

1 BEFORE THE PUBLIC SERVICE COMMISSION
2 OF THE STATE OF MISSOURI

3
4 TRANSCRIPT OF PROCEEDINGS

5 Oral Argument

6 September 30, 2005
7 Jefferson City, Missouri
8 Volume 3

9 In the Matter of the Petition of)
10 Alma Telephone Company for)
11 Arbitration of Unresolved Issues)
12 Pertaining to a Section 251(b)(5)) Case No.
13 Agreement with T-Mobile USA, Inc.) IO-2005-0468

14 RON PRIDGIN, presiding,
15 Regulatory Law Judge,
16 CONNIE MURRAY,
17 LINWARD "LIN" APPLING,
18 Commissioners.

19 REPORTED BY:
20 Jennifer L. Leibach, RPR, CCR(T)
21 MIDWEST LITIGATION SERVICES
22
23
24
25

A P P E A R A N C E S

CRAIG S. JOHNSON, Attorney at Law

1648A East Elm

Jefferson City, Missouri 65101

(573) 632-1900

FOR: Alma Telephone Company, Chariton Valley
Telephone Company, Mid-Missouri Telephone
Company, and Northeast Missouri Rural
Telephone

MARK P. JOHNSON, Attorney at Law

MATTHEW FAUL, Attorney at Law

SONNENSCHNEIN, NATH & ROSENTHAL, LLP

4520 Main Street, Suite 1100

Kansas City, Missouri 64111

(816) 460-2424

FOR: T-Mobile USA, Inc.

1 PROCEEDINGS

2 JUDGE PRIDGIN: Good morning. We are on the
3 record. This is the oral argument in Case No. IO-2005-0468,
4 in the matter of the Petition of Alma Telephone Company for
5 Arbitration of Unresolved Issues Pertaining to a Section
6 251(b)(5) Agreement with T-Mobile USA, Incorporated.

7 I'm Ron Pridgin, the Regulatory Law Judge and
8 Arbitrator assigned over this case. This oral argument is
9 being held on September 30th, 2005, in the Governor Office
10 Building in Jefferson City, Missouri. At this time, I would
11 like to get oral entries of appearance from counsel,
12 beginning with petitioners, please.

13 MR. CRAIG JOHNSON: Thank you, your Honor.
14 It's Craig Johnson here today on behalf of the petitioners,
15 Alma Telephone Company, Chariton Valley Corporation,
16 Mid-Missouri Telephone Company, and Northeast Missouri Rural
17 Telephone Company. My address is 1648A East Elm, Jefferson
18 City, Missouri, 65101.

19 MR. MARK JOHNSON: May it please the
20 Commission. Appearing on behalf of the respondent, T-Mobile,
21 USA, Mark Johnson and Matthew Faul of the law firm of
22 Sonnenschein, Nath & Rosenthal. Our address is 4520 Main
23 Street, Suite 1100, Kansas City, Missouri, 64111.

24 And if I may take an additional minute, I'd
25 like to introduce Mr. Faul to you. He is a newly admitted

1 member of the Missouri Bar, having been sworn in yesterday at
2 the Supreme Court, a graduate of the University of Texas Law
3 School, and I hope you will join me in welcoming Mr. Faul to
4 the practice of law in Missouri.

5 JUDGE PRIDGIN: Mr. Johnson, thank you.
6 Mr. Faul, good morning, and welcome to the Missouri Bar. And
7 I understand Mr. Johnson for the petitioner -- let me take a
8 moment, and I will try to keep this formal. We do have both
9 counsel with the same last name, and I will try for clarity
10 sake, to refer to Mr. Johnson for the petitioner and
11 Mr. Johnson for the respondent.

12 Mr. Johnson for petitioner has correctly
13 pointed out that Alma is not the only petitioner in this
14 case. I've consolidated this case with IO-2005-0469 through
15 0471, so we actually have four different petitioners versus
16 respondent, T-Mobile.

17 Is there anything counsel would like to bring
18 to my attention before an opening statement? All right.
19 Seeing nothing, Mr. Johnson for petitioners, do you have any
20 opening statement before you receive questions from the
21 bench? And you can do that from where you are, or the
22 podium, wherever you're more comfortable.

23 MR. CRAIG JOHNSON: I -- this is my first
24 time, your Honor, and I wasn't familiar with the format that
25 would be used. I came prepared with a presentation, but it

1 will be much more involved than just an opening statement, so
2 if -- it would be 10 or 15 minutes long, at a minimum. And
3 if that's too long, I'd be perfectly happy to waive it and
4 just entertain questions.

5 JUDGE PRIDGIN: The presentation is certainly
6 fine, and however counsel would like to proceed, and
7 Mr. Johnson from respondents, any -- any comment?

8 MR. MARK JOHNSON: No, and if Mr. Johnson for
9 the petitioner has a presentation, I will be as interested in
10 it, as I'm sure the Commissioners will.

11 JUDGE PRIDGIN: Okay. Very well. Mr. Johnson
12 for petitioners, whenever you're ready, sir.

13 MR. CRAIG JOHNSON: Thank you, may it please
14 the Commission. And Arbitrator Pridgin, I hope your skin is
15 thick.

16 JUDGE PRIDGIN: It is, thank you.

17 MR. CRAIG JOHNSON: Like I said before, this
18 is the first occasion we've had all the way to this stage.
19 And by "we", I mean the six companies that I typically
20 represent. So far we've been successful in resolving the
21 rest of our disputes with the wireless carriers without
22 having to get to this stage of the arbitration. And we've
23 resolved all those disputes except with T-Mobile.

24 Two of the members of the group, MoCan and
25 Chocktaw, did reach voluntary, negotiated agreements with

1 T-Mobile, and those have been approved. And so that's why we
2 have the remaining four companies; Alma, Chariton Valley,
3 Mid-Missouri, and Northeast.

4 The issue that we come to you today for is
5 issues concerning who's responsible to pay for, and whether
6 the traffic is truly reciprocal compensation traffic when the
7 traffic is carried by an interexchange carrier, or an IXC.
8 And specifically, what brought us here was the calls that our
9 local customers make that go to T-Mobile customers. And our
10 customers make that when they dial a one plus call, thereby
11 becoming a customer of an interexchange carrier, paying that
12 carrier toll. And the interexchange carrier, such as AT&T,
13 MCI, or Sprint will take that call to T-Mobile, and then
14 T-Mobile terminates it to its customers. That's our issue,
15 and we're concerned because the final arbitration report
16 makes that traffic reciprocal compensation traffic as long as
17 it's -- originates and terminates within the same major
18 trading area, or MTA.

19 The issue that T-Mobile is going to bring
20 before you today is the reciprocal compensation rate that the
21 final arbitration report adopts. And for a minute, I'll
22 digress and recognize that T-Mobile has a financial problem
23 similar to the ones that we've experienced in the past. The
24 FCC has said for this land line to mobile IXC carried
25 traffic, that the IXC is supposed to pay the wireless carrier

1 access to terminate that.

2 But what the FCC did to take the teeth out of
3 that mouth was they said that you have to get an agreement
4 with the interexchange carrier before you can receive that
5 compensation. So T-Mobile finds itself in that no-man's land
6 of being entitled to compensation, but not having the
7 mechanism to get it. In this issue, with respect to
8 interexchange carrier, or IXC traffic, I think, has
9 significant implications here in Missouri.

10 I know there are several agreements between
11 larger LECs, larger ILECs and wireless carriers, and there
12 are approximately 70 or so agreements between small rural
13 ILECs or CLECs and wireless carriers. And to my knowledge,
14 none of those include this IXC traffic within the scope of
15 reciprocal compensation traffic in those agreements. I
16 believe it's fair to say that there's five agreements that
17 T-Mobile has not arbitrated but voluntarily agreed to that
18 don't include such traffic within the scope of their
19 agreements. And those are the agreements that T-Mobile has
20 signed with MoCan, Chocktaw, Seneca, Goodman, and Ozark
21 Telephone Company.

22 And if the Commission is going to go down to
23 the end of the road that the arbitrator has -- has laid out
24 with respect to interexchange traffic, there's going to be
25 some other questions raised that aren't necessarily answered

1 by this arbitration report. If this traffic is going to be
2 reciprocal compensation traffic, does that mean it's not
3 going to be access traffic as it has been in the past? Does
4 it mean we're going to get both access compensation --
5 intercompany compensation and reciprocal compensation applied
6 to the same call? Is that good policy?

7 If we're not going to apply access any longer,
8 I guess that means that we're going to lose our originating
9 access for this traffic. Does that mean T-Mobile will lose
10 its right to terminating access for that traffic? Will the
11 interexchange carrier no longer have to pay access to either
12 originate or terminate these calls? Will the interexchange
13 carrier be -- if it gets a windfall like that, will it be
14 forced to pass those savings along? Where will T-Mobile and
15 the petitioners here go to either recover that lost access
16 revenue, or from our standpoint, to additionally cover the
17 new compensation we'll be paying to T-Mobile that we've never
18 had to pay in the past.

19 Those are all significant ramifications, not
20 just for us, but I think if this decision stands, you're
21 going to see existing agreements being renegotiated and
22 possibly arbitrated because this issue will be possibly
23 contentious between SBC, Century, Sprint, and the wireless
24 carriers as well.

25 First, I would like to present my arguments as

1 to why I don't think IXC traffic should be included as
2 reciprocal compensation traffic. There's a secondary issue
3 in this case, we call it net billing for lack of a better
4 term. I will address it later because it is, like I say, a
5 subset of, or a secondary issue, to the main issue, in our
6 opinion, which is the interexchange traffic issue.

7 And I would like to introduce, or overview, or
8 explain my interpretation of the arbitrator's analysis as set
9 forth in the final arbitration report as to why intraMTA IXC
10 carrier traffic is reciprocal compensation traffic. First,
11 Mr. Pridgin said that federal law must be applied, and we do
12 agree with that. Second, he quoted the FCC's reciprocal
13 compensation Rule 47 CFR 51.701. For short, I'm just going
14 to call that Rule 701. One of the provisions of that rule --
15 there's several sections -- says reciprocal compensation
16 applies to traffic exchanged between a LEC and CMRS provider
17 that originates and terminates within the same major trading
18 area.

19 The report went on to say, then, that the MTA
20 geographical boundary, and nothing else, determines whether
21 reciprocal compensation applies. And that statement's on
22 Page 18 of the report. Then finally, the report relied on
23 four decisions from other federal courts that the arbitrator
24 interpreted as supporting that result.

25 It's our suggestion to you that those

1 decisions in the arbitrator's report only look at one piece
2 of the Rule 701, that they don't look at other pieces of 701.
3 They don't look at all the terms of 701, and they fail to
4 follow the FCC precedent that's been set forth with respect
5 to these reciprocal compensation rules. And what we're
6 suggesting is that you have to read all those together to
7 understand that IXC traffic never was intended, and still
8 isn't intended to be included as reciprocal compensation
9 traffic.

10 And to back up again, T-Mobile interconnects
11 with SBC. And I think most of my clients here -- all of my
12 clients here are served, or subtend, if you will, SBC's McGee
13 access tandem in Kansas City. As a result of that, T-Mobile
14 doesn't reside in our switches, and their phone numbers, or
15 their customers phone numbers, can't be reached by our
16 customers making a seven digit local call. Our customers
17 have to dial a one plus in order to reach the T-Mobile
18 customers.

19 In a previous arbitration decision between
20 Mid-Missouri Cellular, not Mid-Missouri Telephone, and SBC,
21 the Commission in that arbitration decision ruled that in
22 order for a land line to mobile call -- and that's what we
23 are taking about here -- to be considered as local for recip
24 comp purposes, the wireless carrier has to be, one, locally
25 interconnected with the LEC, and two, its numbers have to

1 reside within the LEC's local calling scope.

2 And here, I would ask the Commission to keep
3 in mind that when we're talking about local calling scopes of
4 the customers, we're not talking about the MTA boundaries.
5 The MTA boundaries are the FCC's rules that set forth what is
6 required to be local for purposes of intercompany
7 compensation. It sets forth what's going to be a reciprocal
8 comp call exchanged between a LEC and a wireless carrier, and
9 what's going to be a long distance or access call between a
10 LEC and a wireless carrier.

11 But it's my opinion that this final
12 arbitration report will change the result that this
13 Commission announced in the SBC Mid-Missouri Cellular
14 opinion. So this traffic that we're talking about has to
15 leave our exchange in order to go to the Bell tandem where
16 the T-Mobile numbers reside. When this call was dialed with
17 a one plus, that -- that triggers a set of long distance,
18 equal access, pre-subscription access, no slamming, pick-type
19 rules.

20 We are required by both state and federal law
21 to give that one plus call to the customer's chosen
22 interexchange carrier -- picked interexchange carrier. At
23 that point in time, the traffic is not our traffic. It
24 belongs to the interexchange carrier. That's why we have to
25 deliver it to them. The customer of -- our local customer,

1 at that point in time, is not our customer for purposes of
2 that call. It is the IXC's customer.

3 We become the IXC's access customer for
4 purposes of originating that call. They pay us originating
5 access to use our facilities for that call to originate. The
6 IXC gets the toll revenue from the end user customer. The
7 IXC pays us access, and under the FCC's decision, it's
8 obligated to pay T-Mobile terminating access. There have
9 been earlier orders from this Commission that have recognized
10 that we're not responsible to pay for this traffic.

11 When you approved the wireless termination
12 traffics for Mark Twain and scores of other small companies,
13 the wireless carriers made an argument that we'd already been
14 compensated by de facto bill and keep because we should have
15 been paying them for this return traffic, the land line to
16 mobile traffic that went to them via an interexchange
17 carrier. You rejected that argument on the grounds that the
18 traffic -- the one plus traffic -- one plus IXC traffic that
19 goes from our exchanges to T-Mobile is one-way traffic, it's
20 carried by the IXC, and the IXC is supposed to pay
21 T-Mobile -- or pay the wireless carrier, not the LEC.

22 You repeated that decision later that year
23 when a CLEC filed its wireless termination traffic and AT&T
24 opposed that. And the specific cites to these cases, your
25 Honor, are in the comments that we've submitted already about

1 the final report.

2 This year in, I think it was January, there
3 was a complaint case between the small telephone company
4 group, or certain members of it, and T-Mobile where they were
5 complaining against T-Mobile for not paying for traffic that
6 had terminated pursuant to the small company's wireless
7 termination tariffs. Again, in that case, T-Mobile said,
8 don't approve -- or don't make us pay because we're entitled
9 to compensation for this return IXC traffic. It's roughly in
10 balance, and therefore, you shouldn't approve tariff -- or
11 approve this complaint. This Commission rejected that
12 complaint, again, on the grounds that the LEC was not
13 responsible for the land line to mobile one plus IXC traffic.

14 I'd like to turn to some of the FCC decisions
15 that deal with this issue. And the first one is the 1996
16 Local Competition First Report and Order. After the '96 Act
17 was enacted in February, the United States Congress gave the
18 FCC six months to come up with the reciprocal compensation
19 rules. Section 251(b)(5) of the Act said that there's going
20 to be a different mechanism to pay transport and termination
21 when carriers compete locally, but it left it to the FCC to
22 make up those rules.

23 Also, the act has Section 251(g) that
24 preserved existing regimes, if you will, until these new
25 rules were placed into effect. The first -- and we've

1 discussed these paragraphs in this Local Interconnection
2 Order, or Local Competition First Report and Order, in
3 several previous filings in other cases before this
4 Commission, but paragraphs 1033 to 1043 contains most of the
5 FCC's discussion regarding this issue.

6 First, what the FCC did was it distinguished
7 IXC traffic from local recip comp traffic, and the
8 description they used to make that distinction was that IXC
9 traffic required a three carrier -- three or more carrier
10 collaboration, whereas local reciprocal comp traffic was
11 going to be for two-carrier collaborations. The FCC
12 recognized that the '96 Act in Section 251(g) preserved the
13 legal distinction between the existing access traffic and the
14 new reciprocal compensation traffic.

15 It ruled that we, as LECs, had to continue to
16 offer access, and it ruled the traffic that used to be
17 subject to access would continue to be subject to access.
18 And in our case, the interexchange carrier traffic that we're
19 talking about had been subject to access. The FCC ruled that
20 the reciprocal compensation rules for the transport and
21 termination of traffic would not apply to interexchange
22 traffic.

23 And there was a quote in there that said
24 traffic between LECs and -- and I'm talking about the section
25 of the First Report and Order where they talked about the

1 issues in the specific context of wireless traffic. And they
2 said that traffic between LECs and CMRS providers was not
3 subject to access unless, and I emphasize unless, it was
4 carried by an IXC.

5 And the traffic we're talking about today is
6 carried by an IXC. The CompTel, the competitive telephone
7 association, and that was an association that represented
8 interexchange carriers -- competitive ones -- immediately
9 challenged that decision and they took it to the 8th Circuit
10 Court of Appeals. The St. Louis -- the one that sits in
11 St. Louis, and whose precedent's binding here in Missouri.

12 And their complaint was transport termination
13 that reciprocal compensation is going to cover, that's the
14 same function -- the LECs are going to be giving the wireless
15 carriers and the CLECs exactly the same function when those
16 calls originate or terminate as they give us, as IXCs, when
17 our quote long distance calls originate or terminate.
18 And it's discriminatory for the FCC to set up this cheaper
19 compensation regime, recip comp, and let these new local
20 competitors pay those rates and make us IXCs continue to pay
21 the higher access rates. That was their complaint.

22 And the 8th Circuit Court of Appeals denied
23 that complaint. And the 8th Circuit Court of Appeals said
24 that Congress, when they enacted the '96 Act, did not intend
25 for the access traffic to all migrate to reciprocal

1 compensation, at least not immediately. And the -- the 8th
2 Circuit quoted that ILECs would continue to provide exchange
3 access to IXC's. And in addressing the CompTel's argument as
4 to why this was discriminatory, they characterized CompTel's
5 argument as this, and I'm reading a quotation from the
6 opinion.

7 CompTel also challenges the FCC's
8 interpretation of interconnection as having a discriminatory
9 impact by permitting LECs to charge different rates for the
10 same service based on whether the carrier who's seeking
11 interconnection in other network services is a long distance
12 provider or a local service provider, but the two kinds of
13 carriers are not, in fact, seeking the same service. The IXC
14 is seeking to use the incumbent LEC's network to route long
15 distance calls, and the newcomer LEC seeks use of the
16 incumbent LEC's network in order to offer a competing local
17 service.

18 Arbitrator Pridgin rejected our analysis of
19 the CompTel decision because it wasn't specifically an
20 arbitration between a wireless carrier and a LEC, but we
21 think that misses the point. What we think CompTel stands
22 for is the 8th Circuit binding decision that the FCC's
23 decision not to allow access to apply -- or I'm sorry, not to
24 allow reciprocal compensation to apply to IXC-carried traffic
25 was legal, and it was correct, and it is the rule today.

1 There have been other decisions from the FCC
2 where they've reiterated this conclusion. In 2000, another
3 case cited in the comments, the TSR wireless case, the FCC
4 said that intraMTA LEC originated traffic falls under recip
5 comp rules if it's carried by an incumbent LEC, and it falls
6 under the access rules if the traffic's carried by an
7 interexchange carrier.

8 Then in 2002, Sprint PCS sued, in federal
9 court in Missouri, AT&T because AT&T kept delivering this
10 traffic to Sprint but wouldn't pay them for it. And the
11 federal court deferred that to the FCC to render a decision
12 on the substantive issue. And the FCC did rule that AT&T,
13 the IXC, has to pay T-Mobile, the wireless carrier, access
14 for those terminating IXC calls.

15 Then recently, in March of this year -- I'm
16 sure you've all heard a lot in the last couple years about
17 the Unified Carrier Compensation docket that the FCC's had
18 going on for years now. They announced a new notice of
19 proposed rule making in March of 2005 cited in our brief.
20 And in that, the FCC sought comments as to whether it should
21 change the compensation when IXCs and IXC-traffic is
22 involved. And what they asked was, should we change our
23 existing rules so that IXCs should become -- IXC-traffic
24 should become subject to reciprocal compensation. And the
25 point I would like to make is that even the FCC, this year in

1 March, recognized it would have to change its existing rules
2 in order for IXC provision traffic to be recip comp traffic.

3 Lastly, the final arbitration report relies
4 upon four cases from federal courts in other states that have
5 reviewed Commission decisions in different disputes. Some of
6 them arbitrations, some of them not. Now, I would just like
7 to briefly overview those cases. The first one was a Montana
8 case; Three Rivers.

9 In that case, the arbock [ph. sp.] was Qwest
10 and there was some rural telephone companies. The traffic
11 that they were fighting about there was traffic that was
12 terminating to the small LECs who hung out on the end of
13 Qwest's tandem. It was not land line to mobile traffic, it
14 was either land line to land line traffic, or perhaps mobile
15 to land line traffic that Qwest was sending to those
16 companies.

17 And in that case, what the Court ruled was
18 that Qwest, the transitor, similar to Bell's transiting
19 function here in Missouri, was not responsible to pay for
20 that traffic it transited to the small LECs to terminate. So
21 the point I'd like to make is that case did not really
22 directly address IXC traffic. It's specifically not land
23 line to mobile IXC traffic.

24 Similarly, there was a rural Iowa case -- a
25 case from Iowa which was a dispute between Qwest and some

1 small ILECs, and I think perhaps the INS, or the Iowa Network
2 Services, or ecentralized equal access were a part in that
3 case. But again, that case addressed CMRS traffic that
4 went -- that Qwest got that was destined to go to the land
5 line. It was mobile to land line traffic, and they said that
6 Qwest doesn't have to pay for that traffic, but it didn't say
7 that traffic was properly the subject of a reciprocal
8 compensation agreement between the wireless carrier and the
9 terminating LECs.

10 In fact, in that rural Iowa case, there are
11 some -- it's a very long, logical case, but there was some
12 good reasoning in it and got recitation of the authorities.
13 But the Iowa Utility Board, and the court that affirmed that
14 case, specifically recognized that when Qwest brings this
15 traffic to the small companies, it was not, and I emphasize
16 the word not, acting as an IXC. And the court in rural Iowa
17 found that when there's IXCs carrying this traffic, it's the
18 IXCs that pay the LECs. So I would suggest there's language
19 in that rural Iowa decision that supports our position.

20 The Atlas case is a problem from our
21 standpoint, because it clearly says if a land line to mobile
22 is IXC-carried intraMTA traffic, it is properly the subject
23 of reciprocal compensation agreement. This is a 10th Circuit
24 case from Oklahoma. But what that -- what that opinion did,
25 in our estimation, is that it only relied upon the major

1 trading area geographical boundaries. It only examines
2 whether the calls originate and terminates within an MTA. It
3 doesn't examine whose traffic it is, who's responsible to pay
4 for that traffic, or whether or not IXC-traffic should be
5 considered within the scope of a reciprocal compensation
6 agreement. It doesn't evaluate the FCC's decision and the
7 local competition in that First Report and Order, the
8 subsequent decision, and it simply doesn't address the
9 arguments and the practices that we're presenting in our
10 position -- our comments here.

11 And finally, the fourth and last case is a WWC
12 license case, a case out of Nebraska. And that case pretty
13 much just hangs its hat on the Atlas decision and has no
14 analysis or discussion that -- that helps us here.

15 Basically, what we're asking you Commissioners
16 to do is overrule the arbitration report, to review this law,
17 understand and agree that the FCC never intended IXC traffic
18 to be reciprocal compensation traffic, to overrule the
19 Arbitrator and ask that those provisions of the agreement
20 that would allow it to be included, be deleted from the final
21 agreement that's approved in this case. And our basis for
22 that there just has been a failure to comprehensively look at
23 the entirety of the rules -- the FCC's reciprocal
24 compensation rules.

25 And I would like to point out that when you

1 look at Rule 701, and you look at that part of the rule that
2 the Atlas case and this Arbitrator -- arbitration report
3 hangs its hat on, that rule says that in order to be
4 reciprocal compensation traffic, it has to be -- it's
5 exchanged between -- it's exchanged between a LEC and a CMRS
6 provider, and I wanted to focus on the word "exchanged".

7 To me, exchanged is a term of art that the
8 FCC's created with respect to reciprocal compensation. And
9 it's designed to denote a situation where two competitors
10 connect, and I send my local traffic to you that I'm
11 competing with you for in the first place, and you send your
12 local traffic that you're competing with me for in the first
13 place to each other, and we each pay the other to transport
14 and terminate the traffic that we originate. That's what
15 "exchange" means.

16 And when you look at IXC traffic, there is no
17 exchange. First of all, an IXC doesn't have local customers.
18 It doesn't offer local traffic. It doesn't exchange the
19 traffic with anybody. It either originates it or terminates
20 it. The IXC does not receive traffic from either a LEC or a
21 CMRS provider that it transports and terminates to its own
22 customers because it doesn't have any. It doesn't have its
23 own local customers. So a key portion of the reciprocal
24 compensation rule is this concept of exchange.

25 Let me go to the secondary issue, and that's

1 net billing. And I would just say that if you agree with the
2 petitioners here, that IXC traffic should be carved out of
3 this agreement, then we don't need to worry about net
4 billing, because if you carve out the IXC traffic, they're
5 not going to have return traffic that the net billing
6 provisions would address.

7 Net billing assumes that each company's going
8 to be paying the other for traffic that's exchanged, and that
9 what you do is you look at the totals periodically and you
10 subtract one from the other, so the carrier that owes for
11 more traffic pays the difference. That's what net billing
12 is.

13 The arbitration report ordered the net billing
14 as T-Mobile proposed, but there was one piece of the proposal
15 that T-Mobile made that we believe the final arbitration
16 report failed to get. And I'm trying not to make this too
17 complicated, too involved. But basically, what happened here
18 is that nobody put into evidence how much of this IXC traffic
19 there was, and so we had no way to quantify it. So what
20 T-Mobile proposed in this case was we do know how much
21 traffic is terminated to you guys on the SBC trunks, the
22 traffic that we agree is going to be in this agreement.

23 And there is a general rule of thumb in this
24 industry that 65 percent of the traffic that you -- that goes
25 between LECs and wireless carriers is mobile to land line.

1 There's more calls going from the mobile phones to the land
2 line phones than there is vice versa. So if we take that
3 Bell traffic figure and divide it by 65 percent, we will get
4 a bigger number than just the amount of traffic coming in
5 over the Bell trunk.

6 Once we get that bigger number, then we take
7 65 percent of that bigger number, that's what T-Mobile pays
8 the petitioner for. 35 percent of that bigger number is what
9 the petitioners will pay T-Mobile for. And so then you net
10 bill the difference. What we think the arbitrator missed in
11 the language in his report is that he forgot to order us to
12 do the step where we divide the total Bell traffic by 65
13 percent to reach the bigger number. And if -- if that's --
14 which is not what T-Mobile proposed, and we think it's an
15 oversight on the arbitrator's part. But if it's left the way
16 it is, it has the potential to reduce our compensation by
17 another third.

18 T-Mobile's issue, the reciprocal compensation
19 rate, the report adopts that our rate of 3.5 cents per minute
20 for the intraMTA traffic. There was evidence supporting our
21 3.5 percent rate. Our cost studies show that Alma's costs
22 were 9.1 cents, Chariton Valley is 5.3, Mid-Missouri 6.8
23 cents, and Northeast 5.7 cents. We already had other
24 agreements with other wireless carriers that didn't go to
25 arbitration with a 3.5 cent rate, which is common to a lot of

1 agreements that involve small companies in Missouri.

2 We proved that our cost exceeded the rates.
3 T-Mobile had their expert witness supporting a lower rate. I
4 think it was below opinion, around seven-tenths of a cent,
5 and T-Mobile proposed a penny and a half to be the actual
6 rate. So this was sort of a battle of the experts, a battle
7 over the forward-looking pricing models under the Section 252
8 of the Act. We believe the arbitration report weighed the
9 evidence and selected our rate because it was the better one.

10 Our rate was based upon a widely accepted and
11 peer reviewed HAI model that had been created by not only
12 AT&T or Hatfield, and bought by AT&T, and reviewed by the FCC
13 staffers and hiberdized and everything else, versus
14 T-Mobile's expert witness, Mr. Conwell, who just took his
15 personal evaluations of the pricing rules and came up with
16 his own application of that. I hesitate to call it a model
17 because I'm not sure it's published anywhere.

18 The arbitrator accepted our adjustments to the
19 inputs of the model, which were specific for rural companies
20 instead of using information that's more pertinent to the
21 larger arbock, such as SBC. And that was consistent with
22 prior Commission decisions where these types of adjustments
23 to the HAI model had been accepted in the wireless
24 termination tariff cases.

25 Finally, T-Mobile accuses us of not filing all

1 relevant information at the time we filed the arbitration
2 petition. And they say we should have filed our cost study
3 as an attachment to the arbitration petition itself. The
4 cost study included in the model would have been several
5 hundred pages in length. The FCC Rule 51.505(e) says we have
6 to prove our rates with a cost study, but doesn't say we have
7 to prove it at the time of the petition. And obviously we
8 don't submit our proof with the petition. The hearing's the
9 time we prove our case.

10 We started these negotiations in January of
11 this year, and T-Mobile never asked us for our cost study
12 until after the arbitration petition was filed. They sent us
13 a data request after the arbitration petition was filed, and
14 we provided the cost study. They had this information in
15 advance of the hearing, their expert testified regarding our
16 study, adjustments were made to our study, and they
17 cross-examined our expert about the study.

18 Even if we were required to have submitted
19 this cost study earlier than we did, there's been absolutely
20 no prejudice to T-Mobile as a result thereof. And I thank
21 you for my time. I'm sorry I took so much, but once you get
22 a script, you've got to stick to it.

23 JUDGE PRIDGIN: Mr. Johnson, thank you very
24 much. And let me see if, while you're at the podium, let me
25 see if we have any questions. Commissioner Murray?

1 COMMISSIONER MURRAY: Well, unfortunately, I
2 kind of need to leave also, but I'd like to hear the other
3 opening statement. I do have questions, but ...

4 MR. CRAIG JOHNSON: I'm sorry, I didn't know I
5 had a schedule, or I would have done something differently.

6 JUDGE PRIDGIN: That's quite all right.
7 Mr. Johnson for petitioners, thank you. Mr. Johnson for
8 respondent?

9 MR. MARK JOHNSON: Don't worry, just because
10 I'm bringing all this up here doesn't mean I'm going to use
11 it. Thank you, Judge Pridgin; Commissioner Murray, good
12 morning.

13 The principle issue that we raised in response
14 to the Arbitrator's report relates to the 3.5 cent intraMTA
15 rate, which the arbitrator approved, selecting the
16 petitioner's rate over the rate which T-Mobile proposed.
17 First, as Mr. Johnson for the petitioners indicated, the
18 petitioners violated both the federal statute and the
19 Commission's own rule concerning providing to the Commission,
20 with the Arbitration Petition, all supporting documentation
21 for each allegedly unresolved point.

22 We -- I can understand how it would be
23 difficult for the -- for the arbitrator to strike the cost
24 study, which is the relief we sought due to the petitioner's
25 failure to comply with the statute and rule, because that

1 would have been a drastic remedy, to use the words I believe
2 that he used. However, failing to impose some sanctions on
3 the petitioners simply reads that rule out of the
4 Commission's rules and reads that statute out of the
5 Communications Act. They have to mean something, there have
6 to be consequences for the petitioners failure to comply.

7 And it's not a matter that the Commissioners
8 didn't -- pardon me, that the petitioners weren't aware of
9 this. It's not a matter that they didn't have the
10 information. Mr. Schoonmaker testified that he had worked
11 with the HAI model for, I believe it was six years, prior to
12 the filing of the Arbitration Petition, and yet they still
13 did not include that information -- that supporting
14 information with the Arbitration Petition.

15 Now, moving beyond that point to talk about
16 the 3.5 cent rate in a substantive fashion, the petitioners
17 relied on Mr. Schoonmaker's sponsorship of the HAI model and
18 the results that he achieved through using that model.
19 It's interesting to note that only days before he filed his
20 direct testimony, in other words, he said on
21 cross-examination at the hearing that he had been working
22 with this model for six years -- working on the costs of
23 these companies with the petitioners for six years.

24 Only days before he filed his pre-filed
25 testimony, he reran the model with new inputs. The results

1 of which was an average reduction in the cost results for
2 each of these companies of more than half; 57 percent, to be
3 precise. So we believe that that raises certainly a
4 significant question as to the reliability of the results
5 coming from the model. And when you consider, in addition,
6 that Mr. Schoonmaker candidly, and I think quite
7 forthrightly, testified to his concerns about the reliability
8 of the results yielded by that model, the reliability of the
9 results because these companies -- because it's -- because
10 there were small companies involved here. We're talking
11 about small telephone companies being the petitioners, and
12 also small geographic areas.

13 He said because of those two factors, the
14 results yielded by the model were less reliable than they
15 might be otherwise. He also indicated that there were other
16 concerns that he had with the model, but I think ultimately,
17 as Mr. Johnson for the petitioners indicated, our cost
18 witness, Mr. Conwell, made some personal judgments as to what
19 the cost should be. It's clear that Mr. Schoonmaker did the
20 same.

21 In rerunning the model at the last minute, he
22 made personal judgments that the model was not yielding
23 results which he considered reliable. It had to be done
24 again. And yielded results which showed a substantial drop
25 in each company's cost, not a matter of one or two, but for

1 each company involved there was a significant reduction in
2 the costs yielded.

3 Now, to anticipate one issue that the
4 Commission might be concerned about in looking at T-Mobile's
5 proposed 1.5 cent rate as being higher than the rate --
6 pardon me, the cost which Mr. Conwell calculated at about
7 three-quarters of a cent a minute. The 1.5 cent amount was
8 the position which T-Mobile offered in negotiation, and they
9 felt that that was the appropriate -- that it was appropriate
10 given the best and final offer, nature of the arbitration,
11 that that was the best -- that they felt that they had to
12 follow-through with the 1.5 cent offer in the -- in the
13 arbitration itself.

14 Now, Commissioner Murray, with, you know,
15 trying to keep your short time here in mind, I'm going to
16 respond simply to one point.

17 COMMISSIONER MURRAY: I don't want you to cut
18 yours short, please don't.

19 MR. MARK JOHNSON: Okay. Well, thank you.
20 Let me deal with the reciprocal compensation issue here, and
21 I think it's -- and some ways, there are semantics involved
22 here. T-Mobile refers to it as reciprocal compensation. In
23 other words, we concede that T-Mobile must pay compensation
24 for wireless to land line calls in the context of a
25 negotiated arbitration -- negotiated agreement or an

1 arbitrated agreement, but we also believe that compensation
2 is due for land line to wireless calls.

3 The petitioners want to pull those two items
4 apart. They want to talk simply about land line to wireless
5 compensation while we talk about compensation running in both
6 directions; i.e., reciprocal compensation. I mean,
7 ultimately, and Commissioner Murray, you may remember, in the
8 context of the -- I think it was the complaint case in which
9 Mr. England's clients were involved. T-Mobile took the
10 position that the best way to resolve many of these issues
11 was through a negotiation.

12 And I think that what we see here today is a
13 good example of why it's best to try and negotiate these
14 agreements; sometimes you simply can't do it. Sometimes, the
15 parties are too far apart. But however, on the issue of
16 reciprocal compensation, I think you can cut through a lot of
17 the analysis which the petitioners present to you by simply
18 looking at the FCC rule. The petitioners agree with T-Mobile
19 that the FCC and the federal law govern here.

20 The FCC rule, which Mr. Johnson for the
21 petitioners talked about, the Rule 701, actually, when you
22 read it carefully, leads to the logical conclusion that the
23 type of traffic involved here, the land line to wireless
24 traffic with terminating -- pardon me, originating and
25 terminating within the same major trading area is subject to

1 compensation from the wire line company the wireless company.

2 The Atlas case -- and when the petitioners
3 tell you that the Atlas case is only a decision at the 10th
4 Circuit, in fact, there were no fewer than three bodies
5 involved there. Atlas case was a decision of the 10th
6 Circuit Court of Appeals, affirming a decision of the
7 Oklahoma Federal District Court, which affirmed a decision of
8 the Oklahoma Corporation Commission. So you had three
9 bodies, all of which said that Rule 701 says that
10 compensation is due for land line to wireless calls
11 originating and terminating within the same MTA.

12 The 10th Circuit didn't need to get to all the
13 FCC decisions and other regulatory Commission decisions. It
14 only had to look at the rule, because the rule is quite
15 clear. It says that -- and it draws a distinction between
16 traffic originated by a local exchange carrier going to a
17 wireless carrier on the one hand, and traffic originated by a
18 local exchange carrier and going to any other type of
19 company, and another local exchange company, for example.

20 And it says -- and the Atlas court [sic]
21 specifically says this. And if you want to find the
22 analysis, it's on -- and actually, the Federal District Court
23 dealt with it quite succinctly, 309 Fed 2d., pages 1309 and
24 1310. So all you really have to read is two pages and you
25 can see exactly what the appropriate analysis is. And it's

1 reading 701(b) (1), and 701(b) (2). That's all you have to
2 read, and it will show you, we believe quite clearly, that
3 the wire line to wireless traffic originating and terminating
4 within the same MTA is subject to reciprocal compensation.
5 It's that simple.

6 Mr. Johnson for the petitioners talked about
7 the issue of exchanging traffic. If there were FCC
8 decisions, decisions of this Commission, decisions of any
9 other commission, FCC rules, state regulatory commission
10 rules, if there were any authority to tell you what that word
11 means, they certainly would have told you. If you look at
12 their briefing, if you look at their comments, they -- they
13 define the word exchange as to meaning what they think it
14 means.

15 It's not a term of art, it's not a defined
16 term. It means what it means. It means what the word
17 typically means. Look it up in the dictionary. Traffic
18 going from one company to another company. The Atlas
19 decision very clearly says that traffic going from a wire
20 line carrier to a wireless carrier is subject -- within the
21 same MTA is subject to reciprocal compensation, regardless of
22 the existence of any intervening -- intervening carrier,
23 whether it's a long distance company, whether it's another
24 wireless company.

25 Of course, the Atlas case, which is factually

1 indistinguishable from this case, there is absolutely no
2 distinction that can be drawn between the case before you and
3 the Atlas case. There's nothing in the Atlas case that talks
4 about the word exchange. If the petitioners believe that
5 that is the word that -- on which this case turns, they would
6 be relying on more than what they simply think the word
7 means.

8 On the net billing issue, this was not a
9 surprise. The issue of net billing was raised in our
10 response to the Arbitration Petition. In other words, when
11 we received the Arbitration Petition from the Commission, we
12 prepared an Answer to the allegations in the Petition, and in
13 addition, inserted language into the proposed traffic
14 termination agreement, or interconnection agreement.

15 The language that we inserted as a proposal in
16 the traffic termination agreement included the net billing
17 language. So as early as two months before the arbitration
18 hearing, the issue was on the table. We raised it again in
19 the direct testimony and rebuttal testimony. This was not an
20 issue that could be viewed as a surprise. But for strategic
21 reasons, for tactical reasons, we don't know why the
22 petitioners chose not to respond. They didn't take the issue
23 seriously enough to deal with it.

24 You can't, at this point, give them an issue
25 on which the only evidence was presented by T-Mobile and

1 which the arbitrator clearly decided was, you know, met
2 whatever burden that he felt was appropriate to impose on
3 T-Mobile in resolving the issue in T-Mobile's favor.

4 Finally, let me try to deal with a point which
5 the petitioners raised many times throughout the run-up to
6 the arbitration hearing and then have relied on since the
7 hearing. That's that there are 70 agreements out there which
8 my client, T-Mobile, wants to ignore, that asking the
9 Commission to ignore those agreements, to put -- to approve
10 proposals which are not included within those agreements. A
11 couple of points there.

12 First, in approving negotiated agreements,
13 there's an entirely different analysis applied. In approving
14 negotiated agreements, which those 70 agreements are, the
15 Commission only has to decide whether the agreements are
16 discriminatory. On the other hand, for arbitrated
17 agreements, the Commission has to look for, in the case of
18 rates, has to assure itself that the rates are TELRIC rates,
19 that they're cost justified rates. So the point there is
20 that asking you to rely on arbitrated -- pardon me,
21 negotiated agreements, and your approval of negotiated
22 agreements, is misleading, because the analysis that you have
23 to apply is entirely different.

24 Second point that I wanted to raise about
25 arbitrated versus negotiated agreements is that they look --

1 they say that T-Mobile is signatory to five of those
2 agreements. Absolutely true. Negotiated agreements which
3 the Commission approved. They're asking the Commission to,
4 in essence, adopt terms from negotiated agreements into this
5 arbitrated agreement.

6 However, it's interesting to point out that
7 two of those agreements include a two and a half percent --
8 two and a half cent intraMTA compensation rate. They're not
9 asking you to -- to adopt that. They're saying three and a
10 half cents. Look at -- look at those other three agreements
11 that T-Mobile signed. Those include a three and a half cent
12 rate. They're using that as evidence, as justification for
13 you to adopt three and a half cents in this case.

14 Those other two agreements, ignore those.
15 It's two and a half cents, just ignore that. They haven't
16 raised that with you. It's in their comments -- if you look
17 at the list of agreements in their comments, it's on the last
18 page. It's on Page 22 of the petitioner's comments.
19 Chocktaw/T-Mobile, MoCan/T-Mobile, .025 compensation rate.
20 They were a part of this group.

21 For whatever reason, those two companies
22 decided that two and a half cents was acceptable to them. I
23 think what that ultimately says is that, to be candid, you
24 should ignore those negotiated agreements. They're not
25 evidence, it's not appropriate for you to rely on them.

1 That's all I have.

2 JUDGE PRIDGIN: Mr. Johnson, thank you. Let
3 me see if we have any questions. Commissioner Murray, any
4 questions for counsel?

5 COMMISSIONER MURRAY: Yes, I do. I'm trying
6 to figure out where to start. I guess I'll start with
7 Mr. Johnson, and I don't know that counsel can answer from
8 their chairs without -- let me ask.

9 JUDGE PRIDGIN: That's certainly fine with me.

10 COMMISSIONER MURRAY: When I say Mr. Johnson,
11 I guess I better clarify which Mr. Johnson. I mean Mr. Craig
12 Johnson. I'm sorry, I didn't have my microphone on.
13 Mr. Johnson, you -- in your statements, you made the remark
14 about as far as the MTA goes, that the FCC had set forth what
15 would be reciprocal compensation, and what would be access
16 between land line and wireless carriers. Do you recall
17 saying that?

18 MR. CRAIG JOHNSON: Yes.

19 COMMISSIONER MURRAY: Isn't it true that the
20 FCC has said that intraMTA traffic is local traffic?

21 MR. CRAIG JOHNSON: Yes, for purposes of
22 applying reciprocal compensation, that is the -- what
23 determines what's local compensation between the carriers.

24 COMMISSIONER MURRAY: And isn't the traffic
25 that we're talking about being disputed here intraMTA

1 traffic?

2 MR. CRAIG JOHNSON: Yes, this is traffic that
3 originates and terminates within an MTA, and is carried by an
4 IXC.

5 COMMISSIONER MURRAY: And who determines
6 whether the call will be carried by an IXC?

7 MR. CRAIG JOHNSON: For purposes of the call
8 that leaves my client's exchanges, their local tariffs
9 determine whether the call can be dialed locally or with a
10 one.

11 COMMISSIONER MURRAY: Your clients?

12 MR. CRAIG JOHNSON: Yes, my clients' tariffs
13 approved by this Commission.

14 COMMISSIONER MURRAY: And does it have
15 something to do with how they decide to configure their
16 network?

17 MR. CRAIG JOHNSON: Yes.

18 COMMISSIONER MURRAY: And is it in the
19 complete control of the -- of your clients?

20 MR. CRAIG JOHNSON: We control what exchanges
21 and how we configure our switches to determine what calls can
22 be called locally, and which numbers can be reached through
23 our switches with a local call, yes, that's true.

24 COMMISSIONER MURRAY: You also said something
25 about the IXCs paying the wireless carrier termination fees.

1 How can an IXC be forced to pay a wireless carrier
2 termination fee when the customer does not belong to the IXC?

3 MR. CRAIG JOHNSON: Commissioner Murray,
4 anytime an IXC-carried calls originated and terminated, there
5 can potentially be two different carriers the IXC pays; one
6 to originate the call, and one to terminate the call. And
7 when a call goes to a wireless carrier customer, the FCC has
8 said that the IXC that carries that has to pay the wireless
9 carrier to terminate that call.

10 COMMISSIONER MURRAY: Well, if the IXC is
11 delivering an intraMTA call to a wireless carrier, they're
12 delivering a local call, so who are they getting compensated
13 from?

14 MR. CRAIG JOHNSON: They're not. They're only
15 delivering a local -- I disagree with the premise of that
16 statement.

17 COMMISSIONER MURRAY: Well, you agreed that
18 the FCC has determined that intraMTA calls between a wire
19 line and a wireless carrier are local calls, did you not?

20 MR. CRAIG JOHNSON: Yes, I did. They are
21 local for purposes of the intercarrier compensation. They
22 are not local for purposes of determining what the end
23 user -- who they can call and who they can't call for their
24 local service from their LEC or their wireless carrier.

25 COMMISSIONER MURRAY: And we're talking about

1 intercarrier compensation here, are we not?

2 MR. CRAIG JOHNSON: Yes, but you asked me
3 whether that was a local call from the end user customer's
4 standpoint.

5 COMMISSIONER MURRAY: I did, but isn't the
6 issue here intercarrier compensation?

7 MR. CRAIG JOHNSON: Yes, it is.

8 COMMISSIONER MURRAY: And you did say that the
9 FCC has determined, for purposes of intercarrier
10 compensation, that intraMTA calls between wire line and
11 wireless carriers are local calls, correct?

12 MR. CRAIG JOHNSON: Yes.

13 COMMISSIONER MURRAY: Okay. And your
14 position -- or your client's position is that because your
15 clients are sending some of this traffic over an IXC, rather
16 than providing a direct interconnection, that your clients
17 should be compensated, but that your clients should not also,
18 in turn, compensate the wireless carrier; is that correct?

19 MR. CRAIG JOHNSON: Yes, I think what I am
20 saying is that it was T-Mobile's decision to only locate in
21 Bell's tandem switch and not in our switch. And as a
22 consequence of that, our customers have to dial a one to
23 reach those numbers.

24 And yes, we get paid for those calls for
25 originating them, but we get paid by the IXC, not by

1 T-Mobile. That same IXC is responsible to pay T-Mobile to
2 terminate that call, and so that call is completely -- the
3 calling party's network provider for that call is the IXC.
4 It is not us. That is not our call.

5 COMMISSIONER MURRAY: Tell me how wireless
6 termination tariffs fit within this analysis, if at all.

7 MR. CRAIG JOHNSON: I don't think they do,
8 Commissioner Murray. First of all, they weren't reciprocal
9 compensation arrangements. The Commission accepted the
10 tariffs with the understanding that they weren't, and could
11 be superceded by an approved agreement. Second, they don't
12 apply to the issues -- to the IXC issue here because they
13 only address traffic that terminates to us over the SBC
14 network. They do not address and specifically exclude
15 traffic that comes to us -- or carried by an IXC.

16 There's always been a distinction between what
17 SBC does in its capacity as a LEC, even though we used to
18 argue that what they did was no different than an IXC when
19 they delivered this traffic to us. This Commission said no,
20 this is transit, this is what they do in their LEC capacity,
21 and even T-Mobile's witness in this case agreed that when
22 Bell transited this traffic to us, it's something that we
23 negotiate reciprocal compensation over because of the
24 Commission's decisions. But when it comes to an IXC
25 delivering this traffic to us, or delivering the traffic to

1 T-Mobile, that's not reciprocal comp because IXCs aren't
2 parties to reciprocal compensation agreements.

3 COMMISSIONER MURRAY: And your clients get
4 compensated substantially higher when they deliver over an
5 IXC; is that correct?

6 MR. CRAIG JOHNSON: Yes, the IXC pays our
7 access rates, which are, in most instances, higher than the
8 three and a half cent rate.

9 MR. MARK JOHNSON: Could I interject a point?

10 COMMISSIONER MURRAY: I'm sorry.

11 MR. MARK JOHNSON: I'm sorry, Commissioner
12 Murray, but in response to your question about how the
13 wireless termination tariffs work, they work into this
14 equation. It appears that, and as I remember, you expressed
15 some misgivings about the wireless termination tariffs, and
16 what effect they might have on negotiated agreements.

17 And I think this case might be a good example
18 of how the wireless termination tariffs have candidly had a
19 pernicious effect on negotiations. The -- from the wireless
20 carrier point of view, the difficulty created by the wireless
21 termination tariffs is that they provided -- they do provide,
22 I should say, to the wire line companies that have the
23 tariffs, little incentive to negotiate.

24 They know how much they're going to get. They
25 don't, as Mr. Johnson indicated, provide for reciprocal

1 compensation. They also do provide that if there is an
2 interconnection agreement, the agreement will supercede the
3 tariffs, but as long as there is no agreement, whether
4 negotiated or arbitrated, the wireless termination tariff
5 governs.

6 COMMISSIONER MURRAY: Yes, actually, I have on
7 my screen here, my descending opinion. I was absent when the
8 first wireless tariff was voted out, but there was a Motion
9 for Reconsideration, and I was present to descent from that
10 denial of that Motion for Reconsideration. And I stated that
11 approval of the tariffs will not provide effective incentives
12 for negotiation of reciprocal compensation agreements as the
13 majority seems to claim.

14 In fact, the tariffs will have the opposite
15 effect. The filing companies will no longer have any
16 incentive to negotiate reciprocal compensation for indirect
17 interconnection. Further more, the -- but anyway, I do think
18 that the wireless termination tariffs do remove the
19 incentives to negotiate, and I think that it is incumbent
20 upon the -- I'll stop. Never mind. I'm not going to --

21 MR. CRAIG JOHNSON: May I add something else
22 to this particular discussion? I don't mean to be rude, but
23 in February, the FCC, I think, put to rest some of the legal
24 issues that surrounded whether state tariffs could apply to
25 wireless traffic. And as I recall, what one of the things

1 they did was they said this has been a problem. After the
2 effective date of these new rules, state tariffs can no
3 longer apply, so this has been moot since April 30th of this
4 year, I believe.

5 COMMISSIONER MURRAY: And I understand that,
6 but I also understand there's been some period of time in
7 which there really has been no incentive to negotiate from my
8 perspective.

9 As far as the three and a half cent rate, a
10 part of the supporting information I believe that your
11 clients filed, Mr. Johnson, was that there were other
12 interconnection agreements that had adopted that rate; is
13 that correct?

14 MR. CRAIG JOHNSON: I would disagree with
15 that. I think all along we've tried to argue certain things
16 because the existence of the other agreements. We weren't
17 trying to suggest that those other agreements constituted
18 evidence of our costs or our rates, and that the cost studies
19 we supplied in this case was our meeting of our burden to
20 prove what these four companies costs were. No, we weren't
21 trying to rely, as an evidentiary matter, on what another
22 company's voluntarily agreed rate was.

23 COMMISSIONER MURRAY: Let's assume, just for a
24 hypothetical here, that this Commission decided that -- to
25 agree with you on the compensation that is due when an IXC

1 carries the tariff -- I'm sorry, carries the call. Now, what
2 is your position about your clients owing compensation to the
3 wireless carriers?

4 MR. CRAIG JOHNSON: Let me make sure I
5 understand your call. It's an IXC-carried call?

6 COMMISSIONER MURRAY: Yes.

7 MR. CRAIG JOHNSON: Is it land line to mobile
8 or mobile to land line?

9 COMMISSIONER MURRAY: Well, in this case, it
10 would be land line to mobile.

11 MR. CRAIG JOHNSON: And your question was,
12 what's my position about whether we have to pay for it?

13 COMMISSIONER MURRAY: Yes.

14 MR. CRAIG JOHNSON: And my position is that's
15 an IXC call, and we're not responsible to pay for it at all,
16 under either access or reciprocal comp. The IXC uses our
17 facilities and pays us originating access to originate that
18 call. The customer's not our customer, the customer is the
19 IXC's toll customer.

20 COMMISSIONER MURRAY: So let's practically
21 think how this works. If you've got a customer who's a
22 wireless -- well, let's say you have a land line customer,
23 one of your client's customers, and you have a T-Mobile
24 customer, and each is located within the MTA, and the
25 T-Mobile customer wants to call your client's customer. So

1 that T-Mobile customer is somehow going to have to
2 compensate -- it's going to have to be a customer of the IXC
3 as well as T-Mobile?

4 MR. CRAIG JOHNSON: Commissioner Murray, I
5 think when it comes to the relationship between the wireless
6 customer and who his calling party provider network is on
7 that call, it depends on whether his wireless carrier offers
8 that call within the service the wireless carrier offers, or
9 whether a few wireless carriers do, they also let the
10 wireless customer, by dialing a one, take that call to a
11 traditional IXC.

12 In my experience, most of the wireless
13 carriers offer their customers the ability to call -- make
14 the call that you just described without having to go to an
15 IXC to provision the call; whereas my clients, for the
16 reverse call, require them to dial a one, and by doing that
17 go to an IXC.

18 So the situation is not exactly the same from
19 the wireless customer's perspective as it is from the land
20 line customer's perspective. And I'm not trying to be
21 evasive, I just think that's a correct statement of the
22 current affairs -- or state of affairs.

23 COMMISSIONER MURRAY: And it seems to me so
24 incongruent to have customers looking at calls that are
25 costing certainly upwards of three and a half cents a minute,

1 if you're talking about your compensation being three and a
2 half cents, to make a call within a local MTA. Somebody's
3 paying. Who's paying?

4 MR. CRAIG JOHNSON: If this were the -- if
5 this three and a half cent rate were the rate in this
6 reciprocal compensation agreement, and there was a land line
7 to mobile call, intraMTA, and T-Mobile connected with us and
8 we -- we would pay T-Mobile three and a half cents for that
9 call, but the customer wouldn't pay anybody for it. The
10 customer would pay whatever its local service rate was.

11 COMMISSIONER MURRAY: Go through that scenario
12 one more time, exactly what you just said.

13 MR. CRAIG JOHNSON: If T-Mobile had come and
14 connected with us, and their numbers resided in our switch so
15 that our local customer could make that intraMTA call without
16 dialing a one, it would be our call. And if there's a three
17 and a half cent rate for that, we would have to pay T-Mobile.
18 And when I say "we", I mean the petitioner companies, Alma,
19 Chariton Valley, Mid-Missouri, or Northeast would have to pay
20 to T-Mobile, another carrier, three and a half cents per
21 minute. What we got from our local customer depends upon our
22 local service rates for that call.

23 COMMISSIONER MURRAY: And you're talking about
24 T-Mobile also having to pay you?

25 MR. CRAIG JOHNSON: If T-Mobile sends that

1 call to us and doesn't use an IXC, and here they've chosen to
2 use Bell, they would have to pay us three and a half cents, a
3 symmetrical rate for the same call.

4 COMMISSIONER MURRAY: If that were the rate
5 agreed upon.

6 MR. CRAIG JOHNSON: If that would be the rate
7 either agreed upon or decided by this Commission. But
8 T-Mobile's customer wouldn't pay T-Mobile three and a half
9 cents per minute for that call. What the wireless customer
10 would pay would depend on the package it bought from
11 T-Mobile.

12 COMMISSIONER MURRAY: But obviously everybody
13 has to cover their costs somewhere.

14 MR. CRAIG JOHNSON: I understand that, but
15 there's an easy temptation that you shouldn't succumb to to
16 assume that just because what the end user pays its carrier
17 has anything to do with -- or anything directly to do with
18 the underlying cost that that carrier has to pay to transport
19 and terminate that call.

20 COMMISSIONER MURRAY: For example, if an end
21 user pays its carrier \$6.50 for local service, that's no
22 indication of what it costs that carrier to provide that
23 service?

24 MR. CRAIG JOHNSON: You're absolutely correct.

25 COMMISSIONER MURRAY: And that carrier gets

1 subsidized for the difference by high access rates, many
2 times?

3 MR. CRAIG JOHNSON: Access rates and universal
4 service support funds subsidize those costs, because they're
5 greatly in excess of six and a half dollars per month.

6 COMMISSIONER MURRAY: And don't subsidies keep
7 competitors out of those areas?

8 MR. CRAIG JOHNSON: Haven't kept T-Mobile out.

9 COMMISSIONER MURRAY: Well, I don't think your
10 clients are making it easy for T-Mobile.

11 MR. CRAIG JOHNSON: I'm not sure I follow your
12 thinking there, but ...

13 MR. MARK JOHNSON: Commissioner, could I make
14 a point that I think, perhaps, responds to your question
15 about whether you're making it easy for T-Mobile? I believe
16 it was Mr. -- it might have been Mr. Hines testifying for
17 Alma, and I asked him whether -- and this goes to the issue
18 of direct connection and numbers residing within the local
19 exchange carrier's switch.

20 I asked whether the local exchange carriers --
21 this is at the hearing -- would be willing to share some of
22 the costs of the direct -- of creating a direct connection
23 with T-Mobile. And I was quite -- it was quite an
24 affirmative no, they would not share that cost.

25 But also to talk about what, you know, the

1 existing situation and what the incentives are, right now,
2 the petitioners receive intra -- intrastate access for the
3 calls which their customers make to T-Mobile customers,
4 regardless of the location of the T-Mobile phone. Could be
5 in the same house.

6 For example, Mid-Missouri's intrastate
7 intraLATA access charge is 12 and a half cents a minute.
8 That's what the interexchange carrier has to pay Mid-Missouri
9 for that call, so that's -- those are the revenues which they
10 are receiving. I mean, I understand that that goes to NECCA,
11 and there's settlements, and money comes back. In fact, I
12 think more money comes back than goes to NECCA. But in any
13 case, if you want to talk about incentives and incentives to
14 encourage competition, the existing system is a disincentive.

15 COMMISSIONER MURRAY: I couldn't agree more.

16 MR. MARK JOHNSON: And Commissioner, to your
17 point as to whether the -- to your question as to whether the
18 petitioners are relying on other interconnection agreements
19 as evidence, I suppose I could ask rhetorically, if they're
20 not relying on other interconnection agreements as evidence
21 to justify the three and a half cent rate, why did
22 Mr. Schoonmaker testify in his pre-filed direct testimony,
23 when asked the question, can you describe how the rate that
24 was proposed was developed? He answered, yes, the rate that
25 is proposed is a rate that has been arrived with and agreed

1 to via negotiations between numerous small telephone
2 companies in Missouri and several different wireless
3 carriers.

4 And in their comments -- and by the way, this
5 appears on Page 6 of his direct testimony, which is
6 Exhibit 8. And in their comments on the Arbitrator's Final
7 Report on Page 7, in talking about the potential consequences
8 of the Final Arbitration report, they say, first sentence.
9 There are no approved interconnection agreements in Missouri.
10 Which include IXC land line to mobile traffic as reciprocal
11 compensation traffic. And they go on to say the FAR, Final
12 Arbitration Report, would change the Missouri status quo.

13 If the status quo is no compensation, yes, it
14 would change the status quo, but to say that the status quo
15 shouldn't be changed begs the question.

16 COMMISSIONER MURRAY: Mr. Mark Johnson, I need
17 you to clarify something you said earlier. And it was -- I'm
18 trying to find it in my notes here. I think perhaps it's Mr.
19 Craig Johnson who needs to clarify. The -- an issue you
20 raised about the 65 percent.

21 MR. CRAIG JOHNSON: Would it be helpful if I
22 tried to explain that?

23 COMMISSIONER MURRAY: Would you mind?

24 MR. CRAIG JOHNSON: What Mr. Mark Johnson said
25 earlier is correct. We did not think we had to pay for the

1 IXC traffic, and therefore, we did not make a big issue out
2 of the net billing proposal. It was T-Mobile that wanted to
3 be paid for the -- wanted compensation to be exchanged for
4 the IXC traffic. But there was no evidence in the record as
5 to how much IXC traffic there is. Parties didn't know, so we
6 couldn't develop factors for it.

7 So T-Mobile's proposal, Commissioner Murray,
8 was this. The records that we get and we can quantify are
9 the records we get from SBC for the LEC transited wireless to
10 wire line, mobile to land traffic. And what T-Mobile said is
11 that it's an industry standard in Missouri that there's a
12 balance of traffic between the LECs and the wireless
13 carriers, that 65 to 35.

14 So if we -- if, for example, Bell delivered to
15 you a thousand minutes that month, in order to arrive at the
16 universe of traffic that both -- that goes both ways between
17 T-Mobile and a petitioner, let's divide that 1,000 minutes by
18 65 percent. So then we get a bigger number than 1,000.

19 Now, we take that big number, which is a
20 universal traffic going both ways, and we multiply it times
21 65 percent, that's the land line -- that's the mobile to land
22 line traffic that T-Mobile is responsible to pay for, and the
23 35 percent then becomes the land line to mobile traffic, one
24 of the petitioners is responsible to pay for.

25 So then you take the 65 percent of that total,

1 subtract 35 percent of that total, and you end up with a net,
2 and that's what the petitioner here would bill for, and it
3 would end up being 30 percent of that total universal
4 traffic. Does that -- I know that's weird, but that was
5 their net billing proposal. Not weird, it's just a
6 mathematically -- series of mathematical steps that their
7 proposal required.

8 COMMISSIONER MURRAY: And I need to go back
9 and read the file more carefully on that issue, but Mr. Mark
10 Johnson, do you have anything to add to that?

11 MR. MARK JOHNSON: I think Craig explained it
12 pretty well. Essentially, it's an acknowledgment that
13 there's traffic flowing in both directions. It's also an
14 acknowledgment that most of us believe, and I think there may
15 not be a record in this -- pardon me, evidence in this
16 record, but I think that most of us believe that there is
17 more traffic flowing from mobile customers to land line
18 customers than vice versa. That's my personal experience,
19 and so this formula is an acknowledgment of that, and it's a
20 way for the companies to compensate each other without checks
21 flowing back and forth in both directions. That's why it's
22 called net billing.

23 MR. CRAIG JOHNSON: And the reason I brought
24 it up today, it was our interpretation, on Page 19 of the
25 report, that the divide the Bell total by 65 percent was left

1 out of the Arbitrator's interpretation of the steps, and
2 therefore it reduced the compensation.

3 COMMISSIONER MURRAY: I'm sorry, say that one
4 more time.

5 MR. CRAIG JOHNSON: It was our reading of the
6 final arbitration report, on Page 19, that the report is
7 describing how net billing would work, and this was a
8 modification that was made from the earlier draft report. It
9 left out the step whereby you took the Bell total and divided
10 by 65 percent to get a universe of traffic going both ways.
11 That was bigger than the 1,000 minutes coming from Bell. It
12 appeared us to that the Arbitrator's decision omitted that
13 step, which was in fact, part of T-Mobile's proposal.

14 MR. MARK JOHNSON: I think Craig is correct.
15 Let me suggest, but I think it's a matter of degree. I think
16 we're talking about a difference that would be a matter of a
17 few percentage points. Perhaps Craig and I could agree on
18 some language as to how it could be expressed.

19 And Mr. Arbitrator, I fully understand how
20 this isn't -- it's not intuitive by any means, but in looking
21 at this language, I think Craig is correct, that it isn't a
22 direct allocation. It isn't saying there's a hundred
23 minutes, 65 minutes is T-Mobile to Mid-Missouri and 35
24 minutes is Mid-Missouri to T-Mobile. There's another step in
25 the equation, but I think the result is just incrementally

1 different. It wouldn't change a whole lot.

2 JUDGE PRIDGIN: And I understand, and
3 certainly don't take any offense. And that was what I
4 intended my language to say. I think I'm with you on what
5 you're saying, so if the parties have some different
6 language, we'll certainly be glad to look at it.

7 MR. MARK JOHNSON: Candidly, I think it's laid
8 out in the language which we proposed for the agreement. I
9 think it's Section 5.1.3. I think that's correct.

10 COMMISSIONER MURRAY: Okay. I don't believe I
11 have any other questions. Thank you, Judge.

12 JUDGE PRIDGIN: Commissioner Murray, thank
13 you. Is there anything further from counsel? I don't
14 believe I have any questions. Whatever questions I have are
15 going to be about the mathematical issues that counsel had,
16 and again, if counsel has language they want to propose, I'll
17 certainly be glad to look at that, and I'm sure the
18 Commission would as well.

19 Is there anything further from counsel before
20 we go off the record? Hearing nothing, that concludes this
21 oral argument in Case No. IO-2005-0468. The time is about
22 11:35 a.m. Thank you, we are off the record.

23 WHEREUPON, the recorded portion of the oral
24 argument was concluded.

25