the AT&T IXC, or both?

25 A. All entities, so it would be the IXC --

1 which AT&T Communications of the Southwest is both an
2 IXC and a CLEC, and then as well as the TCG Companies.

3 Q. And if you would please turn to page 11 of
4 your Surrebuttal, I would just like to clarify with
5 you, at the bottom of the table on that page you have
6 three wireless termination rates. Can you just
7 explain to me where you received -- where you found
8 those rates?

9 A. Those rates were taking -- taken from
10 negotiated wireless termination agreements for those
11 companies.

12 Q. Okay. So those are not tariffed rates then.
13 Correct?

14 A. No, they are not. They are contained in
15 termination agreements on file with the Commission.

16 Q. And in your Surrebuttal Testimony, you
17 identify three exceptions to capping a CLEC switched
18 access rate at the ILEC's rate?

19 A. Yes.

20 Q. And in your third exception that you
21 identify, that exception would permit a CLEC to charge
22 reciprocal terminating access; is that correct?

23 A. Yes.

24 Q. And if I understand your proposal, a CLEC
25 could charge the same termination rate as that charged

1 by the ILEC from where the call originates; is that
2 correct?

3 A. That's correct, or an affiliate, a wholly
4 owned affiliate of that ILEC terminating the call to
5 the CLEC.

6 Q. So how do you respond to an argument that
7 this would unfairly allow the CLEC to charge as much
8 as three times for switched access, using your example
9 in your testimony, as what the ILEC is allowed to
10 charge?

11 A. We have not necessarily said that the ILEC
12 cannot charge reciprocal rates. We're not making any
13 proposal on their behalf.

14 Q. Okay. And on page 32 of your Surrebuttal,
15 you recommend that the Commission take steps now to
16 eliminate the CCL, and to the extent it determines it
17 is necessary to offset the revenues associated with
18 the CCL, to shift recovery of those cost revenues to a
19 per-line surcharge, the Missouri USF, or both; is that
20 correct.

21 A. Yes.

22 Q. Is it AT&T's position that the Commission
23 can adjust switched access rates without maintaining
24 revenue neutrality? And, if so, under what authority?

25 A. There's so many different scenarios that can

1 be done. I don't know if you can say definitively
2 they can or they can't. I would think they -- I mean,
3 there will be situations, I would think, where revenue
4 neutrality is not required. An overearnings case, for
5 example. Obviously, if there is overearnings, revenue
6 neutrality is not required.

7 I don't know that it's been fully decided
8 with respect to price-cap companies whether or not
9 revenue neutrality is required or not. Certainly,
10 we're proposing a mechanism that would be revenue
11 neutral that would shift those from the access to a
12 USF in a revenue neutral manner.

13 MR. POSTON: Thank you. That's all I have.

14 JUDGE THOMPSON: Thank you, Mr. Poston.

15 Mr. Dandino?

16 MR. DANDINO: I have no questions, your
17 Honor. Thank you.

18 JUDGE THOMPSON: Mr. Lane?

19 CROSS-EXAMINATION BY MR. LANE:

20 Q. Good morning, Mr. Kohly.

21 A. Good morning.

22 Q. On page 3 of your Direct Testimony you
23 explain why AT&T is not filing its own cost studies
24 and discuss the lack of access to Staff's cost
25 studies. Right?

1 A. Yes.

2 Q. Is it fair to say that the rationale that
3 you advance there explains why AT&T is not proposing
4 adjustments to Staff's cost studies but does not
5 explain why AT&T isn't affirmatively presenting its
6 own cost studies?

7 A. No, that's not true.

8 Q. Did AT&T present its own affirmative case,
9 explain what either its access charges were or what
10 its view of other companies' access charges are?

11 A. Regarding our own costs, we did not. And I
12 guess I would note that many parties that provided
13 their own HC studies did so in testimony proposed --
14 citing to those studies, they said they did it in
15 response to criticisms of Ben Johnson studies.

16 We were not able to analyze Ben Johnson
17 studies to decide if we needed to or should file our
18 own cost studies.

19 Q. Does AT&T have a group of people that
20 perform cost studies?

21 A. I'm familiar with the group that analyzes
22 cost studies. I don't know that we actually -- I'm
23 not familiar with performing our own.

24 Q. Hasn't AT&T presented cost analyses in prior
25 cases on an affirmative basis using the Hatfield

1 Model, for example?

2 A. Yes, in UNE cases, that is correct.

3 Q. And your view that you present in
4 Surrebuttal Testimony relies upon reciprocal
5 compensation rates that are set in UNE proceedings.
6 Right?

7 A. Yes, it does.

8 Q. And so to the extent that information is
9 relevant, then it could have been presented by AT&T on
10 an affirmative basis in this case. Right?

11 A. But, again, not knowing what Mister. --
12 Dr. Johnson had presented, we were unable to evaluate
13 whether or not we should present our own. And that's
14 something that the other parties were able to do,
15 including Southwestern Bell.

16 Q. AT&T had the availability to decide on its
17 own whether it wanted to present its own cost studies
18 without regard to Dr. Johnson. Right?

19 A. Without regard to Dr. Johnson, we had the
20 ability. However, that impacted our decision to do
21 so.

22 Q. And it's fair to say that AT&T has presented
23 internal cost witnesses in various proceedings in
24 front of the Commission including three prior
25 arbitrations with Southwestern Bell. Right?

1 A. Yes.

2 Q. And AT&T has presented outside consultants
3 on cost issues in several proceedings before this
4 Commission involving arbitrations with Southwestern
5 Bell. Right?

6 A. Yes. And to be clear, those involved
7 estimating and calculating Southwestern Bell's costs
8 of network elements.

9 Q. It's fair to say, isn't it, that AT&T has
10 made one of its principal goals the reduction of
11 access charges by ILECs in both the federal and state
12 arenas?

13 A. Yes. That's one of our goals.

14 Q. It's also fair to say that on the federal
15 side, AT&T has presented cost study information that
16 purports to show that the cost of providing access is
17 less than a penny a minute. Right?

18 A. I have not seen the actual studies. I've
19 seen references to the results in the CALLs Order.

20 Q. Okay. And those were based on AT&T's own
21 internal analysis of what it believed the cost of
22 providing switched access was. Correct?

23 A. I'm not sure what those were based upon.

24 Q. Okay. Did you investigate that and the
25 availability of those types of studies that were

1 performed by AT&T for the federal jurisdiction to see
2 if they could be used in the state jurisdiction here
3 in Missouri?

4 A. No, I didn't. And, again, I would say that
5 those studies, though, were targeted at ILEC access
6 rates. And if you are asking if we sponsored a study
7 for our CLEC side, I don't know that those would have
8 been relevant, and that was kind of why we didn't.

9 Q. But on the federal side, you sponsored a
10 study purporting to show in your view what the cost of
11 providing access was but chose not to provide that
12 same study in this case. Right?

13 A. I've not seen your study presented at the
14 national level.

15 Q. Okay. I thought you indicated that you read
16 the results the AT&T study as a part of a CALLs Order?

17 A. I read a cite in the CALLs Order citing to,
18 I guess, a group of cost studies.

19 Q. That AT&T had presented?

20 A. AT&T among others, is my recollection.

21 Q. Okay. And didn't investigate, as I
22 understand it, in this case to see whether they would
23 be useful for submitting as part of AT&T's direct
24 case. Right?

25 A. I did not think they would be useful, so we

1 did not do a lot of investigation.

2 Q. And not having reviewed the studies, tell me
3 how you came to the conclusion that they wouldn't be
4 useful?

5 A. AT&T is often criticized for using
6 interstate rates for comparison purposes.
7 Ms. Meisenheimer criticized that in her Rebuttal
8 Testimony. And so I did not believe that presenting
9 interstate cost analysis or cost rates would meet with
10 any more success than it has in the past.

11 Q. Okay. As I understand it, you presented
12 cost information that was referenced in the CALLs
13 Order, not rates information, and so you could have
14 presented the cost information, could you not? That's
15 not rate, is it?

16 A. And I think in my testimony I do reference
17 the calls rates and their cites to the distance within
18 the economic range of what the FCC believes is the
19 range of costs, and I did provide that testimony.

20 Q. Had you reviewed the cost information that
21 AT&T submitted in the calls proceeding in front of the
22 FCC? You may have found that that had information
23 that was relevant that could have been presented in
24 this case. Right?

25 A. I guess I would say that it's possible, but,

1 again, we're often criticized for using interstate
2 rates and interstate costs because everyone say costs
3 vary by state.

4 Q. So if somebody is going to criticize
5 proposals, then it's probably best not to make them?

6 A. I don't agree with that. I was trying to
7 come up with one that would be -- we would spend less
8 time debating the same issue about costs among states.

9 Q. I thought maybe we could get you not to file
10 testimony in any case on the basis that people would
11 probably not like it.

12 A. I think they always like it.

13 Q. Okay. Now, has AT&T conducted any cost
14 analysis for its own provision of exchange access here
15 in Missouri?

16 A. Not that I'm aware of.

17 Q. Did you investigate to determine whether the
18 cost analysis had been performed for the provision of
19 switched access here in Missouri?

20 A. I did look into that and found -- and did
21 not find one.

22 Q. Okay. AT&T Communications of the Southwest
23 is a provider of both interexchange and local exchange
24 services in Missouri. Right?

25 A. That is correct.

1 Q. And does AT&T Communications in its
2 provision of local service in Missouri utilize its own
3 switching facilities, or does it purchase unbundled
4 local switching from Southwestern Bell, or does it do
5 both?

6 A. It does both.

7 Q. Okay. And does it set the same rate for
8 switching regardless of whether it utilizes
9 Southwestern Bell's unbundle local switching or
10 whether it uses its own switch?

11 A. Yes, it does.

12 Q. And would you agree with me that the rates
13 that AT&T Communications of the Southwest charges for
14 switched access here in Missouri for local switching
15 are a factor several times that which Southwestern
16 Bell charges for local switching for exchange access?

17 A. Can you restate that?

18 Q. Yes. Would you agree with me that the
19 charge that AT&T makes for local switching for
20 switched access is a multiple of several times what
21 Southwestern Bell charges for local switching in
22 connection with exchange access here in Missouri?

23 A. I think I'm failing to understand your
24 question.

25 Our access rates are closer, if not equal to

1 the access rates charged by Southwestern Bell.

2 MR. LANE: Okay. Let's take a look at that
3 again.

4 If I could get an exhibit marked?

5 JUDGE THOMPSON: You certainly may. We are
6 up to Exhibit 50.

7 And how would you describe this exhibit,
8 Mr. Lane?

9 MR. LANE: It is AT&T Communications of the
10 Southwest, Inc. Access Service Tariff, P.S.C. No. 14.
11 It's marked section 17, original sheet 17-22.

12 JUDGE THOMPSON: Very well.

13 (EXHIBIT NO. 50 WAS MARKED FOR
14 IDENTIFICATION.)

15 MR. LANE: Your Honor, I would ask that the
16 Commission take official notice of what's been marked
17 as, I believe, Exhibit 49 (sic), which is a copy of
18 AT&T Communications of the Southwest Access Service
19 Tariff, section 17, original sheet 17-22?

20 JUDGE THOMPSON: Actually, it's been marked
21 as Exhibit 50.

22 MR. LANE: Excuse me. Same request,
23 different number.

24 JUDGE THOMPSON: Do I hear any objections to
25 the request that the Commission take notice of the

1 tariff, original sheet 17-22, AT&T Communications of
2 the Southwest, Inc., P.S.C. Missouri No. 14?

3 MS. DeCOOK: Your Honor, may I just ask
4 Mr. Lane a clarifying question?

5 JUDGE THOMPSON: You may.

6 MS. DeCOOK: Is this the entirety of the
7 rate schedule, or is it just a page of the rate
8 schedule?

9 MR. LANE: It's the entirety.

10 MS. DeCOOK: All right. Thanks.

11 No objection.

12 MR. LANE: I have the full tariff here if
13 you want to take a look.

14 MS. DeCOOK: I don't need it, but Mr. Kohly
15 might.

16 JUDGE THOMPSON: Hearing no objection,
17 Exhibit 50 is received and made a part of the record
18 of this proceeding.

19 (EXHIBIT NO. 50 WAS RECEIVED INTO
20 EVIDENCE.)

21 BY MR. LANE:

22 Q. Taking a look at Exhibit 50, Mr. Kohly,
23 would you agree with me -- I'm going to focus on
24 intraLATA rates, although they are the same as
25 interLATA, that the rate for switching under 17.15.2

1 for an intraLATA access minute is .01848 on the
2 originating side and .026613 on the terminating side?

3 A. Yes.

4 Q. So that if an interexchange carrier both
5 originates and terminates a long distance call on
6 AT&T's local network, they would pay for a minute of
7 use .01848 plus .026613. Correct?

8 A. For a call that both originated --

9 Q. And terminated --

10 A. -- and terminated? Yes.

11 Q. About 4.6 cents. Right?

12 A. You're looking at the -- yes, approximately.

13 MR. LANE: May I approach the witness, your
14 Honor?

15 JUDGE THOMPSON: You may.

16 BY MR. LANE:

17 Q. Mr. Kohly, showing you Southwestern Bell's
18 Access Service Tariff, section 6, 13th revised
19 sheet 85, I'd ask if you would agree with me that the
20 rate for terminating utilizing Feature Group C and D
21 for local switching is .008339?

22 MS. DeCOOK: Your Honor, does counsel have
23 copies for me of what he's showing to the witness?

24 MR. LANE: I don't believe so. I can make
25 some at the break.

1 MS. DeCOOK: Well, I need to understand --

2 MR. LANE: I'm sorry.

3 MS. DeCOOK: -- whether we are doing an
4 apples-to-apples comparison, your Honor.

5 JUDGE THOMPSON: I think there is a copy
6 center next door, if a recess would enable you to get
7 a copy for counsel.

8 MS. DeCOOK: Your Honor, I would impose an
9 objection on the basis that what Mr. Lane is showing
10 the witness is not an apples-to-apples comparison
11 because he's just showing him the local switching
12 piece. He's not showing him the other components that
13 we may include in switching that SWBT doesn't.

14 JUDGE THOMPSON: Well, that's something I
15 believe you can bring out on Redirect, so I'm going to
16 overrule that objection.

17 MS. DeCOOK: Okay.

18 BY MR. LANE:

19 Q. And I don't recall whether you answered the
20 question, Mr. Kohly.

21 Would you agree with me that the charge for
22 local switching under Southwestern Bell's access
23 service tariff is point -- on Feature Group C and D,
24 .008339?

25 A. Yes, I would. But I would -- Ms. DeCook

1 stole my words, but that is not a valid comparison
2 because it's missing the CCL rate and possibly other
3 rate elements. So I don't know that it's a valid
4 comparison. Actually, I don't agree that it's a valid
5 comparison.

6 Q. If a company uses Southwestern Bell's local
7 switching, the rate that's in the tariff is what
8 applies, and if the company utilizes AT&T
9 Communications of the Southwest's local switching, the
10 rate that we described earlier is what applies.
11 Correct?

12 A. But in addition to local switching, there
13 are other rate elements such as CCL, and I would need
14 to review the Southwestern Bell tariff to verify what
15 other additional rate elements occurred when you --
16 were applied when you purchased end-office switching.

17 I believe also with end-office switching
18 there is an equal access recovery charge that may
19 still be in effect, so there are other rate elements
20 that do apply to that.

21 JUDGE THOMPSON: If I could break in for a
22 moment, Mr. Kohly, before you explain away the effect
23 of the question Mr. Lane has asked you, would you
24 please respond to it directly with a yes or no?

25 JUDGE THOMPSON: I'm sorry. I thought I

1 did.

2 The page does show that rate element.

3 JUDGE THOMPSON: Thank you.

4 BY MR. LANE:

5 Q. Mr. Kohly, is the switching rate that AT&T
6 charges as reflected in Exhibit 50, is that a
7 cost-based rate?

8 A. I have not seen a cost study on it. It's
9 intended to mirror the rates charged by Southwestern
10 Bell. I cannot say it is cost-based.

11 Q. You also are here on behalf of TCG St. Louis
12 and TCG Kansas City. Right?

13 A. Yes.

14 Q. And is it fair to say that the access rates
15 for local switching that TCG Kansas City and TCG
16 St. Louis charge are the same as those that AT&T
17 Communications of the Southwest charges when it
18 operates as a local exchange company?

19 A. I would need to compare the tariffs. I'm
20 not sure of that.

21 JUDGE THOMPSON: This will be Exhibit 51.
22 This appears to be a tariff of TCG Kansas City, Inc.,
23 P.S.C. Mo. No. 2, second revised sheet 64.

24 Is that correct, Mr. Lane? Yes.

25 MR. LANE: Yes, it is. I'm checking to see

1 if I got this correct, your Honor. I may not.

2 (EXHIBIT NO. 51 WAS MARKED FOR
3 IDENTIFICATION.)

4 MR. LANE: I may have copied the wrong page,
5 your Honor. I may have to do this a different way.

6 May I approach the witness?

7 JUDGE THOMPSON: You may.

8 BY MR. LANE:

9 Q. Mr. Kohly, I copied the wrong pages. I'm
10 going to have to show you the original here of the
11 tariff sheet.

12 Let me show you the TCG St. Louis tariff
13 first, and with reference to TCG St. Louis Access
14 Services Tariff, First Revised Sheet 63, and ask if
15 you would agree that the charge for switched access is
16 the same as that for AT&T Communications of the
17 Southwest?

18 A. The -- what you've identified as the
19 end-office rates are the same as for AT&T.

20 Q. Okay. And showing you the tariff for
21 TCG Kansas City, Inc., Access Services Tariff, P.S.C.
22 Tariff No. 2, First Revised Sheet 65, I would ask if
23 you would agree that the rates for end-office switched
24 access switching are the same as TCG St. Louis and
25 AT&T Communications of the Southwest?

1 A. Yes, they are.

2 Q. And would your answer be the same with
3 regard to both of those that you can't say that the
4 switching rates that AT&T -- or that TCG St. Louis and
5 TCG Kansas City charges are cost-based?

6 A. No, I cannot.

7 Q. I probably didn't ask it well.

8 Did you -- would you say that they are not
9 cost-based?

10 A. I've not seen a cost study, so I cannot say
11 one way or the other. And, again, I would reiterate,
12 the comparison you've made to Southwestern Bell's is
13 not a valid or apples-to-apples comparison.

14 Q. Is it fair to say that AT&T's position is
15 that carrier common line charges are not appropriately
16 assessed on switched access?

17 A. Yes. We believe that should be removed from
18 the switched access rate element.

19 Q. Okay. And so what -- as I understand it,
20 TCG St. Louis, TCG Kansas City, and AT&T
21 Communications of the Southwest have done is remove
22 carrier common line charges as an element but have
23 placed them over into switched access switching and
24 charge them there. Is that a fair statement?

25 A. Yes, but CCL is always applied with an

1 end-office rate element so the net effect is the same
2 whether you have it as a separate line item or not.

3 Q. You're charging CCL but you wrap it up and
4 place it into your local switching rate. Correct?

5 A. That would be my understanding. And that
6 was done more out of simplicity than anything.

7 Q. Was it done out of simplicity or to maintain
8 purity in your position, at least on the surface, that
9 CCL charges aren't appropriate for switched access?

10 A. My understanding would be it was done out of
11 simplicity. If the Commission were to do something to
12 pull CCL out of switching rates, we would do that.
13 This was not done to hide anything, if that's what
14 you're insinuating.

15 Q. Well, AT&T and TCG Companies, they proposed
16 their own access tariff and they were under the
17 Commission-imposed rate cap at the time. Right?

18 A. Yes, they were.

19 Q. And Southwestern Bell at the time and now
20 charges a carrier common line element as well as a
21 local switching element in connection with switched
22 access. Right?

23 A. Yes it does.

24 Q. And AT&T Communications of the Southwest,
25 TCG St. Louis, and TCG Kansas city, each of them made

1 the affirmative decision to take out and not have the
2 CCL rate element, but to put the charge over and
3 include it as part of local switching. Right?

4 A. Yes, because the net effect is the same.
5 And the cap does not require you to mirror each
6 individual rate element.

7 Q. Do TCG St. Louis and TCG Kansas City utilize
8 their own switch in providing exchange access, or do
9 they utilize Southwestern Bell's unbundled local
10 switching, or do they do both?

11 A. TCG St. Louis and TCG Kansas City rely upon
12 their own switches.

13 Q. With regard to the provision of switched
14 access, would it be your position that AT&T
15 Communications of the Southwest, TCG St. Louis, and
16 TCG Kansas City each have a locational or situational
17 monopoly with regard to the provision of that switched
18 access?

19 A. Yes, on a per-customer basis, they do. And
20 that was the basis for the cap which AT&T supported.
21 We still support.

22 Q. Would you agree with me that the existence
23 of a situational monopoly with regard to TCG
24 St. Louis, TCG Kansas City, and AT&T Communications of
25 the Southwest is the same as it is for any other ILEC

1 or CLEC operating in this state?

2 A. On a per-customer basis, yes. When you look
3 at the market as an aggregate and you start looking at
4 customer bases, I would disagree that the impact is
5 the same overall.

6 Q. With regard to whether an interexchange
7 carrier is required to pay the rate charged by the
8 AT&T companies, it's the same, isn't it?

9 A. Yes. When you're looking at that, I
10 believe -- my answer is yes based on a per-customer
11 analysis.

12 Q. Okay. I'm going to switch gears for just a
13 second.

14 On page 4 of your Direct Testimony you make
15 the claim that Southwestern Bell's witnesses have
16 reviewed Staff's cost studies that purport to show
17 AT&T's cost of access. Right?

18 A. Yes.

19 Q. And you're aware, are you not, that
20 Mr. Barch and Mr. Unruh took issue with that and
21 explained that Southwestern Bell's internal witness
22 did not have access to Staff's studies that purported
23 to show the cost of AT&T's provision of switched
24 access. Right?

25 A. I saw that. I -- well, to the extent that

1 the cost studies relied on UNEs, they would have
2 access, however. But, yes, I saw that in their
3 testimony.

4 Q. Okay. And once you saw that Southwestern
5 Bell's witnesses had said, No, they didn't have access
6 to Staff's cost studies, you didn't make note of that
7 in your Surrebuttal or change your testimony here
8 today, did you?

9 A. No, I did not.

10 Q. And do you have any information today that
11 shows that Mr. Barch and Mr. Unruh actually really did
12 review Dr. Johnson's cost studies to the extent they
13 purported to show the cost of providing switched
14 access by the AT&T companies?

15 A. I don't know that they reviewed the actual
16 studies. I think to an extent they relied on UNE
17 rates, they would have had access to that information.

18 Q. Okay.

19 A. And the cost models that underlie that.

20 Q. You don't know what they reviewed, do you?

21 A. Specific to switched access -- CLEC switched
22 access rates, no, I don't. I do know they had access
23 to the data -- or to part of the data and the cost
24 models.

25 Q. They didn't have access to Dr. Johnson's

1 analysis, did they?

2 A. That, I don't know.

3 Q. And isn't that what you testified to the
4 contrary to on page 4 where you said they had reviewed
5 Staff's cost studies?

6 A. Well, to -- I mean, to the extent that those
7 cost studies would have relied on data or models
8 provided by Southwestern Bell, they would have had
9 access to them, and I assume to the extent -- and I
10 guess this is my assumption, that they would have
11 certainly reviewed the information they provided and
12 they did review the cost models in preparation of, at
13 least, SWBT's own studies. I don't know that they
14 reviewed the CLEC studies provided by Dr. Johnson.

15 Q. Right. And you have no information that
16 they did. Right?

17 A. No.

18 Q. Now, your Surrebuttal Testimony provides
19 support for the continued existence of the CLEC access
20 rate cap but proposes three exceptions. Right?

21 A. Correct.

22 Q. And the first exception is one that would
23 say that if a CLEC comes forward and proves that its
24 costs are higher than the rates charged by the ILEC
25 with whom it competes that it should be permitted to

1 have higher rates?

2 A. Yes. I think I specifically recommended
3 TSLRIC standard be applied to that.

4 Q. Okay. And that was my question. If this
5 Commission adopts a different cost standard, adopts
6 one of the loop allocation methods that's proposed, is
7 it your testimony and position that that exception
8 would permit CLECs to increase access rates above the
9 cap on the basis of a fully distributed cost study?

10 A. I've not thought about that. I still
11 believe TSLRIC is the appropriate standard and have
12 not really thought about what to do if a different
13 cost standard is adopted.

14 Q. Okay. As you sit here today, that's not
15 your recommendation to the Commission?

16 A. No.

17 Q. Okay. The second exception is universal
18 service funding, which, as I understand it, you would
19 like the ability to charge rates higher than the cap
20 as a CLEC if the ILEC is receiving universal service
21 funding and uses that funding to lower switched access
22 as to revenue neutral rebalancing. Is that a fair
23 characterization?

24 A. That is.

25 Q. Is it fair to say that under the

1 Commission's Universal Service Fund rules that its
2 adopted that CLECs are permitted to qualify for
3 assistance from the Universal Service Fund?

4 A. As the rules stand today, they would be able
5 to receive low-income funds. The statutes
6 require, and I believe the rules also reiterate,
7 that anybody who receives high-cost support to be a
8 carrier of last resort.

9 Q. Okay.

10 A. The process for doing that has yet to be
11 defined, and I don't know if it's possible for a CLEC
12 to do that. When I say "possible," I mean practical.

13 Q. Right. It's the CLEC's option, is it not,
14 whether it wants to take on the burdens of being the
15 carrier of last resort in a particular exchange?

16 A. Until the standards are defined as to what
17 that requires, I don't know that it's their option.

18 Q. Under the rules as they exist today, isn't
19 it the option of the CLEC to seek to qualify for
20 funding under the Universal Service Fund by assuming
21 the obligations of the carrier of last resort?

22 A. If you assume they can become a carrier of
23 last resort, then yes.

24 Q. Okay. Your objections or uncertainty relate
25 to whether it's in the business interest of the CLEC

1 to become a carrier of last resort as opposed to
2 whether the rule permits the CLEC to become one and to
3 qualify for funding. Right?

4 A. Not necessarily. I think that -- there
5 needs -- it needs to be looked at from a practical
6 standpoint, is that something a CLEC -- the Commission
7 would agree the CLEC would meet. So it's not just a
8 business decision.

9 Q. Okay. I'm trying to draw a distinction
10 between what the rule permits and whether AT&T or some
11 other CLEC decides that it's in their interest to try
12 to become a recipient of funds under the Universal
13 Service Fund.

14 Would you agree with me that the rule
15 permits it but requires a CLEC seeking to do -- to
16 seek recovery to be a carrier of last resort?

17 A. I would agree that it permits it if the CLEC
18 can become a carrier of last resort, and that's what
19 I'm not sure about.

20 Q. The rule itself says that a CLEC can become
21 a carrier of last resort. Right?

22 A. Yes.

23 Q. Okay. The third exception that you propose
24 is the reciprocal compensation mechanism, and, as I
25 understand it, you propose a hypothetical. If AT&T is

1 serving a local customer in the area that is otherwise
2 served by Southwestern Bell and it terminates a call
3 from a customer in a Sprint exchange that is an
4 intraLATA toll call, that instead of charging the
5 current access rate, which would be Southwestern
6 Bell's access rate, you want to be able to charge
7 Sprint's access rates. Is that a fair
8 characterization?

9 A. Correct. Or whichever carrier you're
10 exchanging traffic with. I don't mean to pick on
11 Sprint.

12 Q. I was going to say nor do I, but I kind of
13 do.

14 And Sprint's rates are substantially in
15 excess of Southwestern Bell's, right, for switched
16 access in Missouri?

17 A. Yes, they are.

18 Q. Ten cents a minute; is that a fair estimate
19 of what their charges are?

20 A. Fair approximation.

21 Q. Versus on a terminating minute for
22 Southwestern Bell now three cents?

23 A. Yes.

24 Q. The justification that you present on
25 page 22 of your Rebuttal -- Surrebuttal Testimony in

1 terms of why it's appropriate for AT&T as a CLEC
2 operating in Southwestern Bell territory to charge
3 Sprint a higher terminating rate would apply equally
4 to Southwestern Bell as the ILEC operating in that
5 territory. Correct?

6 A. It could.

7 Q. It does, doesn't it?

8 A. I've not analyzed it from Southwestern
9 Bell's perspective. I guess it could.

10 Q. Okay. Is there anything that you have
11 presented in your testimony that doesn't apply to the
12 ILEC or Southwestern Bell in my example?

13 A. No. I think that what we're proposing it on
14 is based upon the idea that you get reciprocal
15 compensation from the company you are trading traffic
16 with, and that could apply to Southwestern Bell as
17 well. Certainly, it applies when we exchange traffic
18 with Southwestern Bell today on a local basis.
19 Actually, we do bill and keep, but it's reciprocal
20 termination rates.

21 Q. And under your proposal, is the choice only
22 that of the CLEC, or would the ILEC have the ability
23 to make the same choice?

24 A. Again, I've only focused on this from the
25 CLEC perspective. I've not thought about the ILEC

1 perspective.

2 Q. Do any of the AT&T companies operate in
3 Sprint or GTE/Verizon/Century territory?

4 A. Yes.

5 Q. Okay. And do those AT&T companies that
6 operate in -- well, tell me where they operate first.
7 Is it Sprint and Verizon territory?

8 A. Verizon.

9 Q. Not Sprint?

10 A. No.

11 Q. Okay. And so I'll use Verizon/Century,
12 then, for the example.

13 Their rates are also substantially above
14 those of Southwestern Bell. Right?

15 A. That the CLEC entity charges?

16 Q. Right.

17 A. No.

18 Q. Verizon?

19 A. The ILEC rates, yeah.

20 Are you asking me what -- can you restate
21 your question?

22 Q. Yes. Verizon/CenturyTel's access rates in
23 Missouri for switched access are substantially higher
24 than those charged by Southwestern Bell. Right?

25 A. Yes, they are.

1 Q. Okay. And I want you to assume in this
2 example, then, that AT&T is serving a local customer
3 in the Verizon/CenturyTel territory and that customer
4 places a toll call to a Southwestern Bell customer.

5 And my question is -- let me ask, first,
6 if -- AT&T in that example would be permitted to
7 charge the Verizon/CenturyTel access charges. Right?

8 A. Would be permitted, yes.

9 Q. And any other CLEC would be permitted to do
10 the same operating in that territory. Right?

11 A. Yes.

12 Q. And those rates are substantially above and
13 maybe near ten cents a minute or something like that?

14 A. Yes.

15 Q. Would Southwestern Bell under your example
16 for the call that terminates from a AT&T or another
17 CLEC originated in Verizon/CenturyTel territory, would
18 they have the option to decide they don't want to pay
19 ten cents or more a minute for calls going the other
20 way?

21 A. There is certainly a policy argument that
22 can be made. Under our proposal, I focus just on the
23 CLEC half and did not propose anything for the ILEC's
24 ability.

25 Q. Okay. But the Commission -- and I

1 understand your interest is as a CLEC, but the
2 Commission needs to be concerned about both CLECs and
3 ILECs and competitive parity. Right?

4 A. Not necessarily.

5 Q. Okay. It is at least conceivable that the
6 Commission might believe that it should consider both
7 CLECs and ILECs and competitive parity in establishing
8 rules for the provision of switched access. Right?

9 A. Regulatory parity is appropriate where it is
10 necessary. It is not the reason to ever do anything.
11 You make your rules based on another reason, not just
12 on the idea that we need regulatory parity.

13 Q. Okay. Competitive equality and making sure
14 that the playing field is level, is that an
15 appropriate consideration for the Commission to factor
16 in its decisions generally?

17 A. It is an appropriate factor to consider
18 into -- into the decisions.

19 Q. And so instead of simply adopting a proposal
20 that may be seem seen to benefit CLECs, the Commission
21 ought to consider broader ramifications and consider
22 impact on ILECs and whether ILECs should have the same
23 opportunities as you're proposing for CLECs. Right?

24 A. I think beyond that, though, the Commission
25 needs to look at harm, and that's what you're really

1 doing when you're looking at this level of playing
2 field.

3 Q. Could you answer my question first though?

4 Do you agree that's something the Commission
5 should consider?

6 A. Could you restate what "it" is?

7 Q. I'll rephrase it.

8 In your view, is a subscriber line charge
9 the same -- strike that -- is the imposition of a
10 subscriber line charge the same as an increase in
11 basic local, or is it a different animal?

12 A. It is different.

13 Q. In what respect?

14 A. The basic local rates are tariffed at the
15 Commission, and that's a service. A subscriber line
16 charge is a charge separate from that so that -- i
17 mean, it's not part of basic local. Yes, it may be
18 applied in conjunction with, but that does not make it
19 part of basic local.

20 Q. Okay. And AT&T, when it chooses how to
21 recover costs attributable to carrier common line, had
22 the choice to either have a carrier common line charge
23 added to its switching charge or imposed a subscriber
24 line charge. Right? Those were at least three
25 options available to it?

1 A. From a competitive standpoint, the third was
2 not an option.

3 Q. Okay. And so if there is to be a subscriber
4 line charge, is it your view that it ought to apply
5 and be mandated equally for all providers in the
6 state?

7 A. If the Commission goes to a subscriber line
8 charge and does so in a revenue-neutral manner, all
9 carriers should be able to charge it. I don't know
10 that I would say they have to, but they certainly, I
11 would say on a revenue-neutral basis, should be
12 permitted to.

13 MR. LANE: Okay. Thank you.

14 That's all I have. Thank you.

15 JUDGE THOMPSON: Thank you, Mr. Lane.

16 Mr. Schiffman?

17 CROSS-EXAMINATION BY MR. SCHIFMAN:

18 Q. Hi, Mr. Kohly. Ken Schiffman on behalf of
19 Sprint. And since we were picked on, we have to talk
20 a little bit here.

21 I want to focus on that third exception for
22 the CLEC cap on page 21 of your Surrebuttal Testimony.

23 A. Okay.

24 Q. And this is the reciprocal terminating
25 access rate exception that you and Mr. Lane were just

1 discussing. Right?

2 A. Yes.

3 Q. Okay. Let's focus on the language in
4 lines 10 through 13. And I specifically want to know
5 what you mean by stating that, a CLEC may elect to
6 assess reciprocal terminating access rates for
7 terminating interexchange traffic from other ILECs or
8 CLECs and their identifiable wholly-owned affiliates
9 terminating IXC traffic to the CLEC."

10 What do you mean by "identifiable
11 wholly-owned affiliates"?

12 A. In the case of Sprint, I would say that that
13 one includes Sprint -- Sprint Communications, LP, as
14 well as Sprint Missouri, to the extent that the
15 terminating carrier is able to identify them through
16 the call records.

17 Q. Okay. So say a call does not originate in a
18 Sprint Missouri exchange. Okay? It originates in a
19 Southwestern Bell exchange. It terminates to a
20 Southwestern Bell exchange, but it's -- that customer
21 is served by AT&T. Are you with me so far?

22 A. Uh-huh.

23 Q. Sprint is the IXC that's carrying that call.
24 It originates in St. Louis, for example, in a SWBT
25 exchange. The IXC is Sprint that the customer has

1 selected. It terminates to a Kansas City AT&T
2 customer in a SWBT exchange.

3 A. Yes.

4 Q. Are you going to charge Sprint under your
5 proposal -- Sprint Communications Company, LP, the
6 IXC, are you going to charge that entity Sprint
7 Missouri's access rates to terminate that call?

8 A. Yes, I would. And that's because that's
9 what Sprint Missouri would charge us when AT&T
10 terminated a call to Sprint Missouri.

11 Q. But the same call going from Kansas City to
12 St. Louis, the other way, AT&T -- the same customer
13 calls back to St. Louis. The first time Mom called
14 the son. The second time son calls the mom. The same
15 call path, but there you're charging -- the
16 Southwestern Bell entity would charge its access rates
17 to AT&T, right -- or to Sprint? Sprint is the IXC.

18 A. Yes.

19 Q. Okay. So we have different access rates
20 applying basically for the same call, back and forth?

21 A. Just as we have today.

22 Q. Today there is different -- today the
23 AT&T -- how --

24 A. No.

25 Q. Let's -- let's explore how it works today.

1 Okay. Sprint's the long distance carrier.
2 St. Louis to Kansas City call. What -- and AT&T --
3 and Sprint pays AT&T's access rates that are in that
4 exhibit that you discussed with Mr. Lane. Right?

5 A. Right.

6 Q. Sprint does not pay its Sprint Missouri
7 terminating access rates. Right?

8 A. Right. Right.

9 Q. So we don't have symmetry under your
10 proposal and your testimony as opposed to how it works
11 today. Right?

12 A. No, we don't.

13 Q. Okay. And so your justification for
14 charging Sprint Communications Company, LP higher
15 rates than it's getting charged today is just because
16 Sprint Missouri, which is not even part of this call
17 that we just suggested, has higher access rates than
18 Southwestern Bell?

19 A. They are all part of the same corporation.
20 All revenues flow to the corporation. For pricing
21 decisions, the revenues -- or the access rates of the
22 ILEC are irrelevant, and, so, yes, because it's the
23 same corporation, I think it should apply.

24 Q. Different call -- strike that.

25 Okay. What if instead of Sprint carrying

1 that same call, what if Southwestern Bell Long
2 Distance carried that call? What access rates from
3 Kansas City to St. Louis -- AT&T has the customer in
4 Kansas City. Southwestern Bell Long Distance -- they
5 had picked Southwestern Bell as a long distance
6 carrier. Terminating to St. Louis exchange.
7 Southwestern Bell local customer.

8 What access rates would apply under your
9 proposal?

10 A. Southwestern Bell's.

11 Q. Okay. So Southwestern Bell would be paying
12 a much lower access rate to terminate the call than
13 Sprint would to terminate that exact same call.
14 Right?

15 A. To terminate a call through the same call
16 path, yes.

17 Q. Okay. And I believe you discussed with
18 Mr. Lane that competitive issues should be a factor in
19 Commission decisions as far as parity between
20 companies. Correct?

21 A. Should be a factor, yes.

22 Q. Okay. All right. What if MCI was the long
23 distance carrier for that very same call, but let's
24 also assume that MCI operates a CLEC in Sprint
25 Missouri's exchanges, so -- and it charges and its --

1 in Sprint Missouri exchanges MCI charges Sprint
2 Missouri's access rates but where MCI is just a long
3 distance carrier in the example I'm going through
4 right now. It has -- it has in one part of the state
5 access rates that are higher than Southwestern Bell's
6 access rates.

7 What is AT&T going to charge MCI if they're
8 carrying that call?

9 A. Since MCI does not operate in Sprint
10 territory, I have not thought of that one.

11 Q. Okay. Let's assume for the purposes of my
12 example they are.

13 A. I guess that would be -- I've not thought
14 that. My initial reaction would be that in that
15 case -- I don't know. They would possi-- they would
16 possibly be permitted to charge the Sprint rate.

17 What I'm proposing when I say this, though,
18 is that the CLEC doing this would file a tariff to do
19 this, and so some of those details -- and I've not
20 thought of the situation you're talking about mainly
21 because there is not many CLECs in Sprint territory,
22 but I have not thought about that. That would be a
23 detail I think would be worked out in the tariff
24 process.

25 Q. Okay. But it appears from the face of your

1 example that AT&T would be -- would be able to charge
2 a higher rate to a customer who has picked MCI as its
3 long distance carrier when MCI also has a CLEC
4 operating in Sprint exchanges. Without going --

5 A. Possibly, yes.

6 Q. Okay. Would you agree with me, Mr. Kohly,
7 that there are cost differences for providing switched
8 access in Southwestern Bell's Kansas City exchanges as
9 opposed to Sprint Missouri providing access in its
10 exchanges?

11 A. I've not seen Sprint cost studies for TSLRIC
12 states for switched access. I believe there might be
13 some cost differences, yes.

14 Q. You would expect that to be the case?

15 A. Yes.

16 MR. SCHIFMAN: No further questions.

17 JUDGE THOMPSON: Thank you, Mr. Schifman.

18 Mr. England?

19 MR. ENGLAND: Thank you, your Honor.

20 CROSS-EXAMINATION BY MR. ENGLAND:

21 Q. Good morning, Mr. Kohly.

22 A. Good morning.

23 Q. Let me start with your Direct Testimony if I
24 can, please, page 4, lines 21 through 28. And I'm
25 just going to paraphrase, but my understanding is that

1 the point you're making here is you were unable to
2 review Staff's estimate of AT&T's switched access
3 costs because those costs were based on models
4 utilizing inputs from other carriers who classified
5 their information as highly confidential; is that
6 right?

7 A. Yes.

8 Q. Okay. Did AT-- and we're talking about AT&T
9 as a CLEC, I think, for purposes of this testimony.
10 Right?

11 A. Yes.

12 Q. Okay. Did AT&T provide information to
13 Dr. Johnson as part of his analysis in this -- in this
14 case?

15 A. Yes, we did.

16 Q. Okay. But apparently he did not use that
17 information in developing rates for AT&T, the CLEC --
18 or, I'm sorry -- costs. I keep falling into a little
19 trap. I think everyone is.

20 For purposes of developing AT&T's costs, he
21 apparently didn't use that information exclusively.
22 Correct?

23 A. Apparently.

24 Q. Okay. Is that appropriate, in your opinion?
25 Do you think AT&T's CLEC costs should be used --

1 should be developed based upon models that use inputs
2 from other carriers?

3 A. I think you would have to analyze that in a
4 situation. And, obviously, I can't comment on this
5 specific one because I have no idea what went into
6 Dr. Johnson's estimates.

7 I do think that there are times, and quite
8 often, where a model can be useful and can be used to
9 determine the cost through surrogates or actual costs
10 through modeling.

11 In this specific case, I don't know what
12 Dr. Johnson did, so I do not believe this one is
13 appropriate since we have had no ability to review
14 that.

15 Q. Well, let me ask -- let me try to get at it
16 from a little different angle.

17 Would you agree with me that if your access
18 rates for -- if you were a CLEC -- are in the future
19 determined by this Commission to be based on cost, not
20 on some capping arrangement, that you would have a
21 keener interest in the model used to develop those
22 costs. Correct?

23 A. Yes, I would. And I would want, as we
24 sought in this case, to be able to review what goes in
25 our purported cost. So, certainly, as the rates go

1 forward, we need to see the cost studies. We needed
2 to see them here, we think.

3 Q. In your Surrebuttal Testimony at page 5, I
4 begin -- excuse me -- I believe beginning at line 19,
5 you state, "Staff has not made any recommendation in
6 this docket." Do you see that?

7 A. Uh-huh.

8 Q. Are you aware of Staff's Position Statement
9 in this docket?

10 A. Now, I am. I was not aware of that at the
11 time the Surrebuttal Testimony was filed. And based
12 on the testimony filed, the testimony at that time,
13 there was not a specific recommendation. It was more
14 of, Here is these options, and they didn't -- Staff
15 did not say, Pick this one. And that's what my
16 comment is based upon.

17 Q. Okay. So you -- to the extent Staff has
18 enunciated their Position Statement or their position
19 in the Statements of Position, you would defer to
20 that. Correct?

21 A. That's a statement of their position, yes.

22 Q. Okay. You go on to state there in your
23 Surrebuttal, "However, in Case No. TO-2001-467. Staff
24 witness William Voight testified that the,
25 'Incremental costing methodology' was the most

1 appropriate costing methodology to base costs in a
2 competitive environment."

3 Do you see that?

4 A. Yes.

5 Q. Would you agree with me that that's not
6 Staff's position in this case?

7 A. No, it's not.

8 Q. I'm not sure I understand your answer.

9 No, it's not Staff's position, or, no,
10 you're not agreeing with me?

11 A. I'm agreeing with you, as I always do.

12 Q. Okay.

13 A. Staff is not recommending the adoption of
14 the incremental cost methodology in this case.

15 Q. Okay. And you would agree with me that
16 Mr. Voight is not a witness in this case articulating
17 Staff's position. Correct?

18 A. No. Dr. Johnson did that.

19 Q. What was the nature of TO-2001-467? What
20 kind of a case was it?

21 A. That was a case concerning the competitive
22 classification of Southwestern Bell's services
23 including, actually, all services.

24 Q. Was it in that case that the Commission
25 determined that Southwestern Bell's access services

1 were not subject to effective competition? In fact,
2 they enjoyed a -- was it a locational monopoly?

3 A. I don't know if they used the words
4 "locational monopoly" specifically in that case. They
5 did determine they were not effectively competitive,
6 and if I recall, cited the locational monopoly, but I
7 don't know if the term was actually used there. But
8 that was the nature of the discussion.

9 Q. So if there is an effective competition in
10 the access market, even Mr. Voight's testimony isn't
11 particularly relevant because he's talking about
12 incremental costing in a competitive environment.
13 Correct?

14 A. That's not true. The discussion around this
15 in the transcript was the pricing of access, and even
16 if you focus beyond the access market, access is a
17 critical input into the toll market which is
18 competitive, and that is why access needs to be priced
19 at an incremental basis, because it's a critical input
20 into a downstream market.

21 Q. All I have here and all you've provided the
22 Commission with is an excerpt from Mr. Voight's
23 testimony, which in its brevity here suggests that
24 incremental costing would not be appropriate in a
25 noncompetitive environment. And I'm just suggesting

1 to you that the Commission having found that access is
2 noncompetitive, or certainly not effectively
3 competitive, this sentence or this statement really
4 has no meaning in this docket or relevance?

5 A. I disagree.

6 Q. Okay.

7 A. Again, there are areas in telecommunications
8 which are competitive to which access is an input, and
9 that was -- and that is why it needs to be priced on
10 an incremental cost basis.

11 Q. I want to switch gears on you.

12 Would you agree that both the
13 Telecommunication Act of 1996 and the FCC rules
14 implementing that Act recognize that local
15 interconnection on the one hand and access services on
16 the other hand are two different things, if you will,
17 and require two different compensation mechanisms?

18 A. No, I wouldn't. I think the FCC -- and I
19 quoted on page -- that's still in the record -- page 9
20 of my Surrebuttal Testimony where the FCC recognized
21 that transport and termination of traffic whether at
22 local or long distance uses the same functions that
23 they believe the rates will eventually converge.

24 Q. But they haven't at this point in time and
25 there are two separate compensation schemes, both

1 costing and pricing, for purposes of local
2 interconnection on the one hand and access on the
3 other. Correct?

4 A. The CALLs Order for the large LECs reduce
5 that into what I think the FCC called a range of
6 incremental cost, so I don't know that there are
7 vastly different costing mechanisms when you look at
8 that.

9 To the extent, yes, they rely on the
10 part 36/69 that you're advocating in this case, yes,
11 those are different than the FCC rules for pricing of
12 local traffic.

13 Q. Well, with respect to small carriers, at
14 least those that participate in NECA, those tariffs
15 are based on the part 36/69 -- or those rates, if you
16 will, are based on the part 36/69 costs. Correct?

17 A. The MAG Plan adopted, I believe, last year
18 reduced those rates, and it noted that, I think, it
19 got it closer to economic cost. And so I'm not sure
20 how that will impact the use of the part 36/69
21 studies.

22 Q. Are you saying that NECA rates are not based
23 on part 36/69 cost studies?

24 A. The current ones -- if the -- I'm not -- I'm
25 not sure of the status of the MAG Plan. The NECA

1 rates prior to the MAG Plan were based on those, is my
2 understanding. The MAG Plan may change that. I'm not
3 sure.

4 Q. Is it fair to say, then, that you don't know
5 whether or not the FCC and the Telecommunications Act
6 have established two separate compensation schemes for
7 exchange access on the one hand and local
8 interconnection on the other hand?

9 A. There is obviously access tariffs and
10 interconnection agreements, so if that's your
11 compensation mechanism, then, yes, they are different.
12 But I do think that the FCC expects and has stated so
13 that they expect those to converge.

14 Q. They certainly haven't done so yet, have
15 they?

16 A. I think they are working in that direction
17 as you see in the interstate access rates that will be
18 produced under the MAG Plan and under the CALLs Order.
19 I think they are working in that direction?

20 Q. They haven't done so today, have they, sir?
21 You could tell me yes or no, I believe.

22 A. No.

23 Q. Thank you.

24 Would you agree with me that the FCC has
25 determined that pricing for local wireless service

1 interconnection, if you will, should not include any
2 cost associates with the loop?

3 A. Yes. The intraMTA traffic was directed to
4 use the recip comp or the local pricing rules.

5 Q. Okay. Can you tell me where the FCC has
6 made a similar declaration with respect to the pricing
7 of exchange access?

8 A. I can't provide you with a specific cite,
9 but I think if you do look at the CALLs Order and the
10 MAG Plan Order it does discuss moving the loop costs
11 out of a per-minute rate and over to a subscriber line
12 charge. And so I do think that they have tended to
13 start doing that at the interstate level.

14 Q. But you're aware of no prohibition at this
15 time similar to local wireless traffic that precludes
16 recovery of loop costs for exchange access. Correct?

17 A. I'm not aware of a prohibition.

18 Q. And you would agree with me that to the
19 extent wireless traffic travels between MTAs or is
20 interMTA, it is subject to the same access charges as
21 landline interexchange traffic. Right?

22 A. I believe so.

23 Q. Now, you propose, I believe, in your
24 Surrebuttal Testimony -- it's page 10 and followed by
25 the chart or the table then on page 11 -- to use, for

1 lack of a better description, reciprocal compensation
2 rates for a variety of carriers that have been
3 established here in Missouri as a proper estimate of
4 their cost for access; is that right?

5 A. Yes. I set it out as a -- as an estimate
6 and then actually -- so that these rates may actually
7 be in excess of the TSLRICs. I go through that on
8 page 12.

9 Q. Well, first of all, I want to make sure that
10 the record is clear.

11 These rates that you propose, I guess, in
12 your schedule -- excuse me -- table on page 11, at
13 least insofar as the small companies are concerned,
14 are not based on any cost studies, are they, sir?

15 A. The rates I've used are negotiated rates
16 from three small companies. I don't know that those
17 weren't based on cost. They were contained in an
18 interconnection agreement --

19 Q. Okay.

20 A. -- that was negotiated.

21 Q. Then let's take all of the other small
22 companies with the exception of these three, and it
23 seems intuitive or obvious to me, then, that these
24 rates are not based on their costs, are they, sir?

25 A. No, I wouldn't think so.

1 Q. Okay. Not based on fully distributed or
2 incremental, are they, sir?

3 A. They're a proxy from similar companies.

4 Q. That's not my question.

5 They are not based on fully distributed or
6 incremental costs, are they, sir, for the remaining
7 small ILECs other than the three you --

8 A. No.

9 Q. -- show therein?

10 And for the three you show there, I believe
11 you indicate that these were negotiated rates.

12 Correct?

13 A. Yes.

14 Q. And would you agree with me that when you
15 negotiate rates for purpose of interconnection, they
16 can be based on anything, not necessarily cost? They
17 are simply a negotiated rate?

18 A. They are. And my testimony on page 12 that
19 is kind of why I have indicated I believe they are
20 probably in excess of LRIC given the typical traffic
21 imbalance between CMRS and local. Given that most of
22 the CMRS traffic terminates locally, I believe those
23 are probably in excess of the true cost.

24 Q. Let's explore that a little bit.

25 The three companies that you have -- at

1 least small companies that you have, as you note, are
2 all partly of the TDS Holding Company structure?

3 A. Correct.

4 Q. And TDS is a major player in the wireless
5 industry, is it?

6 A. That, I'm not aware of.

7 Q. You're not aware of its investment in U.S.
8 Cellular?

9 A. I'm not aware of the extent of its
10 investment.

11 Q. Well, let's assume it is a major player in
12 the wireless business. Wouldn't you suspect it may
13 have some interest other than just purely from an
14 independent LEC when it negotiates wireless
15 agreements, particularly to the extent that it impacts
16 the profitability of their other business endeavors?

17 A. I don't know that it would. We see LECs in
18 the toll business, and they have high access rates.

19 Q. So you don't think that TDS may have a
20 business reason for negotiating rates that may not be
21 based on cost when dealing with wireless carriers of
22 businesses in which they have a substantial interest?

23 A. They might have. I mean, these were
24 negotiated rates that I took as proxy out of
25 interconnection agreements.

1 Q. For purposes of this analysis, I note that
2 you do not cite the Grand River/ALLTEL traffic
3 termination agreement, do you?
4 A. No, I don't.
5 Q. Is there a particular reason why you don't?
6 A. No. It certainly was not intentional. And,
7 I guess, when I do this next time, I'll include those.
8 Q. Would you agree with me that the rate
9 negotiated between Grand River and ALLTEL is in the
10 four cent range?
11 A. I've not reviewed that agreement.
12 MR. ENGLAND: Your Honor, if I may --
13 JUDGE THOMPSON: You may.
14 MR. ENGLAND: -- request official notice of
15 the interconnection agreement between Grand River
16 Mutual Telephone Company -- excuse me -- Corporation
17 and ALLTEL Communications, Inc., being filed in your
18 Case No. TO-2002-147 for the specific purpose of
19 observing the rate in that agreement, which is .041227
20 per minute.
21 JUDGE THOMPSON: Do I hear any objections to
22 Mr. England's request for notice of the rate contained
23 in the Grand River and ALLTEL interconnection
24 agreement filed in Case TO-2002-147?
25 (No response.)

1 JUDGE THOMPSON: Hearing no objections, the
2 Commission will take notice simply of the rate.

3 MR. ENGLAND: That's all I need.

4 JUDGE THOMPSON: Thank you, Mr. England.
5 Please proceed.

6 MR. ENGLAND: Thank you.

7 BY MR. ENGLAND:

8 Q. So it appears that there is one other
9 agreement not mentioned in your table where the rate
10 negotiated for purposes of wireless traffic is
11 substantially in excess of the three you show for the
12 TDS companies. Correct?

13 A. Based on your representation that the rate
14 is four cents, yes. It's about twice as high.

15 Q. I'll switch gears a little bit on you.

16 If your proposal is adopted by the
17 Commission, as I understand, that will result in
18 significant access rate reductions.

19 My question is, will AT&T commit to flow
20 through its pro rata share of those access rate
21 reductions to its toll rates?

22 A. AT&T will flow the reductions through.

23 Q. Will it flow through its reductions to all
24 customers in all parts of the state?

25 A. We have not analyzed even -- pricing, how it

1 would be done, so I can't answer that.

2 Q. So you can't say that it would be flowed
3 through to all customers in all parts of the state.
4 Correct?

5 A. No, I can't.

6 Q. Even though under your proposal, all
7 companies in all parts of the state would be making
8 substantial access rate reductions?

9 A. As a general matter, AT&T will flow the
10 reductions through. I've not analyzed, and no one
11 has, the impact or how it will be done.

12 And I also think though you need to go
13 beyond AT&T and look at other carriers, and such as
14 your carriers' ability to offer expanded calling when
15 you -- as benefits that will likely happen when you
16 reduce access rates.

17 Q. That wasn't my question, Mr. Kohly.

18 My question was that you will -- you're not
19 sure that you will flow through or you don't know
20 whether you will flow through the benefits of these
21 access rate reductions to all customers in all parts
22 of the state, even though all companies serving all
23 parts of the state will be making substantial rate
24 reductions. Right?

25 A. No, we've not made any specific flow-through

1 analysis or any kind of rate impact analysis.

2 Q. But all carriers in all par-- all local
3 exchange carriers in all parts of the state will be
4 making substantial access rate reductions under your
5 proposal, will they not, sir?

6 A. Yes.

7 Q. Okay.

8 A. But we are not the sole beneficiary of that
9 either.

10 Q. What's the penalty if you don't flow through
11 dollar-for-dollar all of your access rate reductions,
12 Mr. Kohly?

13 A. I don't know.

14 Q. Would you agree with me that there doesn't
15 appear to be much of a penalty or a downside?

16 A. I don't know. I really don't.

17 Q. Do you know of some authority that this
18 Commission has over you that would allow them to force
19 flow-through of these access rate reductions?

20 A. We are regulated as a competitive company
21 which provides limited jurisdiction over our rates.
22 I've not analyzed it to see if there is no
23 jurisdiction and I really don't know what the penalty
24 would or could be.

25 MR. ENGLAND: Let's talk a little bit more

1 about flow-through.

2 Your Honor, I have an exhibit I've prepared
3 that I would like to have marked.

4 JUDGE THOMPSON: Yes, sir. We're up to
5 Exhibit 53.

6 How should we describe this exhibit?

7 MR. ENGLAND: The title is, "Summary of
8 Recent Access Rate Reductions as a Result of Small
9 ILEC Rate/Earnings Cases."

10 (EXHIBIT NO. 52 WAS MARKED FOR
11 IDENTIFICATION.)

12 MR. ENGLAND: Exhibit 53?

13 JUDGE THOMPSON: It will be Exhibit 52.

14 MR. ENGLAND: Pardon me.

15 Your Honor, before I go further with the
16 witness, what I would like to do is ask the Commission
17 to take official notice of the various case numbers
18 listed in this exhibit. They are all cases before the
19 Commission whose Reports and Orders and attached
20 Stipulations and Agreements are public documents, and
21 I want to take official notice of those documents but
22 only with reference to the access rate reductions
23 which are contained in there.

24 I can produce copies of the Orders and
25 attached Stipulations and Agreements, if you would

1 like, but the only thing I want official --
2 technically official notice of is each of the access
3 rate reductions that were implemented in each of those
4 cases.

5 JUDGE THOMPSON: And this Exhibit 52 shows
6 not the access rate reduction but the effect of the
7 reduction?

8 MR. ENGLAND: No. It just shows the total
9 dollar amount of the access rate reduction by company.

10 JUDGE THOMPSON: Okay. Is that a different
11 figure than appears in the documents you're asking us
12 to take notice of?

13 MR. ENGLAND: I don't believe so, your
14 Honor.

15 JUDGE THOMPSON: This figure does appear in
16 those documents?

17 MR. ENGLAND: It does. And the reason I
18 hes-- I qualified that answer is on the Stoutland, the
19 very last entry there --

20 JUDGE THOMPSON: Yes, sir.

21 MR. ENGLAND: -- the Commission's Report and
22 Order issued in TO-96-349 actually rejected a
23 Unanimous Stipulation and Agreement, in which, I
24 believe, AT&T joined, along with the Company, Staff,
25 and Public Counsel, and suggested another way to

1 reduce access and local rates, which we subsequently
2 followed in a tariff filing that became effective on
3 October 28th, 1996.

4 And the access rate reductions were
5 approximately -- I forget the figure now off the top
6 of my head, but it was, like, 90 to 94 percent of
7 those agreed to in the Unanimous Stipulation, and
8 that's where that number comes from.

9 JUDGE THOMPSON: Okay.

10 MR. ENGLAND: In other words, you have to
11 read the two documents together, both of which are on
12 file with the Commission to arrive at that number.

13 JUDGE THOMPSON: And the number you're
14 speaking of is in each case that contained in this
15 fourth column of Exhibit 52?

16 MR. ENGLAND: This is public. It's the
17 \$307,000 figure along that Stoutland line.

18 JUDGE THOMPSON: Very well.

19 MR. ENGLAND: With the exception of
20 Stoutland, all of the others are clearly denoted in
21 the Reports and Orders or the Stipulations and
22 Agreements that they approve.

23 JUDGE THOMPSON: Any objections to the
24 Commission taking notice as requested?

25 MS. DeCOOK: Your Honor, just a comment.

1 Fundamentally, I don't have an objection to
2 the Commission taking official notice of its Orders
3 and the information contained in those Orders.

4 I think when we talk about column four of
5 the exhibit, you know, that presents a different
6 issue. And it's probably premature to address the
7 validity of the exhibit and its admissibility, but in
8 terms of actual-- actually taking notice of the Orders
9 and the contents of that -- those Orders, I have no
10 objection to that.

11 I believe, though, that counsel limited the
12 notice to the amount of the reduction, and I would
13 suggest that the notice should include the entire
14 Order since I can't sit here today, and I personally
15 don't know any of these Orders, so there may be
16 matters in the Order that bear on the amount of
17 reduction that have some relevance.

18 MR. ENGLAND: Your Honor, I mean, that's
19 fair enough. I was just trying to avoid the copying
20 expense of all of the orders.

21 JUDGE THOMPSON: Well, these are documents
22 that are presently on file with the Commission in
23 other cases; is that correct?

24 MR. ENGLAND: That's correct.

25 JUDGE THOMPSON: So I don't think there is

1 in need to copy and provide copies --

2 MR. ENGLAND: Then in light of that --

3 JUDGE THOMPSON: -- in this record.

4 MR. ENGLAND: -- I have absolutely no
5 objection to taking notice of the full documents
6 referenced here.

7 JUDGE THOMPSON: Very well. As -- as the
8 request for notice has been amended or modified, is
9 there any further objection or any objection to taking
10 notice as requested?

11 (No response.)

12 JUDGE THOMPSON: Hearing no objection, the
13 Commission will take notice -- I want to make sure I
14 understand what we're taking notice of -- of the
15 Report and Order issued in each of these cases,
16 TR-98-346, TR-98-344, TR-98-373, TT-2001-115,
17 TT-2001-119, TR-98-345, TR-98-372, TR-98-347,
18 TR-98-348, TT-2001-117/TC-2001-402, TR-98-349,
19 TR-98-373, and TO-96-349. Is that correct?

20 MR. ENGLAND: Yes, your Honor. And, in
21 addition, with respect to Stoutland, the letter and
22 revised tariff filing that was accepted by the
23 Commission and became effective on October 28th, 1996.

24 JUDGE THOMPSON: Okay. As explained, the
25 Commission will take notice of those items.

1 Please proceed.

2 MR. ENGLAND: Thank you.

3 BY MR. ENGLAND:

4 Q. Mr. Kohly, reviewing these various small
5 ILEC cases, I believe you were involved in most, if
6 not all, of those to one degree or another on behalf
7 of AT&T, were you not?

8 A. At least indirectly, yes. Michael Pauls was
9 generally more active in the rate cases than I was.

10 Q. In addition, there were several earnings
11 investigations involving small companies that did not
12 result in an access rate reduction such as Peace
13 Valley, Iamo, and, I believe, KLM Telephone Company in
14 which you or AT&T was a participant. Correct?

15 A. I'm not recalling those cases. AT-- I would
16 believe AT&T was.

17 Q. Okay. That's -- never mind then.

18 I guess the point of my -- my exhibit here
19 is to quantify the amount of access rate reduction
20 over of the last several years that these small ILECs
21 have made, and ask you to what extent has AT&T
22 explicitly flowed through those access rate reductions
23 to the customers of the companies involved?

24 MS. DeCOOK: Your Honor, I'm going to object
25 to the question on the basis that --

1 JUDGE THOMPSON: You'll have to speak up.

2 MS. DeCOOK: I'm sorry.

3 JUDGE THOMPSON: I'm sorry. I can't hear
4 you.

5 MS. DeCOOK: I'm going to object to the
6 question on the basis that he still hasn't laid
7 foundation that Mr. Kohly participated in every single
8 one of these cases and which ones he didn't
9 participate in.

10 Second, he hasn't laid a foundation that
11 these reductions are accurate and that Mr. Kohly can
12 confirm their accuracy.

13 So I think until he does that, the question
14 is inappropriate.

15 JUDGE THOMPSON: Could you read back the
16 question, Kristal?

17 (THE PENDING QUESTIONS WAS READ BY THE COURT
18 REPORTER.)

19 QUESTION: In addition, there
20 were several earnings investigations
21 involving small companies that did
22 not result in an access rate
23 reduction such as Peace Valley,
24 Iamo, and, I believe, KLM Telephone
25 Company in which you or AT&T was a

1 participant. Correct?

2 JUDGE THOMPSON: It seems to me the question
3 goes to the issue of flow-through. And if Mr. Kohly
4 knows, I think he can answer. Therefore, I'm going to
5 overrule your objection.

6 MS. DeCOOK: Just a clarification, your
7 Honor.

8 JUDGE THOMPSON: Yes, ma'am.

9 MS. DeCOOK: To the extent he asked the
10 witness to quantify the reductions, you're not
11 requiring Mr. Kohly to do that, but, rather, to speak
12 to what extent AT&T flowed through any reductions?

13 JUDGE THOMPSON: I think the question
14 assumes that the figures on Exhibit 52 are true, and
15 it's asking to what extent those reductions have been
16 flowed through.

17 You're raising the question as to whether
18 Mr. Kohly has any knowledge or not of whether those
19 figures are true and whether, in fact, they are true;
20 is that correct?

21 MS. DeCOOK: No. I thought I heard the
22 first statement in his question was asking Mr. Kohly
23 to quantify the reductions made by these small
24 companies, and that was the issue I was raising. I
25 don't --

1 JUDGE THOMPSON: I see.

2 MS. DeCOOK: -- think he has laid a
3 foundation whereby Mr. Kohly can do that. But I think
4 he can respond to the question as you framed it, if he
5 knows.

6 MR. ENGLAND: Your Honor, I'm willing to
7 accept an answer to the question as you stated it and
8 proceed if that's sufficient enough.

9 JUDGE THOMPSON: Let's move towards lunch by
10 having you answer the question as I framed it,
11 Mr. Kohly.

12 THE WITNESS: Unfortunately, I don't recall
13 how you framed it exactly.

14 JUDGE THOMPSON: Neither do I.

15 Kristal, would you help us out?

16 (THE PENDING QUESTIONS WAS READ BY THE COURT
17 REPORTER.)

18 JUDGE THOMPSON: I think the
19 question assumes that the figures
20 on Exhibit 52 are true, and it's
21 asking to what extent those
22 reductions have been flowed through.

23 You're raising the question as
24 to whether Mr. Kohly has any
25 knowledge or not of whether those

1 figures are true and whether, in
2 fact, they are true; is that correct?

3 JUDGE THOMPSON: I think the question then
4 before you, Mr. Kohly, is to what extent have the
5 access rate reductions, whatever they may be, for the
6 companies involved been flowed through?

7 MR. ENGLAND: To their customers.

8 JUDGE THOMPSON: To their customers.

9 MR. ENGLAND: Thank you.

10 THE WITNESS: I guess I really can't answer
11 your question. One, I can't be explicit because of
12 rate averaging requirements.

13 You've given me an industry number so I
14 think it's improper to look at that number and say,
15 Has AT&T flowed that through? That's not what we may
16 have received for rate reductions. And you've also
17 taken a subset of cases, and I don't know if there
18 were other offsetting impacts that would have
19 increased it, so I cannot really answer your question
20 about the amount.

21 I can say that it -- because of rate
22 averaging, you can't explicitly flow through a
23 reduction to one LEC's customers to the extent their
24 own toll providers who operate only in those exchanges
25 can.

1 BY MR. ENGLAND;

2 Q. Well, first of all, I apologize if I left
3 the impression with you or anyone else that the entire
4 amount of this access rate reduction was for the
5 benefit of AT&T. I recognize that you're just one of
6 many interexchange carriers who pay access to us.

7 And my question, I guess, was more limited
8 to the extent that you received access rate reductions
9 as a result of these total access rate reductions, to
10 what extent were they flowed through explicitly to the
11 customers of those companies.

12 And I think your answer was you don't know;
13 is that right?

14 A. Right.

15 Q. Okay. Now, let's talk about what you do
16 know.

17 During this period of time, AT&T refused to
18 participate in intraLATA presubscription when it was
19 implemented for these small ILECs. Correct?

20 A. Yes.

21 Q. And during this period of time AT&T has
22 implemented an in-state access recovery fee in
23 addition to their per-minute charge for long distance
24 service. Correct?

25 A. Yes.

1 Q. Anything else that you've done for the
2 benefit of the Small Telephone Company customers in
3 this state, Mr. Kohly?

4 A. Different rate plans have been introduced.
5 I've not followed those, so I don't know the extent
6 our per-minute rates have changed. That has a factor.

7 Q. Are those rate plans available to the Small
8 Telephone Company customers?

9 A. I believe -- well, many of them are. Some
10 of them are, certainly.

11 Q. Let's talk about some of the access rate
12 reductions implemented by Verizon and Sprint under
13 their price cap rate rebalancing plans of the last two
14 years. I believe counsel for Verizon earlier in this
15 proceeding mentioned that Verizon over the last two
16 years has implemented approximately \$12 million in
17 access rate reductions. Do you recall that?

18 A. Yes.

19 Q. Do you agree with that number?

20 A. I don't know the -- no, I don't.

21 Q. Okay.

22 A. I don't disagree with it either. I don't
23 know what that number is.

24 Q. And Sprint witness Harper, I believe,
25 indicated to me yesterday that access rate reductions

1 as a result of their rebalancing approximated
2 \$3 million a year, or 6 million for the two years that
3 they've implemented it.

4 Were you here for that testimony?

5 A. I was not.

6 I believe they are in that general
7 neighborhood.

8 Q. Okay. Now, correct me if I'm wrong, but
9 after the first year of their rate rebalancing, which
10 would be 6 million, roughly, for Verizon and 3 million
11 for Sprint, for a total of a \$9 million access rate
12 reduction, AT&T did not make any tariff filing to
13 explicitly flow that access rate reduction through,
14 did it, sir?

15 A. No, not after the first year.

16 Q. And, again, I don't want to leave the
17 impression that it was a full 9 million. It was
18 whatever your portion of that 9 million was.

19 A. Right.

20 Q. Okay. And my understanding was that you
21 didn't because of the rounding issue you mentioned a
22 minute ago, that, frankly, that amount of money,
23 whatever it was, didn't have enough effect to move
24 your rates.

25 A. That's my recollection, yes.

1 Q. Now, as a result of the second year of the
2 rate rebalancing, which would now amount to 12 million
3 for Verizon and 6 million for Sprint, or a total of 18
4 million, has AT&T explicitly flowed that through?

5 A. Yes. We've met with the Staff, presented
6 them with revenue figures, and did make a tariff
7 filing to reduce the rates. And they agreed that we
8 had flowed those through.

9 Q. So it wasn't until there was a collective
10 access rate reduction of 18 million before it was high
11 enough up on your radar screen to flow it through to
12 rates; is that right?

13 A. That's an industry number. That does not
14 reflect what impact that had to AT&T.

15 MR. ENGLAND: I'd love to ask you some
16 questions about your CLEC reciprocal pricing
17 arrangement, but I think in the interest of time, I'll
18 pass on that and let the cross-examination for prior
19 witnesses stand on that.

20 Thank you very much.

21 JUDGE THOMPSON: Thank you, Mr. England, for
22 an exciting round of cross-examination.

23 MR. ENGLAND: Thank you, your Honor.

24 And at this time I would like to offer
25 Exhibit 52.

1 JUDGE THOMPSON: Do I hear any objections to
2 the receipt of Exhibit 52?

3 MS. DeCOOK: Well, your Honor, I guess I
4 have to object because I can't verify one way or the
5 other whether the amounts of the reduction is accurate
6 or not. I think he's already put the Orders in the
7 record. There is no need for Exhibit 52 at this
8 point.

9 JUDGE THOMPSON: Well, I'm going to go ahead
10 and overrule your objection, and you'll have an
11 opportunity in briefing to point out any instance of
12 erroneous figures.

13 So Exhibit 52 is received over the objection
14 and made a part of the record of this proceeding.

15 (EXHIBIT NO. 52 WAS RECEIVED INTO EVIDENCE.)

16 JUDGE THOMPSON: Ms. Chase?

17 MS. CHASE: No questions, your Honor.

18 JUDGE THOMPSON: Thank you.

19 Mr. Dority?

20 MR. DORITY: No questions, Judge.

21 JUDGE THOMPSON: Mr. Fischer?

22 MR. FISCHER: No questions, Judge.

23 JUDGE THOMPSON: Now we're ready for
24 questions from the Bench.

25 Commissioner Murray?

1 QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Good morning, Mr. Kohly.

3 A. Good morning.

4 Q. I wanted to pursue a little bit more about
5 what Mr. Schiffman was asking you earlier regarding
6 the -- your proposal for reciprocal terminating access
7 rates at CLECs options and the impact that that would
8 have on IXCs.

9 MS. DeCOOK: Your Honor, I'm sorry to
10 interrupt.

11 Commissioner, I can't hear you.

12 COMMISSIONER MURRAY: I'm sorry. I forgot
13 to turn my mike on. Thank you.

14 BY COMMISSIONER MURRAY:

15 Q. I wanted to pursue a little bit further the
16 effect on IXCs that your proposal for reciprocal
17 terminating access at CLEC options would have.

18 A. Okay.

19 Q. Specifically, on those IXCs that are not
20 affiliates of ILECs, if -- I got so absorbed in the
21 last questioning that I -- I've forgotten what I was
22 thinking when I wanted to ask this question. But give
23 me a minute here, if you would.

24 AT&T is in this case as both an IXC and a
25 CLEC; is that right?

1 A. Yes, and that is because AT&T Communications
2 of the Southwest is both an IXC and a CLEC.

3 Q. Okay. As an IXC, if your proposal for the
4 reciprocal terminating access were adopted, how
5 would -- how would that actually affect AT&T as an
6 IXC?

7 A. It would have no impact. Currently, we
8 operate in the exchanges of Southwestern Bell. We
9 would not change those rates as any kind of part of
10 this cap or as part of this reciprocal piece, so it
11 would have no impact as far as -- and so a CLEC would
12 not be able to raise their access rates in response to
13 ours, so I would say it would have no impact.

14 Q. And because you are not an affiliate of an
15 ILEC that has access rates, you would not be required
16 to pay reciprocal rates based upon what your ILEC
17 parent would be charging; is that right?

18 A. Right.

19 Q. Whereas some -- a company like Sprint who
20 operates as both an IXC and an ILEC might be affected
21 as the IXC by your proposal?

22 A. They would. And I guess the reason we
23 included their IXC affiliate, though, is because they
24 are part of a wholly-owned family of companies, and
25 the IXC -- or the LEC access revenues flow through to

1 the parent company. And so it's appropriate in my
2 mind to include the affiliate.

3 Q. Under your proposal, would a CLEC who opted
4 into reciprocal terminating access have to file a
5 separate tariff for every carrier for which it would
6 provide switched access? Is that your --

7 A. What I envisioned would be -- the company
8 that chose to do this would file a tariff for each
9 specific company, so identifying that company and the
10 rate it would charge them.

11 Q. And so under your proposal, it would be able
12 to elect reciprocal compensation for some carriers and
13 not for others?

14 A. Yes, it would. And part of the reason for
15 that -- one, you would be -- you would file a tariff.
16 That obviously could be suspended if the particular
17 carrier you were proposing to charge reciprocal access
18 charges to had concerns and wanted to oppose that and
19 explain why it was inappropriate. They could do so
20 then.

21 Other times the size of the ILEC may be so
22 small that you can't practically implement it. I
23 mean, ideally, if there is no transactions cost, we
24 could charge reciprocal access to everybody, but some
25 don't provide their own toll. Some do it as a

1 reseller, which you can't identify. So because of
2 those practicalities, we're kind of proposing it on a
3 carrier-by-carrier basis.

4 Q. All right. I'm going to switch gears here
5 now and ask for a further explanation about what you
6 were talking about when you said that access isn't --
7 as an input to a competitive service must be priced on
8 an incremental basis. And I'd like -- I'd like to
9 know if that is why you think that the cost of the
10 local loop should not be considered as a part of the
11 cost of access service?

12 A. I think there are two reasons why we believe
13 the price of access should be priced at incremental
14 cost. The first is that it is an input used by
15 interchange carriers who compete against affiliates of
16 local exchange carriers. And to the extent we pay a
17 rate above cost, the interexchange carrier associated
18 with an ILEC does not pay that same rate. They make
19 their decisions based on the true economic cost. I
20 think Mr. Barch has stated that. I think it's --
21 Sprint has previously stated that.

22 The thing they consider when an IXC is
23 affiliated with an ILEC is that they consider the true
24 economic cost, not the imputed access rate. And so
25 from a -- as an unaffiliated IXC, we're paying a

1 higher rate than they really are, and we're unable to
2 compete. And so that's the first reason.

3 The second reason -- and I think Mr. Unruh
4 said it very clear yesterday, that they believe their
5 local rates are below their economic costs. They
6 believe access rates are above their economic costs.
7 And even if they could take the local rates to
8 economic cost, they would prefer not to because access
9 is a locational monopoly, and it subsidizes local
10 rates.

11 So the additional reason is that you need to
12 drive those implicit subsidies out so that you don't
13 subsidize local service and thwart local competition.

14 And that's also -- the loop one is for cost
15 basis, and that's why it should be included in -- or
16 not included in access. And the second is, from a
17 local composition standpoint, it needs to be recovered
18 in the manner it's incurred so you can have efficient
19 competitive entry.

20 Q. Okay. But you don't dispute that the local
21 loop does support switched access service?

22 A. Not on a cost basis from the way -- well,
23 I'm sorry. You said the local loop supports switched
24 access?

25 Q. Yes.

1 A. No, that does not happen.

2 Q. Now, I'm not talking about -- well, go
3 ahead. Explain why that doesn't happen.

4 A. I guess, can you clarify your question? I
5 was thinking financial support. I'm not sure if
6 that's what you --

7 Q. That's what I was thinking, that the cost of
8 the loop -- cost of the local loop supports the cost
9 of switched access. Is that not true? And if not,
10 why not?

11 A. No. Switched access through its CCL and
12 other elements that are above cost, particularly CCL,
13 though, are what subsidize or support local service
14 historically through pricing. So the support flows
15 from access based on pricing decisions, not costs, but
16 based on social goals or pricing decisions and
17 supports local exchange service and subsidizes local
18 rates.

19 Q. And I understand that from a rate
20 standpoint, but I'm talking about the cost of
21 providing switched access service.

22 A. Switched access service -- I mean, the local
23 loop is non-traffic sensitive. It doesn't matter how
24 much traffic is put down that. Switched access does
25 not add any additional cost to that loop whether you

1 provide it or not. The incremental cost of switched
2 access is zero -- I'm sorry. The incremental cost of
3 the loop to switched access is zero.

4 Q. Even though you couldn't provide switched
5 access without the local loop, there is no reason to
6 include any portion of the cost of the local loop in
7 determining the cost of switched access?

8 A. Not from a cost standpoint, no, because
9 access does not affect the cost of the local loop. So
10 from a cost basis, there is no cost justification for
11 including the loop into the cost of access.

12 Q. Okay. And as to the question that you were
13 asked about flow through of the -- of any reductions
14 and the switched access rates, are there other
15 benefits that accrue to the end-use customers other
16 than dollar-for-dollar flow-through of reduction in
17 access rates?

18 A. I think we've seen just in the last hearing
19 on the MCA case where the attorney for MITG said the
20 key is inter-company compensation, and I think if you
21 reduce access rates, given they've stated an interest
22 in offering expanded calling, you will have that
23 ability. You'll see that happen. There may be other
24 companies that also offer expanded calling.

25 So the benefit of reduced access goes just

1 beyond your traditional IXC anymore and needs to
2 include expanded calling as well as many other LECs or
3 IXCs and the rate reductions they will do. I think it
4 will -- also by lowering the compensation of the rates
5 paid will make calling throughout the state more
6 economical. It may take away some of the demand for
7 this expanded local calling, as well, or these
8 flat-rated plans. It may reduce some of that demand.

9 COMMISSIONER MURRAY: Okay. That's all I
10 have. Thank you.

11 JUDGE THOMPSON: Thank you, Commissioner
12 Murray.

13 Commissioner Gaw?

14 COMMISSIONER GAW: Do you want me to go
15 ahead?

16 JUDGE THOMPSON: Yes, sir, unless you would
17 rather do it after lunch.

18 COMMISSIONER GAW: That's fine.

19 QUESTIONS BY COMMISSIONER GAW:

20 Q. I get to say good afternoon to you,
21 Mr. Kohly.

22 A. Good afternoon.

23 Q. Is AT&T engaged in -- currently in offering
24 local basic service in any territory in Missouri that
25 is where a rural ILEC is operating?

1 A. No, we are not.

2 Q. In the future, would you anticipate that
3 that could be a possibility?

4 A. I guess it would -- I would -- it would
5 depend on how you define "rural ILEC."

6 Q. All right.

7 A. And a very small one.

8 I think in the future you may see
9 development, you know, of competition out of AT&T
10 possibly into some other ILEC territories. I don't
11 know that I could say that you'll see it in every
12 small LEC exchange.

13 Q. There was a -- and why would that be that
14 AT&T would not go into some of the small rural ILEC
15 exchanges to offer local basic and other local
16 services?

17 A. You've got -- I mean, there will be many
18 factors. One will be the cost of going into a new
19 market; the cost of either building a facilities or
20 leasing those facilities relative to the rates. And
21 any time you go into a market, I have to admit one
22 thing that is critical is kind of the size of that
23 market.

24 And if you're going to expend the resources
25 to go into a new market, do you do that in a market

1 that has 5,000 customers or do you do it in one that
2 has 50,000? And that will impact not just AT&T's, but
3 everybody's decision about where you'll have
4 competitive entry.

5 Q. And I'm not meaning to narrow this to AT&T
6 because it's -- because of AT&T being in some select
7 position. As a matter of fact, I'm asking about AT&T
8 because you're on the stand.

9 But, in effect, what you're -- what I'm
10 asking about is whether it is likely that we will see
11 competition in local services throughout Missouri in
12 the near future?

13 A. You -- to the extent resale allows you to
14 enter a LEC territory, that may help. And beyond
15 AT&T, I mean, there are instances where Green Hills,
16 for example, overbuilt one Sprint exchange in
17 Norborne, and so I think you may see some of that
18 where you'll have maybe not an AT&T, but you may have
19 other carriers coming in and building in a couple of
20 exchanges.

21 I think ExOp is a CLEC that is in Kearney
22 and possibly some other towns in that area where
23 they've gone into what is a fairly rural area. I
24 realize those are Sprint exchanges and not small LEC
25 exchanges, but they are not the metropolitan area. So

1 you may see some of that.

2 Q. But beyond that, it's not very likely, is
3 it?

4 A. Probably not.

5 Q. And that's because, as you were touching on,
6 there really aren't a lot of customers in many of
7 those territories in part?

8 A. In part, it will be the size of the market,
9 because you have to spread those fixed costs over
10 those customers. Now, if you can do, let's say, a
11 mass market into, you know, ten small LEC exchanges at
12 once, that helps, and that may eliminate some of
13 those -- or spread those fixed costs.

14 I don't know to the extent another carrier
15 may have the ability to do that.

16 Q. When we have -- when you're looking at the
17 number of customers you have to pay for those costs in
18 rural areas of the state where in general the rural
19 ILECs may be operating, there just -- the cost is --
20 cannot be spread around/among a large number of
21 customers because they are not there?

22 A. Yes. And that will certainly be a factor.
23 I don't know that it -- I hate to say you'll never see
24 it, but, certainly, that will be a factor that will
25 kind of delay it at least.

1 Q. And I -- I understand it's difficult to
2 predict the future on anything. What we're looking at
3 right now and what factors are there would tend to
4 make one believe that it is difficult for that kind of
5 competition to develop throughout Missouri in those
6 rural areas, wouldn't you say?

7 A. Difficult, but not impossible. And I do
8 think when you look at the competition in Norborne
9 you've seen at least -- and I think Mark Twain is
10 doing some competition in some other exchanges that
11 aren't what you would consider these big urban areas.
12 So I think you may see some of that. I can't say
13 you'll see it throughout Missouri, but you may see
14 some of that.

15 Q. Probably not from companies like AT&T,
16 though. Right?

17 A. Probably not. I think I'm safe to say that.

18 Q. I know. So -- so when we're looking at the
19 issue of whether or not this -- this problem of the
20 pricing of access and the -- the pricing of local
21 basic rates ought to be readjusted to help
22 competition -- and I'm really trying to get back to
23 your testimony awhile ago about how that helps the
24 competitive environment -- can you really say that
25 that applies in those small rural ILEC exchanges to

1 the extent that it might apply to some other exchanges
2 that -- that -- that exist in the state?

3 A. To the extent you make the support
4 mechanisms explicit and you pull those out of access,
5 I think, one, that will benefit maybe not basic local
6 competition, but it will benefit toll competition or
7 expanded local calling, so there is that benefit.

8 And as you make those subsidies explicit and
9 then put them into a competitively-neutral type of
10 fund system so you don't have \$80 rates in rural
11 Missouri -- and I understand that's not practical --
12 that does help.

13 Will that mean a CLEC may choose to compete
14 there? It might. It may not be from an MCI or an
15 AT&T, but it might be from a neighboring company
16 trying to expand and compete in a neighboring
17 exchange. You might see that. It will certainly be
18 much easier to the extent the support is brought out
19 and it is explicit and it's portable.

20 Another thing I think you have to worry
21 about is if you do nothing, are the implicit supports
22 you have in access sustainable? I don't believe they
23 are. I think you'll see wireless substitution. They
24 pay a lower rate. It will start eating away at your
25 implicit mechanism.

1 And so you really just can't stay and do
2 nothing, because you've got -- your implicit mechanism
3 is eroding or will erode, and there are benefits to
4 making these supports mechanisms explicit.

5 Q. Is it -- is it fair to say that -- that
6 those arguments may be more accurate or at least more
7 likely to produce the results that you -- that you've
8 indicated earlier with regard to increasing
9 competition in areas where the population is somewhat
10 greater?

11 A. I'd say it's fair to say that the benefits
12 that that would have for local entry are likely to
13 accrue to a greater extent where there is more
14 customers. The expanded calling benefits, I wouldn't
15 say that.

16 You've heard some of the small LECs say they
17 would like to offer it, and I have not heard -- and
18 I've not asked them, so I'm not saying they won't do
19 it, but other companies have said they want to do
20 that.

21 So I think that there's benefits. They may
22 be different, but there are benefits that will accrue
23 to both areas.

24 Q. And I'm glad you brought that up because I
25 wanted to ask you if you could expand upon how this

1 might be utilized to help with expanded calling?

2 A. In the recent MCA case -- or on-the-record
3 presentation, the attorney for the Small Telephone
4 Company Group and Mid-Missouri Independent Telephone
5 Group talked about the impact of high access rates,
6 and because of those access rates, their inability to
7 offer any kind of calling into a neighboring exchange,
8 especially if it were a Sprint or Verizon exchange.

9 And so to the extent you are able to reduce
10 access rates, I think that makes that easier and more
11 practical to do on their own. And so I think that is
12 the benefit that you will see.

13 I think that in addition to just focusing on
14 Verizon and Sprint, you may be able to offer expanding
15 calling into a neighboring small LEC exchange. And if
16 we ever got to a situation, I think, where the
17 compensation was similar for wireless -- I mean, look
18 at the calling scope you get with wireless. There is
19 no distinction for a lot of plans between local and,
20 you know, calling to New York. You may be able to see
21 that. The access rates may still be so high you
22 can't, but you will at least move in that direction.

23 Q. I don't know if you were here the other day,
24 and, quite frankly, I can't remember which witness I
25 asked this question of, but there was a response, as I

1 recall, to the question of the Commission's authority
2 to set calling scope areas.

3 Do you believe this Commission does not have
4 authority to set calling scope areas outside of what
5 has already been done in the MCA orders that have
6 passed?

7 A. I heard Mr. Unruh say that. I didn't hear
8 him cite a specific statute, so I don't know. I
9 wouldn't be quick to conclude you don't necessarily,
10 but I really can't say definitively. I think there
11 are some practical impacts and limitations.

12 Q. But you're not -- you're not necessarily
13 agreeing with that position, are you?

14 A. No.

15 Q. Have you seen -- you've looked at
16 Chapter 392 from time to time, I suspect, haven't you,
17 Mr. Kohly?

18 A. Once or twice.

19 Q. Have you seen 392.200, Sub 7 at some point?

20 And I -- I'm waiting for you because you
21 appear to have that in front of you.

22 A. Yes, I have a copy of Senate Bill 507.

23 Q. That's a little more difficult.

24 A. But it should have .7 in it. And it
25 doesn't, I don't think.

1 What does your .7 say?
2 Q. Would you go -- I just wanted to...
3 Do you have a copy of the statute in front
4 of you now?
5 Wait a minute. Let me see if I have the
6 right cite first.
7 A. Okay.
8 Q. I'm not sure I do.
9 Yes, I do. That's the right cite.
10 Do you have that?
11 A. Yes, I do.
12 Q. And could you read that to me, please?
13 A. "The Commission shall have the power to
14 provide the limits within which telecommunications
15 messages shall be delivered without extra charge."
16 Q. Yes, sir. Thank you.
17 You've seen that before, I suppose, haven't
18 you?
19 A. I have. And I think it clearly says you
20 still have that authority to do that. Now, you know,
21 there is going to be revenue neutrality and other
22 arguments.
23 Q. Yes.
24 A. But really what you're doing is you're not
25 changing the exchange in that case. I guess you're

1 changing the calling scope, and I would think that is
2 within your authority.

3 Q. Yes, sir. I want to go to another issue,
4 Mr. Kohly, just -- just for a little bit.

5 And in the -- in testimony in this case, or
6 at least in questions followed by testimony, and in
7 some other cases that I have heard, some parties have
8 taken the position, I believe, that this Commission
9 cannot utilize the Missouri Universal Service Fund,
10 the high-cost provision of -- portion of that to lower
11 access rates. I may be misstating that somewhat.

12 But have you heard that kind of an argument
13 before?

14 A. I have. And I disagree with that argument
15 completely.

16 Q. I am aware of that. But what I want to ask
17 you, I guess, is, first of all, if you would give me a
18 brief -- and I realize you've done this before, but
19 could you give me a brief reason why you disagree with
20 it? And then I have a follow-up question.

21 A. The idea behind the Universal Service Fund,
22 and the only rational reason I think you have it, is
23 to make your support mechanisms for basic local
24 service explicit. Move those out of access where they
25 are implicit, where the CCL is discriminatory, move

1 those from that implicit mechanism, which SWBT
2 admitted it supports local rates. And so move those
3 out of that into an explicit mechanism, and that is
4 consistent with ensuring just, reasonable, and
5 affordable rates.

6 And so it just -- it's inconceivable to me
7 that you can't use the Universal Service Fund for that
8 reason. And I guess if you just -- even within a
9 narrow view -- the CCL is a local rate element. I
10 mean, it's an access element, but it's designed to
11 recover the local loop. But clearly by moving that
12 out is supporting local services. And I think even
13 beyond that, you're eliminating an implicit subsidy
14 that supports local service.

15 Q. Other than the CCL provision, if you -- if
16 you look at the list of things that is cited in
17 Missouri law that the Missouri Universal Service Fund
18 high-cost portion can be utilized for, does it say
19 anything to your knowledge about access rates, if you
20 know?

21 A. It doesn't -- I'm getting there.

22 It doesn't specifically mention access
23 rates, but it does talk about essential local service.
24 And to the extent access rates support that, I think
25 that it is completely appropriate to target that as an

1 element for rate reductions through USF support.

2 Q. And that's -- that's why I want to follow up
3 with this: I'm trying to understand -- at least it
4 has appeared to me in the past that AT&T has taken a
5 direct approach to its position in regard to the
6 Commission's ability to utilize access -- to utilize
7 the Universal Service Fund to lower access rates.

8 My question is, does AT&T not believe
9 that -- that it is at least appropriate to look at the
10 utilization of the high-cost fund to prevent the
11 raising of local basic rates beyond certain levels
12 that are reasonable in the event that access rates are
13 lowered?

14 A. I think that would be appropriate. That's
15 consistent with what we've said.

16 Q. In essence, is -- in essence, in other
17 words, isn't it clear that the high-cost portion of
18 the authorized -- the authorized statutory provision
19 for high-cost service can be utilized to keep local
20 basic services at a reasonable level? I'm not sure if
21 that's the exact word -- I'm sure it's not the exact
22 wording.

23 A. The statute talks about essential local
24 service which is generally defined so far as basic
25 local, and I think that's the key. And so the extent

1 when you move implicit subsidies out and put them into
2 a fund, you're doing that. So I think -- and that's
3 the basis we think it's appropriate for USF to be able
4 to reduce access rates.

5 Q. I understand your position. I think what
6 I'm asking you is, if you -- if we as a Commission
7 were to somehow get to a point in a later proceeding
8 where local -- where access rates were reduced, would
9 you not expect there to be pressure especially on some
10 of the rural ILECs to raise their basic services or
11 other services affiliated with things such as vertical
12 services, et cetera, in order to make up the revenue
13 difference or loss from access?

14 A. If you were to do a revenue-neutral access
15 reduction, other rates will have to go up. And, you
16 know, you've seen some of the estimates even in my
17 testimony and Mr. Pauls' that show what would happen
18 on a monthly basis if you do that.

19 And, arguably, I mean, that would affect --
20 you could apply that to different rates, but it
21 certainly would put pressure on basic local or other
22 rates, and there are only so many rate elements you
23 can apply that to, I realize.

24 Q. And if there were a high-cost fund in
25 existence in the state, do you know of any reason why

1 the high-cost fund could not be utilized to prevent
2 the raising of essential local services' prices to
3 levels that were not reasonable?

4 A. Let me make sure I understand what you're
5 asking me.

6 If there were a fund in place, could that be
7 used to ensure that local rates, local essential rates
8 did not exceed a just, reasonable, and affordable
9 amount?

10 Q. That's basically it, yes.

11 A. Yes.

12 Q. You agree with that?

13 A. I would.

14 COMMISSIONER GAW: I think that's all I
15 have.

16 Thank you, Judge.

17 JUDGE THOMPSON: Thank you, Commissioner
18 Gaw.

19 We are at 12:25, and I think that delaying
20 the lunch recess any longer would certainly cause me
21 to collapse, if not perhaps the witness and counsel.
22 So we're going to take a shorter lunch recess today,
23 however, so that we can actually finish the case
24 today. We will be back in one hour, at twenty-five
25 minutes after one.

1 (A recess was taken.)

2 JUDGE THOMPSON: We'll go ahead and go back
3 on the record at this time.

4 Commissioner Forbis?

5 COMMISSIONER FORBIS: Up to me.

6 QUESTIONS BY COMMISSIONER FORBIS:

7 Q. It's still afternoon, isn't it, Mr. Kohly?

8 A. Yes, it is. We're not into evening yet.

9 Q. Now that my mind is clouded with cheese and
10 tomato and ham, I'll try to get through my two
11 questions that I had.

12 Page 27 of your Surrebuttal Testimony you
13 lay out sort of these three steps to develop just and
14 reasonable rates -- access rates, and I just was
15 curious. My assumption was -- is there a priority to
16 these three steps? Do all three steps need to happen
17 in unison? If one happened and two didn't happen
18 would there be a negative effect or no effect?

19 A. What we tried to lay out was a three-step
20 process. Realizing you may not decide TSLRIC costs in
21 this case, we looked at it, okay, the first priority,
22 eliminating the CCL as a usage-sensitive element.
23 Let's take that element out of access. That requires
24 no cost determination as far as the LRIC or anything
25 like that, so you could take that out of the existing

1 rate structure and you could do that today, and that
2 could be pulled out and recovered through USF or
3 through a SLC pool, subscriber line charge pool where
4 those revenues are pooled, and the companies could
5 receive funds from that. And that could all happen, I
6 think, fairly quickly.

7 And once you do that, then the next step
8 would be then reducing rates further to their TSLRIC
9 levels. To do that, the Commission may find they need
10 to do additional work. They may be able to adopt a
11 cost study from this case. We used our proxies just
12 kind of to benchmark where we thought they would fall
13 out, to provide some idea of what we thought they
14 would look like, and to be able to quantify the
15 overall impact that these steps my have.

16 And so that's kind of how we broke it out,
17 is, one, what we thought could be done immediately or
18 fairly quickly, and then the next step would be then
19 going to TSLRIC.

20 Q. So you've prioritized them based only on
21 what you thought was immediately achievable versus
22 more of a long-term achievable goal?

23 A. Yes. I think the long-term goal in our mind
24 is going to be to reduce access rates to their LRIC
25 cost, and that's what I think the Commission ought to

1 focus on doing. In the interim to get there, we think
2 it would be completely appropriate and necessary to
3 remove the CCL, or carrier of common line element,
4 from access, and that was what our first step was.

5 Q. Okay. So if we did some -- if cost
6 adjustments were to take place along some TSLRIC
7 approach without addressing the CCL issue, good thing?
8 Bad thing?

9 A. I think the CCL issue is important to do
10 right away. It -- it's identifiable as a rate element
11 that is used to recover loop costs. It's a traffic-
12 sensitive element designed to recover costs that
13 aren't traffic sensitive, so it creates a lot of
14 problems. It creates a subsidy. Some customers pay
15 more or less without relation to cost or their ability
16 to pay. And so we think that that's an appropriate
17 step that ought to be done right away. And it needs
18 to be done. And it would be sort of -- as you go to
19 TSLRIC rate elements, if you were at TSLRIC for
20 access, you would not have a carrier common line, so
21 this is a step in the process, like a phase almost, if
22 you will.

23 Q. All right. Thank you.

24 Now, you mentioned earlier that if you
25 address the CCL problem, you could either do it

1 through the USF or you could do it through basically a
2 SLC-type monthly fee.

3 A. Right. What we -- I'm sorry.

4 Q. So do you have -- is there a preference? Do
5 you think one is better than the other? Would you mix
6 and match?

7 A. Actually, we would probably recommend some
8 type of mixing and matching.

9 Q. Okay.

10 A. Well, let me take that back.

11 You could do either one. If you went to a
12 SLC pool right away, we would essentially have a rate
13 element subscriber line charge put on each -- put on
14 each end user's line that would go to a fund outside
15 of the USF in which the companies then would draw from
16 that their own SLC amount. And that has some benefits
17 maybe that put in the US-- that may be faster than
18 putting it into the USF might have.

19 I think either one is a very good
20 alternative to be done. I think they -- I mean, they
21 both deserve equal consideration. There is not one
22 benefit in my mind to the other. There are just two
23 ways to do it.

24 Q. And both potentially could result in an
25 extra fee of some sort being assigned to the end user?

1 A. Yes.

2 Q. On the SLC pool, would you -- if you had a
3 consumer who made no toll calls, would you still ask
4 them to pay a monthly flat fee?

5 A. Yes. And the reason is, is to get local
6 service -- it comes back to the costing issue. Access
7 does not create any additional cost on the local loop,
8 and so from a cost standpoint, there is no reason that
9 it's appropriate to recover loop rates in access. And
10 so we think that's why it's appropriate to put it on
11 an end user bill, and it's also -- with their local
12 bill.

13 And it's also reflective of the manner in
14 which the costs are incurred. The fact that a person
15 may make a thousand minutes of toll really does not
16 affect the cost of the loop, so why should you have a
17 person who makes a thousand minutes of toll who may
18 have low income supporting someone who makes no calls
19 but is high income and really doesn't need that
20 subsidy? And that's one of the inequities you get
21 with a carrier common line element.

22 Q. The other inequity, though, could be if you
23 make no calls that -- no toll calls, but you're saying
24 you should still pay the fee to help support the cost
25 of the local loop regardless?

1 A. Right, yes. And the -- the loop does not
2 cause any additional cost to -- I'm sorry. Access
3 does not cause any additional costs to be incurred on
4 the loop, and that is the basis for it -- for applying
5 that on a per-line amount rather than on a per-minute
6 amount. And, really, since those costs are incurred
7 by that user, I don't see that that's an inequity.

8 What I do think is an inequity is having a
9 toll user, regardless of income, paying a per-minute
10 amount, subsidizing a local service that the
11 subscriber may or may not have -- may have high
12 income. So it's not means tested.

13 Q. Okay.

14 A. And, also, by having a per-minute amount
15 creates market distortions as well because a
16 high-volume user will have to pay more.

17 Q. Pay more. You mentioned that in your
18 testimony. Right.

19 A. Right. And when they have to pay more, they
20 may look at other substitutes that don't have to pay
21 that same amount. Wireless pays a lower rate, for
22 example, and so that places interexchange carriers at
23 a disadvantage relative to wireless carriers. And,
24 really, when you have a carrier common line element,
25 you've said, IXCs, you have to pay this cost of the

1 loop.

2 Well, there is -- and if you believe in this
3 common cost argument, there's other services that use
4 that loop, and those should also contribute if you're
5 going to buy that argument.

6 Q. On that argument -- I was thinking about
7 that this morning -- regardless of where you move the
8 cost, you're not going -- or how you assess the cost,
9 you're not going to necessarily negate that wireless
10 argument, right, because the cost is still going to be
11 there for the customer whether you get it through a
12 SLC pool or -- or through access.

13 A. The wireless issue comes more to -- on
14 per-minute compensation the fact that if a customer
15 has land-line service and places a call from Jefferson
16 City to Columbia, the access charges will be around
17 18 cents, I mean, just in that general ballpark. If a
18 customer uses a wireless call to make that same call,
19 the terminating expense is only going to be about a
20 half a penny to a penny in the Verizon town, and that
21 is -- that's one of the competitive impacts when you
22 have access rates compared to -- that other carriers
23 don't -- don't face.

24 And then in addition to that, you also have
25 the impact that other services use that loop, so if

1 you are going to price based on loop usage, you need
2 to go beyond forcing access providers to pay for it.
3 And that's where you get into the allocation, which is
4 going to be arbitrary. I think everybody has admitted
5 that.

6 So at the end of the day, what do you have?
7 You have one customer where the loop is dedicated, and
8 that is what you -- regardless of the services, and
9 that's what you have. And that is the cost causer,
10 and I think that's why it's appropriate to apply the
11 cost to that person.

12 COMMISSIONER FORBIS: Thank you very much.
13 I'm done.

14 THE WITNESS: Thank you.

15 JUDGE THOMPSON: Thank you, Commissioner
16 Forbis.

17 QUESTIONS BY JUDGE THOMPSON:

18 Q. Mr. Kohly, what's the purpose of your
19 testimony?

20 A. The purpose of my Direct Testimony was to
21 lay out AT&T/TCG Companies' concerns about a
22 protective order and our ability to analyze the costs
23 that may be related or purported to represent our
24 company and the problems we've had.

25 Q. Okay.

1 A. The purpose of my Surrebuttal Testimony is
2 to address the cost debate, whether the loop is a
3 common or shared cost, and to set forth our belief on
4 what is the appropriate cost standard. A lot of --
5 based on the debate in the Rebuttal Testimony where it
6 became clear the parties had very different advocacy
7 positions.

8 And then we moved into putting the
9 surrogates to give the Commission an idea of what we
10 believe a TSLRIC should be just as another data point
11 to look at for reasonableness comparison and to get --
12 to gauge the results.

13 And then we also used that CCL piece and
14 then the TSLRIC piece to gauge and to put forth a
15 proposal on, What should the Commission do with the
16 result of this case?

17 We think this case is very much about rates.
18 It said it in numerous orders, and so we felt we
19 needed to have something in there about rates, and so
20 that's what we put forth, a proposal to both put forth
21 our estimates of cost and then to take that and put it
22 into an impact in a rate plan for how the Commission
23 should proceed going forward.

24 Q. Now, you have not been able to see
25 Dr. Johnson's study, have you?

1 A. No.

2 Q. Based upon what you've heard during the
3 course of this proceeding, do you have any opinion as
4 to whether that study is useful to the Commission
5 in -- for the purposes for which this proceeding has
6 been held? Maybe that's an unfair question since you
7 haven't seen it.

8 A. I really -- I really can't say. I've heard
9 criticisms both ways, and, really, without evaluating
10 the study, it would be hard for me to say one way or
11 the other.

12 Q. Let me say this: If you were hired to
13 conduct such a study, how would you go about doing it?

14 A. I would have selected a cost methodology
15 which would have been a TSLRIC cost study and
16 performed that analysis on the various companies and
17 provided those results.

18 Q. Okay. I want to make sure I understand
19 exactly what you mean by this phrase TSLRIC that we've
20 been hearing for five days. Could you define that in
21 your own words?

22 A. I mean by that is a total service long run
23 incremental cost, and the way I use it in this
24 context -- access is made up of elements or
25 components, local switching, tandem switching and

1 transport. So what I'm putting forth as a TSLRIC
2 estimate is a summation of the costs of those
3 individual elements which include common costs --
4 joint and common costs in them, so my TSLRIC -- what
5 I'm proposing as a TSLRIC standard would include joint
6 and common costs. As Mr. Farrar said, general
7 corporate overheads.

8 Q. Okay. And how is that different from the
9 TELRIC costs that we've heard about in other cases?

10 A. The TELRIC goes more to an individual
11 element or functionality, and it kind of -- as I said,
12 within the TELRIC or the elements within switching, I
13 combined them and said, Well, that is a service. That
14 is local switching, or that is access service. And so
15 the TSLRIC is the cost of those -- of the service
16 which is made up of the components of that service.

17 Q. And both of these are what are referred to
18 as forward-looking costs; is that correct?

19 A. Yes.

20 Q. And what exactly does that mean,
21 forward-looking costs?

22 A. It would be the -- I wish I had my FCC rules
23 here, but, basically, it would be the forward-looking
24 costs, the economic costs that a reasonably efficient
25 firm would incur in producing a product in the future

1 looking forward. If I'm looking today, I'm going to
2 produce something, what's my cost going to be to
3 produce that?

4 Q. So this is a -- am I correct in
5 understanding this to be absolutely different from
6 historical costs?

7 A. Yes. Historical costs in my mind are
8 accounting costs. When you look backward and say,
9 What did this cost, that's an accounting embedded
10 cost.

11 We're advocating what I would say is a
12 forward-looking economic cost which would be, What
13 will this cost to do? And I think that is the
14 appropriate cost from which you make pricing
15 decisions, and several witnesses have agreed with
16 that.

17 Q. Now, when the Commission established this
18 case, I think the Commission used the phrase "actual
19 costs." Do you have an opinion as to whether or not
20 we've been discussing actual costs here for the past
21 five days?

22 A. I believe actual costs will mean different
23 things to different people. If you were in a
24 situation where you were making a price decision,
25 looking forward, the actual cost is the cost that you

1 will incur in doing that. And so from that
2 standpoint, I do think a forward-looking economic cost
3 is an actual cost.

4 Q. Okay. Now, you're familiar, are you not,
5 with traditional rate of return regulation?

6 A. Yes.

7 Q. And you're aware, are you not, that in
8 traditional rate-of-return regulation that something
9 is -- a tool or a method is used which centers on
10 something called a test year?

11 A. Yes.

12 Q. Okay. Now, would you describe the cost
13 method used in traditional rate-of-return regulation
14 as that -- are those forward-looking costs, or are
15 those historical costs or some other kind of costs?

16 A. Generally, those would be historical costs.

17 Q. And that's because they are based on the
18 costs that actually occurred in a year?

19 A. Yes, prior costs.

20 Q. Prior costs.

21 And, nonetheless, the purpose of that test
22 year is to predict costs for the future, is it not?

23 A. It's -- well, I've always looked at that as
24 it's -- that's used to determine --

25 Q. In other words, since Commission rate-making

1 is prospective when the Commission develops a revenue
2 requirement for a rate-of-return regulated utility,
3 that is an estimation, is it not, of the revenue that
4 the utility needs for some future period?

5 A. I would say it's a -- the revenue a company
6 needs on an embedded basis at a point in time. I
7 think there have been rate cases where certain
8 adjustments were made for additional investments that
9 might have been expected or other instances like that,
10 so I -- it's a point in time. And then you go
11 forward. You have the next rate case and you do the
12 revenue requirement at that point in time and adjust
13 the rates there.

14 Q. I see. The word "embedded" that you used,
15 what do you mean by that?

16 A. Excuse me. That would be historical
17 accounting costs --

18 Q. Okay.

19 A. -- based upon the current network and
20 current design.

21 Q. Did you hear Mr. Johnson -- or, excuse me --
22 Dr. Johnson testify to his opinion that, in general,
23 costs are declining in the telecommunications
24 industry?

25 A. Yes.

1 Q. Do you agree or disagree with that
2 testimony?

3 A. In general, I would agree.

4 Q. There was also testimony that there has been
5 a traditional view that long distance services have
6 been priced above cost and basic local services priced
7 below cost. Are you familiar with that view?

8 A. Do you mean switched access prices are
9 priced above cost? I'm sorry. Priced -- yeah,
10 switched access services are priced above cost instead
11 of toll?

12 Q. Well, first, let's talk about toll.

13 Are you familiar with the view that toll has
14 been priced above cost historically?

15 A. Yes.

16 Q. And do you agree or disagree with that
17 view?

18 A. The reason -- I would agree with that, and
19 the reason is because the component that goes into
20 toll, switched access, has been priced above cost.

21 Q. That's the next question. So you -- you
22 agree that switched access is or has been priced above
23 cost?

24 A. Yes.

25 Q. Do you believe that that's still the state

1 of the industry today?

2 A. Absolutely.

3 Q. Here in Missouri?

4 A. Absolutely. I think the cost studies
5 submitted in this case show that.

6 Q. And there's been testimony that Missouri has
7 high access rates compared to other states. Have you
8 heard that testimony?

9 A. Yes.

10 Q. And you believe that to be true?

11 A. Yes, I do. In my own AT&T comparison, I
12 think Missouri ranked fifth overall with the highest
13 access rates. Dr. Johnson's comparison showed
14 Missouri was at the very high end of access rates.

15 Q. There's also been testimony that Missouri is
16 a high-cost state. Did you hear that testimony?

17 A. Yes.

18 Q. And do you agree with that testimony?

19 A. Not necessarily. And it depends, I guess,
20 how you define "high cost." Is it higher than the
21 lowest cost state? Well, yes. There's several
22 different proxies, though, that I think are
23 available -- bear with me a minute -- that you can
24 look at that show Missouri, while it may be higher
25 than average, still does not justify the high access

1 rates we have.

2 In the FCC's first Report and Order, it put
3 forth loop proxies that were the cost of the local
4 loop through -- on a statewide basis, not just
5 specific to the RBOC or to a particular company.
6 There were 13 states on that list that had higher
7 rates than Missouri. And I know if you look at the
8 FCC Universal Service Model, for example, for
9 Southwestern Bell, Kansas and Oklahoma are a higher
10 cost state than Missouri, as is Arkansas. And so
11 there are many states that are higher than Missouri.

12 Q. Do you happen to know whether access rates
13 in general are higher, lower, or the same as those in
14 Missouri in the states you just mentioned, Arkansas,
15 Kansas, and Oklahoma?

16 A. Oklahoma and Kansas are definitely lower.
17 Arkansas, I am not -- I believe are lower. Michael
18 Pauls could answer that with 100 percent certainty.

19 Q. Very well. Did you hear Dr. Johnson's
20 testimony that with respect to the price-capped ILECs
21 that their access rates are too high?

22 A. Yes.

23 Q. And I may not be wording it exactly the way
24 he did, but I think that was the sense of his
25 testimony.

1 Do you agree with that testimony?

2 A. Yes, I do. When you look at the
3 price-capped ILECs access rates, Southwestern Bell's
4 is the seventh highest for the RBOCs based on AT&T's
5 data. Sprint and Verizon stick out like a sore thumb.
6 I mean, they are just -- on calls within AT&T, I had
7 one person tell me I didn't know what access was when
8 I told them the rate for Verizon. So, yes, they are
9 high.

10 Q. And you know you're going to get some
11 recross?

12 A. I know, but I had to get that in.

13 Q. And did you hear Mr. Dunkle's testimony
14 about calling scope, that Missouri customers,
15 especially in rural exchanges, are not getting much
16 bang for their buck?

17 A. Yes.

18 Q. And do you agree or disagree with that
19 testimony?

20 A. There's many factors, I think, to look at,
21 and it will be relative to the rate they pay. And
22 just reading the recent Union Electric stipulation, I
23 think your electric meter rate adopted was in the \$7
24 range, and that just lets you get electricity.

25 When you start comparing basic local rates

1 at \$6 and say, We can only call a few customers, I
2 don't know that that's wrong, I mean, depending on the
3 rate you pay. And so, no, I would not necessarily
4 agree that local customers are paying too much for the
5 service they're receiving.

6 Q. Okay. Is it your testimony that the
7 interim cap selected by the Commission in the case
8 that preceded this one, that that cap is acceptable?

9 A. Yes, with the three exceptions that were
10 outlined in my Surrebuttal Testimony.

11 JUDGE THOMPSON: Thank you, Mr. Kohly.

12 I'm not going to ask you about the
13 protective order. I think I know your position on
14 that.

15 THE WITNESS: I would be happy to answer,
16 sir.

17 JUDGE THOMPSON: Any further questions from
18 the Bench?

19 (No response.)

20 JUDGE THOMPSON: Okay. Recross based on
21 questions from the Bench.

22 Mr. Morris, please step up.

23 MR. MORRIS: Thank you, Judge.

24 JUDGE THOMPSON: You are an infrequent
25 visitor to the podium.

1 RE-CROSS-EXAMINATION BY MR. MORRIS:

2 Q. Good afternoon, Mr. Kohly.

3 A. Good afternoon.

4 Q. I just have a few questions.

5 Regarding your, I guess, second step to
6 eliminate the CCL and establish, say, a state SLC, if
7 you will --

8 A. Uh-huh.

9 Q. -- during your testimony you were talking
10 about a SLC pool.

11 A. Yes.

12 Q. Now, on the -- for the federal SLC, is that
13 pooled or does each ILEC or LEC who bills the SLC just
14 keep what they bill?

15 A. My understanding is that each LEC keeps what
16 they bill.

17 Q. Okay. That brings me to my next question,
18 which is, sort of the bill-and-keep regime, if you
19 will, on the federal side seems to work. Why wouldn't
20 the bill-and-keep regime on the state side? I mean,
21 why do you propose the --

22 A. When you look at the rates that I reference
23 in testimony that are contained in Mr. Pauls's and
24 what a SLC would be for each company, there is a wide
25 range, and I think it goes from a dollar-something to

1 \$26. And realizing that the \$26 would cause some
2 economic harm, I think the best way to do it would be
3 a pooled mechanism because of the differences we would
4 have in this SLC to offset the access reduction.

5 Q. Okay. Next, I would like to explore this
6 reciprocal terminating access.

7 Do you recall the example that Mr. Schiffman
8 with Sprint posited, and that is an MCI CLEC was
9 offering service in Sprint territory. Do you recall
10 that --

11 A. Yes.

12 Q. -- line of questioning?

13 A. I'm trying to put a diagram of where
14 everybody was.

15 Q. Okay. Now, you may or may not know, but
16 let's -- I'll tell you that there are some MCI CLECs
17 that at least have interconnection agreements in
18 Verizon territory. Are you aware of that?

19 A. No. I've not followed the interconnection
20 agreements of WorldCom.

21 Q. Okay. If you'll assume with me that some
22 MCI CLECs do have interconnection agreements in
23 Verizon territory, as I understand your testimony, if
24 MCI, the long distance company, were carrying a long
25 distance call that terminated with an AT&T CLEC, that

1 under your proposal, AT-- the AT&T CLEC would charge
2 MCI Verizon's terminating access rate regardless of
3 where the long dis-- the long distance call
4 originated?

5 A. If MCI was in Verizon territory and was
6 charging a rate equal to the rate charged by Verizon,
7 that is what we would propose.

8 Q. Okay. Now, would your answer be the same
9 regardless if the MCI long distance company actually
10 carried any long distance calls to the AT&T CLEC from
11 that Verizon territory?

12 In other words, let's assume that 100
13 percent of the minutes terminating with the AT&T CLEC
14 originated in -- that were carried by MCI the long
15 distance company were originated in Southwestern Bell
16 territory. Under your proposal, would the AT&T CLEC
17 still charge the MCI long distance company Verizon's
18 terminating access rates?

19 A. If we were -- if AT&T was terminating
20 traffic to the MCI entity in the Verizon territory and
21 paying Verizon's rate, yes, we would.

22 Q. And that would be true even if the MCI long
23 distance company didn't originate a single minute of
24 long distance traffic in that Verizon territory?

25 A. Yes, as long as Verizon -- as long as MCI in

1 that situation was charging AT&T Verizon's rates, yes,
2 we would. That would be the same as if the CLEC in
3 your situation were AT&T out there or if AT&T was
4 terminating it to MCI. We would have to pay that
5 rate, your -- a rate equal to Verizon.

6 MR. MORRIS: That's all I have.

7 JUDGE THOMPSON: Thank you, Mr. Morris.

8 Mr. Stock?

9 MR. STOCK: No questions, your Honor.

10 JUDGE THOMPSON: Mr. Poston?

11 RECROSS-EXAMINATION BY MR. POSTON:

12 Q. I'm going to throw another scenario at you,
13 and I apologize if this has already been asked. It's
14 also going back to your third CLEC cap selection.

15 If AT&T, the CLEC, is operating in a
16 Southwestern Bell exchange and it receives a call that
17 originated from an ILEC at a rate lower than
18 Southwestern Bell's rate, which rate would AT&T charge
19 for terminating the call?

20 A. In the hypothetical, which I don't think
21 exists, we would charge SWBT's rate.

22 MR. POSTON: Thank you.

23 JUDGE THOMPSON: Thank you.

24 Mr. Dandino?

25 MR. DANDINO: No. Thank you, your Honor.

1 JUDGE THOMPSON: Mr. Lane?

2 RE-CROSS-EXAMINATION BY MR. LANE:

3 Q. I want to ask a couple of questions in
4 follow up to Commissioner Murray's questions on the
5 reciprocal compensation proposal that you have.

6 Would you agree that there may well be
7 traffic identification issues if your proposal were
8 adopted?

9 A. Yes, there would. And, I mean, to the
10 extent we couldn't identify the traffic with a
11 particular ILEC or an affiliate, obviously, we
12 couldn't charge the reciprocal rate.

13 Q. Okay. Why don't you describe, if you would,
14 the problems with trying to identify the traffic as
15 you see it?

16 A. Well, today for much of the intraLATA
17 traffic, it's LEC to LEC over the Feature Group C
18 network. Call records are not exchanged. And so you
19 obviously would still have that issue.

20 To the extent a carrier used a reseller
21 where the reseller terminated it and did not have --
22 use an underlying carrier's CIC code, where you
23 couldn't identify the originating carrier, you would
24 not know that either.

25 Q. And isn't that standard of the resale

1 interexchange toll?

2 A. Yes.

3 Q. There wouldn't be a way to identify based
4 upon CIC code whether the call originated from the
5 company offering service and providing it or the
6 underlying carrier being used for resell. Right?

7 A. Can you restate that?

8 Q. Let me try an example. Let's say that there
9 is a small ILEC out there and that it has an affiliate
10 that provides toll service. Under your proposal, the
11 affiliate would be attributable to the underlying ILEC
12 and you would want to charge the higher rate if you
13 could. Right?

14 A. Right.

15 Q. And if that affiliate then provides toll
16 service to customers in the small ILEC's territory by
17 reselling the service of Sprint or Verizon or
18 whomever, then there would be difficulties in
19 identifying that traffic to know that it came from the
20 small ILEC affiliate as opposed to Sprint or Verizon
21 or whomever. Right?

22 A. Yes, there would. If the carrier terminated
23 in your resell environment, the wholesale provider is
24 responsible for delivery, and you may not know who the
25 originating carrier was, which is why the testimony

1 and the proposal sets forth identifiable wholly-owned
2 substitutes.

3 Q. Okay.

4 A. There will be situations where you may not
5 be able to identify that.

6 Q. And, in fact, in the case of small ILECs, it
7 would -- would it be fair to say that the majority of
8 them that provide service either directly or through
9 an affiliate do so through the resale of an underlying
10 carrier like AT&T, Sprint, or whomever, WorldCom?

11 A. My understanding is the majority of them
12 that do it through an affiliate are resellers. I've
13 not looked at where they do it directly.

14 Q. And is it a fair statement that the majority
15 of them do it through an affiliate?

16 A. Yes.

17 Q. So for the majority of the companies that
18 would be subject to your proposal, you wouldn't be
19 able to identify the traffic in order to assess the
20 charge. Correct?

21 A. If you look at it in you're analysis where
22 you're comparing a number of companies, maybe not.
23 But if you start looking at volume and minutes, you
24 would expect the ones that -- Verizon or Sprint, for
25 example, you would be able to identify them. That

1 would most likely represent the majority of the
2 minutes.

3 Q. I would think -- would you agree that those
4 carriers would have the incentive if your plan were
5 adopted to use and resell the services of an
6 underlying carrier and thereby avoid the charge?

7 A. I think there would be many different
8 factors made in that decision, but, certainly,
9 ceteris paribus, yes, it would create that
10 incentive.

11 Q. And you may have answered this, and I didn't
12 follow along with it. A CLEC that operates in a small
13 ILEC's territory would be subject to the same rules
14 that you're proposing, right, as I understood what you
15 described?

16 A. Yes.

17 Q. And it's also fair to say that under the
18 current access rate cap that a CLEC operating in
19 Southwestern Bell's territory, Verizon's territory,
20 and Sprint's territory could have three different
21 access rate charges. Right?

22 A. Yes.

23 Q. Okay. And if they -- if the IXC affiliate
24 of that CLEC terminates a call to an AT&T local
25 customer, which of the three access rates would apply?

1 A. I guess that's not a detail -- I had not
2 thought of that scenario. Where I think that these
3 details might be worked out would be in a tariff
4 filing where this was done. I -- I don't know what
5 would apply in that. We're hoping to be able to
6 basically have, when you go to file a tariff to
7 implement this cap, to name a specific carrier. I
8 haven't thought about what would happen in that
9 situation.

10 Q. How about the situation where that same IXC
11 affiliated with the CLEC originates a call from an
12 area that is apart from the areas where its affiliate
13 operates as a CLEC, meaning in some small ILEC's
14 territory? What rate would apply then?

15 A. Can you restate your scenario?

16 Q. For example, let's say that WorldCom
17 provides long distance service from Mid-Missouri
18 Telephone Company and terminates the call to an AT&T
19 local customer in St. Louis. And assume further that
20 the WorldCom affiliate has operations in Southwestern
21 Bell's, Sprint's and Verizon's territory and has three
22 different sets of access rates, each of which match
23 the rates of the ILEC in whose territory they compete.

24 For the call that originates from the IXC
25 affiliate that comes from none of those three

1 territories, what rate would apply under your
2 proposal?

3 A. One of the conditions when we came up with
4 this idea was that it be one where we are exchanging
5 traffic. So if we're only exchanging traffic with one
6 CLEC in this -- one of the affiliates in this
7 situation, I think that rate would apply. Now, if
8 you're going to go on and say, Well, you're really
9 exchanging traffic, and you could prove it and
10 identify it with all three, I don't know.

11 If it would help and, you know, agree on
12 the -- err on the side of caution and charge the
13 lowest -- I think there is a debate for each one. I
14 have not fully developed that, and I think that is
15 something that we could do if we actually filed a
16 tariff to do it --

17 Q. Okay.

18 A. -- to implement it.

19 Q. There is -- this proposal, while you endorse
20 it, you would agree that it hasn't been sufficiently
21 developed that the Commission could adopt it in this
22 proceeding. Right?

23 A. I think the Commission could certainly allow
24 this exception and then govern how it's applied
25 through the tariff process, because what we did

1 envision was that each company doing this would have
2 to file a tariff.

3 Q. In deciding whether or not to approve this
4 concept, do you think it's important for the
5 Commission to understand the details of how and when
6 it would apply?

7 A. I think for leaving it open to be able to be
8 implemented and then focusing on the tariff
9 implementation, I think that's completely appropriate.

10 Q. Okay. Commissioner Gaw asked you some
11 questions concerning AT&T's and either CLECs'
12 operation in rural ILEC territory. Do you recall
13 those questions?

14 A. Yes, I do.

15 Q. Would you agree with me that in analyzing
16 the reasons that companies may not be providing
17 service there, an additional reason that you did not
18 elaborate on was the existence of a rural ILEC
19 exemption in the Federal Telecommunications Act?

20 A. That is certainly a factor.

21 Q. Why don't you describe, if you would, what
22 that rural exemption in the Federal Telecommunications
23 Act prescribes?

24 A. Under the Federal Act, there is a process
25 for which a small LEC can claim a rural exemption, and

1 if the Commission agrees with that, then CLECs would
2 not be permitted to compete with them in their
3 territory.

4 Q. And would you agree that there is also
5 limitations then on what the obligations of the ILEC
6 in the rural area would be in terms of unbundling and
7 so forth?

8 A. Yes. If the rural exemption were imposed, a
9 lot of the unbundling, if not all of them, unbundling
10 obligations would go away.

11 Q. And that's a factor, is it not, in the
12 decision of CLECs whether they want to pursue all of
13 those issues and offer service in rural ILEC
14 territory?

15 A. It certainly would be.

16 Q. You were also asked by Commissioner Gaw some
17 questions concerning the Commission's ability to order
18 expanded local calling. Do you recall that line of
19 questions?

20 A. Yes.

21 Q. And would you agree with me that even if the
22 Commission has the authority to order expanded local
23 calling, that the existence of the price cap regime
24 would complicate that considerably?

25 A. The Commission would have to deal with the

1 issue of revenue neutrality and whether or not it was
2 necessary to provide that. In doing that, if they --
3 obviously, if they were to decide they did not have to
4 grant revenue neutrality, it would make it much easier
5 if they didn't have to worry about it. If they
6 determined that you would have to, that might make it
7 a little more difficult.

8 Q. Okay. And so we're clear, if the Commission
9 orders expanded local calling in a particular area,
10 companies that are affected by that order would lose
11 toll revenues and would lose access revenues.
12 Correct?

13 A. Yes. In the situation I just described, I
14 was assuming the Commission ordered one from a rate of
15 return or a small LEC territory into a price-capped
16 LEC territory. And the price-capped LEC would lose
17 revenues most lik-- well, would if it were one way.

18 Q. And if it were ordered in a two-way
19 arrangement or from a Southwestern Bell or
20 price-capped company exchange to a small ILEC
21 exchange, both toll and access would be impacted.
22 Right?

23 A. Yes. There might be some earnings from
24 implementing it as a two-way that would offset some of
25 that, but probably, I think, as it was talked about

1 earlier, not fully.

2 Q. Okay. And assuming that the Commission is
3 under a legal obligation or otherwise believes it
4 appropriate to permit revenue neutrality in that
5 instance, then some other rate would have to be raised
6 to allow the price cap company to recoup the revenues
7 lost from toll and access. Right?

8 A. Well, I guess "raised" considering they
9 could set a rate for this service. If you're going to
10 make this two-way, they could set a rate for that and
11 that could recover the cost.

12 If you didn't -- if you decided to make it
13 free and they decided they had to get revenue
14 neutrality, then, yes, something else would need to be
15 raised.

16 Q. And then that would implicate whether a rate
17 above the price-cap rate could be implemented. Right?

18 A. If it were an existing rate governed by the
19 cap, yes, it could.

20 Q. And also in response to some questions from
21 Commissioner Gaw you were describing the Universal
22 Service Fund in Missouri and your belief that it could
23 be implemented to reduce access charges. And you
24 stated the basis of that was that it would be
25 appropriate to do so to make subsidies that were

1 implicit explicit. Do you recall that?

2 A. Yeah. Actually, subsidies that support
3 local service explicit.

4 Q. Okay. And would you agree with me that that
5 type of statement is one that is found in the Federal
6 Act for purposes of determining Federal Universal
7 Service Fund but that there is not a similar statement
8 in the Missouri Universal Service Fund statute that
9 specifically says that an appropriate use is to make
10 implicit subsidies explicit?

11 A. That exact purpose is not stated. I would
12 note, one, for the reasons we've stated, we disagree,
13 and, two, there is a statement that says, The state
14 funds shall be consistent with the federal funds.

15 Q. But the purposes for which funding can be
16 made are specifically enumerated in section 392.248
17 and do not include the statement that explicit --
18 implicit subsidies can be made explicit. Right?

19 A. They do not contain those words.

20 Q. You were also asked some questions about the
21 high-cost fund and whether it could be used generally
22 to keep basic local rates low and reasonable. Do you
23 recall those questions?

24 A. Yes.

25 Q. And would you agree with me that local rates

1 in Missouri could be increased substantially from
2 their current levels while still remaining just,
3 reasonable, and affordable?

4 A. In areas, yes, I would -- I agree.

5 Q. And you're familiar, are you not, with other
6 states where the price of basic local service is
7 substantially higher than it is for many of the
8 companies in Missouri?

9 A. Yes. I heard, I think, Mr. Harper testify
10 that basic local rates in Kansas for Sprint were
11 around \$21.

12 Q. And you're familiar, are you not, with basic
13 local rates that used to exist in the Holway Telephone
14 Company here in Missouri that were in the \$18 range?

15 A. Yes. And that was -- when I answered the
16 earlier question, that was the benchmark I was using
17 when I said they could be increased.

18 MR. LANE: Thank you.

19 That's all I have. Your Honor.

20 JUDGE THOMPSON: Thank you, Mr. Lane.

21 Mr. Schiffman?

22 MR. SCHIFMAN: No questions, Judge.

23 JUDGE THOMPSON: You don't want to clarify
24 that sore thumb?

25 MR. SCHIFMAN: It's been well clarified, I

1 think, already.

2 JUDGE THOMPSON: Mr. England?

3 MR. ENGLAND: No questions. Thank you.

4 JUDGE THOMPSON: Ms. Chase?

5 MS. CHASE: No questions, your Honor.

6 JUDGE THOMPSON: Mr. Dority?

7 MR. DORITY: No, thank you.

8 JUDGE THOMPSON: Mr. Fischer, if you're
9 here?

10 MR. DORITY: He's not here.

11 JUDGE THOMPSON: Ms. DeCook, redirect?

12 REDIRECT EXAMINATION BY MS. DeCOOK:

13 Q. Mr. Kohly, could you state why you
14 recommended the reciprocal compensation proposal that
15 is in your testimony?

16 A. AT&T recommends the long-run goal is to
17 price access rates at TSLRIC levels or -- based on
18 TELRIC prices. We used the reciprocal compensation
19 surrogates as our measure of what we believe those
20 costs should be for a benchmarking purpose.

21 Reciprocal compensation involves the same
22 elements as switched access. The FCC has noted that.
23 Mr. Farrar, I think, also noted that in his testimony
24 as well. So we took the reciprocal compensation rates
25 which were the same service and used those as a

1 benchmark for the TELRIC or TSLRIC of switched access.

2 Once we used that and provided that
3 benchmark, then we used that for the basis of the
4 analysis to put forth a rate proposal of how the
5 Commission or -- or for the Commission to consider as
6 they move toward TSLRIC rates as we suggest.

7 Q. And so the exception, the reciprocal or
8 symmetrical exception that you propose in your cap
9 exceptions, what's the basis for that proposal?

10 A. That is really in response to the high
11 terminating rates that we see from many of the LECs in
12 Missouri, and, in particular, Sprint and Verizon, as I
13 point, they are kind of the sore thumb. And that's
14 the reason we're doing it.

15 If the rates were closer to a TSLRIC or cost
16 basis, we would not do that. But we need -- because
17 those rates are so high, we want to put some
18 competitive pressure on those to reduce those rates
19 and a reciprocal cap would do that. I think no one
20 has disputed that.

21 Q. And if through actions of this Commission
22 access rates for companies like Sprint and Verizon and
23 others where there is a significant -- significant gap
24 between their rates and what you believe to be their
25 costs, would that eliminate the need to exercise

1 any -- anything under this cap exception?

2 A. It would. I mean, the reason we are
3 proposing this is to bring competitive pressure to
4 those rates because of their level. If you reduce
5 that level, the need would go away.

6 Q. You were asked some questions regarding
7 AT&T's position on the flow-through?

8 A. Yes.

9 Q. And as I recall your testimony, you made the
10 commitment that AT&T would flow through?

11 A. Yes.

12 Q. Has any company in this proceeding aside
13 from AT&T made any sort of recommendations at all
14 about reducing access?

15 A. No.

16 Q. And at least in this proceeding today, there
17 is no indication that the Commission is, has, or will
18 reduce access rates as a result of this proceeding.
19 Correct?

20 A. No, there is not.

21 Q. And, therefore, wouldn't it be speculative
22 to try to determine how AT&T might flow through rates
23 that have not yet been ordered?

24 A. Absolutely. No idea if they will be
25 ordered. If so, what they will be and how that will

1 impact AT&T, so it's impossible to do.

2 Q. Now, Commissioner Forbis asked you some
3 questions about the steps that you propose at page 27
4 of your Surrebuttal.

5 A. Yes.

6 Q. Do you recall that?

7 A. Yes, I do.

8 Q. And I believe that your first step, you
9 indicated, was the elimination of the CCL.

10 Is that the first step that's articulated in
11 your testimony there?

12 A. I'm sorry. It is not. The first step of
13 the three-step process is to maintain the existing cap
14 on CLEC rates and allow AT&T's suggested three
15 exceptions. The second step would then be to
16 eliminate the CCL and move that into a nontraffic-
17 sensitive rate element.

18 Q. And the first step is also one that you're
19 recommending that the Commission can do in this
20 proceeding --

21 A. Yes --

22 Q. -- correct?

23 A. -- can do immediately.

24 Q. Now, you received some questions by Mr. Lane
25 regarding the exact wording of the Universal Service

1 Fund statute in Missouri. Do you recall that
2 testimony?

3 A. Yes.

4 Q. Are there statements in there from which one
5 could infer that the proposal that you recommend in
6 terms of making implicit local subsidies explicit?

7 A. Yes. And the reason you were making them
8 explicit is you're doing that so that they are
9 sustainable and -- so that they are explicit and
10 sustainable so that you can maintain just, reasonable,
11 and affordable essential local rates. And so that is
12 why we think you could move it -- move it out of
13 access into explicit in that case such as USF.

14 Q. And do you believe there is sufficient
15 language in the statute that allows the Commission to
16 employ the vehicle that you're proposing to move
17 implicit subsidies to explicit?

18 A. Yes.

19 Q. And what would that statutory language be?
20 Do you need the statute in front of you
21 again?

22 A. No. I've got my old copy of Senate
23 Bill 507.

24 I think it's throughout. I mean, the
25 statute that sets up the USF is 392.248, and it talks

1 about creating the Fund in order to ensure just,
2 reasonable, and affordable rates. It then talks about
3 that the fund must be set up in a manner that is
4 consistent with the rules adopted by the FCC, which
5 have moved to make support mechanisms explicit.

6 And then it also talks about at 392.248.2
7 doing this in a manner to ensure the provision of
8 reasonably comparable essential local services at a
9 reasonable and affordable rate -- to paraphrase, at
10 just, reasonable and affordable rates.

11 We think that is the basis for the need to
12 move the implicit subsidies in switched access out to
13 an explicit mechanism such as USF.

14 Q. And you have suggested that the Commission
15 also has another vehicle to reduce access that
16 wouldn't involve the Universal Service Fund; isn't
17 that true?

18 A. Yes. And that would be what we just talked
19 about with Commissioner Forbis, would be the
20 subscriber line charge pool, where the CCL element was
21 moved from the traffic-sensitive access rates into
22 another type of funding mechanism where that was
23 pooled and then -- assess on a per-line amount, kind
24 of pooled into a pooled fund, and then withdrawn by
25 the companies, and that would be done outside of a

1 universal service mechanism.

2 MS. DeCOOK: All right. Thank you.

3 I have no further questions.

4 JUDGE THOMPSON: Thank you.

5 You may step down, Mr. Kohly, and you are

6 excused.

7 (Witness excused.)

8 JUDGE THOMPSON: Mr. Pauls.

9 Go ahead and spell your name for the

10 reporter, if you would.

11 THE WITNESS: Michael J. Pauls, P-a-u-l-s.

12 JUDGE THOMPSON: Please raise your right

13 hand.

14 (Witness sworn.)

15 JUDGE THOMPSON: Please take your seat.

16 Do we have some exhibits to mark,

17 Ms. DeCook?

18 MS. DeCOOK: We do, your Honor. We have one

19 exhibit to mark, which is the Surrebuttal Testimony of

20 Michael J. Pauls. I believe the next number is 53.

21 JUDGE THOMPSON: That is correct. This will

22 be Exhibit 53.

23 And this is NP?

24 MS. DeCOOK: Yes.

25 (EXHIBIT NO. 53 WAS MARKED FOR

1 IDENTIFICATION.)

2 JUDGE THOMPSON: Very well.

3 MS. DeCOOK: We have no HC.

4 MR. ENGLAND: That's the problem.

5 JUDGE THOMPSON: I notice a certain disgust
6 in that.

7 MS. DeCOOK: No. It's just the facts. It
8 certainly streamlines your case.

9 JUDGE THOMPSON: You may proceed.

10 MS. DeCOOK: Thank you, your Honor.

11 MICHAEL J. PAULS testified as follows:

12 DIRECT EXAMINATION BY MS. DeCOOK:

13 Q. Could you state your name and business
14 address for the record?

15 A. Michael J. Pauls, 2121 East 63rd Street,
16 Kansas City, Missouri, 64130.

17 Q. By whom are you employed and in what
18 capacity?

19 A. AT&T. I'm manager, Access Landscape
20 Management.

21 Q. And are you filing testimony here today on
22 behalf of the AT&T companies of -- as I will
23 collectively call them?

24 A. I am.

25 Q. And did you cause to have prefiled what's

1 been marked as Exhibit 53 in this proceeding, which is
2 your Surrebuttal Testimony?

3 A. Yes.

4 Q. And was that prepared by you?

5 A. Yes, it was.

6 Q. Do you have any changes to make to that
7 testimony?

8 A. No.

9 Q. If I were to ask you the same questions that
10 appear in that testimony today under oath, would your
11 answers be substantially the same?

12 A. Yes.

13 Q. And is that exhibit -- or testimony true and
14 correct to the best of your knowledge, information,
15 and belief?

16 A. Yes.

17 MS. DeCOOK: I'm reluctant to ask this, but
18 I will move the admission of the Exhibit 53, the
19 Surrebuttal Testimony of Michael Pauls.

20 JUDGE THOMPSON: Do I hear any objections to
21 the receipt of Exhibit 53? Mr. Lane?

22 MR. LANE: No, your Honor.

23 JUDGE THOMPSON: Mr. England?

24 MR. ENGLAND: Would there be any success?

25 JUDGE THOMPSON: There was some success on

1 your last one?

2 MR. ENGLAND: Not the fight I had a dog in,
3 your Honor.

4 MS. DeCOOK: I would say no.

5 MR. ENGLAND: No objection, your Honor.

6 JUDGE THOMPSON: Hearing no objections,
7 Exhibit 53 is received and made a part of the record
8 in this proceeding.

9 (EXHIBIT NO. 53 WAS RECEIVED INTO EVIDENCE.)

10 JUDGE THOMPSON: Cross--

11 MS. DeCOOK: I'm sorry.

12 JUDGE THOMPSON: You were going to tender?

13 MS. DeCOOK: Yes, I was.

14 JUDGE THOMPSON: Thank you.

15 Mr. Morris?

16 MR. MORRIS: No questions, your Honor.

17 JUDGE THOMPSON: Mr. Stock?

18 MR. STOCK: No questions, your Honor.

19 JUDGE THOMPSON: Mr. Poston?

20 MR. POSTON: No questions.

21 JUDGE THOMPSON: Mr. Dandino?

22 MR. DANDINO: Yes, your Honor.

23 JUDGE THOMPSON: Now, you're not going to
24 yell at this witness, are you?

25 MR. DANDINO: I promise I won't.

1 CROSS-EXAMINATION BY MR. DANDINO:

2 Q. Good morning, Mr. Pauls.

3 Good afternoon, Mr. Pauls.

4 A. Good afternoon.

5 Q. If you look at page 3 of your Surrebuttal
6 Testimony, please, I would like to draw your attention
7 to page 3, I guess, at lines 1 and 2. Are you there?

8 A. I am.

9 Q. Okay. And I notice you have just,
10 reasonable, and affordable rates for intrastate
11 exchange access in Missouri. I'm only familiar with
12 the just and reasonable.

13 Can you cite me to some statute or case that
14 requires this Commission to have affordable intrastate
15 exchange access service rates?

16 A. No.

17 Q. That's just something that you -- you put in
18 there?

19 A. It's along the lines of just, reasonable,
20 and affordable local rates, yes.

21 Q. Well, isn't that part of the USF requirement
22 that only applies to end users, that their rates be
23 just, reasonable, and affordable?

24 A. Yes.

25 Q. Okay. Now, I would like to -- if you would

1 look at your schedule -- I guess it's -- it would be
2 schedule MJP-2.

3 A. Okay.

4 Q. Now, I just wanted to get some explanation
5 of this.

6 You have three columns of numbers there.

7 Right?

8 A. Yes.

9 Q. And the end user increased to offset a
10 one-cent-per-minute access reduction. And down at the
11 bottom, you have an average or a total. How did you
12 arrive at that -- that number mathematically?

13 A. You simply take the total of column one,
14 divide by the total of column three.

15 Q. Would that be a weighted average of some
16 sort?

17 A. Yes. The total of columns one and three
18 would result in a weighted number, yes.

19 Q. Okay. So in -- let's say in Steelville --
20 well, let's put it this way: So it's heavily --
21 really, it's heavily weighted really in favor of the
22 Southwestern Bell areas as opposed to, let's say,
23 Steelville or Stoutland?

24 A. Yes. It would be weighted basically by the
25 number of access lines.

1 Q. Sure. So in the urban areas in the Verizon
2 and Southwestern Bell and Sprint exchanges, the
3 customers -- the end users would be paying -- would
4 receive one -- strike that.

5 But you have a whole range here of numbers
6 of -- of amounts, and if you just look at each
7 individual exchange, there's going to be a different
8 cost per line for each one of those, isn't that true,
9 or assessment?

10 A. Yes. Each company is different based upon
11 their level of access revenue and their number of
12 access lines.

13 Q. Now, this -- this is -- this proposal or
14 calculation that you made, now, this would be the --
15 the state SLC that AT&T has suggested possible?

16 A. No.

17 Q. Okay. What would -- what would this -- what
18 would this figure be for the -- on the -- for the end
19 user? How would you characterize it?

20 A. The purpose of MJP-2 is simply to provide
21 the Commission with a tool or a calculator which has
22 not been provided by anyone else in the proceeding, I
23 don't believe, which would enable the Commission to
24 understand the relationship between access decreases
25 and offsets.

1 Q. So in order to offset this -- this
2 one-minute -- one-cent-per-minute reduction, you would
3 need to have the -- have this assessment, whatever you
4 would call it, added to the bill of the -- to the end
5 user. Right?

6 A. Yes.

7 Q. And that's per month. Right?

8 A. Yes, it is.

9 Q. Let's look at -- oh, when you -- well, let's
10 look at also MJP-3, and was -- how was the third
11 column called revenue neutral end user monthly impact,
12 how was that calculated?

13 A. That was based on column two, which is the
14 access revenue impact, dividing that by the number of
15 access lines for each company and then dividing by
16 twelve to get a monthly offset.

17 Q. Now, in any of these calculations for the
18 revenue impact, did you factor in any stimulation or
19 price elasticity factor into it?

20 A. No.

21 Q. Now, the FCC usually uses such elasticity
22 factor when they calculate the revenue impacts on
23 access reductions, don't they?

24 A. I'm not real familiar with their exact rule.

25 Q. Okay. Isn't that something you deal with

1 when you're -- when you're dealing with the access
2 rates?

3 A. No.

4 Q. No. So you don't deal with access rates at
5 the federal level?

6 A. No.

7 Q. Did you do any study to determine whether
8 the -- the monthly end user impact on MJP-3 or MJP-2
9 meets any -- would be affordable to the end users?

10 A. I didn't do a detailed study; however, I did
11 use some of the knowledge we received from the Holway
12 case to -- to understand that if you look at the --
13 the average on MJP-3, for example, of \$6.41, and
14 Mr. Kohly referred to the SLC pool, that that would be
15 the maximum amount to be added as a surcharge or a
16 SLC.

17 And when you take Holway's rate today, which
18 I think is one of the smallest exchanges or companies
19 in the state, they used to have about an \$18 rate
20 according to what we heard earlier in the rate. Today
21 they are \$13, so you add \$6 to 13. You get a rate
22 pretty close to what the Commission has previously
23 deemed just, reasonable, and affordable.

24 So although not doing a specific imperial --
25 empirical study, I came to the conclusion that it

1 wouldn't be unreasonable based on prior Commission
2 actions.

3 Q. But you did no independent study on
4 affordability?

5 A. No, I did not.

6 Q. You're basically relying on just,
7 reasonable, and affordability of the rate based on the
8 current rates that are being charged in Missouri local
9 exchanges?

10 A. Based on the current rates, plus what the
11 Commission has done in the past historically.

12 Q. Well, isn't there a presumption that the
13 current rates for -- for the LECs is just, reasonable,
14 and affordable by law?

15 A. Yeah. I think the Commission sets just,
16 reasonable, and affordable rates. Currently, they set
17 those historically. And those numbers are different,
18 so there have been different answers to the same
19 question.

20 Q. Until someone presents evidence that those
21 rates are not just, reasonable, and affordable,
22 doesn't that legal presumption stand? The Commission
23 has made that determination.

24 A. That's probably a legal conclusion I'm not
25 qualified to answer.

1 Q. AT&T has -- has been relieved of their duty
2 as a caller of last resort in Missouri, haven't they?

3 A. I believe that's right, yes.

4 Q. Okay. And do you know if they've exercised
5 their ability to withdraw from any -- from any
6 exchange?

7 MS. DeCOOK: Your Honor, I'm going to object
8 that this is beyond the scope of Mr. Pauls' testimony.

9 JUDGE THOMPSON: Well, I believe we have
10 wide open cross in Missouri.

11 MR. DANDINO: Well, your Honor, this is also
12 related to -- it's going to be related to access rates
13 and access costs.

14 JUDGE THOMPSON: Yeah. Please continue.
15 The objection is overruled.

16 THE WITNESS: Could you restate the
17 question?

18 BY MR. DANDINO:

19 Q. Has AT&T exercised their ability to withdraw
20 toll service to any exchanges in Missouri?

21 A. No.

22 Q. And isn't one of the reasons that
23 Southwestern Bell -- Southwestern Bell; excuse me --
24 AT&T sought relief from the caller of last resort was
25 their claim that they -- some of the access rates were

1 excessive in some of those exchanges?

2 A. I assume you mean carrier of last resort?

3 Q. Carrier of last resort. I forget what I
4 said.

5 A. I think that was, at least from my
6 understanding, one of the reasons, yes.

7 Q. Okay. For the extra \$6 that the -- on the
8 federal SLC -- I'm sorry. Strike that.

9 For the whatever additional -- additional
10 assessment is made on -- for the revenue-neutral end
11 user monthly impact, that assessment is made on the
12 end user to the local customer. What -- what
13 additional services or improvements in service does
14 the customer get for that -- for that money?

15 A. Well, Mr. Kohly articulated the
16 flow-through, so there will be some flow-through
17 benefits. There will also be some benefits that were
18 discussed earlier about expanded calling
19 possibilities. Perhaps there will be more carriers
20 offering service within territories. Maybe there will
21 be carriers offering enhanced services, different
22 services, better services. Perhaps there will be
23 carriers offering lower per-minute rates. There will
24 be cost reductions received by carriers, so those are
25 possible reactions to those.

1 Q. Well, that's -- I think you just said the
2 magic words there. Possible reactions to it. Isn't
3 all this is doing is transferring the cost recovery
4 from access down to the end user customer, just this
5 figure, putting this assessment on the end user?

6 A. Well, bottom line, all of the costs have to
7 be recovered.

8 Q. That isn't what I asked, sir.

9 I asked, aren't you just shifting by having
10 a local assessment in response to reducing access
11 rates to make -- to recover that money? Isn't that
12 all we're doing here?

13 A. This is -- this is shifting the recovery of
14 costs, yes.

15 Q. Right. And so the customer, just with
16 making this assessment, that alone, gets nothing on
17 its own, no additional service?

18 A. I think I disagree.

19 Q. But you can't -- you can't specify what
20 they're getting other than, well, it could be a
21 reaction to it to give us expanded calling, maybe a
22 flow-through of rates? Right?

23 A. I don't think we know what we're getting
24 yet, and as a result, I'm not sure we know what we can
25 give. But as stated earlier, you know, there will be

1 flow-throughs, and so there will be benefits.

2 Q. I see. So all we know is that in -- I live
3 in a Verizon -- the Verizon exchange. If this
4 revenue-neutral monthly impact is given -- is made,
5 I'm going to be paying about, oh, \$230 more a year,
6 but I don't know what I'm getting either, do I?

7 A. No, I don't think that's right. You will
8 not be paying \$230 more a year.

9 Q. Well, what's 19-- what's \$19.31 times
10 twelve?

11 A. Well, the concept is a SLC pool where you
12 would be paying the average, which is \$6.41 a month.

13 Q. Oh, I see. So I'll only be paying about \$75
14 more a month. So what am I getting -- I'm not getting
15 anything for that, though, either?

16 A. No. There will be benefits. We just
17 don't -- no one can look into the future and know what
18 they are.

19 Q. We don't know. But don't we know that I'm
20 going to pay about \$75 more?

21 A. It -- a lot of that depends on your calling
22 habits and calling patterns. You may be saving more.

23 MR. DANDINO: I may be.

24 That's all I have. Thank you sir.

25 THE WITNESS: You're welcome.

1 JUDGE THOMPSON: Are you done, Mr. Dandino?
2 MR. DANDINO: Yes, sir.
3 JUDGE THOMPSON: Mr. Lane?
4 MR. LANE: No questions, your Honor.
5 JUDGE THOMPSON: Mr. Schiffman?
6 MR. SCHIFMAN: No questions, Judge.
7 JUDGE THOMPSON: Mr. England?
8 MR. ENGLAND: Yes, your Honor.
9 Mr. Lane was kind enough to give me those
10 that he didn't want to ask.
11 JUDGE THOMPSON: You tell him that it's too
12 late to rehabilitate his reputation now.
13 MR. ENGLAND: His usefulness to me in this
14 proceeding is now over. If you want to deal with him
15 at this time, it's perfectly fine.
16 JUDGE THOMPSON: You can see this has been
17 going on too long.
18 MR. ENGLAND: I'll try not to prolong it too
19 long.
20 CROSS-EXAMINATION BY MR. ENGLAND:
21 Q. Good afternoon, Mr. Pauls.
22 A. Good afternoon.
23 Q. I have some questions, too, about your
24 schedules attached to your Surrebuttal Testimony, and
25 some of which I think were covered by Mr. Dandino, but

1 I want to make sure I understand this.

2 Let's look at schedule MJP-2, first, please.

3 The one-cent-per-minute access rate
4 reduction column -- or, excuse me -- shift, if you
5 will, produces a per-line end user impact as shown in
6 your middle column. Right?

7 A. That is right.

8 Q. And you mentioned that the total, which is
9 actually an average for that column, at least, is a
10 weighted average, weighted based on access lines.
11 Right?

12 A. Based on access lines and access revenues.

13 Q. Okay. Because I was more concerned with, of
14 course, the small companies that I represent, and it
15 appears to me that if I were to look at an average, at
16 least a simple average, it's probably more in the \$2,
17 \$3, \$4, somewhere around there, range. Correct?

18 A. It would be higher than \$1.23 because your
19 companies are higher access cost and have fewer lines.

20 Q. Now, I believe in response to one of
21 Mr. Dandino's questions, you indicated that none of
22 the other parties attempted to provide end-user
23 impacts. Do you recall that statement?

24 A. Yes.

25 Q. That's not entirely true, is it?

1 Mr. Schoonmaker presented end-user impacts that would
2 result from adoption of our fully allocated or fully
3 distributed cost method, and I believe Mr. Warinner in
4 his Rebuttal Testimony who you purport to respond to
5 here, did a one-cent, I believe, shift analysis
6 similar to those you show here on MJP, but, of course,
7 just for his client companies?

8 A. Right. What I tried to do was provide the
9 Commission with a total comparison for all companies,
10 because that was not done, to the best of my
11 knowledge, especially for any TSLRIC-cost-based rates.
12 And I wanted to provide a uniform vehicle or tool that
13 the Commission could use to do what-ifs or do
14 sensitivity analyses if that's what they wanted to do.

15 Q. But there were other witnesses, notably the
16 Small Telephone Company witnesses who attempted to do
17 some end-user impact analysis, maybe not as extensive
18 or as pervasive as yours, but they did attempt to do
19 that, did they not?

20 A. For limited companies. It was not for all
21 of the companies in the state.

22 Q. Now, let's talk about column 3 in your
23 analysis -- excuse me -- in your MJP-2 schedule.

24 That's a separate analysis from what you're
25 looking at in the first two columns. Right? This is

1 what would happen if you shifted a dollar --

2 A. Yes.

3 Q. -- or, I guess, added a dollar to basic
4 local exchange for all of the companies, how much
5 access revenue reduction could you generate if you
6 maintained a revenue-neutral position?

7 A. Yes.

8 Q. Okay. And if I'm reading that correctly,
9 you can produce a -- roughly a 45-and-a-half-million-
10 dollar shift from access to local. Right?

11 A. Yes.

12 Q. Okay. Now, if I've done this correctly, and
13 I'll give you my calculator, but I just added up the
14 shift that would occur in alcohol column 3 for the
15 first five companies, Southwestern Bell, Verizon,
16 Sprint, Spectra, and ALLTEL, the large LECs that
17 Dr. Johnson identifies in his analysis. And totaling
18 those up, I got 43,970,000, approximately, dollars.

19 Do you have any reason -- would you like to
20 check me? Would you have any reason to doubt that?

21 A. It looks like it is approximately
22 43,000,000.

23 Q. The reciprocal, if you will, of that is that
24 by shifting a buck for the small local exchange
25 companies, you could produce, roughly, access rate

1 reductions of a-million-and-a-half dollars.

2 A. That's right, maybe -- well, it could be two
3 and a half. It's about two and a half.

4 Q. Whether it's one and a half or two and a
5 half, it's still, according to Mr. Kohly, not enough,
6 at least as far as AT&T is concerned, to make any
7 change in your rates because it isn't big enough.
8 Right?

9 A. I'm not sure I would agree with that.

10 Q. Well, if we assume that the \$2.6 million
11 reduction in access rates achieved through the various
12 earnings investigations of the Small Telephone
13 Companies wasn't sufficient to cause you to move your
14 toll rates, I'm just assuming that a one-and-a-half to
15 two-and-a-half-million-dollar rate reduction as a
16 result of this proposal isn't going to move any toll
17 rates either?

18 A. Well, I'm not sure the proposal is
19 two-and-a-half million. I think the proposal would be
20 on my schedules 3 and 4. And those numbers are
21 significantly bigger.

22 Q. Yes, they are. Let's stick with schedule 2.
23 I like the smaller number, Mr. Pauls.

24 And if you buy into the price cap companies'
25 argument that there is really not much the Commission

1 can do to affect access rate reductions as far as they
2 are concerned, and if you will assume with me that the
3 first five companies there are either price cap
4 companies or will be in the very near future, the only
5 people you can affect with your proposal of a dollar
6 shift would be the small companies, and the only shift
7 you could achieve would be roughly a one-and-a-half to
8 two-and-a-half-million dollars?

9 A. No. I disagree with that.

10 Q. And I apologize. It probably was a compound
11 question.

12 Which part do you disagree with?

13 A. Well, the beauty of a SLC cap, as Mr. Kohly
14 pointed out, is you can do this for not only rate of
15 return companies, but also price cap companies. So
16 you can affect the entire 45 million.

17 Q. By implementing a SLC as opposed to a local
18 rate increase?

19 A. Yes.

20 Q. And that technical difference, in your
21 opinion, gets the price cap companies out from under
22 their price cap; is that right?

23 A. I think it avoids any price cap issues.

24 Q. Stick with MJP-2 and assume that my numbers
25 are right and that it really is only one-and-a-half-

1 million dollars that you move for each dollar of
2 increase in basic local rates for the Small Telephone
3 Companies.

4 If you implement a \$6 increase in the Small
5 Telephone Company basic local rates, you could move or
6 reduce access by approximately \$9 million assuming my
7 one and a half for one dollar is correct. Right?

8 A. Yes.

9 Q. And, again, based on my discussion with
10 Mr. Kohly, it was my understanding that a \$9 million
11 reduction in access rates achieved by Sprint and
12 Verizon through rate rebalancing wasn't significant
13 enough to cause you to flow through those access rate
14 reductions. Right?

15 A. I guess it's important to remember that
16 you're talking industry numbers and you're comparing
17 it to an AT&T impact, which is significantly
18 different. I think sometimes people misunderstand
19 that AT&T is the dominant majority provider, and
20 that's no longer true. So there is a significant
21 difference between an industry access impact and an
22 AT&T access impact.

23 Q. Right. And I am trying to make that
24 consistent between those two analogies.

25 What you show here is an industry-wide

1 access rate reduction for each dollar or for the first
2 dollar, if you will, of increase in basic local
3 exchange rates. Right?

4 A. Yes.

5 Q. And if I'm correct and you only get a
6 million and a half from the small companies for a
7 dollar switch or a dollar shift, you're only going to
8 get 9 million total industry-wide for a \$6 shift.
9 Right?

10 A. Yes.

11 Q. And that 9 million comports to the same
12 industry-wide \$9 million access rate reduction that
13 Sprint and Verizon collectively achieved with their
14 first year of rate rebalancing. Correct?

15 A. I think that's about right.

16 Q. Okay. So when I'm talking these two
17 9 millions, we're talking industry-wide?

18 A. Well, I think Mr. Kohly's testimony
19 indicated there was other reasons, and that eventually
20 was flowed through.

21 Q. In the second year when it became an
22 \$18 million reduction. Right?

23 A. I believe that was his testimony, yes.

24 MR. ENGLAND: Your Honor, I've got some
25 questions now with -- I've got some exhibits, the

1 first of which is actually the work papers which AT&T
2 provided me with in support of these schedules, which
3 I believe contain highly confidential information; the
4 second of which is, again, information which AT&T
5 provided me in response to discovery, which I believe
6 is also highly confidential.

7 I think for purposes of the remainder of my
8 cross-examination, it would be best if we went in
9 camera.

10 JUDGE THOMPSON: Very well.

11 MS. DeCOOK: Your Honor, may I ask, are
12 these numbers that you produced and that's why they
13 are highly confidential, because I don't believe
14 anything that Mr. Pauls used was highly confidential.
15 They came from public sources.

16 MR. ENGLAND: It could be. What I
17 understand I have in the way of work papers for his
18 schedules MJP-2, -3, and -4, are per-company access
19 revenue information, some access rates. The part I
20 think is probably highly confidential is minutes of
21 use by company. All of this information apparently
22 Mr. Pauls pulled out of the USF case and used for
23 purposes of analysis here.

24 MS. DeCOOK: But was the information he
25 pulled out of the USF case designated as highly

1 confidential or not?

2 MR. ENGLAND: I'm sorry. I assumed it was.

3 MS. DeCOOK: I don't believe it is.

4 You could ask Mr. Pauls that question, but
5 I -- before we go in camera, it would probably makes
6 sense to.

7 MR. ENGLAND: I agree with you.

8 BY MR. ENGLAND:

9 Q. I think -- I think my second exhibit which
10 is information you provided me about how much access
11 you pay per company on an annual basis is confidential
12 to you-all.

13 A. That was marked AT&T proprietary. The first
14 two sheets were not.

15 MS. DeCOOK: I don't think it would be
16 marked highly confidential.

17 MR. ENGLAND: Okay. Well, then, let me deal
18 with my first exhibit, if I can, and I'll ask the
19 witness to take a look at it.

20 JUDGE THOMPSON: You may.

21 BY MR. ENGLAND:

22 Q. What was the source of this information,
23 Mr. Pauls?

24 A. This information was publicly available data
25 that was derived out of the Universal Service Fund

1 case. I think it's the 329 case.

2 Q. Okay. So even the industry access MOUs,
3 minutes of use, by company?

4 A. That was simply a derivation of taking the
5 revenues divided back through by the rates, so I, you
6 know, assume it was, yes.

7 MR. ENGLAND: Well, I -- here is my dilemma.
8 If it wasn't public, but apparently can be gleaned
9 from public information, I don't know if it's -- if
10 it's still public.

11 JUDGE THOMPSON: Let me clarify this.

12 Mr. Pauls, you took numbers that were public
13 numbers from the 329 case, was it?

14 THE WITNESS: Yes.

15 JUDGE THOMPSON: And you divided those
16 numbers by rates that are on file with the Commission?

17 THE WITNESS: No. The rates were also in
18 the 329 case.

19 JUDGE THOMPSON: Were also in the case, and
20 were also public?

21 THE WITNESS: Yes.

22 JUDGE THOMPSON: And the concern is that the
23 result of this manipulation might have yielded numbers
24 which could be or should be highly confidential; is
25 that the concern?

1 MR. ENGLAND: Yes, sir. And -- I mean, I've
2 got my witness here. I could ask him whether or not
3 he thinks any of this is highly confidential. My
4 problem is, there is also information with respect to
5 Southwestern Bell, Sprint, Verizon.

6 JUDGE THOMPSON: Well, I think that
7 particular cat's out of the bag. If he took public
8 information out of a public case and was able to
9 perform a simple mathematical manipulation, one that
10 even I could perform, then I think that that
11 information is basically public at this point.

12 MR. ENGLAND: Okay.

13 JUDGE THOMPSON: I will allow the parties
14 if -- perhaps you should allow them to look at this
15 document, and I will hear from the people who actually
16 have something at stake here.

17 We'll go ahead and recess and take the
18 afternoon recess at this time. We'll take ten
19 minutes.

20 (A recess was taken.)

21 MR. ENGLAND: We believe we should go in
22 camera as we discuss this exhibit until we can decide
23 among ourselves as to whether the information is
24 highly confidential, proprietary, or --

25 JUDGE THOMPSON: Or just plain secret.

1 MR. ENGLAND: Or even nonproprietary,
2 because we need to go back into the USF case and find
3 out where this information came from --

4 JUDGE THOMPSON: Okay..

5 MR. ENGLAND: -- to figure out what markings
6 were attributable to it.

7 So for purposes of this exhibit --

8 JUDGE THOMPSON: That's fair enough.

9 MR. ENGLAND: -- I don't know how you want
10 to do it. If you want to start out at HC, we can
11 always go down later, or just call it --

12 JUDGE THOMPSON: Let me get it marked, and
13 then we'll just start off in camera.

14 MS. DeCOOK: Your Honor, Mr. Pauls did these
15 calculations using this information because he
16 believed it wasn't designated as proprietary at all.
17 And I just want to note that neither he nor Mr. Kohly
18 has signed a protective order at all. So, you know, I
19 would just like to make sure that everyone is in
20 agreement that despite that fact, if this turns out to
21 be proprietary or confidential information, there is
22 no problem with Mr. Pauls and Mr. Kohly having seen
23 this particular information in this proceeding.

24 MS. SCHIFMAN: I would say as long as they
25 don't use it for any other purpose, I would not object

1 to that agreement.

2 MR. CONROY: And will agree to whatever it
3 is determined eventually and to be bound by the terms
4 of protective order in terms of disclosure.

5 MS. DeCOOK: Yeah. We'll agree to be bound
6 by the protective order based upon how it's finally
7 classified and that they will not use this information
8 for any other purpose if it's determined to be
9 proprietary or highly confidential.

10 JUDGE THOMPSON: I hardly know how to
11 respond to that.

12 MS. DeCOOK: And one -- you know, if it is
13 determined to be -- some aspect of the information on
14 this document is determined to be proprietary or
15 highly confidential, I would hope for purposes of the
16 record that we could clearly articulate what is
17 confidential so they know what they can use and what
18 they can't use.

19 JUDGE THOMPSON: I think it's Mr. England's
20 purpose to get to that point. Isn't that correct?

21 MR. ENGLAND: As to --

22 JUDGE THOMPSON: Whether we're going to find
23 out just what is confidential or proprietary?

24 MR. ENGLAND: Not today, your Honor.

25 JUDGE THOMPSON: Not today. Okay.

1 MR. ENGLAND: We have to go back into the
2 work papers or exhibits in the prior document.

3 JUDGE THOMPSON: Let me ask you this: Do
4 you believe that there was some sort of impropriety on
5 the part of this witness in preparing this document?

6 MR. ENGLAND: No, sir. I think there was
7 genuine confusion as to exactly what this information
8 was and in what manner it was made available in that
9 last case.

10 JUDGE THOMPSON: Okay.

11 MR. FISCHER: Your Honor, maybe we should
12 clarify that in that USF case there were some
13 workshops where special arrangements were made for
14 handling data. And what we need to check, I think, is
15 whether this data was in the record or whether it came
16 out of those workshops, and we just want to make sure
17 that we're comfortable with where it came from.

18 JUDGE THOMPSON: Okay. In other words, you
19 believe the source data -- you have at least a
20 question as to whether the source data was protected
21 in some way or another?

22 MR. FISCHER: That's my understanding of the
23 problem.

24 JUDGE THOMPSON: Okay.

25 MS. DeCOOK: And just for your Honor's

1 information, we received this information through a
2 disk provided by the Staff, and some -- the
3 information that we understood was proprietary was
4 blacked out, and that may be the source of the
5 confusion. It may well have been that there was some
6 agreements reached in the workshop that weren't
7 necessarily reflected in the disk that was provided to
8 us. So that's what we're trying to clear up.

9 (EXHIBIT NO. 54-HC WAS MARKED FOR
10 IDENTIFICATION.)

11 JUDGE THOMPSON: Okay. Very well.

12 We have marked this document as Exhibit 54
13 and we have marked this document as highly
14 confidential. We will now go into an in-camera
15 session so that you may ask questions of this witness
16 concerning -- in fact, we're still in an in-camera
17 session, I see, since I never turned it back on after
18 the break, so we'll leave it in that condition.

19 (REPORTER'S NOTE: At this time, an
20 in-camera session was held, which is contained in
21 Volume 7, Pages 1188 through 1208, of the transcript.)

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1 JUDGE THOMPSON: Ms. Chase?
2 MS. CHASE: No questions, your Honor.
3 JUDGE THOMPSON: Mr. Dority?
4 MR. DORITY: No. Thank you, Judge.
5 JUDGE THOMPSON: Mr. Fischer?
6 MR. FISCHER: No questions, your Honor.
7 JUDGE THOMPSON: Questions from the Bench.
8 Commissioner Murray?
9 COMMISSIONER MURRAY: I think not, Judge.
10 JUDGE THOMPSON: Commissioner Gaw?
11 QUESTIONS BY COMMISSIONER GAW:
12 Q. There were a couple of numbers that were
13 mentioned in in-camera, and I'm going to hopefully
14 avoid those numbers in the event that it requires us
15 to go back there.
16 But in regard to the -- the proposal for a
17 SLC charge with a pool amount, I heard two different
18 numbers in regard to an -- in regard to a prospective
19 monthly line charge.
20 My question is whether those -- I'm trying
21 to clarify whether those were numbers that should be
22 added together in regard to looking at what the
23 monthly charge would be, or if those numbers were
24 separate and distinct. And if necessary, we'll just
25 go back in camera.

1 MR. ENGLAND: Commissioner, I'm sorry to
2 interrupt, but you may be referring to some public
3 numbers.

4 COMMISSIONER GAW: If it is, that would be
5 helpful in asking my questions.

6 MR. ENGLAND: Are you looking at the either
7 total or average numbers at the bottom of each column
8 ON MJP-3 and 4?

9 COMMISSIONER GAW: Yes.

10 MR. ENGLAND: Those are public.

11 COMMISSIONER GAW: Thank you.

12 MR. ENGLAND: You're welcome.

13 BY COMMISSIONER GAW:

14 Q. I believe one of those numbers was \$3.49?

15 MR. ENGLAND: Correct.

16 BY COMMISSIONER GAW:

17 Q. And the other one, I believe, was \$6.41?

18 A. Basically, it's a two-step proposal.

19 Q. Thank you.

20 A. The first step being a \$3.49 increase. Then
21 you take the difference between 6.41 and 3.49, so the
22 second step would be an additional \$2.92.

23 Q. Thank you.

24 So the total is 6.41?

25 A. Exactly.

1 COMMISSIONER GAW: All right. That's all I
2 have.

3 JUDGE THOMPSON: Thank you, Commissioner
4 Gaw.

5 Commissioner Forbis?

6 COMMISSIONER FORBIS: No questions, your
7 Honor.

8 QUESTIONS BY JUDGE THOMPSON:

9 Q. Mr. Pauls, I want to make sure that I
10 understand what these numbers mean.

11 This two-step process, first 3.49 and then
12 another amount totaling 6.41, this is a surcharge to
13 be imposed on a monthly basis on all Missouri basic
14 local subscribers. Is that what I understand it?

15 A. Yes. It would be synonymous to their
16 interstate subscriber line charge, similar.

17 Q. And this would produce a pool of money which
18 would then be used to offset the lost revenues to the
19 ILECs because of a reduction of access rates?

20 A. Exactly.

21 Q. And this would be reducing access rates by
22 how much?

23 A. The first step would be reducing access
24 \$159 million roughly.

25 Q. Which is -- okay. Per minute, what's that

1 work out to?

2 A. It would vary by company --

3 Q. Okay.

4 A. -- because each company has different access
5 rates. Each company has a different CCL rates. What
6 that does is it eliminates the CCL rate element from
7 each company. And it --

8 Q. Okay.

9 A. I haven't calculated the average because
10 it's really not possible.

11 Q. Okay. Very well.

12 And then the second step would reduce it
13 even further; is that correct?

14 A. Yes. A difference between 291 million and
15 159 million.

16 Q. And the result would be, if I understand
17 this correctly, approximately, what, an 80 percent
18 reduction?

19 A. I believe Mr. England indicated about an 80
20 to 85 percent reduction, yes.

21 Q. Now, the calls that are made by AT&T
22 customers that produce these access rates, I mean,
23 some of these calls are made from Missouri customers
24 to other Missouri customers. Right?

25 A. They all would be. It's intrastate only.

1 Q. This is only intrastate?

2 A. Yes.

3 Q. Okay. So we're not -- we're not talking
4 about imposing a rate increase on Missouri subscribers
5 to benefit people outside of Missouri?

6 A. We are not.

7 Q. But subscribers don't see access rates, do
8 they?

9 A. Not directly.

10 Q. So subscribers would see, first, a \$3.49
11 charge on their bill, and then they would see a \$6.41
12 charge on their bill; is that correct?

13 A. They would see \$3.41 and then an additional
14 \$2.92 for a total of 6.41.

15 Q. And what would they see to reflect the
16 reduction in access rates?

17 A. They would see a reduction or elimination of
18 AT&T in-state connection fee. They would see toll
19 rate reductions possibly. They may have enhanced
20 calling scopes. They may have more choices of
21 carriers. They may have more options for toll plans
22 of carriers. They may see some things we don't know
23 as of today.

24 Q. And you're speaking only for AT&T; is that
25 correct?

1213

1 A. Yes, I am.

2 Q. So other -- other IXCs, for example, may not
3 pass this through at all?

4 A. I don't know what they will do.

5 JUDGE THOMPSON: Thank you very much.

6 I have no further questions.

7 Other questions from the Bench?

8 (No response.)

9 JUDGE THOMPSON: Recross based on questions
10 from the Bench.

11 Mr. Morris is gone. Very well.

12 Mr. Stock?

13 MR. STOCK: No, sir. Thank you.

14 JUDGE THOMPSON: Mr. Poston?

15 MR. POSTON: No. Thank you.

16 JUDGE THOMPSON: Mr. Dandino?

17 MR. DANDINO: Yes, your Honor.

18 JUDGE THOMPSON: Somehow I thought we would
19 be hearing from you.

20 RECROSS-EXAMINATION BY MR. DANDINO:

21 Q. Mr. Pauls, Judge Thompson just was asking
22 you about what would the consumers see, and one of the
23 things you had mentioned was elimination of the \$1.99
24 in-state connection fee.

25 A. Yes.

1 Q. Now, are you making in front of this
2 Commission an absolute commitment that if access rates
3 are reduced that that's going to be eliminated as the
4 next step AT&T is going to take?

5 A. My understanding, Mr. Dandino, is when we
6 filed that -- that charge, it was filed because of a
7 difference between intrastate and interstate access
8 rates. And if you complete steps one and two of
9 Mr. Kohly's proposal, that would eliminate that
10 differential, so that charge would be eliminated.

11 Q. What about using it to reduce toll rates in
12 Missouri by AT&T? When would that come about?

13 A. Well, it could be in conjunction with the
14 elimination. I don't know the specifics, but --

15 Q. Sure.

16 A. -- that's part of the array of AT&T
17 services, and we would have to look at all services
18 and decide what kind of rate design promotion we would
19 want to offer.

20 Q. But this Commission would have to completely
21 agree with Mr. Kohly's proposal in order for that
22 \$1.99 fee to be eliminated. Right?

23 A. I believe it's \$1.95.

24 Q. Excuse me.

25 A. But even if we complete step one, there

1 would be a reduction. It's not necessarily you have
2 to go all of the way to step two. There would be some
3 reduction. How much, I don't know, but there would be
4 some reduction if you complete step one.

5 Q. Were you here when Dr. Staihr was
6 testifying?

7 A. I was.

8 Q. And you may recall that he said that -- that
9 their -- that those in-state connection fees or access
10 recovery fees may not be eliminated right away because
11 of the -- the source of revenue, and during these
12 times, the IXCs may have difficulty replacing their
13 revenue, which how does that relate to what you're
14 saying?

15 A. That's not my testimony. I don't --

16 Q. You don't agree with him on that?

17 A. I don't know what Sprint would do with their
18 charge, but I know that if we complete the rate
19 reductions, that ours, you know, will be eliminated.

20 Q. Now, are you the person who is responsible
21 to be making those decisions?

22 A. Not directly, no.

23 Q. You can only advise others, or are you just
24 going to provide the calculations?

25 A. I would quantify the impact, provide them to

1 the pricing organization, and they would make the
2 determination.

3 MR. DANDINO: Okay. That's all I have.

4 Thank you.

5 THE WITNESS: You're welcome.

6 MR. DANDINO: That's all I have, your Honor.

7 Thank you.

8 JUDGE THOMPSON: Thank you, Mr. Dandino.

9 Mr. Conroy?

10 MR. CONROY: Mr. Lane had to step out for a
11 minute. I just have one or two questions.

12 JUDGE THOMPSON: That's quite all right.

13 RECROSS-EXAMINATION BY MR. CONROY:

14 Q. Mr. Pauls, under that -- the questioning by
15 Judge Thompson, the first step would be make permanent
16 the CLEC access cap. That's step one? Right?

17 A. Yes, with Mr. Kohly's three exceptions.

18 Q. Okay. And then you come to your two-step --
19 the two-step process that comes after that?

20 A. Yes.

21 Q. Okay. The first step, \$3.49 gets added as a
22 SLC to all customers' bills. Right?

23 A. Yes.

24 Q. And the second step would be \$2.92 or so,
25 another charge added to the customers' bills?

1 A. Yes.

2 Q. Okay. A total of \$6.41. Correct?

3 A. That's correct.

4 Q. Okay. When you said that Missouri

5 customers -- well, Judge Thompson asked you a couple

6 of questions about what would the customers see, and

7 you said the one thing that they would see for sure

8 would be the elimination of the \$1.95 -- what do you

9 call that charge?

10 A. In-state connection fee.

11 Q. Okay. Reduction or elimination of the \$1.95

12 in-state connection fee that AT&T charges its

13 customers. Right?

14 A. Yes.

15 Q. It's true that you only charge that to your

16 own customers. Right?

17 A. I believe that's right.

18 Q. It would be hard to charge it to somebody

19 else's customers. Right?

20 A. That's true.

21 Q. Okay. If the customer wasn't an AT&T

22 customer, they wouldn't see any benefit from that,

23 would they, because they are not getting charged

24 currently the \$1.95 in-state connection fee from AT&T,

25 so it's only your customers who would benefit?

1 A. If Sprint or MCI WorldCom has an in-state
2 connection fee, they would have to decide if they
3 would adjust that fee.

4 Q. So it would depend on whether the company --
5 their serving IXC had an in-state connection charge.
6 Right?

7 A. Yes, or they may make other rate changes.

8 Q. Okay. But with respect to the in-state
9 connection charge, your commitment -- or, actually, I
10 don't think it's a commitment anymore after the last
11 set of questions, but your suggestion that that might
12 get reduced or eliminated, that would only benefit
13 your customers. Right?

14 A. We would flow through what we get. We can't
15 flow through anything that some other carrier gets.
16 It would be up to them what kind of price reduction
17 they would get?

18 Q. So is that true? Yes? Elimination of your
19 in-state connection fee would only benefit your
20 customers?

21 A. Yes.

22 MR. CONROY: Okay. That's all, Judge.

23 Thanks.

24 JUDGE THOMPSON: Thank you, Mr. Conroy.

25 Mr. Schiffman?

1 MR. SCHIFMAN: No questions, your Honor.
2 JUDGE THOMPSON: Mr. England?
3 MR. ENGLAND: No. Thank you.
4 JUDGE THOMPSON: Ms. Chase?
5 MS. CHASE: No questions, your Honor.
6 JUDGE THOMPSON: Mr. Dority?
7 MR. DORITY: No. Thank you, Judge.
8 JUDGE THOMPSON: Mr. Fischer?
9 MR. FISCHER: No questions.
10 JUDGE THOMPSON: Ms. DeCook, redirect?
11 REDIRECT EXAMINATION BY MS. DeCOOK:
12 Q. Mr. Pauls, I'd like to just go over your
13 schedules quickly since there's been a lot of
14 discussion about them.
15 Looking at MJP-2 --
16 A. Okay.
17 Q. -- was that schedule provided for
18 illustrative purposes?
19 A. Yes, it was. It was simply a tool for the
20 Commission. To help them connect the dots, I think I
21 wanted to provide a big picture of how access changes
22 related to the rate changes.
23 Q. And as I understand MJP No. 3, that was
24 provided to show to the Commission the impact of a
25 reduction from existing rates to TSLRIC rates based on

1 your use of the surrogate that's in Mr. Kohly's
2 testimony?

3 A. Yes.

4 Q. And so in the third column, the revenue
5 neutral end-user monthly impact, that's not your
6 recommendation as to what should happen to local rates
7 in this proceeding? Right?

8 A. No.

9 Q. Rather, what you provided it for was to
10 calculate the what you call the SLC pool maximum
11 amount which appears in the total column at the
12 bottom?

13 A. Yes.

14 Q. And you also provide as an alternative the
15 percent impact that would arise using these
16 calculations on a USF?

17 A. Yes.

18 Q. And that's the revenue-neutral USF end user
19 charge that's reflected at the bottom of the page?

20 A. Yes, 16.3 percent.

21 Q. Now, do you believe that the Commission has
22 a variety of tools that it can use in this proceeding
23 to offset the support that's in access charges?

24 A. Yes. I tried to provide both ends of the
25 spectrum. You could either do a total SLC charge, if

1 you will, or you can do a total USF, or you can do a
2 combination of the two in order to make each LEC
3 revenue neutral.

4 Q. Do they also have a choice of increasing
5 local rates if they believe that's appropriate?

6 A. Yes, or maybe vertical services or other
7 services also.

8 Q. Or some combination of all of those things?

9 A. Probably including overearnings.

10 Q. Okay. Let's just move on to MJP-4.

11 And, again, as I understand this exhibit, it
12 was designed to reflect the SLC pool amount that you
13 believe would arise if the Commission were to take
14 step one, which is the elimination of the CCL?

15 A. Yes.

16 Q. And so the column 3 there is simply your
17 mechanical numbers to get to the total SLC amount?

18 A. That's right.

19 Q. And there is, likewise, a revenue-neutral
20 USF end user surcharge reflected on this page that
21 would represent the surcharge if they were to use the
22 USF rather than the SLC pool?

23 A. Yes, 8.9 percent.

24 Q. I don't want to -- I want to refer you to
25 Exhibit 55, but I don't want to address any of the

1 specific numbers in there, so we don't need to go in
2 camera.

3 JUDGE THOMPSON: Very well.

4 BY MS. DeCOOK:

5 Q. You had a discussion with Mr. England about
6 the percent applicable based upon the revenues
7 represented here to small telephone companies. Do you
8 recall that?

9 A. Yes.

10 Q. And while it may be true that the percentage
11 impact is small in terms of absolute dollars, do the
12 Small Telephone Companies' access charges have an
13 impact on AT&T's ability to compete in Missouri?

14 A. Absolutely.

15 Q. Could you describe that impact?

16 A. Yes. The problem we had in Missouri is
17 there is a significantly higher percent of rural
18 ICO -- small ICO traffic, and due to the fact that we
19 have to have statewide average toll rates, we have to
20 factor in those higher costs when we come up with our
21 statewide average toll rates. It makes it very
22 difficult to compete with a carrier like Southwestern
23 Bell who only originates traffic in their own low-cost
24 access areas.

25 So it puts us at a tremendous disadvantage

1 having the high access rates with the small ICOs,
2 especially since they are such a significant part of
3 the state compared to most other states.

4 Q. You received some questions from Mr. Dandino
5 about the shifting of recovery of costs from access to
6 local. Do you recall those questions?

7 A. Yes.

8 Q. Who ultimately pays for the subsidy that's
9 in access charges?

10 A. The consumer.

11 Q. So irrespective of whether they are in the
12 local service rate, a SLC, access charges, ultimately,
13 the consumer experiences those costs?

14 A. Absolutely.

15 MS. DeCOOK: Thank you.

16 That's all I have.

17 JUDGE THOMPSON: You may step down,

18 Mr. Pauls.

19 You are excused.

20 (Witness excused.)

21 JUDGE THOMPSON: We have come finally to the
22 end of the witness list in this case, and I think now
23 we have to hear from the parties on where we go from
24 here. Some of the parties have offered Suggestions to
25 the Commission as to what the Commission should do

1 with the information collected up to this point, and
2 some of the parties have not, suggesting that it is
3 premature to offer suggestions and that there should
4 be another phase or perhaps even other proceedings.
5 So it's for this reason that I think it is necessary
6 to hear from the parties, Where do we go from here?

7 And I will start with Staff since the
8 Commission, in establishing this case, charged Staff
9 with the principal responsibility for carrying out
10 this investigation.

11 Mr. Poston.

12 MR. POSTON: Thank you. May I address from
13 here, please?

14 JUDGE THOMPSON: You may.

15 MR. POSTON: Thank you.

16 Well, the Staff has considered this to be a
17 two-part process since the outset. Part one is to
18 investigate the costs, and, hopefully, that's what
19 will be the outcome of this proceeding now.

20 And we would propose that the Commission
21 allow the parties an opportunity to brief the issues
22 in this case and to propose orders -- to file proposed
23 orders for the Commission to basically answer the one
24 question that this investigation has investigated,
25 which is the cost of exchange access in Missouri. And

1 we would hope that the Commission would then adopt
2 costs that it would determine to be the cost of access
3 in Missouri.

4 And, next, we would hope the Commission
5 would move to either a second phase in this case or
6 another case that explores the overall goal that the
7 Commission set, which is to ensure just and reasonable
8 rates.

9 And if we did move to another case, we would
10 hope that the case would be captioned differently than
11 this case to hopefully expand it beyond just CLECs.

12 That's where Staff stands.

13 JUDGE THOMPSON: Very well. Mr. Dandino?

14 MR. DANDINO: Thank you, your Honor.

15 I think that what the Office of Public
16 Counsel is suggesting to this Commission is that --
17 you investigated -- you wanted to take a look at the
18 costs just more in a broad -- broad-stroked way to see
19 what would come out of this. And I think you've --
20 you're going to find out, and I think you have found
21 out that no matter which way you look at it, you're
22 going to come up with a result, a cost study or a cost
23 result, I guess, or factor, that is not readily usable
24 in anything else without a full evidentiary hearing to
25 change rates.

1 I think, more, it's just going to give you a
2 little feel on -- on a lot of the claims that have
3 been made over the years about what's going -- you
4 know, about subsidies and what the costs are and
5 everything.

6 And other than that, I think you can make a
7 regular -- some type of determination that you've
8 looked at all of these costs -- you've looked at all
9 of these cost studies, you've looked at the evidence,
10 and you can have a general -- general statement. Of
11 course, we feel the evidence is going to show that
12 it's -- there is no subsidy.

13 I think the basic thing you're going to have
14 to look in this case for is, Does this case produce a
15 compelling reason for this Commission to take any
16 further action? And I think that's -- that's the
17 essence of what this all comes out to. Is there a
18 compelling reason here? And, you know, we -- of
19 course, we don't feel like there is.

20 I think that the next step going to this is
21 to fashion an order that would -- would resolve the
22 essential question of why you left the cap -- the CLEC
23 cap as an interim, and I think that's the question you
24 really have to answer. I think that's the only one
25 that really comes out of this that is really needing a

1 determination from this Commission is, should that be
2 made permanent or not? And I -- of course, you know,
3 we see the evidence that it should be made permanent.

4 But I think that is the key question that
5 should -- that this Commission has to answer out of
6 it, and that's what we would encourage the Commission,
7 to answer that question.

8 Thank you.

9 JUDGE THOMPSON: Thank you, Mr. Dandino.
10 Mr. Conroy?

11 MR. CONROY: Thank you, Judge.

12 Southwestern Bell's -- from Southwestern
13 Bell's perspective, we view this case as an
14 investigation into the costs that are incurred to
15 provide switched access, and mostly for the -- mainly
16 for the purpose of determining whether the access rate
17 cap that was adopted on an interim basis should be
18 imposed on a permanent basis.

19 And the Commission has now heard a lot of
20 evidence, detailed cost evidence, and I believe that
21 the parties ought to be given the opportunity to file
22 briefs as in a normal case on the issues that were
23 identified in the issues list.

24 But the main issue that we see in that --
25 there are seven issues, but the main issue we see is,

1 again, should that access rate cap become or be
2 imposed on a permanent basis, and on that issue,
3 Southwestern Bell believes that there is sufficient
4 evidence upon which the Commission should rely to
5 impose the access rate cap on a permanent basis going
6 forward in Missouri.

7 We don't believe there is any evidence that
8 would suggest that rates -- any other rate should
9 be -- clearly should not be impacted in this
10 proceeding, and, as I stated in our opening statement,
11 I don't believe that the Commission would have the
12 authority to reduce the large price cap regulated
13 incumbent access rates.

14 And if the Commission wants to take some
15 further action with respect to whether the current
16 access rates of the smaller companies should be
17 adjusted in response to social or economic goals, that
18 would be the only action that we would see would be --
19 if the Commission so inclined that would be the next
20 step for the Commission to take.

21 JUDGE THOMPSON: Thank you, Mr. Conroy.

22 Mr. Schiffman?

23 MR. SCHIFMAN: Thank you, your Honor.

24 I believe Sprint's position still remains
25 the same as it was in its Position Statement that we

1 filed with the Commission. We agree that the TSLRIC
2 methodology is the one that the Commission should use
3 in determining a company's forward-looking economic
4 costs for switched access, and we -- we believe
5 that -- that loop costs should not be included in that
6 calculation.

7 We believe that numerous adjustments need to
8 be made to Dr. Johnson's cost studies as to reflect
9 true forward-looking economic costs.

10 And as far as the CLEC access cap, we mostly
11 agree with what Mr. Conroy said. I think the one
12 exception that Sprint has with that is that if the
13 CLEC does come in and prove that it has higher costs
14 than -- through the submission of a cost study than
15 the ILEC in the territory that it is operating in,
16 then it should be allowed to charge rates above --
17 consistent with those higher costs that it proved.

18 And, finally -- and, finally, with respect
19 to what the Commission can do to price cap companies'
20 rates, I would agree with Mr. Conroy.

21 So I think the Commission should take these
22 costs and use its best judgment as far as what the
23 appropriate methodology is -- we believe we submitted
24 the appropriate one -- and take those costs and come
25 up with a decision. And then if there's rates that

1 need to be affected, that should be done in a separate
2 case with the Commission looking at what its authority
3 is to adjust rates in that separate case.

4 JUDGE THOMPSON: Thank you.

5 Mr. Fischer?

6 MR. FISCHER: Yes, your Honor.

7 From Verizon's perspective, the very next
8 step that should be taken is to take me up on my
9 motion to dismiss Verizon from this case and let them
10 leave the state and quit paying my bill.

11 From CenturyTel's perspective, I think we
12 would agree with the Public Counsel that the issue
13 that needs to be decided is whether that cap on CLECs
14 should be made permanent, and I think we would endorse
15 that as a permanent solution.

16 We would also note that CenturyTel has been
17 classified as a -- as a price cap company, and as a
18 result of that, this company coming into the state
19 will be subject to those rate rebalancing provisions
20 in the statute. And from our perspective, the system
21 is not broken, and we'll just continue along under the
22 statute as it exists today.

23 JUDGE THOMPSON: Thank you, sir.

24 Ms. DeCook?

25 MS. DeCOOK: Thank you, your Honor.

1 We would recommend, based upon our testimony
2 in this case, that the CLEC cap with the exceptions
3 that we proposed be adopted. I don't believe that --
4 at least insofar as maintaining the existing cap that
5 that is disputed by anyone.

6 We would also advocate that you move towards
7 the elimination of the CCL. We think you should
8 establish the appropriate cost standard in this
9 proceeding, and, not surprisingly, we believe you
10 should fix the protective order in this proceeding,
11 particularly before you move to phase two, if you
12 decide to do a phase two.

13 And with respect to a phase two or a
14 separate proceeding, however you choose to denominate
15 it, we suggest that the appropriate nature of that
16 proceeding should be applying whatever cost standard
17 or standards you adopt to the individual companies and
18 then move towards the establishment of just and
19 reasonable rates.

20 And I would just say before you embark on
21 individual company cases to do the phase two that I
22 think to save people a lot of time and hair splitting
23 and pulling hair that it makes sense to first
24 determine your authority and get that issue resolved
25 before we all go through the exercise of exploring --

1 filing and exploring cost studies.

2 I also think it's important to express your
3 intent of what you want to do in those proceedings so
4 it's clear up front and parties cannot dispute it what
5 the intent of the Commission is in the proceeding.

6 And I join in Mr. Poston's recommendation
7 that we not use the same heading for or caption for
8 whatever the subsequent phases are of this preceding.

9 Thank you.

10 JUDGE THOMPSON: Thank you.

11 Mr. Dority?

12 MR. DORITY: Thank you, Judge.

13 While your question is not identical to, it
14 is certainly similar to Issue 7 that the parties did
15 address in their Statements of Positions. That was,
16 What, if any, course of action can or should the
17 Commission take with respect to switched access as a
18 result of this case?

19 It was ALLTEL Missouri's position that the
20 Commission need not take any action with respect to
21 switched access as a result of this particular case,
22 and we would stand by that.

23 Regarding the other issue that was also
24 addressed regarding whether or not the interim cap
25 should be made permanent, ALLTELL's position, I think,

1 is similar to that of the other parties where we
2 indicated that there does appear to be a general
3 consensus that that cap should be made permanent, and
4 we would support that.

5 And I guess I would also look forward to
6 perhaps providing additional comments in the context
7 of a brief that we would intend to file in this
8 proceeding.

9 Thank you.

10 JUDGE THOMPSON: Thank you, Mr. Dority.

11 Mr. England?

12 MR. ENGLAND: Thank you, your Honor.

13 I wasn't expecting to get a pop quiz at the
14 end of the hearing, but I guess that's only fair since
15 we've kept you here all week.

16 I do have some thoughts. Unfortunately,
17 they are random. They are not very collected.

18 With respect to the CLEC cap that has been
19 interim, I agree with most of the commentators before me
20 that it probably can be made permanent. It doesn't
21 appear to be a problem. You may want to look at
22 tweaking it somewhat in -- consistent, rather, with
23 some of the recommendations in this case, but,
24 generally speaking, the cap as it exists today, seems
25 to be working.

1 With respect to access, as I said in my
2 opening statement, while you appeared and some parties
3 wanted to remind you that you were only looking at
4 costs, I think it's very important that you look at
5 the whole picture. Like so many things in this
6 business, you can't examine one factor in a vacuum,
7 and that certainly is the case with access.

8 Like a water balloon, if you push in at one
9 spot, it's going to expand at a bunch of other spots.
10 So simply looking at the cost of access with everyone
11 knowing in the back of their mind that once you
12 determine that cost, you're probably going to want to
13 do something with it. We suspect it's going to be
14 affect rates. And when you start affecting access
15 rates, then you start expanding the balloon in other
16 places, primarily local exchange rates as far as the
17 small companies are concerned.

18 Southwestern Bell has told you very
19 emphatically that you can't use the Universal Service
20 Fund to fund access rate reductions. Southwestern
21 Bell has also told you that you can't affect their
22 rates because of their price cap status. I think
23 they've even suggested that if you feel like you need
24 to do something with access rates, let's look at the
25 small companies.

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1 I have to admit, I don't like being in the
2 fish bowl any more than anybody else, but the fact of
3 the matter is, while you do have jurisdiction to look
4 at the small companies, you have to look at us in the
5 total package or picture, and that is with respect to
6 all of the services we provide.

7 So when you've done that in the past, in
8 rate cases where the parties have fought over rate
9 design as to how much cost you shift to access and how
10 much you shift to local, the Commission, quite
11 honestly, has been reluctant to put too much of the
12 burden on the local subscriber, primarily because of
13 the reasons Mr. Dunkle talked about with regard to the
14 small calling scopes. And as a matter of course, as a
15 matter of financial reality in this business, we must
16 get most of our revenue requirement from intrastate
17 access rates. If you will, that is in lieu of a
18 Universal Service Fund for the small, rural, high-cost
19 companies. So if you're going to examine small
20 companies only, it's a broader examination than just
21 cost of access.

22 And then the other thing I would remind you,
23 and I would hope that I made my point here today and
24 in days prior, that while the small companies may have
25 relatively high per-minute access rates, when it comes

1 right down to it, we're not talking about a lot of
2 money, and I don't think you're going affect total
3 state operations by what you may or may not do with
4 the small companies. So I think you also have to
5 weigh the costs versus the benefits of any access rate
6 reform, if you will, as far as it only impacts the
7 small companies.

8 Before we go on to any other phases, I think
9 it's important that you tell us what you want. I
10 think when you started this docket, it was -- it was a
11 noble effort to try to determine the costs of access.
12 It certainly made sense or certainly sounded good.

13 But what we've learned is that there are
14 different types of costs, forward-looking versus fully
15 distributed. There are different types of models that
16 can be used for either type of cost analysis. And we
17 have different types of LECs. We have price cap; we
18 have competitive, and we have traditional rate-base
19 rate-of-return regulated LECs, which may, in fact,
20 argue for a different cost standard, depending upon
21 the standard of regulation applied and your authority
22 to do anything.

23 So if we're going to proceed, gives us some
24 guidance as to how much further you want us to go,
25 what types of costs, if you think that's important,

1 and you may not. I mean, the other answer may be, We
2 don't think costs, on second thought, are that
3 important. But if they are, tell us what kind of
4 costs you want to look at.

5 Give us some guidance if there is going to
6 be a second phase. Excuse me. And keep in mind that
7 anything you do has ramifications in other aspects of
8 the business.

9 Thank you.

10 JUDGE THOMPSON: Thank you, Mr. England.

11 Ms. Chase?

12 MS. CHASE: I would concur in Mr. England's
13 remarks. And I would also agree that -- the MITG does
14 agree that the price cap mechanism that is in place on
15 the interim basis would be appropriate and that we
16 would not be opposed to CLECs coming in with
17 additional cost information if they indeed can
18 determine that they -- they needed a higher rate and
19 they could show that to you. We would leave that as
20 an exception for them.

21 But I think we would have to stand by our
22 Position Statement, and I appreciate the opportunity
23 to further set forth our opinions in the briefing.

24 JUDGE THOMPSON: Thank you.

25 Mr. Stock?

1 MR. STOCK: Your Honor, if I may, since I've
2 voided the podium all week, may I use that mike for
3 this purpose?

4 JUDGE THOMPSON: Please.

5 MR. STOCK: I feel like I may be the lone
6 voice in the wind here since I believe I'm the only
7 person in the room that was representing solely a set
8 of rural CLECs. Needless to say, I have a slightly
9 different version of reality, perhaps, than my
10 colleagues sitting out here.

11 One thing we've certainly heard this week is
12 the various opinions about what sort of cost analyses
13 are appropriate for any kind of action the Commission
14 may take.

15 Now, I think as others have indicated prior
16 to my speaking, I think we need some guidance from the
17 Commission about where, in fact, you want to go next.
18 And certainly some these jurisdictional issues about
19 what powers the Commission has to influence some of
20 these situations should be a prerequisite to having a
21 lot more effort put forth by the various companies
22 that are present here and involved in this matter.

23 Having said that, I think from a CLEC's
24 perspective, one of the concerns is that, does a
25 single type of cost methodology for analytical

1 purposes fit all? I'm not sure it does, I think that
2 still has to be decided.

3 Secondly, the issue about whether or not the
4 current interim cap should be kept in place, we would
5 argue that it should not necessarily be kept in place,
6 although we could probably live with the idea that if
7 there was exceptional circumstances, we could bring in
8 additional data.

9 If the Commission is truly interested in
10 fostering competition, I think it has to be cautious
11 in imposing regulatory solutions to market problems.
12 And the whole nature of a CLEC is that it's market
13 oriented, and, therefore, if it's going to act in a
14 prudent way to try to be a viable competitor to the
15 current LECs, it has to have enough flexibility to do
16 its job in an appropriate manner and have the ability
17 to influence its costs or control its costs and its
18 rates so that it succeeds. Otherwise, you're not
19 going to have competition.

20 Having said that, I would like to ask that
21 you do give us some additional guidance with respect
22 to where we are headed in this process. We think
23 there has got to be another phase at least, if not
24 another case, as has been indicated, and we would be
25 interested in participating in that.

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1 JUDGE THOMPSON: Thank you, Mr. Stock.

2 I think I heard from everyone, Mr. Morris
3 having departed.

4 Okay. I have -- I have 55 exhibits, all of
5 which have been offered and received excepting
6 Exhibit 51, which was the page inadvertently copied by
7 Mr. England, not the correct page.

8 I assume you don't want to offer that.

9 MR. ENGLAND: I believe that was Mr. Lane's
10 exhibit, but I'll take --

11 JUDGE THOMPSON: I'm sorry.

12 MR. ENGLAND: But since he's not here, I'll
13 take the blame for it.

14 JUDGE THOMPSON: I apologize.

15 MR. ENGLAND: That way he owes me one.

16 JUDGE THOMPSON: I don't know if you'll ever
17 collect.

18 In addition to the issues listed in the list
19 of issues, in the briefing -- and I think there
20 certainly has to be briefing in this phase of this
21 case whether we go anywhere else or not.

22 In addition to the issues set out there,
23 there were ten questions proposed by AT&T at an
24 earlier stage of this matter, and you'll find them set
25 out in the Order Adopting the Procedural Schedule.

1 The first four questions has to do with the
2 Commission's -- or have to do with the Commission's
3 authority with respect to price cap regulated ILECs.
4 Then there's questions having to do with rate-of-
5 return regulated ILECs, and some questions having to
6 do with CLECs all going to just what can the
7 Commission do with respect to the access rates of
8 these various types of companies. And I would like
9 the parties to address those points as well.

10 I apologize for throwing ten additional
11 issues into the hopper, but I do think the point was
12 well taken that before the Commission goes any
13 further, it take a look at just what the Commission
14 can and cannot do in the area of access rates. So it
15 may actually save everybody money and effort further
16 down the road to address these points now rather than
17 to address them later.

18 There was also talk about calling scopes and
19 the authority that the Commission has to impose or to
20 enlarge calling scopes, and there was talk linking
21 this in some way to the idea of access rate reform, if
22 I can use that phrase. I'd like you to address the
23 Commission's authority with respect to enlarging
24 calling scopes, as well, because there has been a lot
25 of talk about that during this week.

1 Finally, there's the issue of the protective
2 order and the information contained in the protective
3 order, and, of course, AT&T's pending Motion for
4 Reconsideration of the Commission's Order with Respect
5 to the Protective Order.

6 We have heard primarily from AT&T and from
7 Southwestern Bell on that issue in terms of written
8 motions and responses. I believe Sprint also weighed
9 in at one point. Perhaps some other companies did. I
10 don't recall at this juncture.

11 We have asked questions about this
12 throughout the case. I've made a point of doing that
13 because if there is to be a further phase at least of
14 this case, then I think there has to be some attention
15 given to how can you reform access rates when some of
16 the companies can't even look at the information that
17 is driving the reform. So I'd like the parties to
18 address that as well.

19 And let me just end by saying that in using
20 that phrase "access rate reform," that that's simply
21 convenient and we don't mean to send fear and
22 trepidation throughout the telecommunications industry
23 of the state of Missouri by the use of that phrase.

24 Thank you all very much for the lots of hard
25 work put into this case at this point. Let's just set

1 a briefing schedule and I think we can then go home.

2 Kristal, when will the transcripts be
3 available? Take your time.

4 THE COURT REPORTER: I think mine is due a
5 week from Monday.

6 JUDGE THOMPSON: A week from Monday.

7 So the transcripts will be available very
8 soon, but I don't expect the briefs very soon.

9 Does anybody have any suggestions as to the
10 briefing schedule? I assume we're going to do
11 simultaneous principal briefs and simultaneous reply
12 briefs. Correct?

13 MR. CONROY: That's fine with us. Me.

14 MR. SCHIFMAN: When does Ms. Creighton-
15 Hendricks get back from maternity leave?

16 JUDGE THOMPSON: Did I hear a suggestion?

17 MR. SCHIFMAN: No.

18 JUDGE THOMPSON: Christmas Day?

19 Well, let's see. A week from Monday, that's
20 when the transcripts will be available. Monday is the
21 16th, so the 23rd, did I calculate that correctly, or
22 a week from this past Monday?

23 THE COURT REPORTER: I think it's the
24 Tuesday.

25 JUDGE THOMPSON: The 24th. Okay. The

1 transcript is available the 24th.

2 MR. ENGLAND: Your Honor?

3 JUDGE THOMPSON: Sir,

4 MR. ENGLAND: If I may?

5 JUDGE THOMPSON: You may.

6 JUDGE THOMPSON: Just in case you were
7 thinking a shorter time than I was, perhaps 45 days
8 for the -- after the receipt of the transcript for the
9 initial brief and 30 for the reply?

10 JUDGE THOMPSON: I was thinking 60 days.

11 MR. ENGLAND: Okay. I'm sorry. Never mind.

12 JUDGE THOMPSON: There is a very large
13 record. It's very complicated. Maybe some of you
14 guys can understand what economists say, but I've
15 certainly been having a hard time.

16 MR. ENGLAND: That's exactly what I said,
17 your Honor, was 60 days.

18 MR. CONROY: Mr. England no longer has
19 authority to speak.

20 JUDGE THOMPSON: Sixty days gets us to
21 Thanksgiving week, and we don't want to go there, so
22 we're going to make this due -- how about Friday,
23 December 6th?

24 And I know there is going to be somebody out
25 there who is going to start working on this thing on

1 Tuesday, December 1st, and that's okay. That's --
2 time management is your problem.

3 And then we will have the reply briefs
4 due -- how about January 10th. That's also a Friday.

5 MR. ENGLAND: Could we push that back a
6 week?

7 JUDGE THOMPSON: Sure. Friday,
8 January 17th, does that work?

9 MR. POSTON: That's the day after my
10 birthday, but I'll be okay with that.

11 MR. CONROY: What is that, thirty, Marc?

12 JUDGE THOMPSON: You'll just have to get
13 that brief done early.

14 MR. POSTON: I guess so.

15 JUDGE THOMPSON: Okay. Anything else that
16 we need to take up at this point?

17 MR. FISCHER: Your Honor, Verizon would
18 request that it be relieved of the obligation of
19 filing a brief.

20 JUDGE THOMPSON: Verizon is relieved of the
21 obligation of filing a brief.

22 Why don't I just go ahead and dismiss
23 Verizon from the case?

24 MR. FISCHER: That would be great.

25 JUDGE THOMPSON: Verizon is dismissed.

1 MR. FISCHER: Thank you.

2 JUDGE THOMPSON: And I think we're
3 adjourned.

4 WHEREUPON, the hearing in this case was
5 concluded.

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2			
3	Exhibit No. 44 Direct Testimony of Steve Brandon	998	999
4			
5	Exhibit No. 45-HC Schedule A to Direct Testimony of Steve Brandon	998	999
6			
7	Exhibit No. 46 Rebuttal Testimony of Steven Brandon	998	999
8			
9	Exhibit No. 47 Direct Testimony of R. Matthew Kohly	1000	1024
10			
11	Exhibit No. 48 Surrebuttal Testimony of R. Matthew Kohly	1000	1024*
12			
13	Exhibit No. 49 Errata Sheet for R. Matthew Kohly	1000	1024
14			
15	Exhibit No. 50 AT&T Communications of the Southwest, Inc. Access Service Tariff, P.S.C. Mo. No. 14, Section 17 - Rates	1035	1036
16			
17	Exhibit No. 51 TCG Kansas City, Inc. Access Service Tariff, P.S.C. Mo. No. 2, Second Revised Sheet 64	1041	
18			
19	Exhibit No. 52 Summary of Recent Access Rate Reductions as a Result of Small ILEC Rate/Earnings Cases	1080	1094
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22	Exhibit No. 53 Surrebuttal Testimony of Michael J. Pauls	1158	1161
23			
24			
25	* Received into evidence in part.		

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Exhibit No. 54-HC Work papers for Mr. Pauls' schedules	1187	1204
Exhibit No. 55-P List of access payments for April 2001 through March 2002 by AT&T to all Missouri ILECs	1204	1206