

1 STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

2  
3 TRANSCRIPT OF PROCEEDINGS

4 Oral Argument

5 July 31, 2003  
Jefferson City, Missouri  
6 Volume 1

7 Application of Kingdom Telephone )  
Company for Approval of a Traffic ) Case No. IO-2003-0201  
8 Termination Agreement under the )  
Telecommunications Act of 1996 )  
9  
In the Matter of the Application of )  
10 Green Hills Telephone Corporation ) Case No. IO-2003-0208  
for Approval of an Interconnection )  
11 Agreement under the )  
Telecommunications Act of 1996 )  
12  
Application of IAMO Telephone )  
13 Company for Approval of a Traffic ) Case No. IO-2003-0209  
Termination Agreement under the )  
14 Telecommunications Act of 1996 )  
  
15 Application of Cass County Telephone )  
Company for Approval of a Traffic ) Case No. IO-2003-0210  
16 Termination Agreement under the )  
Telecommunications Act of 1996 )  
17  
Application of New Florence )  
18 Telephone Company for Approval of a ) Case No. IO-2003-0211  
Traffic Termination Agreement under )  
19 the Telecommunications Act of 1996 )  
  
20 In the Matter of the Application of )  
Grand River Mutual Telephone Company )  
21 for Approval of a Traffic ) Case No. IO-2003-0213  
Termination Agreement under the )  
22 Telecommunications Act of 1996 )  
  
23 In the Matter of the Application of )  
Lathrop Telephone Company for )  
24 Approval of a Traffic Termination ) Case No. IO-2003-0214  
Agreement under the )  
25 Telecommunications Act of 1996 )

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1 Application of Steelville Telephone )  
 Exchange, Inc. for Approval of a ) Case No. IK-2003-0222  
 2 Traffic Termination Agreement under )  
 the Telecommunications Act of 1996 )  
 3  
 Application of Peace Valley )  
 4 Telephone Company, Inc. for Approval )  
 of a Traffic Termination Agreement ) Case No. IK-2003-0223  
 5 under the Telecommunications Act of )  
 1996 )  
 6  
 In the Matter of the Application of )  
 7 Craw-Kan Telephone Cooperative for )  
 Approval of a Traffic Termination ) Case No. IK-2003-0245  
 8 Agreement under the )  
 Telecommunications Act of 1996 )  
 9  
 Application of Le-Ru Telephone )  
 10 Company for Approval of a Traffic ) Case No. IK-2003-0255  
 Termination Agreement under the )  
 11 Telecommunications Act of 1996 )  
 12 In the Matter of the Application of )  
 Fidelity Telephone Company for )  
 13 Approval of a Traffic Termination ) Case No. IK-2003-0284  
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 14 Telecommunications Act of 1996 )  
 15 In the Matter of the Application of )  
 Fidelity Communication Services II, )  
 16 Inc. for Approval of a Traffic ) Case No. CK-2003-0285  
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 17 Telecommunications Act of 1996 )  
 18 In the Matter of the Application of )  
 Fidelity Communication Services I, )  
 19 Inc. for Approval of a Traffic ) Case No. CK-2003-0287  
 Termination Agreement under the )  
 20 Telecommunications Act of 1996 )  
 21 In the Matter of the Application of )  
 Miller Telephone Company for Approval )  
 22 of a Traffic Termination Agreement ) Case No. TK-2003-0315  
 under the Telecommunications Act of )  
 23 1996 )

24

RONALD D. PRIDGIN, Presiding,

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                  STEVE GAW,  
2                   BRYAN FORBIS,  
                  ROBERT M. CLAYTON, III,  
3                               COMMISSIONERS.

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REPORTED BY:

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KELLENE K. FEDDERSEN, CSR, RPR, CCR

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1 APPEARANCES:

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9 Lathrop Telephone Company.  
Steelville Telephone Exchange, Inc.  
10 Peace Valley Telephone Company, Inc.  
Craw-Kan Telephone Cooperative, Inc.  
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18  
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20  
21  
22  
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25

1 P R O C E E D I N G S

2 JUDGE PRIDGIN: Good afternoon. This is the  
3 prehearing conference for some consolidated cases, and I  
4 will read the case numbers off briefly, starting with Case  
5 No. IO-2003-0201, 0208, 0209, 0210, 0211, 0213, 0214. Also  
6 Case No. IK-2003-0222, 0223, 0245, 0255, 0284, Case  
7 No. CK-2003-0285, 0287, and Case No. TK-2003-0315.

8 I am Ron Pridgin. I am the Regulatory Law  
9 Judge assigned to hear these cases or the oral argument for  
10 these cases. They are consolidated simply for oral  
11 arguments. The oral argument is being held July 31st, 2003,  
12 one o'clock in the afternoon. We're at the Hotel Governor  
13 Office Building in Jefferson City, Missouri.

14 At this time I would like to get entries of  
15 appearance from the parties, and do I understand that the  
16 applicants all have the same counsel?

17 MR. ENGLAND: That is correct.

18 JUDGE PRIDGIN: If I could get entries of  
19 appearance for the applicants, please.

20 MR. ENGLAND: Thank you, sir. Let the record  
21 reflect the appearance of W.R. England and Brian McCartney  
22 on behalf of the applicants, as you refer to. They are  
23 individually named in our written entry of appearance. And  
24 our mailing address is Brydon, Swearengen & England, P.C.,  
25 Post Office Box 456, Jefferson City, Missouri 65102.

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1 JUDGE PRIDGIN: Thank you, Mr. England. Could  
2 you double check to make sure your microphone is on so we  
3 can pick you up?

4 MR. ENGLAND: It is now.

5 JUDGE PRIDGIN: All right. Thank you very  
6 much.

7 Anyone present on behalf of the Staff?

8 MR. MEYER: Yes, your Honor. My name is David  
9 Meyer. I'm representing the Staff of the Missouri Public  
10 Service Commission for this oral argument. Our address is  
11 P.O. Box 360, Jefferson City, Missouri 65201.

12 JUDGE PRIDGIN: Thank you, Mr. Meyer.

13 Any other parties wishing to be heard?

14 (No response.)

15 Hearing none. Let me just briefly remind the  
16 parties, we did set this case for oral argument because of a  
17 July 16th, 2003 Order issued in the above-mentioned cases.  
18 At this time let me go off the record briefly and await the  
19 Commissioners to arrive for oral argument.

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

21 JUDGE PRIDGIN: Let me give the Commissioners  
22 just a moment to get set up. For the Commissioners, I've  
23 recited an opening statement into the record, and we're  
24 ready to begin any questions by the Commissioners.

25 Let me ask the parties if there's anything

1 else that they feel they need to address before we begin the  
2 question and answer session. Mr. England?

3 MR. ENGLAND: If I may, your Honor. We have  
4 created a summary of all of the cases that I believe are  
5 impacted by this oral argument today in written form, and  
6 with your permission I'll distribute it to the parties as  
7 well as to the Commission, summarizing the various companies  
8 that have filed traffic termination agreements, the numbers  
9 of -- or the case numbers associated with it, the date the  
10 Orders were issued, whether or not there were Motions for  
11 Correction or Clarification filed, and a brief, very brief  
12 summary of the nature of the Motion for Clarification or  
13 Correction. And I think that may help to put some  
14 perspective on the whole proceeding if possible.

15 JUDGE PRIDGIN: Thank you, Mr. England.

16 Mr. Meyer, any objections to Mr. England's  
17 proposal?

18 MR. MEYER: I'd like to look at it first.

19 JUDGE PRIDGIN: Sure.

20 Mr. Meyer, did you have any objections to  
21 Mr. England's --

22 MR. MEYER: No.

23 JUDGE PRIDGIN: Anything else the parties  
24 would like to take up before the Commissioners ask  
25 questions?

1                   MR. ENGLAND: Mr. Meyer had asked, had a  
2 question perhaps for purposes of clarification. On this  
3 summary that we prepared, you will see a final column to the  
4 right entitled Other Errors.

5                   In some instances in our Motion for  
6 Clarification and/or Correction we noted that -- the general  
7 point we were trying to make was changing, I believe, the  
8 title from Order Approving Interconnection Agreement to  
9 Order Approving Traffic Termination Agreement. But in some  
10 of these, and they're noted there on the summary, we pointed  
11 out what we believe were factual inaccuracies, typographical  
12 errors, whatever you want to call them, in the body, if you  
13 will, of the Order. Not in all, but those noted. So in  
14 some instances the Motion for Clarification and Correction  
15 covered two different aspects.

16                  JUDGE PRIDGIN: Okay. Thank you, Mr. England.  
17 Anything else?

18                  Okay. Hearing nothing. Mr. England, at this  
19 time if you would please approach the podium and see what  
20 questions the Commissioners have.

21                  Mr. England, before the Commission has any  
22 questions for you, do you have any type of opening statement  
23 you would like to make?

24                  MR. ENGLAND: Sure. I rarely pass up an  
25 opportunity to speak. Whether people listen to me or not is

1 an entirely different question.

2                   As I understand, the Commission has been  
3 struggling with our Motions for Correction and Clarification  
4 regarding a number of orders that they issued involving  
5 traffic termination agreements between small rural incumbent  
6 local exchange carriers that we represent and, in this case,  
7 Verizon Wireless.

8                   As I mentioned a minute ago, the primary  
9 thrust of the Motions for Clarification and Correction were  
10 to ask that the Commission change the title of their orders  
11 from Order Approving Interconnection Agreement to Order  
12 Approving Traffic Termination Agreement, and in some  
13 instances we believe that the text of the order itself had  
14 an inaccuracy that we thought ought to be corrected.

15                   Based on discussions that I believe were had  
16 over several Commission agenda meetings, there appears to be  
17 a great deal of concern or confusion on the Commission's  
18 part as to, one, what we're trying to do, and two, perhaps  
19 the Commission's jurisdiction to do anything, even if they  
20 agree with us. And I'm prepared --

21                   JUDGE PRIDGIN: I'm sorry, Mr. England, to  
22 interrupt. Can you double check to make sure your  
23 microphone's on? We're having a hard time picking you up on  
24 the webcast, I understand.

25                   MR. ENGLAND: I don't know how to turn it on.

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1 JUDGE PRIDGIN: Okay. There should be a  
2 button maybe actually on the microphone.

3 Okay. I'm sorry to interrupt.

4 MR. ENGLAND: That's quite all right.

5 And I believe secondly there was a question  
6 with respect to jurisdiction, and I guess perhaps addressing  
7 the jurisdictional issue first, whether or not the  
8 Commission can even consider clarifying or correcting its  
9 order. I guess I would begin by noting that a number of  
10 these cases that come before you pursuant to the  
11 Telecommunications Act of 1996 present a lot of issues that  
12 you've never had to deal with before.

13 And in that regard, I would agree with the  
14 Supreme Court when it said that the Act is not a model of  
15 clarity. I think in some instances we're plowing new  
16 ground, and in a lot of instances you have a great deal of  
17 discretion with what you can do in accordance with the  
18 guidance of the Telecommunications Act.

19 Specifically I think, first of all, you have  
20 jurisdiction to review, modify, correct, clarify, whatever  
21 you want to call it, rehear for that matter, your orders  
22 pursuant to both state statute and your own rules.

23 The statute I'm referring to, of course, is  
24 386.500 which allows parties interested in an order issued  
25 by the Commission to file for rehearing. I think that gives

1 you independent jurisdiction to rehear any order you issue,  
2 whether it's in conformity with the Telecommunications Act  
3 or one pursuant to other statutory authority that you  
4 already have or possess.

5                   Your Commission Rule 4 CSR 240-2.1 -- excuse  
6 me -- 240-2.160(4) allows you to correct your own orders  
7 nunc pro tunc in some instances. Particularly with respect  
8 to the errors we believe are in the narrative of some of the  
9 orders, we think you clearly have the authority to correct  
10 an inaccuracy in that order.

11                   And then finally I think you've got  
12 jurisdiction even when you look at some of the federal court  
13 cases that have evolved over the last few years involving  
14 commission determinations and decisions with interconnection  
15 agreements.

16                   I think all of these are cited in our  
17 pleadings, but just to reiterate, the Eighth Circuit, for  
18 example, has held that Section 252(e) of the Act necessarily  
19 includes the power to enforce the interconnection agreement,  
20 and that was -- decision was cited in -- or excuse me --  
21 rendered in Southwestern Bell v. Connect Communications  
22 Corporation, 225 F 3rd 942.

23                   And other circuit courts, federal circuit  
24 courts appear to also be in agreement with this notion and  
25 have stated that no court has held or suggested that a state

1 commission does not have the authority to interpret and  
2 enforce interconnection agreements after they have been  
3 approved. The specific case I reference there is BellSouth  
4 Telecommunications, Inc. Vs. MCI Metro Access Transmission  
5 Services, Inc., 317 F 3rd 1270 at 1276. That's an Eleventh  
6 Circuit decision rendered en banc, if I'm reading my notes  
7 correctly.

8               So I think it's, in my opinion, abundantly  
9 clear that you have the jurisdiction to review your orders  
10 approving interconnection agreements, traffic termination  
11 agreements, whatever you want to call them.

12              But let me go one step further. In this case  
13 the changes that we ask, at least part of the changes we  
14 think are simply clarification of a correction nature that  
15 ought to be made just so that they accurately reflect the  
16 circumstances.

17              The other issue that we raise with respect to  
18 the titling of the order, quite honestly it would be nice if  
19 you would agree with our position and do that but, quite  
20 frankly, is not significant enough to us that we don't  
21 intend to pursue this any further than at this level.

22              So if you-all are worried about appeals and  
23 that sort of stuff, I can tell you that we are, at least  
24 based on what we've seen so far, not intent upon appealing  
25 this. We just thought it would be more accurate to call it

1 a traffic termination agreement. We thought it was an  
2 appropriate designation when we entered into the agreement.  
3 We think it's an appropriate agreement to submit to you for  
4 approval under Section 252, and we think you're well within  
5 your right to approve a traffic termination agreement, even  
6 though Section 252 talks about approval of interconnection  
7 agreements.

8                   And this would be consistent with other states  
9 that have issued orders approving traffic termination  
10 agreements. This would be consistent with other orders this  
11 Commission has issued approving traffic termination  
12 agreements. If you'll note, for example, the BPS case, the  
13 very first case on the list, that is an Order approving  
14 traffic termination agreement.

15                   It would also be consistent with other orders  
16 issued by this Commission where you have approved resale  
17 agreements. Resale agreements are not specifically  
18 identified in Section 252, but you have nevertheless  
19 approved those pursuant to Section 252 authorization.

20                   If you don't want to change the title, though,  
21 that's okay with me. Our main concern was, as we enter into  
22 negotiations with wireless carriers, with competitive local  
23 exchange carriers, we did not want to be met with the  
24 argument, particularly in a case where they want to directly  
25 connect with us, that we have waived our rural exemption and

1 simply by pointing to a title of an order that says, well,  
2 here you're party to a case where the Commission has  
3 approved an interconnection agreement.

4           My understanding is that the Commission has  
5 not waived or lifted our rural exemption, and that's great.  
6 I mean, that's the way we like it. I was just trying to  
7 avoid in the future some unnecessary arguments with future  
8 interconnectors over what we may or may have not done in the  
9 past in regards to that exemption.

10           One of the suggestions we had is if you're  
11 troubled by the term traffic termination agreement, title  
12 your orders Order Approving Agreement, but in the body of  
13 the order recite the fact that it's an indirect  
14 interconnection and recite the fact in this case that the  
15 parties have agreed we are not waiving our rural exemption.

16           And I apologize for perhaps making a mountain  
17 out of a molehill with these pleadings, but certainly  
18 appreciate the opportunity to address you and explain where  
19 we're coming from with these motions.

20           JUDGE PRIDGIN: Mr. England, thank you very  
21 much. Let me see what questions the Commissioners have.  
22 Commissioner Murray?

23           COMMISSIONER MURRAY: I'm going to pass at  
24 this time.

25           JUDGE PRIDGIN: Thank you very much.

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1 Commissioner Gaw?

2 COMMISSIONER GAW: Thank you, Judge.

3 Mr. England, thank you very much for coming  
4 today. Part of the reason that we wanted you to be here,  
5 from my perspective in particular, was just I wanted to  
6 understand completely what your concerns were, and sometimes  
7 that's difficult to do just by receiving paperwork.

8 You may have already cleared up most of what  
9 my questions were just by what you've told us. If I could  
10 just take a little bit of time on a couple of issues just to  
11 get your perspective, it would be helpful.

12 MR. ENGLAND: Sure.

13 COMMISSIONER GAW: Going to the traffic  
14 termination agreement phraseology by itself, if I understand  
15 you correctly, you're telling us that it really isn't as  
16 much of a concern about what we call this as it is the  
17 impact of naming it something and making it clear in the  
18 order that there aren't certain ramifications to that  
19 terminology?

20 MR. ENGLAND: I think that's correct.

21 COMMISSIONER GAW: So if we're -- if the  
22 orders, and I -- I think you recognize the fact that we may  
23 be here on certain cases, but part of this is to clear this  
24 up from our perspective for future cases that may come in  
25 front of us. I think you acknowledged that with your

1 opening statement.

2                   This concept of -- you had two points, that  
3 the order should say that -- recite that it is an indirect  
4 interconnection in some fashion?

5                   MR. ENGLAND: Correct.

6                   COMMISSIONER GAW: And secondly, that the  
7 parties are -- that the rural teleco is not waiving its rule  
8 exemption. In that regard, what -- in the documents that  
9 you filed with the Commission, what in there gives us that  
10 language that we can draw on to say the parties acknowledge  
11 that that's the case? Is there something in the  
12 interconnection agreements or the agreements, whatever we  
13 call them?

14                  MR. ENGLAND: I think there are two things.  
15 First of all, there is a -- and I don't have one of them in  
16 front of me, but there's a specific provision towards the  
17 end of the agreement that acknowledges between the parties  
18 that the small ILEC or the ILEC in this case is not waiving  
19 its rural exemption to the extent that it's entitled to one.

20                  COMMISSIONER GAW: So that's contained in the  
21 document itself?

22                  MR. ENGLAND: That's in the agreement between  
23 each of these companies and Verizon Wireless.

24                  COMMISSIONER GAW: And you believe that it  
25 would be critical to have that language, at least it's

1 helpful to have that language acknowledging that that's in  
2 the agreement in the order itself?

3 MR. ENGLAND: Yes, sir.

4 COMMISSIONER GAW: Okay. And if that is done,  
5 if those two things occur that we just mentioned, that it's  
6 an indirect interconnection and that the rural ILEC is not  
7 waiving its rural exemption, that it really isn't too  
8 important what we call this?

9 MR. ENGLAND: That's correct. I view this as  
10 kind of a semantical debate. And maybe to put some further  
11 light on the subject, I view interconnection agreement  
12 perhaps as something more narrowly than you or perhaps the  
13 Staff view it.

14 And I view interconnection agreements as  
15 direct under, I think it's 250 -- excuse me -- 251(d)(2) --  
16 or excuse me -- (c)(2) of the Act, keeping in mind that  
17 Section 251(a) requires all carriers to connect directly and  
18 indirectly, but an interconnection agreement to me is a  
19 direct interconnection and it's done under (c)(2) of  
20 Section 251.

21 And again, in our agreement with Verizon  
22 Wireless, we say that this is being negotiated under (b)(5),  
23 which is our duty to enter into reciprocal compensation  
24 arrangements for the transport and termination, if I can  
25 emphasize that word of telecommunications.

1                   So that's another -- in the agreement itself  
2 it recites that it's being negotiated under 251(b)(5).

3                   COMMISSIONER GAW: Okay. When you use the  
4 terminology traffic termination agreement, is that language  
5 in the Act anywhere, and where do you pull that language  
6 when you're -- when you're using it?

7                   MR. ENGLAND: The answer to your first  
8 question is, no, I don't believe traffic termination  
9 agreements are referenced in the Act.

10                  To answer your second question, believe it or  
11 not, we started work on these agreements years ago, right  
12 after the Commission told us we needed to, and at that time  
13 I think it was the wireless carriers were primarily sending  
14 us this traffic.

15                  And that's the title we used at that time as  
16 we started working on these agreements, and I can't recall  
17 if it was something I came up with, I saw as a -- from a  
18 template from another jurisdiction or somebody else  
19 suggested that was in the process. I really can't tell you  
20 the genesis of it.

21                  I can tell you, as I said, that we've become  
22 more sensitive to it lately, in light of the motions here in  
23 this case, and we find that in a number of jurisdictions  
24 that other parties are referring to these as traffic  
25 termination agreements. In fact, just recently Southwestern

1 Bell and Sprint filed an application for approval of a  
2 traffic termination agreement with you-all. I think that's  
3 a 13-state or a multi-state agreement.

4               So while it has no genesis that I know of in  
5 the Act, it seems to be coming, if not already a term of art  
6 in the telecommunications industry.

7               COMMISSIONER GAW: Okay. If I -- if you would  
8 compare for me the difference between a traffic termination  
9 agreement as you use that phrase and an indirect  
10 interconnection agreement. Is there any difference? Does  
11 one overlap the other one? Are they the same?

12              MR. ENGLAND: I would say that perhaps an  
13 indirect, not having negotiated an indirect interconnection  
14 agreement per se, I could see where an indirect  
15 interconnection agreement might actually specify and involve  
16 the third party who is in the middle.

17              COMMISSIONER GAW: I see.

18              MR. ENGLAND: And be more -- be more specific  
19 about how we are going to indirectly connect our networks  
20 and perhaps compensation for that and how parties are going  
21 to pay for getting the traffic from one network to the other  
22 when you have to utilize somebody in between.

23              COMMISSIONER GAW: I understand where you're  
24 coming from on what you just said, but I'm trying to connect  
25 back up with what you're asking us to put in the order, that

1 this is an indirect interconnection agreement, if we use the  
2 phrase, the title interconnection agreement at the beginning  
3 of the order.

4 MR. ENGLAND: And perhaps I misspoke. I think  
5 all I would --

6 COMMISSIONER GAW: Maybe I misunderstood. I'm  
7 just trying to understand now.

8 MR. ENGLAND: Maybe the discussion's helpful.  
9 I think as long as you recite the fact that it's an indirect  
10 interconnection would be sufficient, and then if you wanted  
11 to go further, I would -- and I think we suggested this --  
12 say call it a reciprocal compensation arrangement pursuant  
13 to 251(b)(5).

14 COMMISSIONER GAW: Uh-huh. Well, if that  
15 occurs, then, at least that satisfies your -- the concerns  
16 that you have that you're not going to lose your rural  
17 exemption, which I understand is a very important issue?

18 MR. ENGLAND: Correct.

19 COMMISSIONER GAW: The other states that you  
20 looked at that you say are using the traffic termination  
21 language, traffic termination agreement language, did you  
22 see any authority in any of those states for where they  
23 derive that terminology?

24 MR. ENGLAND: We didn't look to state-specific  
25 statutes or rules that may have addressed that, and you're

1 very -- you could be very accurate that or right that they  
2 may have some rules particularly in the state that direct  
3 them to call it that. I don't know. I honestly don't know.

4 COMMISSIONER GAW: That's all right. I'm just  
5 trying to gather the information so we can look at this a  
6 little closer.

7 The issue -- I'm going to jump back to --  
8 well, let me ask you this question first. The BPS case that  
9 you said that I think you said it was entitled traffic  
10 termination?

11 MR. ENGLAND: Correct.

12 COMMISSIONER GAW: Tell me when that was  
13 and --

14 MR. ENGLAND: If you'll look at the summary.

15 COMMISSIONER GAW: Yeah. Commissioner Clayton  
16 has handed me one.

17 MR. ENGLAND: That will give you the case  
18 number and the date it was issued. And the second to last,  
19 Rock Port, that also looks like it went out on March 4th and  
20 it was titled Order Approving Traffic Termination Agreement.

21 COMMISSIONER GAW: Do you know how in those  
22 cases the -- I mean, I don't expect you to know how the  
23 Commission came up with the title to its order, but if you  
24 have any inkling or any insight there.

25 MR. ENGLAND: Well, having worked at the

1 Commission a number of years ago and worked before it now  
2 for even more years, I wouldn't be a bit surprised if it was  
3 just sort a case of the left hand not knowing what the right  
4 hand was doing.

5 COMMISSIONER GAW: I hate to hear that, but  
6 I'm not going to dispute you.

7 MR. ENGLAND: I'm sorry. You asked the  
8 question, your Honor.

9 COMMISSIONER GAW: I'm not sorry I asked. I  
10 want to know.

11 MR. ENGLAND: And I think, quite honestly, if  
12 it is your-all's opinion that you can only approve  
13 interconnection agreements, if you want to go back and  
14 correct on your own BPS and Rock Port, I've got no problem  
15 with that, as long as we recite that it's an indirect  
16 interconnection and that it doesn't cause us to lose our  
17 rural exemption.

18 COMMISSIONER GAW: There isn't any difference  
19 in those cases as far as what's involved and what's involved  
20 in these cases, right?

21 MR. ENGLAND: All of these agreements are  
22 identical with the exception of the name of the ILEC and  
23 the, I believe, inter-MTA factors may change for some  
24 companies.

25 COMMISSIONER GAW: Okay. Could you just

1 briefly describe for me what these agreements accomplish  
2 when you do have them entered into, with the agreement to  
3 terminate without an indirect interconnection.

4               MR. ENGLAND: The most practical effect of the  
5 agreement is that it allows the wireless carrier to  
6 terminate traffic at three and a half cents versus what our  
7 tariff rate would otherwise be, and right now they run in  
8 the range of five to seven and a half cents. So it's a  
9 significant reduction. That's perhaps the most significant.

10              As far as the way in which we interconnect,  
11 the way in which the traffic is exchanged, nothing has  
12 changed as a result of these agreements. The traffic still  
13 flows to us the same way it always has.

14              I guess the other issue is, to the extent we  
15 have traffic going back to Verizon Wireless, and this is  
16 something we made very clear in that agreement, for which we  
17 have responsibility, and that is traffic that we carry  
18 pursuant to our tariffs where we have the end user or the --  
19 excuse me -- the billing arrangement with the end user for  
20 that call, we also anticipate or it is anticipated in the  
21 agreement that we have an obligation and will pay three and  
22 a half cents a minute to Verizon Wireless to complete that  
23 call. So it also affords the wireless carrier the  
24 opportunity for reciprocal compensation.

25              COMMISSIONER GAW: And the carrier that

1 connects the two companies together, they're not a party to  
2 these agreements?

3 MR. ENGLAND: That's correct.

4 COMMISSIONER GAW: And have you -- I guess  
5 that sort of rubs up against some other issues, doesn't it?

6 MR. ENGLAND: That's a kind way of putting it.  
7 You're absolutely right. My expectation, although I'm not a  
8 hundred percent sure, but if I had to guess right or die, I  
9 would guess that Verizon Wireless has an interconnection  
10 agreement with either Southwestern Bell, who the majority of  
11 our companies subtend, or Sprint Missouri, the ILEC which  
12 some of ours, a few of ours subtend. So there is that  
13 agreement.

14 COMMISSIONER GAW: Okay. Do those agreements,  
15 to your knowledge, have any impact on the terms that that  
16 company that is a party to both that agreement and these  
17 agreements, in other words in this case maybe it would be  
18 Verizon Wireless, do they interact with one another in  
19 regard to their terms and conditions?

20 MR. ENGLAND: Do Verizon --

21 COMMISSIONER GAW: If Verizon Wireless had  
22 already entered into a direct interconnection agreement with  
23 one of the carriers that may be delivering the traffic --

24 MR. ENGLAND: Southwestern Bell for example.

25 COMMISSIONER GAW: -- how does that impact

1 their negotiation of these agreements on the indirect term--  
2 the termination or the indirect interconnection agreement  
3 here?

4                   MR. ENGLAND: Only in that when you-all a long  
5 time ago approved Southwestern Bell's wireless tariff  
6 revisions that sort of gut them out of the responsibility of  
7 paying us for the terminating wireless traffic, I thought  
8 you made it very clear to the wireless carriers they were to  
9 come and get an agreement with us before they did so.

10                   And that is contained in Bell's --  
11 Southwestern Bell's interconnection agreement with most, if  
12 not all, wireless carriers. It recites that the wireless  
13 carrier will get an agreement with us. That's the only  
14 interaction I know of or impetus or driver, whatever you  
15 want to call it, for these agreements.

16                   COMMISSIONER GAW: Okay. Let me go to the  
17 issue of jurisdiction and ask you, at what point do you  
18 believe that the Commission, other than a nunc pro tunc  
19 order, that the Commission loses its ability to change an  
20 order approving one of these agreements under the Act,  
21 whether that's a direct or indirect interconnection  
22 agreement?

23                   MR. ENGLAND: Boy, that's a good question. If  
24 it's a non-substantive change, which I believe all of these  
25 that we're requesting are -- by the way, I mean, we're

1 operating under the agreement. You-all approved the  
2 agreement, if you will. We are operating under it as far as  
3 Verizon Wireless is concerned. So I don't want anybody to  
4 think that this is being held up because of this proceeding.

5 COMMISSIONER GAW: Okay. That's good. I'm  
6 glad you mentioned that.

7 MR. ENGLAND: But I think the federal courts  
8 have made it pretty clear that you retain jurisdiction  
9 certainly in cases where parties have a dispute as to how to  
10 apply the -- an interconnection agreement previously entered  
11 into, previously approved by the state commission, the state  
12 commission clearly has the authority to go back and  
13 interpret that and render further, I guess, decisions  
14 regarding that interconnection agreement.

15 I think -- I don't know if I want to say it's  
16 well settled, but it seems pretty clear to me that you have  
17 that jurisdiction. Now your question is if there are  
18 non-substantive change?

19 COMMISSIONER GAW: Well, go ahead. I'll  
20 follow up.

21 MR. ENGLAND: I think you've got that  
22 jurisdiction, and I think you can make it at any time,  
23 whether that's under the federal act or under your own  
24 Public Service Commission law. I mean, if you determine  
25 years down the road that you'd issued an order that had a --

1 I guess I'm having a hard time imagining a non-substantive  
2 change that you felt so compelled you had to change that far  
3 out, I think you have that authority to do that.

4 I think when you get into the substance, and  
5 there'll always be a debate as to what's substantive and  
6 what's not, then you have more limitations on what you can  
7 do.

8 COMMISSIONER GAW: It's been -- I have had an  
9 impression that when you're looking at whether or not an  
10 order can be corrected, if you're using nunc pro tunc as the  
11 rationale for it, that you're very limited in what you can  
12 consider an error that can be corrected, that the decision,  
13 it's not a change in the decision that was originally  
14 rendered, just a correction of a clerical error that was  
15 made.

16 When you get beyond that, which I think you  
17 could argue could include non-substantive issues, that still  
18 may not be something that you can change, at least under a  
19 nunc pro tunc. So if you consider the window, and I know  
20 this -- I think this is a difficult question, and I'm not  
21 asking you to give me an answer that there may not be a  
22 clear answer, but maybe you can expound a little bit if you  
23 have -- if you have any input.

24 What is there -- on other kinds of cases when  
25 we're not dealing with a right to go to federal court under

1 the Act, the Commission has -- there is a place at which  
2 time the Commission loses jurisdiction. And there's a right  
3 to appeal if it's a state court that has jurisdiction on the  
4 appeal. That time frame runs at some point.

5                   But I'm not clear at this stage about when  
6 that -- when there is a comparative running of jurisdiction  
7 as far as windows of time are concerned on these kinds of  
8 orders.

9                   MR. ENGLAND: I think if it's something that's  
10 teed up by a motion of the parties, under at least these  
11 federal court cases, and it has to deal with an  
12 interpretation of the contract or enforcement of it, I think  
13 you can pick that up at any time.

14                  COMMISSIONER GAW: And I'm following you on  
15 that, and I can kind of understand how that theory would  
16 work, and it may be that you can argue that the limits of  
17 that are very broad, I mean, that an interpretation of a  
18 previous order could actually be something that clarifies  
19 that order because you're interpreting something that wasn't  
20 very clear to begin with. I mean, I understand that, that  
21 concept.

22                  But if it's -- if you're really talking about  
23 changing the order, when does the Commission lose  
24 jurisdiction?

25                  MR. ENGLAND: In that case, I'm afraid I don't

1 have an answer for you.

2 COMMISSIONER GAW: That's okay.

3 MR. ENGLAND: I think it's a balancing act  
4 between how -- are you talking about sua sponte, on your  
5 own?

6 COMMISSIONER GAW: Either way. Is there a  
7 point in time when the Commission cannot throw out the nunc  
8 pro tunc possibilities or that you're just going back and  
9 interpreting an order that's already been entered?

10 MR. ENGLAND: I think it becomes a balancing  
11 act. I agree with you not only should orders become final,  
12 but I think the parties are entitled to finality at some  
13 point.

14 COMMISSIONER GAW: That's kind of what I  
15 think, too.

16 MR. ENGLAND: And I think you have to balance  
17 the extent of what it is you want to correct versus how much  
18 time has elapsed and what, if any, potential impact is going  
19 to result from that.

20 COMMISSIONER GAW: I'm trying to understand  
21 whether or not there's any guidance in any of the decisions  
22 that are rendered in other states --

23 MR. ENGLAND: No. I'm sorry.

24 COMMISSIONER GAW: -- that say, look, you've  
25 got a right to take this to federal court if you disagree.

1 You've got to do it within this amount of time if you're  
2 going to do the request to have that reviewed, and up until  
3 that point in time, it's in the state commission's hands.

4                   And I don't see -- so far I haven't seen  
5 anybody that's had the answer to that.

6                   MR. ENGLAND: I would agree with you.

7                   COMMISSIONER GAW: I'm looking for guidance  
8 because I don't have the answer.

9                   MR. ENGLAND: Certainly not under the Act and  
10 not under the federal court decisions that we've seen, I  
11 can't give you any guidance on that.

12                   For fear of making this more complicated than  
13 it has to be, I've always debated what your authority was  
14 under the state statute 386.500 to go back and rehear a  
15 case, even though the motion for rehearing may have been  
16 filed after the effective date. If you look at Subsection  
17 1, it seems there's no time limit for the filing of the  
18 motion for rehearing. Only if you want to pursue a  
19 subsequent appeal must you file it before the effective  
20 date.

21                   Then you've got to -- but then you've got to  
22 balance that against the other statute that says all orders  
23 of the Commission are prima facie lawful until found  
24 otherwise by a court.

25                   So again, maybe even under the state act you

1 may have some latitude beyond the effective date to pull  
2 something back, correct it, but I'm -- it probably -- it's  
3 the nature of the correction, the impact it's going to have  
4 and how long you waited to do that.

5                   COMMISSIONER GAW: Yeah. Well, that's  
6 interesting, too. But I think it would be -- it would make  
7 sense if we could find the answers out to those questions,  
8 and this one which appears to me to be very murky, so the  
9 parties would know. I mean, I would think if I were  
10 representing parties out there that I would like to be able  
11 to make sure that I know when that deadline is, and that  
12 right now I -- it's not clear to me, and it sounds like it  
13 may not be clear to some out there as well, including you.

14                   MR. ENGLAND: Well, I agree. If we bring it  
15 back to the cases at hand, I think at the very least we  
16 acted within the time frames given us. I mean, I think in  
17 all but two cases, as you see in the summary, we filed  
18 before the order became effective. So I think to that  
19 extent, at least under -- again under state law, you clearly  
20 have jurisdiction to look at that order.

21                   COMMISSIONER GAW: It sounds like there are  
22 ways to address the issues of concern in these cases maybe  
23 without getting into some of those questions I'm raising,  
24 but since it's in front of us, it's a good opportunity for  
25 me to ask.

1                   MR. ENGLAND: Well, I'm sorry I don't have a  
2 more definitive answer for you.

3                   COMMISSIONER GAW: You're being helpful by  
4 telling me what your opinion is. That's all I have, and  
5 thank you very much, Mr. England.

6                   MR. ENGLAND: Thank you.

7                   JUDGE PRIDGIN: Thank you, Commissioner.  
8 Commissioner Forbis?

9                   COMMISSIONER FORBIS: Thank you, Judge.  
10 Good afternoon.

11                  MR. ENGLAND: Good afternoon.

12                  COMMISSIONER FORBIS: You've cleared something  
13 up for me that I haven't been able to understand for a year  
14 and a half. Commissioner Gaw is left handed and I am right  
15 handed. Now I know what the problem is. The left hand  
16 doesn't know what the right hand is doing. We've got this  
17 all figured out. Okay. I appreciate that help. Thank you.

18                  So I want to make sure that I'm clear. On  
19 this order and the other orders, if we -- if there's  
20 language added, not change the title per se but adding  
21 language that says parties haven't waived rural exemption  
22 and there is an indirect interconnection, and you've been  
23 saying that you thought the Commission had the authority to  
24 make non-substantive changes to an order that's been issued?

25                  MR. ENGLAND: Yes, sir.

1                   COMMISSIONER FORBIS:  So you would define that  
2 kind of -- if I understand right, then, is adding that  
3 language, would that not be a substantive change to the  
4 order?  Could you add that language and call it a  
5 non-substantive change?

6                   MR. ENGLAND:  Well, I suppose, as I said,  
7 substantive is probably in the eye of the beholder.  But all  
8 I believe you're doing here is correctly reflecting what's  
9 in the agreement that you approved.  I mean, you are now --  
10 and to the extent, for example, you've got some errors where  
11 it says it's a direct connection, I think that needs to be  
12 corrected, and I would think anybody involved in that would  
13 want to at least get it right.

14                  COMMISSIONER FORBIS:  In other orders or in  
15 this --

16                  MR. ENGLAND:  The first one is the Cass  
17 County, and this is a direct quote from the order as issued.  
18 It said it would permit Cass County to provide local  
19 telecommunications service by interconnecting its facilities  
20 with Verizon.  And I will speculate that that sentence came  
21 out of an agreement between a CLEC and Verizon the ILEC, not  
22 Verizon Wireless.  This has no relevance to what we're  
23 doing, what Cass County is doing with Verizon Wireless.

24                  And I would -- I mean, call it  
25 non-substantive, call it correcting an error, whatever.  I

1 think you -- I think everybody would agree that it ought to  
2 be -- if it's caught and brought to your attention in a  
3 timely fashion, I wouldn't think there would be an argument  
4 about making that correction.

5                   COMMISSIONER FORBIS: If the orders aren't  
6 changed, and you've indicated that this is probably as far  
7 as you're going to take this issue and that if the title's  
8 not changed you can live with it and so on. I mean, I guess  
9 in the end, how much -- how much distress are you feeling if  
10 nothing is changed?

11                   MR. ENGLAND: Commissioner Forbis, I feel  
12 distress every day. I am always distressed by the fact that  
13 people don't follow my advice, and that's whether it's my  
14 clients or immediate members of my family, and I can tell  
15 you it seems to happen more times than not. So I've learned  
16 to deal with distress. I don't like it, but I've learned to  
17 deal with it.

18                   As I said, the title of the order is the least  
19 of my worries. I just -- I'm talking to you now from my own  
20 personal experience in negotiating with wireless carriers.

21                   To the extent that I can clean this up now at  
22 this stage so I don't have to deal with it in future  
23 negotiations and take them back through the case papers of  
24 the case to explain to them, yeah, the Commission said this,  
25 but here's the agreement and this is what the agreement

1 said, it makes my life a little bit easier.

2                   If you decide not to correct any of this, will  
3 I appeal it? No. I'll deal with it just like when my  
4 children fail to do what I ask them to do.

5                   COMMISSIONER FORBIS: I'm not going to ask you  
6 to deal with that, and your cardiologist will be grateful.

7                   Okay. I'll stop. Thank you.

8                   JUDGE PRIDGIN: Thank you, Commissioner  
9 Forbis. Commissioner Clayton?

10                  COMMISSIONER CLAYTON: Thank you, Judge.

11                  Mr. England, believe me, I understand. When I  
12 got the honor to take this position, a lawyer back in  
13 Hannibal said that I just added ten years to my life. So  
14 believe me, I understand exactly what you're saying in terms  
15 of stress and distress.

16                  The first thing I wanted to say was I want to  
17 appreciate -- or I want to say thank you for the education  
18 on a number of procedural matters here, because as the  
19 newest member of the Commission I've asked a number of  
20 questions that don't come up that often and I tend to think  
21 of things perhaps a little differently coming out of a  
22 different type of practice.

23                  But going over the different sections on  
24 jurisdiction, what we can do with our orders after what  
25 amount of time, obviously there are different rules under

1 state law, under federal law and obviously under  
2 administrative law.

3           There are different stages of the proceedings  
4 here, and I just kind of want to follow up on what  
5 Commissioner Gaw said on a number of things and make sure  
6 that I understand what I'm talking about here, because I am  
7 the newest person here and I don't always get the  
8 terminology correct when it comes through on an order or a  
9 pleading.

10           The position of the company in this instance  
11 would be that we have the ability to correct any order at  
12 any time, is that correct, that there's no time delay in  
13 terms of correction?

14           MR. ENGLAND: Again, I think that's probably  
15 true, but as I said, I think you need to balance that with  
16 the elapse of time and --

17           COMMISSIONER CLAYTON: Sure.

18           MR. ENGLAND: -- and how important that  
19 correction really is.

20           COMMISSIONER CLAYTON: I look at correction as  
21 a -- I see correction as a typographical error or a mistake  
22 in drafting, something like that.

23           MR. ENGLAND: Right.

24           COMMISSIONER CLAYTON: On interconnection  
25 agreements under the Federal Act, under 252(e), do you

1 believe it makes a difference before or after the 90 days of  
2 whether we can modify an order approving an interconnection  
3 agreement? Do you believe that that 90-day period where it  
4 takes effect if we take no objection, whether it makes a  
5 difference or not?

6 MR. ENGLAND: Well, if I understand -- that's  
7 a good question. Let me make sure I understand it. If you  
8 take no action and the agreement is approved by operation of  
9 law, if you will, do you have the ability to come back and  
10 do something? My guess is no. And I emphasize the word  
11 guess.

12 That's -- I don't have any case law to tell  
13 you that, but it seems only fair to me that if you're not  
14 going to assert jurisdiction in the first instance and let  
15 it run its course, that I don't know that you really have  
16 the juris-- you can reassert it after the fact, on second  
17 thought, I think I do want to do something with that.

18 COMMISSIONER CLAYTON: Okay. Then let's take  
19 another scenario. Let's say that you approve the  
20 interconnection agreement -- and I've got to work along in  
21 steps here. Let's say you approve the interconnection  
22 agreement within the 90-day period, and then the 90 days  
23 pass and then you have a motion to correct or a motion to  
24 modify or a motion to change or nunc pro tunc, whatever  
25 procedural mechanism.

1                   Do you believe that the Commission has the  
2 ability to modify an order that -- on one of these  
3 interconnection agreements under 252(e) once the 90-day  
4 period ends? Do you think we can change an order like that?

5                   MR. ENGLAND: Yes, and the reason I say that  
6 is because you have the authority to clarify it where two  
7 parties disagree as to its interpretation. So I would think  
8 you'd certainly have the authority if a party came back and  
9 said, by the way, you made a mistake here and we'd like for  
10 you to correct it. With notice to all parties so that you  
11 make sure that nobody else objects to the change that's  
12 being requested, I think you retain at least that  
13 jurisdiction.

14                  COMMISSIONER CLAYTON: Let's say we did have a  
15 dispute. Let's say we did have a disagreement over  
16 whether -- over the change in some language. Would one  
17 party have a fruitful argument of saying you-all can't mess  
18 with that order because the 90 days have passed? You  
19 approved it. The 90 days have passed. It is approved and  
20 you can't change the order.

21                  If you did have a dispute, do you think a  
22 party could make that argument and be successful?

23                  MR. ENGLAND: They certainly could make that  
24 argument. They might be successful in the short term  
25 because you might dismiss it and say, we've got an objection

1 here, obviously it is a substantive issue. But if I'm the  
2 party that filed the initial motion for correction, I'd turn  
3 around then and file a motion to -- whatever the -- whatever  
4 MCI did in that case I cited. I would then tee it up as a  
5 disputed item and have you reconcile it, which I think you  
6 clearly have the power to do.

7 COMMISSIONER CLAYTON: And that would not be  
8 through approving or disapproving of an interconnection  
9 agreement but through either enforcement of its terms or --

10 MR. ENGLAND: Interpretation of its terms.

11 COMMISSIONER CLAYTON: -- or through  
12 interpretation?

13 MR. ENGLAND: Sure.

14 COMMISSIONER CLAYTON: Okay. Well, that  
15 certainly helps from my perspective, I think.

16 The actual language used in these orders,  
17 we've talked about traffic termination, indirect  
18 interconnection agreement. You stated under questioning  
19 with Commissioner Gaw that there's no provision within the  
20 Federal Act, and when I say the Federal Act I'm assuming  
21 Section 251 and 252, traffic termination agreements.

22 MR. ENGLAND: Not that I'm aware of.

23 COMMISSIONER CLAYTON: I just want to be sure  
24 I'm making a accurate statement. And it is only through  
25 this indirect interconnection that Commission approval would

1 even be necessary?

2 I guess as the new person here, I'm struggling  
3 with there's a specific reference to this Commission  
4 approving or disapproving of interconnection agreements. If  
5 it's not truly an interconnection agreement, then what is  
6 our rule?

7 MR. ENGLAND: If you read interconnection  
8 agreement narrowly as a direct interconnection under (c)(2),  
9 I believe, of Section 251, then you might decline  
10 jurisdiction to approve a traffic termination agreement for  
11 indirect interconnection. But I would say you'd also have  
12 to decline jurisdiction for a resale agreement which comes  
13 under 251(b) or a collocation agreement which also is under  
14 251(b).

15 I think when they use interconnection  
16 agreement in 252, that they intended it to cover the gamut  
17 of agreements that they were obligating the parties to enter  
18 into under 251. I don't think it's -- I don't think it's as  
19 precise a term in 252 as it in 251 (c)(2).

20 COMMISSIONER CLAYTON: And to clarify exactly  
21 what you're wanting here today, it would be that we modify  
22 the orders in the existing cases, and I'm assuming looking  
23 forward in future cases, identifying the orders approving  
24 indirect interconnection agreements and then reference --  
25 referencing it to being a traffic termination agreement?

1                   MR. ENGLAND: If I had my druthers, my first  
2 priority is to get the errors corrected that I've identified  
3 in the right-hand column. That's my first priority.

4                   My second priority is to make sure that the  
5 order clearly reflects we haven't waived our rural  
6 exemption. That's my first priority. But as far as the  
7 title, that's lower on the priority list.

8                   But as I said, it just makes my job a little  
9 easier in the future if someone were to come to me to want  
10 to negotiate a true interconnection, direct interconnection  
11 agreement and say, well, you've done it with Verizon  
12 Wireless, here's the order approving interconnection  
13 agreement.

14                  And I'm going, no, it's not. Read the order  
15 or read the agreement. If I can't show them on the face of  
16 the order, read the agreement. It is not a direct  
17 interconnection agreement. It is an agreement under (b) (5).  
18 It's a reciprocal compensation arrangement or we've titled  
19 traffic termination agreement.

20                  COMMISSIONER CLAYTON: Thank you very much,  
21 Mr. England.

22                  MR. ENGLAND: You're welcome.

23                  COMMISSIONER CLAYTON: Thank you, Judge.

24                  JUDGE PRIDGIN: Thank you, Commissioner  
25 Clayton.

1                   Commissioner Gaw, do I understand you have  
2 follow-up questions?

3                   COMMISSIONER GAW: Just very briefly.

4                   Would there be a problem with, as far as the  
5 form of these orders were concerned, with just going to a  
6 straight, a very short order that just said the Commission  
7 had reviewed -- reviewed this agreement pursuant to the  
8 Federal Act and whatever the requirements are as far as the  
9 public interest are concerned and approves the agreement and  
10 stop? What would that do or not do to this problem? We're  
11 really talking about what's in the order now, not the  
12 agreement.

13                  MR. ENGLAND: And I think you've got a lot of  
14 latitude to say what you want or not say what you want in an  
15 order. My concern in that sit-- my real concern in that  
16 situation would be if you were silent as to the fact that it  
17 was indirect interconnection and that the rural exemption  
18 hadn't been waived, yet on the face of the order you call it  
19 order approving interconnection agreement, that would be in  
20 my opinion misleading.

21                  COMMISSIONER GAW: I don't know if I was as  
22 precise as I intended to be, but I thought what I had said  
23 was did not include interconnection in, just agreement.

24                  MR. ENGLAND: Right.

25                  COMMISSIONER GAW: And if I didn't, that's

1 what I intended.

2 MR. ENGLAND: At some point even us  
3 practitioners like a little bit of guidance so we kind of  
4 know what's going on. As I said, you have a lot of latitude

5 COMMISSIONER GAW: I wanted to ask the  
6 question because we're spending -- we're spending quite a  
7 bit of time worrying about what's in an order that where  
8 most of the order really is just reciting things that may  
9 not be necessary. It's all in the agreement, and if all  
10 we're doing is approving or disapproving the agreement based  
11 upon the Federal Act, maybe a lot of the rest of that stuff  
12 just causes more questions to come up later.

13 MR. ENGLAND: It could. It could. And I'm  
14 reminded of, an old chief hearing examiner here years ago  
15 said, the less I say in my orders, the less chance I'm going  
16 to have of being reversed.

17 But at some point, as I said, the  
18 practitioners, the people that appear before you do  
19 appreciate some recitation of the facts and the  
20 circumstances under which you render your order so that we  
21 can advise clients or know what to do in the future. There  
22 is some beauty to sometimes saying a little bit more than  
23 maybe you absolutely have to.

24 COMMISSIONER GAW: Okay. Well, I wanted to  
25 ask the question because -- to get some feedback. That's

1 all I have. Thank you.

2 JUDGE PRIDGIN: Thank you, Commissioner Gaw.

3 Any further questions from the Bench?

4 (No response.)

5 Mr. England, thank you very much.

6 MR. ENGLAND: You bet. Thank you.

7 JUDGE PRIDGIN: Mr. Meyer.

8 MR. MEYER: Good afternoon, your Honor.

9 JUDGE PRIDGIN: Whenever you're ready.

10 MR. MEYER: I had prepared a brief opening  
11 statement, but I think I'll just deviate from that to  
12 express, I guess, Staff certainly has no objection to any of  
13 the corrections that Mr. England's exhibit on the right-hand  
14 column lists, and I certainly think those could be  
15 characterized as nunc pro tunc and that the Commission  
16 continues to have jurisdiction over these cases to be able  
17 to address that.

18 As far as the rural exemption issue, certainly  
19 it does not appear from our perspective that there was any  
20 waiver of the rural exemption. And just to clarify, as far  
21 as the Telecommunications Act of 1996 relates to this, for  
22 the rural exemption to be waived there are a couple of  
23 provisions that would have to have taken place.

24 First, the small rural telephone company would  
25 have actually had to have received a request for

1 interconnection, and then at that point the state  
2 commission, in other words the Commission, would have to  
3 determine that interconnection would not be -- and it's a  
4 three-part test -- not unduly economically burdensome, would  
5 have to determine that it's technically feasible, and would  
6 have to determine that it's consistent with Section 254  
7 which is relating to universal service.

8               The party requesting interconnection from the  
9 rural telephone company would actually have to file that  
10 request with the Commission formally. The Commission then  
11 would have to make a formal finding within 120 days that the  
12 exemption is actually terminated if it finds those three  
13 factors were present.

14              So I think through approving an  
15 interconnection agreement that might potentially open up  
16 some discussion on that topic, but certainly it does not  
17 lead to any decision, determination that that exemption is  
18 waived. I think that would need to be explicitly done.

19              As far as the title of the order, I think we  
20 perceive that as somewhat of a semantical argument as well.  
21 I think you'll find that Staff's recommendation has  
22 characterized these on its checklist as a wireless  
23 interconnection agreement, and that is how Staff has  
24 perceived these, as opposed to a facilities-based  
25 interconnection agreement. But certainly we perceive this

1 as an interconnection agreement.

2                   If it was not under that sort of more generic  
3 sense, it certainly should not have been submitted to the  
4 Commission for its review in the first place. So that's how  
5 we perceive the way that the language should play out.

6                   I think that's all, all I have to say up  
7 front.

8                   JUDGE PRIDGIN: Thank you, Mr. Meyer.  
9 Commissioner Murray?

10                  COMMISSIONER MURRAY: I don't have any  
11 questions.

12                  JUDGE PRIDGIN: Thank you. Commissioner Gaw?

13                  COMMISSIONER GAW: I don't think I have any  
14 either.

15                  JUDGE PRIDGIN: Thank you. Commissioner  
16 Forbis?

17                  COMMISSIONER FORBIS: No.

18                  JUDGE PRIDGIN: Commissioner Clayton?

19                  COMMISSIONER CLAYTON: Yes. Wasn't going to  
20 let you get away completely. I just want to be -- I want to  
21 absolutely clear. In light of the comments in the  
22 information that's been provided by Mr. England, you-all  
23 have no -- let me ask this: Staff has no problem with the  
24 language in the orders relating to being indirect  
25 interconnection agreement, and to each of the language

1 provisions that they've suggested, you don't have any  
2 problem with those?

3 MR. MEYER: We believe that this is an  
4 indirect interconnection agreement.

5 COMMISSIONER CLAYTON: And you have no problem  
6 with the sentence relating to no waiver of rural exemption?

7 MR. MEYER: That is correct. I think we might  
8 have some concerns potentially if this gets characterized as  
9 a 251(b)(5) reciprocal compensation agreement, but we  
10 certainly would think that this would be a 251(a)(1)  
11 indirectly or directly obligation.

12 COMMISSIONER CLAYTON: I understand your  
13 comments regarding the fact that you don't believe this  
14 would cause a waiver of any rural exemption.

15 MR. MEYER: Correct.

16 COMMISSIONER CLAYTON: But your position here  
17 today, has it changed at all from the original Staff  
18 recommendation?

19 MR. MEYER: No. No. We believe that we have  
20 been consistent. If it appears that we have not, it is not  
21 intentional.

22 COMMISSIONER CLAYTON: Well, as I recall --  
23 and I've got a stack of paper up here. I tried thumbing  
24 through it. But as I recall, you-all were opposed to the  
25 motion for correction just because you thought the waiver of

1 the rural exemption was not necessary and that the actual  
2 semantic change didn't make any difference. Is that  
3 incorrect or is that correct?

4 MR. MEYER: That is correct. We opposed  
5 it because we do not believe it was necessary, but we don't  
6 oppose it on any underlying principle, such as we think they  
7 actually have waived it, for example.

8 COMMISSIONER CLAYTON: So you opposed it, but  
9 it was kind of a half-hearted opposition and it's really  
10 okay?

11 MR. MEYER: I don't know that it's that as  
12 much as we just think this is not as much of an issue  
13 certainly as it appears the parties that have already  
14 appeared before you think it is.

15 COMMISSIONER CLAYTON: Thank you very much.

16 JUDGE PRIDGIN: Thank you, Commissioner  
17 Clayton. I don't believe I have any questions. Mr. Meyer,  
18 thank you. I'm sorry. Commissioner Gaw.

19 COMMISSIONER GAW: I'm sorry. You said  
20 something about the 251(b)(5)?

21 MR. MEYER: Reciprocal compensation.

22 COMMISSIONER GAW: You might explain what your  
23 concerns are about that so -- just enlighten us a little  
24 bit.

25 MR. MEYER: I would be happy to, and I

1 apologize. This is something that I've recently tried to  
2 get an understanding of.

3           As I understand it, the way that the language  
4 actually reads in these traffic termination agreements and  
5 as Mr. England characterized, it appears as though the  
6 payment schedule would be set up such that payment would be  
7 transferred either direction, depending upon how the traffic  
8 flows.

9           In practice -- and Mr. Voight is here to  
10 explain any technicalities that I may not necessarily  
11 accurately express. As I understand it, the traffic from  
12 the rural telephone company that flows to the wireless  
13 company goes via an IXC. Therefore, the customers pay the  
14 IXC, and then the IXC then pays the originating and  
15 terminating companies.

16           So in that sense, when the call goes from the  
17 rural telephone company subscriber to the wireless company,  
18 there would not actually be any money transferred under this  
19 agreement, as opposed to in the other direction when the  
20 traffic goes from the wireless company to the rural  
21 telephone company, this agreement applies and it would be  
22 the 3.5 cents or whatever the dollar figure might be per  
23 minute.

24           So from that sense, we don't see it --  
25 certainly on its terms in the language in there it may be a

1 reciprocal compensation agreement in practice, Staff has not  
2 perceived it as necessarily a reciprocal compensation  
3 agreement. Thus me might have some problem with that term  
4 if that starts appearing in the orders.

5 COMMISSIONER GAW: So when would the payment  
6 be made back from the rural carrier to the wireless carrier?

7 MR. MEYER: I would assume that would be under  
8 the terms of this agreement.

9 COMMISSIONER GAW: What kinds of calls? I  
10 mean, when would you see it paid as opposed to the payment  
11 going -- you said the IXC is sometimes dealing with the  
12 intermediary. That's when you've got a long distance call,  
13 I assume the IXC's paying access both sides?

14 MR. MEYER: That is my understanding.

15 COMMISSIONER GAW: So are you talking about a  
16 local call from -- I'm looking for when the interconnection  
17 agreement applies for compensation from the rural ILEC to  
18 Verizon, what kind of a call are we talking about when that  
19 happens?

20 MR. MEYER: As I understand it, from a rural  
21 subscriber to a Verizon Wireless customer, for example, if  
22 the rural telephone company subscriber calls a wireless  
23 subscriber, as I understand it, an IXC would be the  
24 intermediary that would route that call, as opposed to a  
25 transiting carrier, and that the IXC would then bill that

1 customer and the rural telephone company would not have that  
2 relationship.

3                   Therefore, this -- these traffic termination  
4 agreements that we have before us would not apply to that  
5 phone call because that phone call would not be routed --  
6 I'm sorry -- would not be billed from the rural  
7 telecommunications.

8                   COMMISSIONER GAW: And I think I understand  
9 your example. I'm looking for the exception to that.

10                   MR. MEYER: As I understand it, Staff does not  
11 have a grasp of what that exception might be. Mr. England  
12 certainly referred to situations where that might happen,  
13 and in that case certainly it appears this would be in  
14 practice reciprocal compensation agreement. It's just I  
15 don't think at this time we understand how that might work.

16                   COMMISSIONER GAW: Okay. Well, if somebody  
17 could shed some light on that for me.

18                   MR. MEYER: Again, we were just trying to head  
19 off another potential -- we weren't sure if this would  
20 result in something coming out where this Commission might  
21 start issuing orders approving reciprocal compensation  
22 agreements.

23                   COMMISSIONER GAW: I understand, and I'm  
24 really probably outside the boundaries of some of this  
25 hearing, but I'm just trying to understand.

1                   MR. MEYER: Sure, as are we all.

2                   JUDGE PRIDGIN: Thank you, Mr. Meyer. I

3 believe Mr. England would like to approach. Commissioner

4 Gaw, did you have some questions for Mr. England?

5                   COMMISSIONER GAW: If he has an answer for

6 that, that would be fine. That would be helpful.

7                   JUDGE PRIDGIN: Mr. Meyer, thank you.

8                   MR. ENGLAND: I'd love to address this issue.

9 Unfortunately, it really has nothing to do with our motion

10 for clarification.

11                  COMMISSIONER GAW: I understand that.

12                  MR. ENGLAND: But this is a major bone of

13 contention between rural ILECs, not just in this state but

14 in other states, and wireless carriers where you have

15 indirect interconnection.

16                  Staff is right. Most, if not all, of the

17 calls from our customers to wireless carriers are long

18 distance. Their MPA/NXXs are usually associated with larger

19 Bell/Sprint towns. So when our customer calls a wireless

20 customer, they must dial one plus the area code plus the

21 NXX.

22                  We have maintained, and this is what has

23 prevented us from having -- one of the reasons, excuse me.

24 There are three offer four critical issues, but one of the

25 main critical issues we have had with wireless carriers that

1 have prevented these agreement from happening before now is  
2 some of the wireless, not all, have taken the position that  
3 when our customer makes a call to them, regardless of how  
4 it's carried, as long as it's within the MTA, the wireless  
5 carrier is entitled to reciprocal compensation from the  
6 local exchange carrier.

7                   Our position is, and it's in support --  
8 Verizon Wireless is one of the few wireless carriers who  
9 support us or support this position -- is if this call is  
10 carried by an interexchange carrier, that long distance  
11 call, it is the interexchange carrier's responsibility for  
12 paying terminating compensation to the wireless carrier.

13                   As a matter of fact, Sprint brought a case in  
14 federal court against AT&T Long Distance on that very issue.  
15 It's still before the FCC. It has not been resolved up  
16 there. But the issue, of course, is whose call is that, and  
17 our argument is it's the long distance carrier's call. He  
18 is the entity that has the billing relationship with the end  
19 user. He charges him whatever his toll rate is. As you  
20 point out, he then is responsible, the interexchange carrier  
21 is responsible for paying both the originating company and  
22 the terminating company for originating and terminating that  
23 call.

24                   Staff is right. Most of these calls are long  
25 distance. The one exception would be those companies that

1 are located in the MCA, and in that case we recognize that  
2 we are providing the call. It's MCA services provisioned by  
3 us, and that is our call and we owe reciprocal compensation  
4 on that call.

5                   Another example in this particular case is  
6 Fidelity Telephone Company, who is a former primary toll  
7 carrier, and they do -- they carry long distance for their  
8 customers if their customers presubscribed Fidelity. So if  
9 a Fidelity customer in Sullivan, Missouri who is  
10 presubscribed to Fidelity Telephone Company's long distance  
11 service calls a Verizon Wireless customer in St. Louis, and  
12 that's a 1+ call, Fidelity Telephone Company, because it's  
13 also the long distance carrier on that call, has an  
14 obligation to pay reciprocal compensation to Verizon  
15 Wireless.

16                   The difference would be if that Fidelity  
17 customer's presubscribed to MCI, in which case it is our  
18 opinion and the agreement with Verizon Wireless reflects the  
19 fact that it is -- it's the no longer our obligation to pay  
20 reciprocal compensation. It is the interexchange carrier's  
21 responsibility to do so.

22                   Another example would be an EAS arrangement.  
23 We have one right here in Jefferson City. Kingdom Telephone  
24 Company has one-way EAS from, I believe, Tebbetts and  
25 Mokane, one of their exchanges into Jefferson City. So if

1 one of their subscribers dials Jefferson City, they're going  
2 to do it over that EAS arrangement, Kingdom Telephone  
3 Company is the responsible carrier and they will pay  
4 reciprocal compensation.

5                   But Staff's correct, in the vast majority of  
6 situations there is not going to be reciprocal compensation  
7 from the small ILEC back to the wireless carrier primarily  
8 or almost exclusively, because it's long distance traffic  
9 and it's carried by long distance carriers.

10                   COMMISSIONER GAW: Your Fidelity example is  
11 the -- is the company separately divided into a long  
12 distance company and a local exchange company or is that --

13                   MR. ENGLAND: Not for -- well, yes and no.  
14 For purposes of my description to you, it's not. Years ago  
15 it assumed the obligation as a primary toll carrier. So  
16 it's a local exchange company, but it also provides long  
17 distance -- intraLATA long distance toll, just like  
18 Southwestern Bell, Sprint, GTE at that time.

19                   But Fidelity since implementation of  
20 presubscription created, I believe, a long distance  
21 affiliate that also provides long distance service. So I'm  
22 just talking about the intraLATA calling that the customer  
23 would make.

24                   COMMISSIONER GAW: But in that case, there  
25 would be -- they would be treated as transiting the traffic

1 instead of --

2 MR. ENGLAND: Actually, Bell would be the  
3 transiter.

4 COMMISSIONER GAW: Okay. That's interesting.  
5 Okay. I'm following you.

6 MR. ENGLAND: Fidelity has their switches in  
7 Sullivan, Missouri. It would go to their switch. Somewhere  
8 between Sullivan and St. Louis they meet facilities with  
9 Southwestern Bell. It's transferred over to Southwestern  
10 Bell who carries it to their facilities in St. Louis,  
11 switches it and delivers it to Verizon Wireless.

12 And not only would Fidelity pay the wireless  
13 carrier terminating compensation under this agreement, they  
14 also pay Southwestern Bell a transport rate for that call,  
15 just as they would if that call went from a Fidelity  
16 customer to a Southwestern Bell landline end user customer  
17 in St. Louis.

18 COMMISSIONER GAW: Okay. Are there a lot of  
19 examples like that? Is that sort of a rarity?

20 MR. ENGLAND: It's more the exception than the  
21 rule. As I said, the vast majority of calling from the  
22 small telephone companies to Verizon Wireless, for example,  
23 to Sprint, to virtually all of them is long distance  
24 calling.

25 COMMISSIONER GAW: Yeah. Routed over an IXC?

1                   MR. ENGLAND:  Correct.

2                   COMMISSIONER GAW:  Thank you for that

3 explanation.

4                   MR. ENGLAND:  You're welcome.

5                   JUDGE PRIDGIN:  Thank you, Commissioner Gaw.

6 Any further questions from the Bench for Mr. England?

7 Seeing none.  Thank you, Mr. England.

8                   Any further questions for Mr. Meyer?  All

9 right.  Seeing none.

10                  Anything else from the Commissioners?  Hearing

11 nothing, that will conclude this oral argument.  Thank you

12 very much, and we will now go off the record.

13                  WHEREUPON, the oral argument of this case was

14 concluded.

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