

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing

March 10, 2006
Jefferson City, Missouri
Volume 2

FullTel, Inc.,)
)
Petitioner,)
)
vs.) Case No. TC-2006-0068
)
CenturyTel of Missouri, LLC)
)
Respondent.)

KENNARD L. JONES, Presiding
REGULATORY LAW JUDGE
CONNIE MURRAY
STEVE GAW
ROBERT M. CLAYTON, III,
COMMISSIONERS

REPORTED BY: Monnie S. VanZant, CCR, CSR, RPR
Midwest Litigation Services
714 W. High Street
Jefferson City, MO 65102
(573) 636-7551

1 A P P E A R A N C E S

2 For Staff of the Missouri Public Service Commission:

3 Mr. William K. Haas
4 Missouri Public Service Commission
5 P.O. Box 360
6 200 Madison Street
Jefferson City, MO 65102
(573) 751-7510

7 For CenturyTel of Missouri, LLC:

8 Mr. Larry W. Dority
9 Fischer & Dority, PC
10 101 Madison, Suite 400
Jefferson City, MO 65101
(573) 636-6758

11 Mr. Calvin K. Simshaw
12 Attorney at Law
805 Broadway
13 Vancouver, WA 98660
(360) 905-5958

14 For FullTel, Inc.:
15

16 Mr. Mark W. Comley
17 Newman, Comley & Ruth
601 Monroe Street, Suite 301
18 P.O. Box 537
Jefferson City, MO 65102-0537
(573) 634-2266

19 Mr. Andrew M. Klein
20 Attorney at Law
1200 19th Street Northwest, Suite 200
Washington D.C. 20836
21 (202) 684-7985

22

23

24

25

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

2 JUDGE JONES: Okay. We can go ahead
3 and go on the record. This is Case No.
4 TC-2006-0068, Complainant FullTel,
5 Incorporated, for enforcement of the
6 interconnection obligations of CenturyTel of
7 Missouri, LLC.

8 My name is Kennard Jones. I'm the -- I'm
9 the presiding judge over this matter. At this
10 time, we'll taken entries of appearance
11 beginning with FullTel.

12 MR. COMLEY: Good morning, Judge,
13 Jones and Commissioners. Let the record
14 reflect the entry of appearance of Mark W.
15 Comley, Newman, Comley & Ruth, 601 Monroe
16 Street, Suite 301, Jefferson City, Missouri,
17 65101.

18 And, also, to my right, I would like to
19 introduce Mr. Andrew M. Klein, and I'm going to
20 let him say his business address.

21 MR. KLEIN: Good morning, Judge,
22 Commissioners. My name is Andrew M. Klein.
23 I'm with Klein Law Group, PLLC, 1200 19th
24 Street Northwest, Suite 200, Washington D.C.,
25 20036.

1 MR. COMLEY: And both of us are
2 appearing on behalf of Full-Tel, the
3 complainant.

4 I have noted to the Judge already that
5 there is pending before the Commission a
6 petition for Mr. Klein to appear today pro hac
7 vice, and would ask that it be favorably ruled
8 on.

9 JUDGE JONES: Thank you. And from
10 CenturyTel?

11 MR. DORITY: Thank you, your Honor.
12 Appearing on behalf of respondent CenturyTel of
13 Missouri, LLC, Larry W. DORITY with the firm
14 Fischer & DORITY, PC. Our address is 101
15 Madison, Suite 400, Jefferson City, Missouri,
16 65101.

17 Also appearing on behalf of CenturyTel of
18 Missouri this morning, I would like to
19 introduce to the Judge and the Commissioners
20 Mr. Calvin Simshaw.

21 Mr. Simshaw is the Vice President and
22 Associate General Counsel Regulatory for
23 CenturyTel. His address is 805 Broadway,
24 Vancouver, Washington, 98660.

25 Mr. Simshaw has filed previously a

1 Petition for Leave to Appear Pro Hac Vice, and
2 that has been ruled upon by the Commission.
3 Thank you.

4 JUDGE JONES: Thank you. And on
5 behalf of the commission?

6 MR. HAAS: Good morning. Staff
7 appears by William K. Haas. My address is Post
8 Office Box 360, Jefferson City, Missouri,
9 65102.

10 JUDGE JONES: And I'll note for the
11 record, and correct me if I'm wrong, there is
12 no one here from the Office of Public Counsel.

13 All right. Well, first, we have pending a
14 -- a Petition to Appear Pro Hac Vice by
15 Mr. Andrew Klein. There are no objections to
16 that petition. The petition is, therefore,
17 granted.

18 At this time, we'll take opening
19 statements from FullTel.

20 COMMISSIONER CLAYTON: Did you pay
21 your fee to the Supreme Court?

22 MR. KLEIN: Yes, I did. Counsel can
23 confirm that for me, but I believe we did
24 submit to the Public Service Commission.

25 MR. COMLEY: I distinctly remember

1 paying that.

2 COMMISSIONER CLAYTON: Yeah. We were
3 worried about that.

4 OPENING STATEMENT

5 BY MR. KLEIN:

6 MR. KLEIN: Good morning, your
7 Honor, Commissioner. Appreciate the
8 opportunity to be here today and to talk about
9 this matter.

10 This is a continuation of what you might
11 call a dispute between FullTel and CenturyTel
12 that has now gone on for several years. It's a
13 very simple case.

14 All that CenturyTel is seeking is to
15 interconnect its network with the network of
16 CenturyTel to serve southwest Missouri. It
17 sounds simple, but yet there have been one
18 complication after another and one delay and
19 one obstacle after another that have been
20 introduced by CenturyTel in an effort to thwart
21 FullTel's competitive entry into southwest
22 Missouri.

23 CenturyTel has notified Full -- FullTel,
24 rather, has notified CenturyTel that it has
25 sought to establish a single point of

1 interconnection or a point in Branson,
2 Missouri, in order to serve the area of -- that
3 CenturyTel currently serves in southwest
4 Missouri. CenturyTel has denied that request
5 for interconnection.

6 First, FullTel had requested the adoption
7 of an agreement that was in effect between
8 Brooks Fiber and CenturyTel. CenturyTel denied
9 that adoption.

10 FullTel applied to this Commission, and
11 the Commission confirmed that adoption and
12 allowed that agreement to go into effect
13 between these two parties. So the parties do
14 have an interconnection agreement that was
15 established through an adoption that was
16 confirmed by this Commission a couple of years
17 ago.

18 FullTel thought it was done and that we
19 could then proceed with the interconnection.
20 It notified CenturyTel that it was wanted to
21 interconnect through colocation in the Branson,
22 Missouri, central office. The request for
23 colocation was denied by CenturyTel.

24 Again, FullTel invoked the resources of
25 the Commission, notified Commission staff that

1 it was facing this obstacle and that colocation
2 had to be provided in accordance with both
3 federal law and state law.

4 Finally, CenturyTel relented and FullTel
5 has now established colocation at the Branson,
6 Missouri, central office.

7 What FullTel has not been able to obtain
8 is actual interconnection of its facilities
9 with CenturyTel's facilities in that serving
10 area.

11 And, therefore, back in August of 2005,
12 FullTel filed a complaint to enforce the
13 interconnection obligations with this honorable
14 Commission.

15 This -- this matter that's currently
16 before the Commission has already been decided.
17 It was decided by the Act -- the Federal
18 Communications Act of 1934, by the FCC in
19 Orders, by the FCC rules, by Federal District
20 Courts and by Federal Courts of Appeal, by the
21 interconnection agreement that's in effect
22 between the parties by other Commissions and
23 even by this commission just several months ago
24 in the context of the SBC arbitration.

25 So, frankly, there's just not a whole lot

1 left to be decided. And we think that we agree
2 with your Honor that this could be a very
3 abbreviated hearing.

4 As I've just reviewed, there have been a
5 lot of obstacles that have been thrown up by
6 CenturyTel over the last couple of years. The
7 Commission has been good enough to clear those
8 prior obstacles. Only one obstacle remains,
9 and that is advising CenturyTel that it must
10 follow the law and must permit FullTel to
11 interconnect with it in Branson.

12 You're likely to hear, to the extent we
13 get into any detail today because you've
14 already seen pleadings to this effect, that
15 CenturyTel will assert how complex this matter
16 is and that the law is undecided in this area.

17 You will see, and I believe you've already
18 seen it from the briefs that have been
19 submitted, that is just simply not the case.
20 Under the Telecom Act or the Federal
21 Communications Act of 1934 as amended, FullTel
22 may interconnect pursuant to Section 251 to
23 exchange various forms of traffic. That is all
24 that FullTel has requested here and that
25 request has been denied.

1 Under the FCC rules, FullTel is entitled
2 to interconnection at any technically feasible
3 point. The FCC rules make it clear that
4 physical interconnection is to distinguished by
5 the reciprocal compensation obligations of the
6 parties under that interconnection. So first
7 there's the interconnection, and then there's
8 secondly compensation for the traffic that
9 flows through that interconnection.

10 The FCC rules also significantly provide
11 that CenturyTel may not charge FullTel for
12 traffic originating on CenturyTel's own
13 network. That's right out of the FCC rules.
14 Without mentioning CenturyTel or FullTel, of
15 course, but that is one carrier may not charge
16 another carrier for traffic originating from
17 that carrier's network. In other words, the
18 ILEC cannot shift the cost of traffic
19 originating on its network to the competitive
20 entrant.

21 FCC orders also come into play. In April
22 of 2001, the FCC issued the ISP remand order.
23 The FCC has established specific rules
24 addressing the treatment of ISP bound traffic
25 under the federal law.

1 Right now, as it is between these parties,
2 it will likely be bill and keep under that FCC
3 regime.

4 The FCC, since April of 2001, has been
5 attempting to revise those rules, the
6 intercarrier compensation rules. It has not
7 done so. Right now, the April 2001 ISP remand
8 order is still the law of the land as it
9 relates to compensation and treatment of ISP
10 bound traffic. Again, that is all that FullTel
11 has requested is that the parties follow the
12 law.

13 The FCC has reiterated that rule as well
14 in the MCI, AT&T, and Verizon Virginia
15 interconnection arbitration. The Virginia
16 Commission, the State Corporation Commission
17 declined to have an arbitration under Section
18 252. The FCC stepped in, took jurisdiction and
19 decided those issues and confirmed the
20 obligations of the parties to exchange traffic
21 pursuant to prior FCC precedent, the Act and
22 FCC rules.

23 The federal courts have also stepped into
24 this issue. The Fourth Circuit and the Fifth
25 Circuit Courts of Appeal in MCI versus Bell

1 South in the Fourth Circuit and SBC versus
2 Texas PUC in the Fifth Circuit have resolved
3 that the ILEC may not shift costs of
4 originating traffic to competitors, that CLECs
5 may interconnect at any technically feasible
6 point regardless of geography, and CLECs may
7 interconnect at one point per LATA.

8 The Fifth Circuit specifically said SBC,
9 in this case, the ILEC, must transport traffic
10 to the point -- the point of interconnection
11 pursuant to the Act, the FCC rules and the FCC
12 arbitration order.

13 Interconnection and compensation are
14 distinct. In fact, the Court of Appeals
15 confirmed a grant of summary judgment to the
16 CLEC that that case, the CLEC in that case,
17 which was AT&T finding there was no issue of
18 material fact. And the law was so well settled
19 that the case had to be remanded back together
20 Texas PUC to implement the FCC's ISP remand
21 order.

22 In the Fourth Circuit, the North Carolina
23 Utilities Commission had issued an order
24 permitting Bell South to charge the CLEC, in
25 that case, MCI, for the cost of transporting

1 traffic to the POI even if the point of
2 interconnection was distant from Bell South.
3 Again, the federal court said you cannot do
4 that, that the originating carrier, in that
5 case, Bell South, has an obligation to carry
6 the traffic to that single POI even if it's
7 hundreds of miles away.

8 The interconnection agreement in this case
9 that is in effect, there was a Stipulation of
10 Facts that the parties have filed that confirms
11 that that agreement is in effect and has been
12 in effect between parties. It's written to
13 reflect the law.

14 It identifies two forms of traffic,
15 reciprocal compensation traffic and ISP bound
16 traffic. CenturyTel must, of course, follow
17 the terms of the agreement that was approved by
18 this Commission.

19 Under that agreement, FullTel's entitled
20 to interconnect and exchange traffic pursuant
21 to the FCC's ISP remand order, which is
22 referenced in that interconnection agreement.
23 This past June, this Commission had an
24 arbitration decision that was issued in which
25 it said that SBC must provide interconnection

1 and colocation even outside of its service
2 territory since feasibility and not geography
3 is the basis of the limitation that Congress
4 placed on the duty to interconnect.

5 As I mentioned at the outset, FullTel is
6 interconnecting through colocation. There's no
7 question but that colocation is a technically
8 feasible method of interconnection.

9 Finally, the staff of your Commission
10 issued a report in September of 2005 finding
11 that federal rules in this Commission's
12 precedent indicate that FullTel can establish
13 one POI in a CenturyTel service area for the
14 exchange the traffic at issue.

15 And, finally, just several weeks ago, the
16 Washington State Utility Commission issued an
17 order addressing this very specific issue
18 itself finding in that case that Quest, as the
19 ILEC, must exchange and there compensate the
20 CLEC for ISP bound traffic pursuant to the ISP
21 remand order regardless of the point of origin
22 or termination of that ISP bound traffic and
23 regardless of whether it is VX -- VNX traffic
24 or not.

25 So in a nutshell, there are a number of

1 bases the Commission can reply upon to confirm
2 that FullTel is entitled to interconnection at
3 a single point in the LATA and to exchange
4 traffic with CenturyTel pursuant to the ISP
5 remand order and other prevailing federal and
6 State law.

7 There's really no issue yet to be decided,
8 and we hope that the Commission will act
9 expediently in confirming that right to
10 interconnect and exchange traffic. Thank you.

11 JUDGE JONES: Thank you. Now we'll
12 hear opening statement from CenturyTel.

13 OPENING STATEMENT

14 BY MR. SIMSHAW:

15 MR. SIMSHAW: Thank you, your Honors.
16 As Mr. Dority mentioned, my name is Calvin
17 Simshaw. I'm in-house counsel for CenturyTel.

18 I can be very brief here because I think
19 the Commission has done an excellent job of
20 zeroing in on the heart of the matter in this
21 dispute.

22 In the Commission's order requiring
23 additional information, they stated that it's
24 not clear whether FullTel will deliver a local
25 traffic through the contemplated

1 interconnection. That is the heart of the
2 matter.

3 The Commission went on to state that
4 whether or not traffic is local is to be
5 determined by whether or not the calls
6 originate and terminate within the local
7 calling area as defined in CenturyTel's tariff.

8 Okay. Why is it important to know whether
9 the traffic is local? Well, there's really
10 three basic reasons. Mr. Klein spoke to the --
11 the Federal Telecommunications Act. And, yes,
12 he's correct that Section 251 does define the
13 terms and scope of when a local interconnection
14 agreement has to be executed by an incumbent
15 LEC like CenturyTel.

16 However, when you look at the Act,
17 specifically Section 251(c)(2)(a), it's very
18 clear that CenturyTel is obliged to exchange
19 traffic pursuant to a local interconnection
20 agreement when -- for the purpose of exchanging
21 telephone exchange service. In other words,
22 local traffic.

23 So we must ask, is the traffic in dispute
24 local traffic? The FCC itself went even
25 further in adopting a rule that specifically

1 states -- and this is at 47 CFR 51.305(b) --
2 that simply states that a CLEC that is
3 requesting local interconnection agreement
4 solely for the purposes of exchanging
5 interexchange traffic is not entitled to that
6 agreement.

7 So, again, important question. Is the
8 traffic in dispute local? Because it's only if
9 it's local that they're entitled to a 251 local
10 interconnection agreement.

11 Thirdly, and perhaps most importantly, the
12 agreement itself that Mr. Klein referred to,
13 which was the adoption of the Brooks Fiber
14 agreement, an integral part of that agreement
15 is the adoption letter. It is binding. It
16 sets forth binding terms for the agreement. In
17 fact, you can find it at seriatim page 3 of the
18 agreement on file with the Commission. What it
19 says is that the CLEC, in this case, FullTel,
20 that the agreement covers only services
21 provided within CenturyTel's service territory.
22 That's the scope of the agreement. So, again,
23 the question must be asked, what is the nature
24 of the traffic? Does the traffic originate and
25 terminate within CenturyTel's territory?

1 And if the answer is no, then the traffic
2 is not subject to the agreement by the -- by
3 the agreement's own terms.

4 Now, Mr. Klein that brought up the subject
5 of the fact that FullTel's prospective client,
6 as far as the terms of this dispute and
7 complaint go, happens to be an ISP. That
8 doesn't change the fundamental question because
9 the FCC's ISP remand order only applied to
10 those situations where the dial-up customer
11 calls an ISP located in the same local calling
12 area.

13 So, again, we arrive back at the same
14 question. Is the traffic local? Does
15 originate and terminate in the same calling
16 area? That limited scope of the ISP remand
17 order requiring that the calling party and the
18 ISP be in the same local calling area was
19 reiterated by the reviewing court that reviewed
20 the ISP remand order. So it's still the same
21 question even if it's an ISP customer. Is the
22 traffic in dispute local?

23 Therefore, the question asked by the
24 Commission is the correct question. It's the
25 definitive question. It will allow the

1 Commission to rule on this complaint. So we
2 urge the Commission that this is an evidentiary
3 hearing. Listen to the testimony very
4 carefully, particularly with regard to the
5 traffic. Where is the customer originating the
6 call? Where is the call being answered? Is it
7 originating and terminating within the same
8 local calling area?

9 We would submit that there's nothing in
10 the complaint that indicates that the disputed
11 traffic is local. There was nothing in the
12 subsequent affidavits filed in response to the
13 Commission's order that indicate that the
14 traffic is local.

15 And we would submit that when you listen
16 to the evidentiary testimony today, you must
17 again conclude the traffic in dispute is not
18 local. Therefore, pursuant to CenturyTel's
19 pending Motion to Dismiss and the evidence
20 you'll hear today, the complaint should be
21 dismissed and denied. Thank you.

22 JUDGE JONES: Thank you, Mr. Simshaw.
23 At this time, we'll have FullTel's witness.

24 COMMISSIONER CLAYTON: I have
25 questions for the lawyers before you hear

1 evidence.

2 JUDGE JONES: Okay. Well, at this
3 time, we have questions from Commissioner
4 Clayton of the attorneys present.

5 COMMISSIONER CLAYTON: Unless
6 Commissioner Murray -- I had some question
7 general questions on legal principles that I
8 wanted to go over before we got started if
9 that's all right, Judge, before we got to the
10 factual witnesses.

11 First of all -- Mr. Klein; is that
12 correct?

13 MR. KLEIN: Yes.

14 JUDGE JONES: Of FullTel, would you
15 give me the citations that -- I need the
16 specific citations and references to the
17 interconnection agreement on which FullTel
18 relies. And I'm just looking for the -- the
19 operative law that you're relying on.

20 So if you could start with -- I think you
21 concluded your remarks saying this is where we
22 rely. If you could repeat that --

23 MR. KLEIN: Certainly, Commissioner.
24 The -- the interconnection agreement is on file
25 with the Commission at CK 2002 1146.

1 COMMISSIONER CLAYTON: I'm aware of
2 the interconnection agreement. I want specific
3 references inside of the interconnection
4 agreement to the language that you're referring
5 to. And if there's an FCC order, I want
6 specific references to the -- to the -- to the
7 provisions that you're relying on in this
8 complaint.

9 MR. KLEIN: I have those here,
10 Commissioner. Let me just --

11 COMMISSIONER CLAYTON: I guess what
12 I'm looking for is a short list. If it's a
13 long list, you'll have to take that up with the
14 Judge.

15 MR. KLEIN: If I may, I could start
16 with the legal citations.

17 COMMISSIONER CLAYTON: I just want --
18 I want the law -- the legal either -- legal --
19 I want either the FCC rule, federal statute,
20 the case or opinion by federal court and then a
21 specific reference inside of the
22 interconnection agreement.

23 Start with your most relevant or on point
24 citation and work to the least, if you can do
25 that.

1 MR. KLEIN: Yes. They're all
2 obviously very relevant. The -- the cases that
3 I cited -- first the Fifth Circuit decision is
4 Southwestern Bell Telephone Company versus the
5 Public Utility Commission of Texas.

6 That decision can be found at 348 Fed
7 Third, F Third 482. It was filed on October
8 21st, 2003. The Fourth Circuit case from the
9 Fourth Circuit Court of Appeals is MCI Metro
10 Access Transmissions Services, Incorporated
11 versus Bell South Telecommunications,
12 Incorporated. And that can be found at 352 Fed
13 Third, page 872.

14 The FCC -- not necessarily in order of
15 relevance, so --

16 COMMISSIONER CLAYTON: I'm assuming
17 that those cases are going to interpret federal
18 statutes, so I assume those federal statutes
19 would be fairly relevant.

20 MR. KLEIN: They do. The federal
21 rule -- or the federal statute is Section
22 251(c)(2), which is referenced by counsel for
23 CenturyTel. We agree that is the relevant
24 statute. We didn't agree on its
25 interpretation, of course.

1 The reciprocal compensation of LECs is in
2 Federal Rule 47 CFR Section 51.703. And that
3 is where it is established that a LEC may not
4 assess charges on any other telecommunications
5 carrier for telecommunications traffic that
6 originates on the LEC's network.

7 COMMISSIONER CLAYTON: Are they
8 allowed to -- can I ask you a question about
9 that? May a LEC assess charges on a call that
10 originates on the network that eventually
11 terminates over an IXC network?

12 MR. KLEIN: If it is indeed access
13 traffic, yes. Access traffic is not what would
14 be considered within the scope of that rule.

15 COMMISSIONER CLAYTON: Okay. So the
16 application of that section would depend on our
17 ruling on whether this traffic is inter --
18 whether it's interexchange traffic or local
19 traffic, correct?

20 MR. KLEIN: Well, it really would
21 depend on whether it was considered ISP bound
22 traffic because the FCC has delineated ISP
23 bound traffic under the same category of
24 traffic.

25 COMMISSIONER CLAYTON: So do you

1 acknowledge it as interexchange or -- or
2 interstate traffic but just that it is
3 characterized as ISP traffic?

4 MR. KLEIN: Well, the FCC's basis for
5 finding that it was interexchange was reversed
6 by the -- by the D.C. District Court by the
7 Court of Appeals to the District of Columbia.
8 So that basis has been challenged, but the rule
9 itself has remained in effect.

10 So while the underpinnings of the rule are
11 not clear, the rule is still valid. That's
12 what the D.C. Circuit Court of Appeals has
13 held.

14 COMMISSIONER CLAYTON: Okay.

15 MR. KLEIN: So it's -- the key is
16 whether --

17 COMMISSIONER CLAYTON: Forgive me for
18 -- maybe I'm complicating the issue. But
19 traffic is either identified as local or it's
20 identified as interexchange or it's identified
21 as ISP.

22 MR. KLEIN: Correct.

23 COMMISSIONER CLAYTON: Is that
24 correct? Is there any other way that the
25 traffic can be identified or characterized?

1 MR. KLEIN: No, I don't believe.

2 COMMISSIONER CLAYTON: That would be
3 relevant for this discussion?

4 MR. KLEIN: No, there really isn't.

5 COMMISSIONER CLAYTON: Before we take
6 it too far.

7 MR. KLEIN: There's really those
8 three categories.

9 COMMISSIONER CLAYTON: Okay. So do
10 you contend that this traffic is local, or do
11 you contend that it is ISP?

12 MR. KLEIN: We contend that it is ISP
13 bound traffic. There is no --

14 COMMISSIONER CLAYTON: ISP?

15 MR. KLEIN: Yes.

16 COMMISSIONER CLAYTON: Okay. You
17 don't contend this is local traffic?

18 MR. KLEIN: Well, when we say this
19 traffic, it's not clear. Right now, FullTel
20 has not entered the market, so they have no
21 traffic, in fact.

22 What they seek to do is establish the
23 interconnection and then establish traffic
24 flows between the parties. And at that point,
25 the reciprocal compensation obligation of the

1 parties would be established.

2 COMMISSIONER CLAYTON: So you say
3 there's no traffic at issue here? I thought
4 there was an ISP in Oklahoma City or something
5 that was going back and forth? You're saying
6 there's no traffic, however?

7 MR. KLEIN: Right now, there is zero
8 traffic. The -- FullTel's intent was to enter
9 the market, was to serve a Missouri ISP. And
10 by serving that Missouri ISP, it was going to
11 carry some of the traffic back to the FullTel
12 switch or to premises there in Oklahoma across
13 the border. But that --

14 COMMISSIONER CLAYTON: But that
15 traffic is not ongoing right now? In there's
16 zero traffic. And I guess there is no ISP at
17 this time?

18 MR. KLEIN: Right. We filed an
19 affidavit several weeks ago indicating that
20 that ISP has now canceled its contract with
21 FullTel. So right now there is technically no
22 traffic at issue.

23 What FullTel seeks to do is establish the
24 interconnection, and then the parties would
25 then obviously compensate one another depending

1 on what traffic did end up going.

2 COMMISSIONER CLAYTON: Okay. Let me
3 stop you there. For the purposes of this case,
4 is the question moot?

5 MR. KLEIN: No, I don't believe it is
6 because I think that what will happen,
7 obviously, if FullTel is allowed to
8 interconnect that they will establish
9 interconnection, it will be both ISP bound
10 traffic and local traffic eventually flowing
11 over that interconnection.

12 COMMISSIONER CLAYTON: So what you're
13 asking here is for a declaratory judgment
14 setting out the rights and responsibilities of
15 the parties, correct?

16 MR. KLEIN: Correct.

17 COMMISSIONER CLAYTON: Is that -- is
18 that an equitable power ruling that would be a
19 declaratory judgment in nature?

20 MR. KLEIN: It -- it would be less
21 than -- than purely equitable because, in this
22 case, there are actual facts that the parties
23 have presented. There are actual customers to
24 be affected by the decision.

25 COMMISSIONER CLAYTON: You said there

1 is no traffic, so there are no customers to be
2 affected at this time.

3 MR. KLEIN: There are no existing
4 customers, that's correct.

5 COMMISSIONER CLAYTON: Okay. So this
6 is forward looking declaratory ruling. And I
7 guess my question to you is do we have
8 jurisdiction? Do we have the legal authority
9 to address a forward-looking contractual matter
10 like a Circuit Court would? Does an
11 administrative body have that authority?

12 MR. KLEIN: Yes. Because I -- I
13 don't believe it would be truly equitable in
14 nature in terms of the relief that's been
15 requested. The relief has been to implement
16 the interconnection agreement. The
17 interconnection agreement is in effect.

18 So there's no dispute. There's no
19 theoretical basis to say, well, something's
20 going to happen in the future, we're going to
21 predict what that is. There is an actual
22 interconnection agreement that exists between
23 the parties, and it's a dispute as to how the
24 language of that agreement has to be
25 interpreted.

1 COMMISSIONER CLAYTON: So we're
2 interpreting a contract, which is a declaratory
3 ruling which has a separate rule under Missouri
4 Supreme Court Rules. I guess I just want to
5 make sure this Commission has the legal
6 authority to decide that, write that forward
7 looking right responsibility as a Circuit Court
8 would in a contractual matter.

9 MR. KLEIN: Yes. I think it would be
10 analogous to an interconnection arbitration
11 under Section 252. This Commission has those
12 all the time.

13 COMMISSIONER CLAYTON: Those are
14 specific -- those are specific statutory
15 provisions for -- for setting up that type of
16 action. There's no specific statutory
17 authorization for this Commission to take up
18 such a matter, is there?

19 I -- this is a new issue. It wasn't
20 raised by any of the parties, and I don't
21 expect you to come up with a case that would
22 cite our authority to do that. But it may be
23 something that we want to consider.

24 Do you have any -- do you have any other
25 rules or specific provisions you want to cite

1 before I go to the -- before I go to
2 CenturyTel?

3 MR. KLEIN: Yes, Commissioner. The
4 FCC arbitration that was referenced involving
5 World Com, AT&T and Verizon Virginia is at CC
6 Docket Nos. 00-218, 00-249 and 00-251. The
7 order was issued July 17th, 2002.

8 COMMISSIONER CLAYTON: And what are
9 those? Those are FCC orders?

10 MR. KLEIN: That is the FCC order on
11 interconnection agreement arbitration.

12 COMMISSIONER CLAYTON: And do you
13 have page numbers for -- for the language that
14 you're referring to? I really wasn't looking
15 for just like a -- a bibliography or a case
16 list. I was looking for specific references.

17 MR. KLEIN: I do have -- they are set
18 forth in the brief that we filed in the case on
19 November 4th, 2005. That particular citation
20 is at Footnote 12. And I believe the paragraph
21 citations are contained in the brief here.

22 COMMISSIONER CLAYTON: Okay.

23 MR. KLEIN: As far as the
24 interconnection agreement citations, generally,
25 what we've cited to is page 54 of the

1 interconnection agreement, but I know that we
2 have the actual language as well. We obviously
3 would be making reference to the Staff report
4 of the Missouri Public Service Commission that
5 was filed on September 13th, 2005, at page 8.

6 Yes. The interconnection agreement we've
7 cited to as well is page 67 of the parties'
8 interconnection agreement.

9 COMMISSIONER CLAYTON: Mr. Klein,
10 I'll give you -- if you want to supplement that
11 at a later time, just to keep things moving.
12 What I was looking for were some specific
13 references to the -- to the law that would
14 support your position so I can try to zero in
15 on -- on the particular law. So if you want to
16 supplement that, feel free at any time. Mr. --

17 MR. KLEIN: Okay.

18 MR. COMLEY: Commissioner Clayton.

19 COMMISSIONER CLAYTON: Yes.

20 MR. COMLEY: Respecting the question
21 about the Commission's jurisdiction, I think --
22 this has been filed as a complaint for
23 violating the terms of the interconnection
24 agreement which the parties were ordered to --
25 to abide by. The denial of the interconnection

1 is the root of the dispute. And I think that
2 simply because there is no traffic right now,
3 it's because there's been no realistic
4 interconnection.

5 I would think that we're not asking for a
6 declaration. We're asking to say that there
7 has been an offense to the agreement, the
8 parties are now ordered to abide by it. And we
9 think that CenturyTel is the one violation the
10 terms of the agreement. So it's not in terms
11 of a declaratory judgment or any kind of
12 equitable decree. It is, Go ahead. You have
13 violated our order. Please cure your violation
14 by abiding by its terms, and here are the
15 terms.

16 COMMISSIONER CLAYTON: Okay. I'm
17 sorry. Mr. Dority, are you --

18 MR. DORITY: Yes. Mr. Simshaw --

19 COMMISSIONER CLAYTON: Mr. Simshaw,
20 just -- if you could give me just the -- the --
21 say, the top three or four citations for --
22 that support CenturyTel's position in this
23 case.

24 MR. SIMSHAW: Yes, Commissioner. The
25 251(c) of the '96 Act defines what is subject

1 to the local interconnection agreement. The
2 local interconnection agreement is a creature
3 of 251.

4 I cited in my opening remarks the section
5 that requires -- or defines that it is
6 telephone exchange service that -- that is to
7 be exchanged. That is defined further in the
8 Act in the Definitions section as traffic that
9 is originated and terminated within an exchange
10 or within a group of exchanges encompassing an
11 exchange area.

12 It's kind of a -- a different way, I
13 think, of saying local traffic. The primary
14 citation I would like to direct the
15 Commissioner to because this -- it directly
16 affects the interpretation of the FCC's ISP
17 remand order, which is what FullTel is relying
18 on as saying, This traffic in dispute is ISP
19 traffic.

20 Well, it's not ISP bound traffic as the
21 FCC defined it in the ISP remand order. In
22 that Order, in proceedings, the FCC was making
23 a determination that some traffic that had up
24 to that point been determined to be local --
25 and -- and remember that the FCC all along has

1 had two regimes for interconnection. There's
2 the access regime for interexchange traffic,
3 and there's the 251(c) local interconnection
4 agreements for local traffic.

5 The FCC in that proceeding had determined
6 that there were a lot of games being played, a
7 lot of one-way traffic, a lot of arbitrage with
8 regard to ISP traffic. So they stepped in, and
9 they said, With regard to the local traffic
10 that is ISP traffic, we're going to set up some
11 special compensation rules.

12 COMMISSIONER CLAYTON: So those rules
13 are an FCC order?

14 MR. SIMSHAW: That's the FCC's ISP
15 remand order.

16 COMMISSIONER CLAYTON: Okay.

17 MR. SIMSHAW: Now, that was reviewed
18 by the Court, as Mr. Klein mentioned. And if
19 you will go to the review of the -- the Court's
20 language in reviewing that order, they
21 specifically state that what the FCC was
22 addressing was ISP bound traffic where the --
23 where the caller making the call and the ISP
24 are located in the same local calling area.
25 And that reviewing court citation is World Com

1 versus FCC.

2 COMMISSIONER CLAYTON: And that's on
3 page 11 of your brief. I've got that right in
4 front of me.

5 MR. SIMSHAW: Okay. It is.

6 COMMISSIONER CLAYTON: So -- so do
7 you -- does CenturyTel believe this traffic is
8 local, that it interexchange, or that it is ISP
9 traffic?

10 MR. SIMSHAW: It is interexchange.
11 It's not ISP as defined -- ISP bound as defined
12 in the ISP remand order.

13 COMMISSIONER CLAYTON: Because it
14 doesn't terminate within -- it doesn't
15 terminate within the local calling area?

16 MR. SIMSHAW: Right. I can't deny
17 that it is traffic that is destined to go to an
18 ISP. But -- but ISP bound traffic is a term of
19 art.

20 COMMISSIONER CLAYTON: It is defined
21 by -- it has to terminate within the local
22 calling area --

23 MR. SIMSHAW: Right.

24 COMMISSIONER CLAYTON: -- correct?

25 MR. SIMSHAW: Right.

1 COMMISSIONER CLAYTON: Now, right
2 now, I guess -- or -- how does the phone call
3 physically get -- how does the phone call
4 physically get to Oklahoma City, which is --
5 was referenced? I know there is an affidavit
6 filed.

7 How does -- and this may be a factual
8 question that I'm jumping to. But -- maybe I
9 should wait on that.

10 MR. SIMSHAW: I can address it if
11 you'd like.

12 COMMISSIONER CLAYTON: Well, if you
13 can address it briefly because it is a -- it's
14 a fact.

15 MR. SIMSHAW: It's a CenturyTel
16 customer, and there were four local exchanges
17 that FullTel was interested in. And by the
18 way, this -- this complaint was specific. I
19 mean, it's part of the -- the process that that
20 -- that when a carrier approaches CenturyTel,
21 we must determine the nature of their traffic
22 that they're requesting to interconnect because
23 it has to be determined whether it's
24 interexchange. And we'll do it out of our
25 access tariff. Or whether it's local, and we

1 -- and we'd be doing it out of a local
2 interconnection agreement if there's one in
3 place and if it covers the traffic.

4 So this complaint stems from FullTel
5 approaching CenturyTel with some specific -- a
6 specific customer and some specific traffic in
7 mind. Okay.

8 As described to CenturyTel, the traffic,
9 as we understand it, would -- would originate,
10 let's say, in Ava, Missouri, which is a
11 CenturyTel exchange, one of them that FullTel
12 was interested in.

13 This traffic would -- would -- would
14 originate when that customer dials a particular
15 phone number. And let me back up one step.
16 That phone number would be a phone number that
17 FullTel has assigned to the ISP located in
18 Oklahoma City. So even though the ISP is in
19 Oklahoma City, they're going to assign an Ava,
20 Missouri, telephone number, and they're going
21 to do it for a whole lot of other exchanges.

22 But for purposes of my example, they will
23 assign an Ava, Missouri, telephone number to
24 the ISP in Oklahoma City. They'll have to take
25 out a thousand block that they've got for that

1 particular exchange. So the CenturyTel
2 customer has their computer modem dial that
3 number. The call -- obviously, there has to be
4 a physical link between that customer and Ava
5 and the ISP in Oklahoma City. So you're right
6 there.

7 COMMISSIONER CLAYTON: Are there two
8 issues? Is there one issue of getting the
9 phone call from Ava to Branson and then a
10 second issue of the phone call moving from
11 Branson to Oklahoma City?

12 MR. SIMSHAW: Yes. Because I don't
13 think there is a compensation issue associated
14 with the second part. They're very definitely
15 is with the first part.

16 COMMISSIONER CLAYTON: So we're just
17 focusing in on the Ava to Branson transport of
18 that phone call, whatever --

19 MR. SIMSHAW: Who pays for that.

20 COMMISSIONER CLAYTON: Who pays for
21 that phone call.

22 MR. SIMSHAW: Who pays for that
23 particular transport, yes, of that phone call.

24 COMMISSIONER CLAYTON: Okay. Do you
25 all believe the question is moot in this

1 complaint? And do you believe we have the
2 ability to make a declaratory ruling looking
3 forward, if that, indeed is what it is. I know
4 it's contested whether that's the case.

5 MR. SIMSHAW: Well, I -- I do believe
6 it is mooted because the facts have gone away.
7 I mean, FullTel -- in order to trigger the --
8 the local interconnection agreement must
9 approach CenturyTel and say, Okay, I'm ready to
10 connect for this particular traffic.

11 There is no this particular traffic
12 anymore. CenturyTel has from the beginning
13 indicated that, We'll interconnect under our
14 access tariff to the extent you want to take
15 traffic out of our service territory and out of
16 our local calling areas, you know, elsewhere.

17 We do that every day with the IXCs, AT&T
18 MCI. All the long distance carriers come to us
19 every day out of our access tariff, and that's
20 what they get. They get traffic that uses our
21 facility to get to Branson, which is the access
22 tandem and then to -- then be handed off to an
23 IXC who takes it anywhere in the world that it
24 needs to go. That's in place today.
25 Fulltel could have that simply by paying an

1 access service request right out of the tariff
2 just like the other IXC's. There are calls
3 today that are going from Ava to Oklahoma City,
4 and they are using those same facilities, and
5 they are paying for the use of those facilities
6 out of the access tariff.

7 COMMISSIONER CLAYTON: How does --

8 MR. SIMSHAW: So --

9 COMMISSIONER CLAYTON: How is the
10 traffic characterized going from Branson to
11 Oklahoma City if there's no dispute there? Is
12 it ISP traffic? Is it interexchange?

13 MR. SIMSHAW: It's interexchange
14 traffic being carried by an interexchange
15 carrier. That's on their own facilities. So
16 that's why there's no compensation.

17 COMMISSIONER CLAYTON: Okay.

18 MR. SIMSHAW: Much like AT&T
19 carriers.

20 COMMISSIONER CLAYTON: Some of us
21 don't speak this language on a daily basis.

22 MR. SIMSHAW: I understand. I
23 understand.

24 COMMISSIONER CLAYTON: So --

25 MR. KLEIN: Commissioner, if I may

1 just follow up to say that the traffic at issue
2 here is interexchange is absolutely absurd.
3 The whole point of the FCC's ISP remand order
4 was to resolve this very question. Four and a
5 half years ago, five years ago almost this
6 question was resolved.

7 COMMISSIONER CLAYTON: And that's the
8 MCI the World Com case?

9 MR. KLEIN: That was the actual ISP
10 remand order where the FCC specifically said,
11 Let's have a docket, let's decide how ISP bound
12 traffic has to be handled.

13 The reason why the FCC took jurisdiction
14 over this traffic is because the FCC said it
15 was not local and it was not interexchange.
16 And it's something the FCC has exclusive
17 jurisdiction over.

18 The FCC exclusively said, We need to
19 resolve how this traffic is going to be handled
20 because it very often does terminate outside of
21 a local calling area. If it was local traffic,
22 there would be no need for a specific rule
23 because it would just be reciprocal
24 compensation traffic.

25 COMMISSIONER CLAYTON: Where is

1 the specific language from the ISP remand order
2 in your brief? Could you help me find that
3 real quick?

4 MR. SIMSHAW: Your Honor, CenturyTel
5 has language. I --

6 MR. KLEIN: Commissioner, it will
7 probably take a minute to find that specific
8 cite, but it's really --

9 COMMISSIONER CLAYTON: If you could
10 find that citation, I want to ask one other
11 question of the party.

12 MR. KLEIN: Okay.

13 COMMISSIONER CLAYTON: What is
14 Staff's role here? Staff? Is Staff -- I
15 really want to establish whether Staff's a
16 party or not. And does Staff take a position?

17 MR. HAAS: We have not taken a
18 position to this point. But I can set forth
19 one.

20 COMMISSIONER CLAYTON: I'm not
21 necessarily -- I guess if your role is
22 advisory, does it need to be advisory on the
23 record or off the record or --

24 MR. HAAS: I would think that it
25 would need to be on the record since we have

1 not been -- there's has not been any order
2 setting -- setting us up as advisory staff.

3 COMMISSIONER CLAYTON: Does anyone
4 have a position on Staff's position? Mr.
5 Klein, did you have something? I didn't want
6 to --

7 MR. KLEIN: Yes, Commissioner. We
8 -- at Footnote 34 of the brief in support of
9 the enforcement of the interconnection
10 obligations, we do cite FCC Internet order,
11 paragraphs 1 through 8 --

12 COMMISSIONER CLAYTON: Okay.

13 MR. KLEIN: -- and paragraph 14 in
14 Footnote 6. And that order also addresses, as
15 we note there, CenturyTel's contention that FCC
16 Rule 51.305(b) bears on this issue, the very
17 rule that CenturyTel keeps referring to was
18 designed to prevent IXCs from coming in and
19 using the interconnection components of the Act
20 to avoid access.

21 This is not access bypass. I think
22 CenturyTel knows that. What they're trying to
23 do is shoehorn this type of traffic into that
24 rule, which prohibits true IXCs from coming in
25 and seeking access bypass. So that -- you

1 know, that is just really nothing more than a
2 red herring here.

3 The FCC, as we note, did -- did -- did
4 explain that. I did also find the section of
5 the interconnection agreement that defines the
6 traffic at issue and the obligations of the
7 parties.

8 COMMISSIONER CLAYTON: Uh-huh.

9 MR. KLEIN: In the interconnection
10 agreement, reciprocal compensation traffic is
11 defined at Section 2.83 of the glossary. ISP
12 bound traffic in caps -- capital letters
13 defined term is defined by both Section 2.54
14 and 2.42 of the interconnection agreement,
15 again, in the glossary section referencing the
16 fact that Internet -- that ISP bound traffic
17 will be as defined by the FCC in the Internet
18 order.

19 The agreement then, as we noted, goes on
20 to provide that each party, the originating
21 party at its own expense shall provide for the
22 delivery to a relevant IP, which is
23 interconnection point, of the other party, the
24 receiving party, reciprocal compensation
25 traffic and ISP bound traffic.

1 Then it goes on to further state that ISP
2 bound traffic shall be governed by the terms of
3 the FCC Internet order other applicable FCC
4 orders.

5 COMMISSIONER CLAYTON: So the
6 definition of ISP traffic as defined in the ISP
7 remand order, and that's the definition we
8 should look to. So your -- your I -- this ISP
9 traffic has to meet that definition to be -- to
10 fit under the interconnection agreement.
11 That's what this Commission would have to find
12 to sustain your complaint?

13 MR. KLEIN: Yes. That is what
14 defined the parties' obligations under the
15 agreement. There is no definition of local
16 traffic in the interconnection agreement.

17 COMMISSIONER CLAYTON: We're talking
18 about ISP traffic --

19 MR. KLEIN: Right.

20 COMMISSIONER CLAYTON: -- correct?
21 We're not defining local traffic. We're not
22 defining interconnection -- or interexchange
23 traffic. We're -- we have to determine whether
24 the traffic identified in this complaint meets
25 the definition of ISP traffic in the ISP remand

1 order?

2 MR. KLEIN: Correct. Because if --
3 if it -- if the -- definition was as counsel
4 for CenturyTel says it is, the FCC never would
5 have had the jurisdiction to resolve this. If
6 all it was saying was it had to be local to be
7 ISP, that would be a decision for you all and
8 the FCC would have no jurisdiction if it was
9 purely intrastate local traffic.

10 The very fact that they had the decision
11 to make means that it is interexchange.
12 Otherwise, it's not local traffic. It's ISP
13 bound traffic that does cross exchanges.
14 That's the fundamental nature of ISP bound
15 traffic, and that's what the FCC held.

16 COMMISSIONER CLAYTON: If Washington
17 had its way, we wouldn't make any of those
18 decisions. Okay. So I -- I'm done. Thank
19 you.

20 JUDGE JONES: Commissioner Gaw, did
21 you have any questions?

22 COMMISSIONER GAW: No.

23 JUDGE JONES: Commissioner Murray?

24 COMMISSIONER MURRAY: I think I'll
25 wait. Thank you.

1 JUDGE JONES: Okay. At this time,
2 we'll take a witness for FullTel.

3 MR. KLEIN: FullTel calls Mr. Roger
4 Baresel.

5 JUDGE JONES: Mr. Baresel, will you
6 please raise your right hand?

7 ROGER BARESEL,
8 being first duly sworn to testify the truth, the whole
9 truth, and nothing but the truth, testified as follows:

10 JUDGE JONES: Thank you. You may be
11 seated.

12 MR. KLEIN: Judge, do you want us to
13 present the witness before your questioning?

14 JUDGE JONES: I'll go ahead and ask
15 the one question. Mr. Baresel, does -- does
16 FullTel intend to provide any traffic other
17 than ISP bound traffic through this
18 interconnection agreement with CenturyTel?

19 MR. BARESEL: Yes, we do.

20 JUDGE JONES: What other type of
21 traffic do you intend to transit?

22 MR. BARESEL: What we explained to
23 CenturyTel was that, initially, it would be ISP
24 bound traffic, but that as soon as possible
25 thereafter, we would establish the ability to

1 deliver advanced high speed data and voice
2 service to local customers in that area.

3 Specifically, we've designed a product
4 that allows us to deliver Internet as well as
5 local dial tone and long distance over a T-1
6 local loop utilizing specialized equipment. We
7 provide efficiencies for paying with
8 utilization for the customer.

9 JUDGE JONES: Thank you. You may
10 proceed with your witness, FullTel.

11 DIRECT EXAMINATION

12 BY MR. KLEIN:

13 Q Roger, approximately how long have you been
14 attempting to interconnect with CenturyTel?

15 A It seems like forever. But I believe we
16 started the process in the summer of 2004.

17 Q Okay. What was the first step in that process?

18 A The first step in the process -- well, to back
19 up a little bit, we were at a national
20 conference, and we were approached by a local
21 ISP servicing that area of Missouri.

22 In our conversations with them, they
23 expressed a great deal of dissatisfaction with
24 the state of the competitive environment in
25 that part of Missouri. CenturyTel is and was

1 their supplier. They were very unhappy with
2 the quality of service as well as the pricing
3 of the service.

4 They were very excited about what we were
5 doing in Oklahoma, and they encouraged us to
6 come to southwest Missouri to provide service,
7 a competitive service to that area of Missouri.

8 At that time, we identified local counsel.
9 We retained local counsel. We obtained our
10 Certificate of Convenience to provide service
11 in Missouri and notified CenturyTel that we
12 intended to interconnect and bring a
13 competitive service to that part of Missouri.

14 Q What happened when you -- after you obtained
15 your certificate to operate as a local carrier
16 and adopted an interconnection agreement? You
17 notified CenturyTel, I imagine, of your
18 decision on which agreement to adopt?

19 A We did. They were -- to put it politely, they
20 were not particularly helpful in the adoption
21 process. They fought us every step of the way.
22 They've made it an extremely difficult process.

23 MR. DORITY: Your Honor, excuse me.
24 I'm going to have to object to this line of
25 questioning. We're not here to relitigate the

1 adoption case, and I would object to this line
2 of questioning. I thought we were here to try
3 to identify what traffic is going to be
4 exchanged.

5 MR. KLEIN: Well, we think it would
6 be beneficial to yourself and to the
7 Commissioners to have the background of this
8 proceeding. The background does involve the
9 adoption of the agreement because while
10 CenturyTel may now say they'll adhere to the
11 agreement, they fought the adoption of the
12 agreement repeatedly.

13 JUDGE JONES: But we have that
14 benefit in the file. You realize that, don't
15 you?

16 MR. KLEIN: Yes, I do. We can move
17 forward if you --

18 JUDGE JONES: Thank you.

19 MR. KLEIN: Certainly.

20 Q (By Mr. Klein) Fast forwarding a couple of
21 years, you then -- did FullTel attempt to
22 interconnect with CenturyTel?

23 A We did.

24 Q Okay. And how was that initiated?

25 A We identified what we believed was the

1 appropriate contact within CenturyTel, Susan
2 Smith. We notified her of our desire to
3 interconnect, requested a conference call. And
4 approximately two months later, that conference
5 call took place.

6 At that conference call, CenturyTel raised
7 the objections that they've raised in that
8 hearing, that they were not willing to
9 interconnect with us due to the nature of our
10 traffic.

11 Q What was the method of interconnection that you
12 had proposed?

13 A We had proposed interconnection through
14 colocation at the Branson City, Missouri.

15 Q Is it your understanding that colocation is a
16 technically feasible method of interconnection?

17 A Yes.

18 Q Okay. Was your request for a colocation
19 granted or denied by CenturyTel?

20 A Initially, it was denied. They raised a number
21 of issues from lack of space to lack of
22 facilities to lack of desire to interconnect
23 with us.

24 At the present time, we've paid them
25 \$5,000 roughly for the right to locate a DSX

1 panel in 7 inches of rack space in the Branson
2 city, Missouri, CO, which they have denied us
3 the ability to connect our facilities to or to
4 use for any productive purpose to service that
5 area of Missouri.

6 Q So while FullTel was able to finally obtain
7 colocation space, it was unable to actually use
8 that colocation for interconnection?

9 A That's correct.

10 Q Has FullTel been damaged as a result of that?

11 A We have.

12 Q Did FullTel identify what type of traffic and
13 what areas it intended to serve through the
14 interconnection to be established at that point
15 of interconnection?

16 A We did.

17 Q And what was CenturyTel's response once you
18 identified that traffic?

19 A That they were not willing to interconnect with
20 us to service that traffic.

21 Q And we're here because a complaint was then
22 filed by FullTel to request the Commission's
23 assistance in obtaining that interconnection;
24 is that accurate?

25 A Yes. That's correct.

1 Q And was FullTel in -- interested in getting
2 this expeditiously resolved?

3 A Yes, they were.

4 Q And you authorized a motion for expedited
5 treatment?

6 A Yes.

7 Q And that was granted, I imagine?

8 A Yes, it was.

9 Q Okay. Why was it important to have expedited
10 treatment?

11 A As a competitive local exchange carrier, it
12 costs us a great deal of money to open up a new
13 market. In order to do that, it's important to
14 have an economic reason to move quickly.

15 The Missouri ISP that had contacted us
16 requesting that we provide a competitive
17 service in that area of Missouri indicated that
18 if we would do so that -- that they would
19 purchase service from us. They indicated that
20 there was a specific time frame within which
21 that needed to take place. We thought we had
22 more than an adequate amount of time, thinking
23 that surely it couldn't take more than a few
24 months to obtain that interconnection.

25 Ultimately, when we filed the request for

1 assistance from the Commission on an expedited
2 basis, the customer had indicated to us that if
3 we were not in a position to provide them
4 service by the end of the year that they were
5 going to have to cancel the contract and make
6 other arrangements.

7 Q And what year was that?

8 A 2005.

9 Q And has that customer now terminated its
10 contact with FullTel?

11 A They have terminated the contract. We have
12 refunded their deposit.

13 Q Is it still FullTel's intent to compete in
14 southwest Missouri if it obtains relief in this
15 proceeding?

16 A It is.

17 Q And through what manner would you anticipate
18 entering the market?

19 A We believe that it's a two-fold approach.
20 Clearly, the Missouri ISPs are unhappy with the
21 quality of service they are receiving.

22 In addition, we believe that the small and
23 medium-sized businesses are not receiving the
24 type of advanced services that we are
25 interested in providing.

1 Q Your referenced in response to questioning
2 several minutes ago the types of service you
3 would initially provide as well as subsequent
4 services you would seek to provide. Can you
5 elaborate on that, please?

6 A Initially, we provide the -- the service for
7 ISPs, for Missouri ISPs where their customers
8 can access the Internet on a more efficient
9 basis.

10 In addition to that, we provide voice and
11 data services on a converged basis to small and
12 medium-sized businesses. Over a T-1 type local
13 loop, we can provide a very efficient dynamic
14 band width allocation between voice and data,
15 which allows small and medium-sized businesses
16 to more efficiently meet their
17 telecommunications and data needs.

18 Q If you were able to obtain the interconnection
19 you've requested, is it foreseeable that some
20 of the traffic that would flow through the
21 interconnection would terminate within the
22 local calling area from which it originates?

23 A Yes.

24 Q And that some of the traffic would leave the
25 local calling area?

1 A Yes.

2 Q So it's your anticipation it would be both

3 forms of traffic flowing over the

4 interconnection that's been requested?

5 A That's correct.

6 Q Mr. Baresel, you've indicated that you seek to

7 interconnect through a single point of

8 interconnection in the LATA. Is it your --

9 what's your understanding as to whether you are

10 or are not entitled to obtain that single point

11 of interconnection?

12 A We would not have embarked on this adventure if

13 we weren't convinced that the state of existing

14 law was that a single point of interconnection

15 was available to us as a matter of law as well

16 very clearly set forth in the interconnection

17 agreement which we adopted.

18 Q What has CenturyTel proposed in return to

19 FullTel's notification that it did intend to

20 deploy a single point of interconnection?

21 A They've indicated that they are not willing to

22 allow us to interconnect on that basis, and

23 they have requested that we interconnect on the

24 basis of multiple points of interconnection in

25 every city where we intend to provide service.

1 Q So, for example, you've identified four cities
2 in which you plan to provide service. Has
3 CenturyTel insisted that you interconnect at
4 each of those four separate points?

5 A Yes.

6 Q Is that feasible from either operation or
7 fiscal point of view?

8 A What CenturyTel has done has attempted at every
9 stage to make this process so expensive or so
10 counter-productive that it eliminates any type
11 of economic advantage for us to compete with
12 them in this market.

13 So in answer to your question, very
14 clearly, if they force us to interconnect on
15 that basis, it eliminates our ability to
16 provide a competitive service to those Missouri
17 residents.

18 Q If FullTel was forced to interconnect at each
19 end office, would it be able to enter the
20 southwestern Missouri market?

21 A Economically, no.

22 Q Mr. Baresel, is there anything else that you'd
23 like to explain to the Commission?

24 MR. DORITY: I'd object to that, your
25 Honor. This is direct examination.

1 customer. In fact, I think you say -- well,
2 did you identify any local customers that would
3 be generating local traffic?

4 A Until we're interconnected and in a position to
5 offer service, we cannot obtain customers.

6 Q Following up on one of your last statements,
7 did CenturyTel offer to FullTel to exchange
8 this very traffic, this ISP bound traffic with
9 virtual NXX under terms of an agreement similar
10 to the one executed with MCI?

11 A In the course of attempting to settle the issue
12 with CenturyTel, CenturyTel did propose a -- a
13 settlement basis which would have been
14 economically unproductive. And I believe it
15 was related to MCI.

16 Q Okay. And in that settlement, didn't MCI agree
17 to have a point of presence in each local
18 calling area?

19 A I'm not familiar with how MCI has structured
20 their network.

21 Q Mr. Baresel, going back to the -- the ISP
22 customer that you identified and -- what
23 telephone numbers would you assign to that
24 customer?

25 A We would assign FullTel telephone numbers that

1 would be local to the cities where they wanted
2 to provide service to their customers in.

3 Q Okay. So you would -- you would give them Ava
4 telephone numbers?

5 A That's correct.

6 Q Out of a thousand block assigned to Ava?

7 A Yes.

8 Q And, also, you would give them Gainesville
9 numbers?

10 A Yes.

11 Q And Willow Creek and -- Willow Springs. I'm
12 sorry. Willow Springs and Mansfield as well?

13 A That's correct.

14 Q So each of those would involve a thousand block
15 of numbers?

16 A Yes.

17 Q Would you also give -- consider giving them
18 numbers for other exchanges in Missouri?

19 A Within the LATA serviced by that point of
20 interconnection, if they requested them, we
21 would consider it, yes.

22 Q Wouldn't you conserve a lot of number resources
23 if instead you gave them an 800 number?

24 MR. KLEIN: I'll object, your Honor.

25 I mean, this is irrelevant to the matter before

1 the Commission, and it was not covered in
2 direct at all. I'm not sure where counsel is
3 going with this line of questioning about
4 numbering.

5 JUDGE JONES: Counselor?

6 MR. SIMSHAW: Well, your Honor, I --
7 the complaint is based upon particular set of
8 traffic. It is virtual NXX traffic, which is
9 very dependent on the assignment of numbers.
10 That's where I'm going with this. It's the
11 assignment of numbers which creates the virtual
12 NXX which creates the original traffic. In any
13 event, I'll get off of numbers.

14 JUDGE JONES: So do you withdraw the
15 question?

16 MR. SIMSHAW: No. I guess I -- no.
17 I'm just informing your Honor that that's the
18 last question I'll have in that area.

19 JUDGE JONES: I'll allow the answer.
20 Objection overruled.

21 A If we used one phone number instead of many,
22 yes, that would mean we used fewer numbers.

23 Q (By Mr. Simshaw) Where would you deliver --
24 deliver the traffic to that customer?

25 A We would take the traffic from our point of

1 interconnection with CenturyTel in Branson
2 City, Missouri, and transport that traffic back
3 to Oklahoma City on our switch and on our
4 facilities at our cost.

5 That traffic, to the extent it was ISP
6 bound traffic, we would then aggregate that
7 traffic and route it to the Internet from
8 Oklahoma City.

9 Q Well, those are calls to a particular telephone
10 number. Where would you deliver that traffic
11 to that customer? It's -- it's a -- it's not
12 an Internet -- I mean, it's -- I apologize.
13 I'll leave it at that.

14 Where would you deliver that call to that
15 particular customer that had that telephone
16 number?

17 A I'm -- I'm not sure I follow your question.

18 Q Okay. Let -- let me go at it a little bit
19 differently. We've established that the call
20 would originate on CenturyTel facilities.
21 Let's use Ava again as an example.

22 It would eventually go from Ava to
23 Branson, would be handed off so that it would
24 leave CenturyTel facilities and go on to
25 FullTel facilities at Branson. What I'm asking

1 is at what point would it leave FullTel
2 facilities and go on to the customer's
3 facilities?

4 A The customer in your question, is that the ISP
5 in Missouri, or is that your customer that's
6 making the phone call?

7 Q I'm talking about your -- FullTel's customer,
8 the one that you gave the telephone number to,
9 the one that you are charging for your service.

10 A We're charging an ISP in Missouri to terminate
11 calls from CenturyTel customers to that ISP.
12 Those calls originate in -- for your example,
13 in Ava.

14 They're turned onto our network in Branson
15 City, Missouri. We pay to transport them back
16 to Oklahoma City. And as I indicated, at that
17 point, they're aggregated and routed to the
18 Internet.

19 Q And what point do they leave the FullTel
20 facilities and go on to your ISP customers
21 facilities? Where?

22 A The ISP customer is contracting with FullTel
23 for FullTel to provide those facilities to
24 them.

25 Q I'm sorry. I may not be making myself clear.

1 Physically, geographically, where do they leave
2 the FullTel facilities and go on to the ISP
3 customer's facilities?

4 A Once again, FullTel is providing those
5 facilities to the ISP in Missouri. So I -- I
6 guess I just don't understand your question. I
7 apologize.

8 Q Where in Missouri does that happen? Where does
9 it leave the FullTel facility and go on to the
10 customer's facilities?

11 A Once again, I'm not sure it ever does. It -- I
12 think we've all been very clear, the call
13 originates with a CenturyTel customer in Ava.
14 CenturyTel transports to the POI in Branson
15 City, Missouri.

16 We transfer it, transport it to Oklahoma
17 City on our switch. We aggregate it. We send
18 it out to the Internet from there.

19 Q Are you saying that you provide a service to a
20 customer but you never deliver traffic to the
21 customer?

22 A I just described the service that I provide to
23 the customer. I'm -- I'm not sure I understand
24 your question.

25 Q Do you deliver traffic -- you gave this

1 customer a telephone number. Do you deliver
2 them traffic when people call that telephone
3 number?

4 A When people call that telephone number, the
5 traffic is delivered, as we've described, to
6 our switch in Oklahoma City. And from there,
7 it's routed to the Internet. The ISP customer
8 in Missouri is paying us for that end-to-end
9 service.

10 Q So who did you give the telephone phone number
11 to? The Internet?

12 A We -- once again, I -- I apologize for being
13 dense. We give the Missouri ISP's customers
14 the right to call that telephone number.

15 And when they call that telephone number,
16 the calls are delivered by CenturyTel to the
17 SPOI in Branson city, Missouri. It's
18 transported from there to our switch in
19 Oklahoma City. It's aggregated and sent to the
20 Internet at that point.

21 Q So it never goes on to the customer's
22 facilities?

23 A Once again, I -- I guess I'm failing to see
24 your distinction.

25 Q Well, I'll have to apologize. Maybe I'm a

1 little bit too old school. But what I'm trying
2 to get at is telephone numbers are assigned to
3 customers. That allows others on the public
4 switch telephone network to call that telephone
5 number and communicate with that customer. And
6 when there is a local exchange carrier, which I
7 believe FullTel holds itself out to be, signs
8 up customers. There is a service point or
9 point of service where calls to that customer
10 will be delivered and calls from that customer
11 will be picked up. Where is your service point
12 with your customer?

13 A As you describe it, I would -- I would say
14 Branson City, Missouri.

15 Q So at Branson City, the traffic goes off of
16 FullTel's facilities and onto the facilities of
17 the IP -- of the ISP customer?

18 A Once again, the ISP customer in this example,
19 this particular customer who incidentally is
20 not the only customer in Missouri or the only
21 type of traffic we intend to change under this
22 interconnection agreement, but this ISP
23 customer has contracted with FullTel to provide
24 a complete end-to-end solution. So that
25 customer has no facilities as -- as I

1 understand the term.

2 Q Let me simplify it to this point, then. At
3 what point does the traffic leave FullTel's
4 facilities? Where?

5 A As I thought I said every time, you know, in
6 Oklahoma City.

7 Q Okay. So it's a call from Ava, Missouri, to
8 Oklahoma City?

9 MR. KLEIN: Judge, I have to object.
10 I think this has been asked and answered.

11 JUDGE JONES: Objection sustained. I
12 don't know if it's been answered, but -- I
13 don't even know if it's been asked properly.
14 But I certainly don't want to hear anymore
15 about it.

16 Q (By Mr. Simshaw) Concerning whatever FullTel
17 would charge this ISP customer for that
18 service, what tariff would that come out of?

19 A I'm not an attorney, so I'd have to -- it would
20 be whatever our attorneys advised us needed to
21 be done.

22 Q Well, FullTel is a Certificated Local Exchange
23 Carrier in Missouri?

24 A Yes.

25 Q So I take it you have not filed a tariff to

1 this point?

2 A That's correct.

3 Q This ISP that you've been referring to that
4 approached you, I think you also refer to them
5 as a Missouri base. Do they have modems or
6 routers, equipment in -- in place within
7 CenturyTel's service territory?

8 A I believe they do. Yes.

9 Q After you would begin providing service to them
10 -- or after FullTel would begin providing
11 service to them at Oklahoma City, would they
12 still maintain that equipment in Missouri?

13 A Some of it, they might. A great deal of their
14 infrastructure could be eliminated as a result
15 of us providing this service.

16 Q I assume you mean eliminated because the
17 function now occurs in Oklahoma?

18 A Yes.

19 Q Do you recall writing a letter to Susan Smith
20 on -- dated June 7 that has been attached to
21 the Joint Stipulation of Facts?

22 A With assistance of counsel, we sent several
23 letters to Susan Smith, and that date sounds
24 consistent with my recollection. Yes.

25 Q I'm going to read to you one particular passage

1 and ask you a couple of questions about it.
2 It's located on the second page. It says,
3 CenturyTel must interconnect with FullTel and
4 bring traffic originating from CenturyTel
5 customers the service for which CenturyTel
6 bills its customers to the point of
7 interconnection.

8 I interpret this to mean that it is your
9 position that CenturyTel must, as it says,
10 bring that traffic that originates from
11 CenturyTel customers when they dial your ISP
12 customer to the point of interconnection in
13 Branson; is that correct?

14 A Yes.

15 Q And then you're also saying that that is the
16 service for which CenturyTel bills its
17 customers. So are you saying that hauling that
18 traffic from Ava, for instance, to Branson is a
19 service that CenturyTel bills its customer for?

20 A It's my understanding that each of us is
21 responsible for the cost of transporting
22 traffic of our customers that originates on our
23 network to our point of interconnection,
24 irregardless of the physical location of that
25 point of interconnection.

1 Q But, Mr. Baresel, I'm not asking about cost
2 responsibility. I'm asking about what
3 CenturyTel charges to its customers because you
4 have said that's the service for which
5 CenturyTel bills its customers. What billing
6 are you referring to?

7 A I'm referring to the fact that CenturyTel
8 provides telephone service to that customer and
9 charges that customer to de -- for that service
10 and to deliver those calls wherever they go.

11 Q Okay. So you're talking about the flat monthly
12 rate for local service?

13 A I'm not 100 percent familiar with how
14 CenturyTel bills its customers. I was speaking
15 in terms of general principles. And the
16 general principle, as I understand it, as a
17 businessman is that each of us is responsible
18 for the cost of the traffic that originates on
19 our networks from our customers and the cost of
20 transporting it to our point of
21 interconnection.

22 Q Well, these are calls from Ava that leave the
23 calling area and go at least as far as Branson
24 and it looks like they go to Oklahoma City.
25 Are you suggesting that CenturyTel recover

1 those costs in their local rates?

2 A I wouldn't presume to tell CenturyTel how to
3 recover their costs or run their business.

4 Q But as a businessman, you would agree that if
5 there's costs, you probably need to try and
6 recover them somewhere?

7 A I believe that, as a businessman, I should
8 adhere to the terms of the contract that I
9 enter into, that I should follow the law that
10 regulates my business, and I should attempt to
11 make a profit while doing both of those things.

12 Q Well, if I go to CenturyTel -- if an Ava
13 customer goes to CenturyTel's tariff and looks
14 at the local service tariff, are they going to
15 conclude that, wow, you know, as long as I pay
16 my local monthly rate I can call Branson? I
17 can call Oklahoma City? Or can they just make
18 their local calls within the local calling
19 area?

20 A I have no idea what they would conclude, sir.

21 Q Well, you concluded that CenturyTel was billing
22 its customers for this service. What were you
23 basing that statement on?

24 A I was basing that statement on my general
25 understanding that each of us is responsible

1 for the cost of transporting our customers
2 calls to our point of interconnection.

3 Q Give me one possibility of a way that
4 CenturyTel could bill for that service.

5 A I have no idea how CenturyTel could, would or
6 should bill for that service.

7 Q Would FullTel or its ISP customer have a
8 problem if CenturyTel started billing those
9 specific Ava customers who make those calls and
10 measure charge?

11 A There's very little that CenturyTel has done to
12 this point that FullTel and that ISP customer
13 haven't found objectionable. So it would
14 hardly surprise me that were we to move forward
15 with this interconnection that CenturyTel would
16 find yet another way to prevent competition
17 from coming to that part of Missouri.

18 Q But you've -- you've implied, have you not,
19 that it is CenturyTel's obligation to carry it
20 from Ava to Branson and they're billing for it?

21 MR. KLEIN: Judge, again, asked and
22 answered several times. I'd have to object.

23 MR. SIMSHAW: I'll withdraw the
24 question.

25 JUDGE JONES: Thank you.

1 Q (By Mr. Simshaw) Would FullTel generate
2 additional revenues once traffic started
3 flowing from Ava to Branson to be picked up by
4 FullTel?

5 A Yes.

6 Q Would CenturyTel generate additional revenues
7 once this traffic begins to be carried from Ava
8 to Branson?

9 A I believe the nature of competition is such
10 that the ILEC does not generate additional
11 revenues when competition comes into their
12 area.

13 Q Would CenturyTel experience additional costs
14 for the facility in the capacity from Ava to
15 Branson when this traffic begins to flow?

16 A I suspect that CenturyTel's answer will be
17 different than mine. I do not believe that
18 CenturyTel will incur any type of additional
19 significant costs from transporting this
20 traffic.

21 Even if CenturyTel were to generate
22 additional costs from transporting this
23 traffic, that's a policy decision. That's a
24 matter of law that's been decided by the FCC.
25 It's been decided by this Commission. It's

1 been decided by the policymakers.

2 It -- whether or not CenturyTel loses
3 business as a result of competition or has
4 increased costs as a result of increased
5 competition is -- is irrelevant. That's --
6 that's already been determined.

7 The issue is should CenturyTel abide by
8 the agreement that this Commission approved.
9 And we're requesting the Commission's
10 assistance in making that happen.

11 Q Well, since you've rendered opinions as to what
12 the law says and what the agreement says, how
13 -- how do you respond to the fact that the
14 adoption letter that is part of the agreement
15 states that it only covers services provided
16 within CenturyTel's service territory?

17 MR. KLEIN: Judge, I'm going to
18 object. I don't know what adoption letter
19 counsel is referring to.

20 MR. SIMSHAW: It's a matter of public
21 record, your Honor. It's seriatim page 3 of
22 the agreement.

23 JUDGE JONES: Isn't it the letter
24 that adopts the agreement that's being adopted?

25 MR. KLEIN: It's not actually, Judge.

1 That's what -- that's where the confusion is.
2 CenturyTel never agreed to let FullTel adopt
3 this agreement, so there is no adoption letter.

4 JUDGE JONES: So your objection --
5 you're objecting because you don't know what
6 he's talking about?

7 MR. KLEIN: Correct.

8 JUDGE JONES: Objection overruled.

9 MR. KLEIN: Could -- could I ask that
10 he at least identify -- present to --

11 MR. SIMSHAW: I can read the language
12 if that would help.

13 MR. KLEIN: Can you provide a copy of
14 it? I --

15 MR. SIMSHAW: It's part of the
16 agreement. But I suppose we could.

17 MR. COMLEY: What page of the
18 agreement?

19 MR. SIMSHAW: Seriatim 3, I think.

20 MR. DORITY: It's what you filed,
21 Mr. Klein.

22 COMMISSIONER CLAYTON: Judge, can I
23 ask a question of Mr. Klein? Mr. Klein, if
24 there's no adoption letter, does that mean that
25 your client did not adopt the interconnection

1 agreement at issue here?

2 MR. KLEIN: No, Commissioner. The
3 adoption was rejected by CenturyTel, and
4 FullTel petitioned the Commission to permit to
5 adopt the agreement. And the Commission did
6 confirm that adoption. The terms of the
7 adoption were set by the Commission.

8 COMMISSIONER CLAYTON: Was it
9 adopted, or was it not adopted?

10 MR. KLEIN: It was adopted.

11 COMMISSIONER CLAYTON: It was
12 adopted. So there is an adoption letter,
13 correct?

14 MR. KLEIN: No. That's where the
15 confusion is. There's no letter that -- that
16 amends the adopted agreement in any way because
17 there was no adoption letter. CenturyTel never
18 said, We'll let you adopt it if you do X, Y, Z.
19 There was no -- there was just an objection.

20 COMMISSIONER CLAYTON: How would you
21 characterize it, Mr. Klein?

22 MR. KLEIN: That the Commission
23 instructed CenturyTel that it has to allow --

24 COMMISSIONER CLAYTON: How would you
25 characterize the letter?

1 MR. KLEIN: That's what I'm looking
2 for here to see what the letter is. Is it a
3 letter July 11th, 2002, from Verizon to Brooks
4 Fiber?

5 MR. DORITY: That is correct, your
6 Honor. Commissioner Clayton, if I may, I think
7 might able to clarify this. It will just take
8 me a second.

9 JUDGE JONES: Is there some document
10 that's not a part of the record now that we're
11 discussing? Are we talking about the
12 interconnection agreement?

13 MR. DORITY: We're talking about the
14 interconnection agreement that was adopted.
15 The interconnection agreement was filed with
16 this Commission by yours truly on July 18th,
17 2002. It was filed on behalf of Brooks and
18 Verizon and it was filed as a substitute
19 agreement numbered seriatim. In totality, it
20 includes an adoption letter. And that is the
21 adoption letter to which Mr. Simshaw was
22 referring.

23 As the Commission requires, rules require,
24 this total agreement was filed as a substitute
25 interconnection agreement. This is the

1 agreement which FullTel adopted. And they
2 filed it in the case papers in September of
3 this year. Mr. Comley did that.

4 JUDGE JONES: So the letter is a
5 cover to the Brooks Fiber interconnection
6 agreement?

7 MR. DORITY: That's correct. And it
8 is a piece part -- part and parcel of the
9 agreement itself. That -- this is what they
10 adopted. And that is the language which
11 Mr. Simshaw has been referring to.

12 COMMISSIONER GAW: Judge, would
13 somebody please make a copy of the document
14 that we're referring to and --

15 MR. DORITY: It's in the file.

16 COMMISSIONER GAW: I want a copy of
17 the document that's being referred to that
18 could be marked so I know what it is that we're
19 talking about, a copy of this, quote, unquote,
20 adoption letter. Can somebody please do that?

21 MR. DORITY: Certainly.

22 COMMISSIONER GAW: Thank you.

23 MR. DORITY: I think I've got a
24 seriatim number.

25 JUDGE JONES: Does anyone have a copy

1 of the letter that we can --

2 MR. DORITY: I do have.

3 MR. SIMSHAW: The entire agreement,
4 including the letter is attached to the joint
5 stipulation.

6 MR. DORITY: Commissioner Gaw, could
7 I ask a clarifying question?

8 COMMISSIONER GAW: I would be glad to
9 try it answer it. Yes, sir.

10 MR. DORITY: And I'm trying to be
11 sure I'm responsive to your -- to your inquiry.
12 As I said, all of this was numbered seriatim.
13 And I think the adoption letter is actually
14 page 1, and it goes through -- the agreement
15 itself is about 160 pages.

16 Are you just asking for the -- the first
17 few pages of the agreement which we have
18 referred to as the adoption letter?

19 COMMISSIONER GAW: That's all I'm
20 wanting so that we're all talking about the
21 same document and it can be marked so somebody
22 looking at this on the record later on,
23 everyone can see this is exhibit whatever it
24 is. That's all I'm looking for. I don't care
25 beyond that other than trying to make the

1 record clear.

2 MR. DORITY: Mr. Voit, I think, has
3 kindly offered to make some copies for us.

4 COMMISSIONER GAW: Thank you.

5 JUDGE JONES: Is it a letter dated July
6 11th?

7 MR. DORITY: Yes, sir.

8 JUDGE JONES: Would that explain why
9 Mr. Klein doesn't have a copy of it? It was
10 never sent to him, right?

11 MR. KLEIN: I do have a copy of this
12 now. I just was very unclear as to what they
13 were talking about.

14 JUDGE JONES: Now will you draw your
15 objection?

16 MR. KLEIN: Yes. Now that we've
17 identified the actual document. I agree with
18 Commissioner Gaw that we need to identify what
19 it is that we were speaking about. But I am
20 now clear on that.

21 But I would -- I would object to its
22 characterization as an adoption agreement
23 because that's what triggered this
24 miscommunication and the confusion in the first
25 instance.

1 It is clearly not an adoption between
2 CenturyTel and FullTel, neither of the parties
3 that are here today.

4 JUDGE JONES: I think he just called
5 it an adoption letter, not an adoption
6 agreement.

7 MR. KLEIN: Very well.

8 JUDGE JONES: We'll mark it as
9 Exhibit 1 when we get copies of it entered into
10 the record. You may proceed, Mr. Simshaw.

11 MR. SIMSHAW: Thank you.

12 Q (By Mr. Simshaw) Mr. Baresel, I'm going to
13 refer to what's on page 3, I think it is, of
14 the adoption letter. Well, just quickly, it
15 says -- and I recognize when I read this that
16 it's between Brooks and Verizon.

17 But now FullTel is in the shoes of Brooks,
18 and CenturyTel is in the shoes of Verizon.

19 JUDGE JONES: And for purposes of
20 clarity, Mr. Simshaw, could you refer to it as
21 Exhibit 1?

22 Q (By Mr. Simshaw) And what I'm going to read to
23 you, Mr. Baresel, is, again, from page 3 of the
24 adoption letter, which will be marked as
25 Exhibit 1 into the record.

1 It says, Brooks represents and warrants
2 that it is a certificated provider of local
3 telecommunication service in the State of
4 Missouri and that its adoption of the Verizon
5 California terms will only cover services in
6 the service territory of Verizon in the State
7 of Missouri.

8 So going back to my question, is it
9 FullTel's position that service to the
10 identified ISP customer would be provided
11 within CenturyTel's service territory?

12 A It's our position that the exchange of the type
13 of traffic we requested was ISP bound and local
14 exchange traffic for small, medium-sized
15 businesses is traffic that is allowed to be
16 exchanged pursuant to our adoption of that
17 agreement.

18 We formed that conclusion based on having
19 competent legal counsel review the agreement
20 and all the parts and advise us on how to
21 proceed. I'm not familiar enough with the
22 specifics of it myself personally to be any
23 more specific than that at this time.

24 Q Are calls from a customer in Ava to an ISP
25 customer in Oklahoma City, is that service

1 within CenturyTel's service territory?

2 A We believe that a call to an Ava telephone
3 number transported to Branson City, Missouri,
4 and then transported from there on our
5 facilities back to Oklahoma City and from there
6 routed to the Internet is consistent with the
7 terms of the agreement.

8 Q I want to go back to your comment about whether
9 CenturyTel would or wouldn't experience
10 additional costs associated with this traffic.

11 As part of this process, did FullTel
12 submit a traffic forecast to CenturyTel
13 regarding the expected traffic volumes that
14 this would entail?

15 A Yes, we did.

16 Q And did that include traffic from Ava?

17 A Yes, it did.

18 Q And I realize there's a confidential sensitive
19 nature to that traffic, but would you agree
20 that that entailed the expectation that there
21 would need to be additional numerous additional
22 trunks? More than one?

23 MR. KLEIN: I'd object as vague, but
24 allow the witness to answer to the extent he
25 can understand what the question is asking.

1 A In our trunk forecast, we forecast multiple
2 trunks for the cities involved. Yes.

3 Q (By Mr. Simshaw) And those trunks have a cost
4 associated with them, right?

5 A Yes. There is a cost associated with trunks.

6 Q And in your view, who would bear that cost?
7 I'm, again, speaking specifically of the
8 additional trunks required from Ava to Branson.

9 A It's our understanding that CenturyTel would
10 bear the cost of fulfilling their obligations
11 under the terms of our interconnection
12 agreement just as we would bear the cost of
13 fulfilling our obligations under that
14 agreement.

15 Q And who would generate revenue from the traffic
16 going offer those trunks?

17 A CenturyTel generates revenue from its
18 customers. We generate revenue from our
19 customers.

20 Q And, once again, once those trunks with are
21 added, is CenturyTel going to start charging
22 more for its local service?

23 A I don't know that those trunks don't exist now.
24 I don't know that CenturyTel -- and, of course,
25 I would expect CenturyTel to use existing

1 trunking. I would expect them to use that
2 trunking on a shared basis.

3 Q So it's your opinion that this is probably
4 sufficient common trunking capacity to
5 accommodate this additional traffic?

6 A Yes.

7 Q What if there's not?

8 A Then our understanding of the agreement that
9 the CenturyTel would be required to build that
10 trunking and to bear the cost of building that
11 trunking.

12 Q And how would they generate revenue to recover
13 that cost?

14 A I don't know that that's a requirement of their
15 obligation to honor the interconnection
16 agreement.

17 Q I'm sorry. What's not a requirement? To add
18 the trunks or to build and recover the costs?

19 A To recover the costs.

20 Q But it may not be an obligation, Mr. Baresel,
21 but wouldn't you agree, as a businessman, that
22 you'd probably want to try to recover the
23 costs?

24 A I don't fault CenturyTel a bit for their
25 opposition to competition coming into their

1 markets. And they're certainly proving to be
2 extremely effective at doing that.

3 MR. SIMSHAW: One -- one moment,
4 please, your Honor. Your Honor, thank you.
5 Actually, that is all I have for this witness.

6 JUDGE JONES: We'll have questions
7 from the Bench now. Commissioner -- or do you
8 have questions?

9 COMMISSIONER MURRAY: Yes, I do.
10 Thank you.

11 CROSS-EXAMINATION

12 BY COMMISSIONER MURRAY:

13 Q Good morning.

14 A Good morning.

15 Q The interconnection that FullTel seeks is
16 interconnection with CenturyTel's customers; is
17 that correct?

18 A It -- yes. It's interconnection with
19 CenturyTel's network for purposes of receiving
20 calls originating from CenturyTel's customers.

21 Q All right. Once the interconnection is
22 established, will different types of traffic be
23 compensated differently?

24 A Yes.

25 Q What does it mean technically in terms of your

1 colocation space for which you've already paid
2 if we order CenturyTel to interconnect with
3 you? Technically, what does that mean? What
4 happens next?

5 A Technically, what happens next is that, if
6 necessary, they build the trunking from the
7 four cities to that point of interconnection
8 and that we would then build facilities from
9 Oklahoma City to Branson, Missouri, at the
10 point of interconnection.

11 Q And that you would then do what?

12 A We would then build trunking from Oklahoma City
13 to the point of interconnection at Branson,
14 Missouri. So -- so, in effect, we're
15 responsible for the costs of handling the
16 traffic on our side of the point of
17 interconnection just as we believe CenturyTel
18 is responsible for their handling of the cost
19 of their customers on their side of the
20 interconnection.

21 Q So CenturyTel would only be responsible for
22 service -- interconnecting with you within
23 their service territory?

24 A That's correct.

25 Q Now, earlier, it was mentioned that if --

1 whether -- asked about whether we had --
2 whether you had a justicial interest at this
3 time in pursuing this and that you don't have
4 any customers.

5 Well, I -- I just want your opinion on
6 this. If you had to wait until you had a
7 customer in the wings before you could seek
8 interconnection, I -- and something -- each
9 time you had a customer you had to come to us
10 to seek interconnection and something similar
11 to what happened here, your customer got tired
12 of waiting and said, I'm sorry, I don't want
13 the service anymore, would that be a
14 never-ending road as far as you're concerned?

15 I mean, could it possibly be that you'd
16 never actually get that resolution because
17 every time you had a customer there would be
18 this process through which the customer is
19 likely to get disgusted and leave?

20 A Yes, Commissioner. That's the never-ending
21 nightmare of the CLEC in this environment.

22 Q Now, the letter -- the adoption letter between
23 Brooks and Verizon that was referenced earlier,
24 that, as I understand now, is a part of the
25 agreement that CenturyTel was ordered to allow

1 you to adopt; is that correct?

2 A Yes.

3 MR. DORITY: Commissioner, excuse me.
4 I do have copies available if you'd like for me
5 to -- to distribute them. I'd be happy to do
6 that if that would be helpful.

7 COMMISSIONER MURRAY: I have a copy.
8 If you want to distribute it to those who
9 don't, that's fine.

10 JUDGE JONES: What you might do is
11 mark one as Exhibit 1 and just give it to the
12 court reporter so she can make it as a part of
13 the record.

14 Q (By Commissioner Murray) The section that was
15 quoted on page 3 was that this will only cover
16 services in the service territory of Verizon on
17 in the state of Missouri.

18 And my question is regarding what -- what
19 would be the definition of services in the
20 service territory of Verizon, first of all, if
21 it is a service from a -- and let's substitute
22 the current parties. FullTel -- I --
23 CenturyTel customer to a point of
24 interconnection with FullTel that is within the
25 service territory of CenturyTel, is that not a

1 service in the service territory of CenturyTel?

2 A Yes, Commissioner. That's our opinion.

3 Q And just to kind of help me clarify, because

4 I'm having trouble remembering how these thing

5 fit together, if this service were, in fact, as

6 CenturyTel claims it is, an inter -- an IXC

7 service, would CenturyTel have to interconnect

8 with FullTel in order to allow that IXC

9 transmission?

10 A If it were an IXC service, in order to be able

11 to provide it, there would need to be

12 interconnection, yes.

13 Q Would it fit with under -- would it fit within

14 this interconnection agreement?

15 A I'm not sure it would. And, once again, this

16 is where the complexity -- of this type of

17 thing are beyond me. That -- I would really

18 suggest that either Mr. Klein or -- would

19 probably be best to answer that.

20 Q Now, as I understand it, the ISP, there --

21 there is an ISP located in Missouri; is that

22 correct?

23 A That's correct. Yes.

24 Q And that is the customer that sought your

25 service?

1 A Yes.

2 Q And that customer also is located in Oklahoma

3 City?

4 A They are not. They are located in Missouri.

5 They're a Missouri company supplying service to

6 Missouri customers today.

7 Q But they are not located within CenturyTel's

8 service area, is that correct, physically?

9 A They are located smack-dab in the middle of

10 CenturyTel's service area.

11 Q Now, who was assigned the NXX number that was

12 local to CenturyTel that is not actually in

13 CenturyTel's -- physically in that service

14 area?

15 A I presume FullTel.

16 Q All right.

17 A If I could expand on that a little bit, FullTel

18 obtains the local telephone number and then

19 reserves that telephone number for the -- the

20 use only of customers of the Missouri ISP who

21 reside in -- in the cities where the number is

22 local to.

23 Q And then how does FullTel serve other customers

24 assuming other customers sign up?

25 A Typically, there is two types of services that

1 we provide. We provide this type of service to
2 -- on a wholesale basis to ISPs in that area of
3 Missouri.

4 In addition, once we've got sufficient
5 revenues flowing over our facilities, we can
6 then establish additional products to be
7 deployed to those cities in Missouri. Those
8 products would be for small businesses and
9 medium sized businesses. They would consist of
10 a bundle product which bundles high speed
11 Internet access with local dial tone in a very
12 efficient manner, which is very cost effective
13 for the Missouri customer, while at the same
14 time improving the quality of their service.

15 Q And they would each have a different telephone
16 number? Each one of those customers would have
17 a specific telephone number?

18 A Yes, Commissioner, they would. In fact, that
19 type of business customer typically has blocks
20 of -- of numbers. So they would -- they would
21 have anywhere from -- you know, typically, they
22 like to have 20 telephone numbers associated
23 with those facilities. Some of them request
24 larger blocks of phone numbers for their
25 business.

1 COMMISSIONER MURRAY: Okay. That's
2 all I have right now. I may have something
3 later. Thank you.

4 MR. BARESEL: You're welcome.

5 JUDGE JONES: Commissioner Gaw?

6 COMMISSIONER GAW: I pass.

7 JUDGE JONES: Commissioner Clayton.

8 CROSS-EXAMINATION

9 BY COMMISSIONER CLAYTON:

10 Q What -- forgive me for maybe asking some
11 repetitive questions. First of all, what are
12 -- what is your role with -- are you an
13 employee of FullTel?

14 A Yes. I'm the President and Chief Financial
15 Officer of FullTel.

16 Q Okay. President and CFO?

17 A Yes.

18 Q And CEO or --

19 A CFO and president. There is a CEO.

20 Q How -- how many states does FullTel operate in?

21 A At the present time, Oklahoma. It's --

22 Q One?

23 A One state. I'm sorry.

24 Q One state?

25 A One state.

1 Q How -- how many employees does FullTel have?

2 A Roughly, 15.

3 Q Fifteen. And is it a -- is it a certificated

4 utility in Oklahoma?

5 A Yes. We have a Certificate of Convenience in

6 Oklahoma.

7 Q And is that for basic local service or

8 interexchange service or -- what are the --

9 what's the certificate for? What type of

10 service?

11 A It's for basic local exchange service.

12 Q Do you have -- does FullTel have a certificate

13 for long distance service?

14 A We do, yes.

15 Q Is that for intrastate, interexchange --

16 A I apologize for -- we have an IXC certificate,

17 and we offer long distance to our business

18 customers along with the local service. And

19 then we use a wholesaler for actually

20 provisioning the long distance service itself.

21 Q Okay. And in how many exchanges approximately

22 would FullTel be offering basic local service?

23 A In Oklahoma or in Missouri?

24 Q Well, I guess I asked how many states you were

25 operate -- was FullTel operating, and you said

1 one state, Oklahoma. And then I asked -- I
2 guess I'm interested in how many exchanges in
3 Oklahoma you provide basic local service.

4 A At the present time, one.

5 Q And what exchange is that?

6 A The Oklahoma City exchange.

7 Q Now, FullTel -- maybe I'm -- maybe I'm
8 misunderstanding. But does FullTel operate in
9 other states other than Oklahoma?

10 A No, we do not.

11 Q You don't operate in Missouri?

12 A We're attempting to enter the Missouri market.

13 Q Are you certificated in Missouri?

14 A Yes, we are.

15 Q And what is that certificate for?

16 A Local exchange service.

17 Q And it's not -- do you have an IXC certificate
18 in Missouri?

19 A It's been so long since we started this process
20 that it escapes me at the moment whether or not
21 we have an IXC.

22 Q How long has this process been going on?

23 A Since mid 2004.

24 Q You know, relatively speaking, that's not that
25 long in PSC time.

1 A Unfortunately, Commissioner, I've learned that
2 the hard way.

3 Q Does Oklahoma operate faster than Missouri?

4 A Probably not. Although SBC has been easier to
5 deal with than CenturyTel.

6 Q Okay. In Oklahoma, in providing basic local
7 service, does FullTel own its own facilities,
8 or does it lease lines from the incumbent?

9 A A combination. We own our own classified
10 telephone switch. We own our own fiber that
11 connects us with Southwestern Bell. We've
12 purchased local loops from another CLEC in the
13 Oklahoma City market.

14 Q From a CLEC. So you don't lease any loops from
15 the incumbent?

16 A We try and avoid that wherever possible. We
17 probably have one or two that we've leased from
18 SBC.

19 Q Okay. Okay. Do you own any facilities in the
20 State of Missouri?

21 A Other than the DSX panel currently colocated
22 with CenturyTel in Branson City, Missouri,
23 that's all we have in Missouri.

24 Q Okay. Does FullTel act as a basic local
25 telecommunications provider in Ava or Branson,

1 or is it all four of the subject exchanges? Or
2 is it only Branson?

3 A We would expect to operate as a local exchange
4 carrier in all four of the exchanges.

5 Q Well, excuse me. I'm a little confused on your
6 language. You say you expect to. I guess I
7 want to know where are you certificated, where
8 are you permitted by this Commission to do
9 business as a basic local telecommunications
10 provider in Missouri? What exchanges?

11 A It's my understanding we are certificated to
12 provide in all of those exchanges.

13 Q All of the four exchanges at issue in this
14 case?

15 A Yes.

16 Q Okay. Okay. And the colocation DSX -- DSX, is
17 that what that machine is called? Is it a
18 machine?

19 A Yes, sir. It's a -- it's about this big. It
20 requires no power. It's -- it's, in effect, an
21 interconnection point for cabling.

22 Q Is it -- so it's just cables? It's -- is it an
23 extension cord? Monster cable? Stereo
24 speaker?

25 A Yes. It would be -- the DS-1's trunks that

1 CenturyTel would deliver to us for
2 interconnection purposes would interconnect on
3 that panel.

4 Q Okay. Okay. And do you -- I'm not sure if I
5 asked this question. Do you have any employees
6 that are in Missouri?

7 A No, we do not.

8 Q Okay. When this complaint was filed, FullTel
9 had a customer a single customer -- FullTel had
10 a single customer in Missouri; is that correct?

11 A Yes, sir.

12 Q And who is that customer?

13 A It's an ISP that operates under the trade name
14 Goin.

15 Q Could you spell that for me?

16 A I believe it's spelled G-o-i-n. G-o-i-n.

17 Q No apostrophe?

18 A No apostrophe.

19 Q Okay. And is that a -- is that a dial-up
20 service? Is it a wireless service? What kind
21 of ISP? Is it a -- do you know?

22 A I'm not completely familiar with our
23 operations. It's my understanding they provide
24 dial-up, that they do some wireless. And I
25 suspect they do also some dedicated circuits.

1 Q When you were -- when you were -- when you had
2 them as a client, would they -- would they send
3 you ISP traffic in all those forms?

4 A When I say that we -- let me make something
5 clear that seems to have gotten lost. We have
6 not been able to provide any service in
7 Missouri.

8 Goin came to us and asked us to come to
9 Missouri, get certificated, build our
10 facilities, to offer service to their
11 customers.

12 They entered into a contract with us that
13 was subject to us being successful in getting
14 interconnected with CenturyTel. So that's --
15 and they gave us a deposit as part of that
16 contractual relationship. So they were a
17 customer in the sense that we had a contractual
18 relationship with them.

19 But as far as being able to actually
20 provide service, we have been completely
21 blocked from providing any service to anyone in
22 Missouri up to this point.

23 Q So -- so Goin is not operating in Missouri, are
24 they?

25 A They are operating at the present time.

1 They're simply not purchasing services from
2 FullTel.

3 Q Who do they purchase their service from?

4 A CenturyTel.

5 Q And are you aware of what exchanges they have a
6 presence in Missouri? Is it all four of the
7 mentioned in this case?

8 A They -- all four of those exchanges as well as
9 a number of other exchanges in territories
10 services by -- identified as Spectra
11 territories.

12 Q Are you a -- are you an engineer --

13 A No, sir.

14 Q -- by training? Lawyer? Accountant?

15 A Unfortunately, an accountant.

16 Q Salesman?

17 A Accountant.

18 Q Entrepreneur?

19 A Accountant.

20 Q You're an accountant?

21 A Yes, sir.

22 Q Okay. Do you enjoy reading FCC orders --

23 A No, sir.

24 Q -- or court cases describing FCC orders?

25 A I find them very difficult to stay awake while

1 reading.

2 Q I'm not going to disagree with you. Can you
3 describe to me in a -- in a financial manner --
4 and when I mean financial, I mean who pays whom
5 for service. According to your theory of this
6 case. How things should be -- if you were --
7 if you had Goin as your customer operating in
8 these exchanges how money would exchange hands
9 under your theory of this case between
10 companies and also between companies and their
11 customers?

12 A So we're talking Goin's customer, Goin, FullTel
13 and CenturyTel?

14 Q Yes. Under your theory --

15 A I understand.

16 Q -- Goin is your customer.

17 A Yes, sir. Under our theory, Goin would pay
18 FullTel to provide service to Goin's customers
19 relating to Internet service on a dial-up
20 basis.

21 In addition, those same --

22 Q That would be a -- you'd be getting phone lines
23 for Goin's customers, correct? And they would
24 get a second phone line in their house?

25 A No. The Goin,

8 One of the uses for that dial tone is to
9 call Goin and receive serv -- Internet access
10 over those same phone lines. In our theory of
11 the case, CenturyTel would charge their
12 customer for providing them with local dial
13 tone.

15 A As it's set out, it would be a local call. It
16 would be a toll free call, yes.

18 A The customer in Ava would pay CenturyTel for
19 the right to call a local phone number. They
20 would call that local phone number.

25 At that point, FullTel would transport,

1 pay the cost of transporting that call back to
2 Oklahoma City where it would be aggregated with
3 other traffic and routed to the Internet. Goin
4 would pay FullTel for that service.

5 And, you know, our understanding is that
6 CenturyTel will be responsible for the costs of
7 getting their customers' call to Branson.
8 FullTel is responsible for the cost from there.

9 And --

10 Q Can you answer this question since you're an
11 accountant, not an engineer? I don't know if
12 you know the answer to this.

13 What is the physical path that the traffic
14 would take from Branson to Oklahoma City? In
15 would it take -- would it take a -- a Bell
16 operating system feature group C-path or would
17 it take an IXC path? Or does it matter?

18 I'm --

19 A You've -- you've easily moved beyond my level
20 of expertise. I -- I will tell you my
21 understanding is that CenturyTel would deliver
22 the call to Branson, Missouri, and that at
23 Branson, Missouri, FullTel would be, in effect,
24 paying an IXC carrier to back-haul the traffic
25 from Branson City, Missouri, to Oklahoma City.

1 JUDGE JONES: We're going to break
2 right here and continue after lunch with
3 questions from the Bench. Then we'll proceed
4 with recross and then redirect. With that
5 then, we're off the record until 1:30. Okay.
6 1:15.

7 (Lunch recess.)

8 JUDGE JONES: Okay. We can go ahead
9 and go back on the record. We're still on the
10 record with Mr. Baresel's testimony. At the --
11 prior to going to lunch, Commissioner Clayton
12 was asking questions, and we'll continue it
13 from there.

14 COMMISSIONER CLAYTON: Thank you,
15 Judge.

16 Q (By Commissioner Clayton) I think when we last
17 talked, we were talking about the compensation
18 that was paid by customers by -- by companies
19 among companies, and I don't think we had
20 gotten to that point.

21 So focusing on as -- from the FullTel
22 perspective in this case, would there be any
23 compensation paid between CenturyTel and
24 FullTel?

25 A For the ISP bound traffic, there would be no

1 compensation paid from FullTel to CenturyTel or
2 from CenturyTel to FullTel. It would be
3 pursuant -- my understanding, once again,
4 pursuant to the FCC remand order, bill and
5 keep. For local exchange traffic, where we're
6 providing the service to the business
7 customers, it would be subject to reciprocal
8 compensation.

9 Q I followed you until just that last set. You
10 -- are you -- is FullTel seeking business
11 customers in these exchanges?

12 A We will be, yes.

13 Q You will be. So if there's a -- explain to me
14 how the reciprocal compensation would -- would
15 work for one of your business customers.

16 A Where it's one of our business customers, we
17 would transport their traffic to our point of
18 interconnection with CenturyTel.

19 Q Go back before that. Tell me where that
20 business customer is.

21 A The business customer has an office in Ava.
22 They want to make a call across the street to a
23 CenturyTel customer. Full -- FullTel will be
24 responsible for transporting that Ava
25 business's call to our point of interconnection

1 with the CenturyTel network at Branson.

2 And then it would be transported by
3 CenturyTel to their customer across the street
4 in Ava. And we would pay CenturyTel for
5 transporting or terminating our customer's
6 traffic on their network.

7 Q How about if you had a phone call from a
8 FullTel business customer in Branson to a
9 CenturyTel customer in Branson? Would there be
10 a reciprocal compensation there?

11 A I -- I believe there would be, yes.

12 Q Branson -- Branson FullTel customer to Ava
13 CenturyTel customer?

14 A Yes. Reciprocal compensation.

15 Q And where are the terms for that compensation?
16 Where can they be found?

17 A I believe they're set forth in our
18 interconnection agreement and have been
19 referenced in the briefs that have been filed
20 by FullTel attorneys. I'm sorry. I don't know
21 the specific section.

22 COMMISSIONER CLAYTON: Okay. I don't
23 have any other questions. Thank you.

24 MR. BARESEL: You're welcome.

25 JUDGE JONES: Commissioner Murphy?

1 COMMISSIONER MURPHY: Thank you. I
2 have at least a couple more questions.

3 RECROSS EXAMINATION

4 BY COMMISSIONER MURPHY:

5 Q You mentioned you're doing business in
6 Oklahoma; is that correct?

7 A Yes.

8 Q And you -- the ILEC there that you have
9 interconnection with is SBC? Is that what you
10 said?

11 A Yes.

12 Q Do you have issues of interconnection in
13 Oklahoma that are similar to these issues here
14 today?

15 A I'm not sure I understand your question,
16 Commissioner. It's a similar structure. It's
17 -- it's a different interconnection agreement,
18 but it's a similar network design. So in -- in
19 that regard, it -- yes, the issues are the
20 same.

21 SBC is responsible for transporting their
22 customers' traffic to our point of
23 interconnection. We're responsible for
24 transporting from there to our switch.

25 Q And you have an interconnection agreement with

1 SBC in Oklahoma?

2 A Yes, we do.

3 Q And are you -- were you able to establish

4 interconnection there?

5 A Yes, we were.

6 Q Did you have to go to the Commission to

7 litigate those matters or --

8 A We had to go to the Commission to get

9 Southwestern Bell to allow us to opt into the

10 interconnection agreement, yes.

11 Q So they initially objected to your opting in?

12 A Yes.

13 Q And then once you opted in, did you establish a

14 -- an interconnection at a single POI within

15 SBC's territory or --

16 A Yes, we did. We have two SPOIs with

17 Southwestern Bell, one in the 405 area code or

18 -- or that -- the Oklahoma City LATA. We have

19 a separate point of interconnection in the

20 Tulsa LATA.

21 Our agreement there is similar to the

22 agreement here in Missouri. It provides for a

23 single point of connection in each LATA.

24 Q And do you have any ISP customers there?

25 A Yes, we do.

1 Q And how is -- are -- do you interconnect with
2 SBC for a provision of service to your ISP by
3 means of that interconnection agreement?

4 A Yes, we do. Initially, with Southwestern Bell,
5 we interconnected with them pursuant to a --
6 what's called a data only exemption. So from
7 Day 1, Southwestern Bell was aware that we were
8 going to initially be provisioning data
9 services only on the identical basis, in
10 essence, as we are seeking to do in -- in
11 Missouri.

12 And then as we've represented to the
13 Commission here, we represented to the
14 Commission in Oklahoma that once we established
15 the network and generate sufficient cash flow,
16 we would then offer local exchange service,
17 which is what we've done.

18 Q When you say a data only exemption, it was an
19 exemption to what?

20 A It was an exemption from 911 trunking
21 requirements. So we were allowed for our
22 network to go live initially without being 911
23 compliant. Today, we are 911 compliant and are
24 offering local exchange voice service in
25 Oklahoma City.

1 Q Is -- is the 911 compliance an issue here in
2 Missouri?

3 A I suspect that it will be, yes.

4 Q But that's not an issue that's been raised in
5 this particular complaint case, is it?

6 A Not to this point.

7 Q Is it your opinion that the FCC has determined
8 that ISP traffic is interexchange traffic?

9 A It's -- it's my interpretation, Commissioner,
10 that the FCC has determined that ISP bound
11 traffic is a unique form of traffic and is
12 subject to a specific type of compensation
13 separate from the definition of local or
14 interexchange.

15 Q For the purposes of compensation, I believe
16 they have characterized its a hybrid; is that
17 correct?

18 A That's my understanding. Yes.

19 Q But have they defined it for definitional
20 purposes as interexchange traffic?

21 A I -- I don't know.

22 Q If they have, would that mean to you that
23 FullTel -- if FullTel is only delivering ISP
24 bound traffic, only --only interconnecting with
25 CenturyTel's customers to ISP bound traffic,

1 but the interconnection agreement would not
2 apply unless you're also delivering other kinds
3 of local traffic?

4 A That's not my understanding. My understanding
5 of the interconnection agreement is that it
6 provides for two types of traffic, for
7 reciprocal compensation traffic and for ISP
8 bound traffic, and that it provides that ISP
9 bound traffic will be handled pursuant to a
10 single point of interconnection and that, for
11 compensation purposes, it will be bill and
12 keep.

13 Q There is a citation from -- or quotation, I
14 guess, from 47 CFR 51.30(b) in CenturyTel's
15 brief on page 5.

16 And it reads, A carrier that requests
17 interconnection solely for the purpose of
18 originating or terminating its interexchange
19 traffic on an incumbent LEC's network and not
20 for the purpose of providing to others
21 telephone exchange service, exchange access
22 service or both is not entitled to receive
23 interconnection pursuant to Section 251(c) (2)
24 of the Act.

25 If ISP bound traffic fits the definition

1 of interexchange traffic, then it appears that
2 the interconnection agreement would not entitle
3 you to simply interconnect for that sole
4 purpose. Would you agree with that?

5 A I -- I guess two things. One, that's not the
6 sole purpose we're seeking interconnection for.
7 That is a significant part of the purpose we're
8 seeking interconnection, but it's not the sole
9 purpose.

10 In order for a CLEC to be able to
11 financially develop a new market, we've got to
12 rely on -- on revenue generating activities.
13 So the ISP bound traffic is -- is one part of
14 it, but it's not the end in itself or the only
15 part.

16 Secondly, before attempting -- before
17 starting this process in Missouri, we sought
18 competent legal counsel regarding these very
19 issues. And the counsel that we got was that
20 the agreement -- the Brooks Fiber agreement
21 that we would be opting into would provide for
22 the type of delivery of services that we were
23 seeking to implement.

24 We were also informed that the existing
25 case law or the FCC remand order as well as

1 Commission decisions in other states all
2 supported what we were attempting to do.

3 So I don't mean to be non-responsive, but
4 all -- you know, obviously, these are complex
5 legal issues. And we've relied upon the best
6 legal advice we could get. And -- and it
7 appeared to us that -- you know, that these
8 issues had been litigated and decided years ago
9 and -- and that, consequently, what we were
10 attempting to do was -- was appropriate.

11 Q The interconnection agreement that you adopted
12 does reference ISP bound traffic at -- well,
13 actually, it's in the glossary, I guess is
14 where that is. 2.54.

15 The traffic that is subject to the
16 intercarrier compensation plan for ISP bound
17 traffic established in the FCC Internet order.
18 Do you know specifically which order they're
19 referencing there?

20 A I believe it's the -- the FCC what's referred
21 to as the FCC remand order. But for a more
22 specific confirmation, I would look to our
23 counsel.

24 Q And then again on the -- well, I'm not sure how
25 to -- how to say exactly where this is in the

1 interconnection agreement. But it's either
2 page 67 or page 82, and it's No. 8. Other
3 types of traffic, ISP bound traffic is
4 referenced there, and that is to the extent
5 that if any FCC -- basically, if any FCC
6 established rate is vacated or reversed, then
7 the parties will renegotiate. Okay.

8 Up further in that same clause, it does
9 say that the parties' rights and obligations
10 with respect to any intercarrier compensation
11 that may be due in connection with their
12 exchange of ISP bound traffic shall be given by
13 the terms of the FCC Internet order and other
14 applicable FCC orders and FCC regulations.

15 And I guess as I read these references to
16 compensation for ISP bound traffic, in the
17 interconnection agreement -- and I will ask
18 CenturyTel's witness this, also, but I would be
19 -- I'm puzzled as to why ISP bound traffic --
20 compensation for ISP bound traffic would even
21 be mentioned if it were not to be provided
22 through the interconnection agreement. Do you
23 have any thought on that?

24 A I share your -- I share your puzzlement as to
25 what the fuss is about. It seems clear to us

1 that that interconnection agreement provides
2 for ISP bound traffic to be exchanged pursuant
3 to that agreement. That's why we opted into
4 it.

5 Q And right now, you're -- even though your
6 complaint was filed based upon a desire to
7 provide service to an ISP, today -- and correct
8 me if I'm wrong, but today it's -- it's my
9 understanding that you are seeking to have
10 CenturyTel perform under the terms of the
11 interconnection agreement by providing you the
12 ability to interconnect without a specific
13 customer in mind.

14 A That's correct.

15 COMMISSIONER MURPHY: All right.
16 Thank you.

17 MR. BARESEL: Thank you,
18 Commissioner.

19 JUDGE JONES: We'll move on to
20 recross at this time.

21 MR. SIMSHAW: Thank you, your Honor.

22 REXCROSS-EXAMINATION

23 BY MR. SIMSHAW:

24 Q Mr. Baresel, you responded at one point with --
25 with a hypothetical of FullTel having a

1 business customer in Ava.

2 A Yes.

3 Q Do you recall that? Okay. How would -- how

4 would FullTel establish a link to that

5 customer?

6 A FullTel would have to purchase a local --

7 either build a local loop to that customer or

8 purchase a local loop from CenturyTel.

9 Q And -- and then would you have to tie that

10 customer to your switch in Oklahoma City?

11 A That's correct.

12 Q Why -- why would FullTel be willing to or have

13 a business model that would allow them to pay

14 to get to Ava for that customer but -- but

15 FullTel's not willing to pay to get to Ava for

16 the ISP customer?

17 A Our -- our business model is designed to take

18 advantage of the existing law and the existing

19 interconnection agreement. It's -- the cost of

20 service to different types of customers in any

21 business model is going to be different.

22 So it's a -- it's a blending of the -- of

23 the two that -- that makes it possible for us

24 to bring competition to that area of Missouri.

25 Q But you would agree that -- that in one

1 instance you'd pay to get to Ava and the other
2 you're not willing to?

3 A I would agree that in one instance the law and
4 the interconnection agreement require me to
5 pay, and in the other instance, they don't.

6 Q Just a couple of clari (sic) thing --
7 clarifying questions. I think you were asked a
8 question about -- again, hypothetically if --
9 if FullTel served a customer in Branson and
10 CenturyTel served a customer in Ava and the
11 Branson customer called Ava whether that would
12 be subject to reciprocal compensation. And I
13 recall your answer was yes.

14 A I'm -- I'm sorry. I lost you in all the
15 different cities. In -- in general, our belief
16 is that we're responsible to pay CenturyTel
17 reciprocal compensation on traffic that
18 originates with our customers and terminates on
19 your network.

20 Q But the specific example that I wrote down was
21 that -- that FullTel customer is in Branson,
22 the CenturyTel customer in Ava. Is it local
23 call from Branson to Ava?

24 A I -- I suspect -- or I believe that for
25 CenturyTel's rate center purposes that it's not

1 local calling.

2 Q Well, therefore, wouldn't that call from
3 Branson to Ava be subject to long distance
4 charges?

5 A I -- two things. One, I assume it would depend
6 upon how we define our rate centers. But,
7 secondly, if it was subject to long distance,
8 we would -- we would handle the traffic in
9 accordance with the interconnection agreement.

10 What I was attempting to convey to
11 Commissioner Clayton in response to his
12 questions was that we recognized our burden to
13 pay reciprocal compensation to CenturyTel when
14 our customer's traffic is terminated on your
15 network.

16 If -- if I -- you know, if I made a
17 mistake in the hypothetical as to whether it
18 was local or long distance, I apologize for
19 that.

20 Q You mentioned that FullTel maintains a point of
21 interconnection in the Tulsa, Oklahoma LATA; is
22 that correct?

23 A Yes.

24 Q Do you have any local customers, provide local
25 service to local customers anywhere in the

1 Tulsa LATA?

2 A Not at the present time.

3 Q Okay. So you -- there are instances where you
4 have points of interconnection with no local
5 customers?

6 A It takes time to develop local customers. It
7 all starts with the interconnection process.
8 It's very difficult to go out and market to
9 customers with the uncertainty associated with
10 being able to establish interconnection.

11 Q Just one more area of clarification. Before
12 the lunch break in response to a question from
13 Commissioner Murray, I thought I heard you to
14 say -- and I apologize if I'm wrong -- that
15 FullTel reserves numbers to give to the
16 customers of ISPs.

17 A I might not have communicated clearly.
18 Basically, what we do as it relates to -- to
19 this matter or providing this type of service
20 to ISPs is we establish a specific unique
21 telephone number for the use of a specific
22 unique ISP providing service in a specific
23 area.

24 For instance, in -- in this case, the ISP
25 would have a single telephone number for Ava

1 that would be used by their customers.

2 Q So the -- the -- the numbers that the customer
3 calling the ISP has are actually CenturyTel
4 numbers, right?

5 A They're FullTel numbers.

6 Q All right. Maybe I haven't made myself clear.
7 The customer that's calling the ISP, they have
8 a CenturyTel telephone. The customer that
9 calls the ISP, the customer calling the ISP is
10 a CenturyTel customer?

11 A Yes.

12 Q Okay. With a CenturyTel number?

13 A Well, I assume, yes, they have a CenturyTel
14 telephone number.

15 MR. SIMSHAW: Those are on the only
16 areas where I had clarification. Thank you.

17 MR. BARESEL: You're welcome.

18 JUDGE JONES: We'll move on to
19 redirect.

20 MR. KLEIN: Judge, I just have one
21 area where I'd like to clarify the -- the re --
22 recross by counsel for CenturyTel.

23 RE CROSS EXAMINATION

24 BY MR. KLEIN:

25 Q Mr. Baresel, when you were talking just now

1 with counsel for CenturyTel about where you
2 were providing -- or where would you provide
3 local service to an end user, is it your
4 understanding it would be your obligation to
5 provide facilities to both originate from and
6 terminate traffic to that end user if it's an
7 end user customer of yours, if it's a local
8 customer of FullTel?

9 A Yes, it is.

10 Q And would that be distinct in your mind from
11 the situation where an end user is being served
12 by CenturyTel that CenturyTel would, therefore,
13 have the obligation to both originate and
14 terminate traffic from that customer?

15 A Yes.

16 Q And in the first instance where the end user
17 customer is an end user of FullTel, you would
18 be bringing that traffic to the point of
19 interconnection if it was destined for a
20 CenturyTel end user?

21 A That's correct.

22 Q And, likewise, you would be receiving traffic
23 destined for your end user at that same point
24 of interconnection if it originated from a
25 CenturyTel customer?

1 A Yes.

2 MR. KLEIN: Okay. Thank you very
3 much. I have nothing further, your Honor.

4 JUDGE JONES: Okay. Now, we'll have.
5 -- you may step down, Mr. Baresel.

6 MR. BARESEL: Thank you.

7 JUDGE JONES: We'll have CenturyTel's
8 witness, please. Please raise your right hand.

9 SUSAN SMITH,
10 being first duly sworn to testify the truth, the whole
11 truth, and nothing but the truth, testified as follows:

12 JUDGE JONES: Thank you. You may be
13 seated.

14 DIRECT EXAMINATION

15 BY MR. SIMSHAW:

16 Q Would you please state your name and address?

17 A Susan Smith, 911 North Bishop Road, Suite
18 C-207, Tex-Arkana, Texas, 75501.

19 Q And what is your title or position, Ms. Smith?

20 A I am Director of External Affairs at CenturyTel
21 Service Group.

22 Q Could you generally describe what your job
23 duties entail in that position?

24 A In my position, I'm responsible for negotiating
25 the terms and conditions of interconnection

1 agreements for -- for various CenturyTel areas,
2 including the state of Missouri.

3 Q In the course of those duties, have you been
4 involved in the dispute that's before the
5 Commission today?

6 A Yes, sir.

7 Q And are you the CenturyTel representative who
8 filed the affidavit in response to the
9 Commission's order directing further filing?

10 A Yes, sir.

11 Q Could you briefly describe what your
12 conclusions were with regard to the nature of
13 the traffic that is the subject of this
14 dispute?

15 A That it was interexchange traffic.

16 Q What did you base that conclusion on?

17 A We had a meeting with FullTel on June 2nd in
18 regard to their forecast that had been
19 submitted.

20 In this conference call, there was
21 discussions concerning the -- the forecast that
22 had been provided required for trunking in four
23 different CenturyTel exchanges.

24 On that forecast, there were several items
25 that were not included in there that would be

1 needed if you were providing local services.
2 There was no trunking forecasted for
3 interexchange traffic, and there was no 911
4 facilities and other things.

5 And so the issue came up is what is the
6 nature of this traffic? Where will it
7 originate and terminate? And a during those
8 discussions, we were told that it was all ISP
9 originating traffic that would be terminating
10 to FullTel and that it would be terminating to
11 their customer located in Oklahoma City.

12 Q And did you communicate those conclusions to
13 FullTel in the form of a letter?

14 A Yes, sir.

15 Q Did they respond to that letter?

16 A Yes, sir.

17 Q Did they address your assertion that the
18 customer was in Oklahoma City and it was all
19 ISP bound traffic?

20 A They did not address it all, the fact of their
21 customer location.

22 Q Well, did they represent to you that, no, you
23 -- you've got it wrong, there's other --

24 A No.

25 Q -- other customers or other traffic?

1 A Absolutely not.

2 Q Did you base your -- your conclusion that this

3 was not local traffic on the location of the

4 FullTel switch?

5 A No, I did not.

6 Q What did you base it on?

7 A The origination and termination point of the

8 customer. At what point does it originate on

9 the public switch telephone network and what

10 point does it leave the public switch telephone

11 network, which is customer locations.

12 Q You -- you've been present today in the hearing

13 room for the testimony of Mr. Baresel?

14 A Yes, sir.

15 Q Did you hear anything in his testimony that

16 would -- that caused you to change that

17 conclusion?

18 A No, sir.

19 Q FullTel seems to place a lot of significance on

20 the fact that the point where the traffic would

21 be exchanged or the point of interconnection

22 would be in Branson, which is within the

23 CenturyTel service area. Is there any

24 significance to that?

25 A Absolutely not. Branson is an access tandem.

1 That is where every interexchange carrier meets
2 us.

3 Q Okay. So are you saying that, then, that
4 there's other interexchange carriers to which
5 CenturyTel delivers traffic from Ava and Willow
6 Springs and Gainesville and Mansfield to
7 Branson?

8 A Yes. Any call that would be, for example,
9 going to Oklahoma City would go over
10 interexchange facilities from Ava, Gainesville,
11 Mansfield. It would go from that point over
12 those interexchange facilities to Branson or a
13 CenturyTel provider which we are compensated
14 for. And then they would go on dedicated
15 interexchange carrier facilities leaving
16 Branson.

17 Q Well, does the fact that these IXC's have this
18 -- this point of presence in Branson, does that
19 mean CenturyTel should not be charging them
20 access?

21 A No.

22 Q Could you describe what role it is that the
23 CenturyTel network plays -- plays in a typical
24 call that would be part of the traffic that
25 we're discussing here today? And let's, for

1 purposes of illustration, just use an example.
2 From a CenturyTel customer in Ava to the
3 FullTel ISP in Oklahoma City.

4 A Today, what -- what we would be providing is no
5 different than if it was any other
6 interexchange carrier call. The call would
7 originate by a CenturyTel customer in Ava. It
8 would go to the Ava central office. It would
9 then go across joint access toll facilities
10 between Ava and Branson.

11 And then it would be placed on a dedicated
12 facility provided by FullTel, exactly the way
13 any other interexchange call would transport
14 out of Ava.

15 Q Okay. Focusing specifically on the part of the
16 route from Ava to Branson, does CenturyTel
17 currently maintain trunks between those two
18 points?

19 A Yes. We do have interexchange trunking between
20 Ava and Branson.

21 Q Okay. Is there any local traffic being carried
22 on those facilities?

23 A No. It is all toll traffic.

24 Q Would CenturyTel -- I believe you mentioned how
25 CenturyTel would be compensated by the IXCs.

1 Would CenturyTel be compensated for the Ava to
2 Oklahoma City traffic?

3 A No, we would not.

4 Q I had a discussion with Mr. Baresel about the
5 trunks from Ava to Branson, and we got into the
6 question about, well, there's existing
7 facilities and is there enough capacity to
8 accommodate this new and additional traffic.

9 Are you familiar with how much trunk
10 capacity there is currently between Ava and
11 Branson?

12 A Yes, sir, I am.

13 Q In the course of your involvement in this
14 proceeding, did you also have submitted from
15 FullTel a trunk forecast from them as to how
16 much traffic would need to be put on these
17 facilities from Ava to Branson?

18 A Yes, we did.

19 Q And I don't want you to get into too much
20 detail here given the confidentiality of those
21 -- of those -- of that information, but can you
22 just give a rough generalization of how the
23 FullTel forecasted traffic that would go to its
24 ISP compares to the existing capacity on the
25 Ava to Branson route?

1 A We would have to increase the facilities
2 between those -- between Ava and Branson
3 approximately 150 percent.

4 Q Well, does that answer Mr. Baresel's
5 assumption that -- that maybe this traffic
6 could be put on existing facilities?

7 A It could not. It would immediately cause
8 blockage.

9 Q Okay. Well, what do you mean by blockage?

10 A Meaning that a local customer out of Ava trying
11 to make a long distance call would receive
12 blockage. They would not be able to make that
13 call.

14 Q Okay. And that's regardless of whether they
15 were trying to call the -- the FullTel ISP or
16 just making any other kinds of long distance
17 call?

18 A That's correct.

19 Q Well, can additional trunks be added to the Ava
20 to Branson route?

21 A Yes, they could.

22 Q Would there be a cost associated with that?

23 A Definitely.

24 Q To the extent that CenturyTel was forced to add
25 those trunks, would CenturyTel generate any

1 additional revenues from that traffic?

2 A None at all.

3 Q So in your view, which party should be
4 responsible for the cost of those trunks?

5 A The cost --

6 MR. COMLEY: Your Honor, I'm going to
7 object to that question. The issue is the
8 interpretation of agreement and not whether
9 this witness believes which party should be
10 given that cost.

11 JUDGE JONES: I'm going to overrule
12 the objection. She can certainly say what she
13 believes in. Whether it's true or not, I don't
14 know. She can say whether -- whoever should
15 pay -- who do you think should pay?

16 A I believe the cost causer should pay, which in
17 this instance, would be FullTel.

18 Q (By Mr. Simshaw) Is it your understanding --
19 or do you have an opinion as to whether FullTel
20 would generate revenue from this additional
21 traffic?

22 A Yes, they would.

23 Q Has CenturyTel had similar controversies with
24 other CLECs regarding non-local ISP bound
25 traffic?

1 A Yes, we have.

2 Q Did those controversies also involve
3 interpretation of the FCC's ISP remand order?

4 MR. COMLEY: I'll object on
5 relevance. I don't know what the other similar
6 circumstances or other similar cases would have
7 to do with the one at hand.

8 JUDGE JONES: Then how can you
9 object?

10 MR. COMLEY: Because it's irrelevant.

11 JUDGE JONES: How can you say it's
12 irrelevant if you don't know what they would
13 have to do with this?

14 MR. COMLEY: The objection, Judge, is
15 it's irrelevant to this proceeding.

16 JUDGE JONES: Okay.

17 MR. SIMSHAW: Well, your Honor, this
18 proceeding has been fraught with
19 interpretations of the ISP remand order. Their
20 witness gave his interpretation. Their
21 attorney has given his interpretation.

22 I think what's going on in the industry
23 generally is relevant with regard to that
24 interpretation.

25 JUDGE JONES: I'll overrule the

1 objection. You may answer the question, Ms.
2 Smith.

3 A Could you restate the question, please?

4 Q (By Mr. Simshaw) Sure. Has CenturyTel been
5 involved with other CLECs and ISP bound traffic
6 where the interpretation of the ISP remand
7 order has been in controversy?

8 A Yes, we have.

9 Q Has CenturyTel refused to interconnect to
10 exchange that traffic absolutely?

11 A No.

12 Q What kind of accommodation was worked out?

13 A Would you like me to give the specific example?

14 Q Sure. I mean, as long as it's a matter of
15 public record.

16 A It is. One example would be the -- the
17 agreement that we have before us today. The
18 original party who adopted this agreement --
19 this was an issue with Brooks Fiber.

20 The result of that difference of opinion
21 of the ISP remand order resulted in a
22 negotiated amendment to this very existing
23 agreement.

24 Q So are you saying there was an amendment
25 specifically to incorporate this type of

1 traffic?

2 A Yes, sir, I am.

3 Q And -- and under the terms of that amendment,
4 who -- let's just use Ava -- Ava to Branson,
5 assuming that's still the point of
6 interconnection.

7 Who -- who, under the terms of that
8 agreement, would be responsible for the cost of
9 adding any trunks there?

10 A The CLEC, which in this case -- for -- MCI,
11 Brooks Fiber, would be responsible for
12 establishing a point of interconnection
13 anywhere where they were going to -- where they
14 had a code and were providing this type of
15 service.

16 They would establish an interconnection to
17 the end office.

18 Q So MCI agreed, as a condition to exchanging
19 this traffic, to have a point of
20 interconnection in the local calling area; is
21 that right?

22 A Yes, sir.

23 Q Did -- did CenturyTel offer these same terms
24 and conditions to FullTel any point in this
25 proceeding?

1 MR. COMLEY: Your Honor, I'm going to
2 object to this line of questioning. I don't
3 know what the settlement negotiations have to
4 do the issues at hand. Furthermore, bringing
5 in what MCI agreed to is irrelevant to this
6 proceeding.

7 MR. SIMSHAW: Your Honor, the fact
8 that -- that this offer was made is in the
9 record already. It's -- it's in the
10 correspondence, which is attached to the
11 stipulation of facts.

12 JUDGE REDUNDANT: So objection
13 sustained. It's redundant.

14 MR. SIMSHAW: It's already there.
15 Point well taken.

16 JUDGE JONES: That means you can't
17 answer the question.

18 MS. SMITH: Yes, sir. Thank you.

19 Q (By Mr. Simshaw) There's been some comment
20 about CenturyTel's cooperation in -- in
21 providing interconnection. Did CenturyTel --
22 has CenturyTel been willing to exchange traffic
23 from Ava to Oklahoma City?

24 A Yes.

25 Q Under what terms?

1 A Under an access arrangement.

2 Q That's the same terms as the IXCs have?

3 A Yes, sir.

4 Q As far as -- addressing specifically the -- the
5 prosecution of this case, did CenturyTel agree
6 to submit a stipulated set of facts?

7 A Yes, we did.

8 Q Did CenturyTel agree to submit the matter on
9 affidavits?

10 A Yes, we did.

11 Q Did CenturyTel agree to submit the matter on
12 briefs?

13 A Yes, we did.

14 JUDGE JONES: Mr. Simshaw, those last
15 three questions give me the impression that
16 you're reaching. When you ask them, I don't
17 know what it is you mean to show by it. If you
18 agree to submit affidavits, if you agree to a
19 stipulation of facts and if you agree to submit
20 the case on briefs, then FullTel would also
21 have to have agreed to that, too. So what
22 difference does it make that you agreed?

23 MR. SIMSHAW: Would you allow me to
24 follow up on that, then?

25 JUDGE JONES: Sure.

1 Q (By Mr. Simshaw) Was there a joint stipulation
2 of facts submitted by the parties?
3 A Yes, there was.
4 Q Did both parties submit affidavits?
5 A Yes, we did.
6 Q And both parties submitted briefs?
7 A Yes, we have.
8 Q There was a question about who -- I'm turning
9 for a moment to the -- the ISP provider that
10 approached FullTel. There was a question as to
11 who currently serves that ISP, and I believe
12 the response was CenturyTel. Is that correct?
13 A I assume so. I have no reason to question
14 that.
15 Q I -- I think it was also noted that that ISP
16 currently had modems or servers or equipment in
17 the CenturyTel exchange.
18 So to the extent that CenturyTel is
19 providing service to Goin, I think was the name
20 of the company, is that true local service?
21 A Yes. To the extent that CenturyTel is
22 providing service, that service would be
23 ordered out of the local exchange tariff. It
24 is provided locally. Traffic would originate
25 and terminate within the local calling area.

1 Q And based on what -- what you've heard and are
2 aware of, would that service still be local if,
3 in fact, FullTel began serving Goin and Goin
4 moved its equipment to Oklahoma City?

5 A No, it would not.

6 Q Based upon what you've heard in the hearing
7 room today, do you have -- do you have an
8 opinion as to whether the dispute currently
9 before the Commission involves any local
10 traffic?

11 A All of the traffic that has been presented
12 today that would originate in these given
13 exchanges and would terminate in Oklahoma City,
14 all of that traffic is interexchange in nature;
15 therefore, non-local.

16 Q And does CenturyTel have any problem with
17 exchanging local traffic with FullTel pursuant
18 to the Brooks agreement?

19 A Absolutely not.

20 MR. SIMSHAW: Thank you. That's all
21 I have, your Honor.

22 JUDGE JONES: Thank you. We'll move
23 on to cross-examination.

24 MR. KLEIN: Thank you, Judge.

25 CROSS-EXAMINATION

1 BY MR. KLEIN:

2 Q Good afternoon, Ms. Smith.

3 A Good afternoon.

4 Q My name is Andy Klein. And as I think you
5 know, I represent FullTel in this matter.

6 A Yes, sir.

7 Q I'm going to be asking you some questions this
8 afternoon regarding a couple of items, most of
9 which have been covered earlier today.

10 If you don't understand my question, just
11 let me know, and I'm attempt to restate it or
12 rephrase it.

13 A Thank you.

14 Q Let me start with a couple of -- of basics, if
15 I may. CenturyTel is a publicly traded
16 for-profit corporation; is it not?

17 A Yes, it is.

18 Q Okay. And as such --

19 JUDGE JONES: Excuse me.

20 A CenturyTel who? Is that --

21 Q (By Mr. Klein) CenturyTel, Inc.

22 A CenturyTel, Inc., yes, they are.

23 Q Okay. And as such, the company's goal is to
24 increase revenue wherever possible, decrease
25 costs; is that accurate?

1 A I assume so. Yes.

2 Q Okay. Just like any other company, its goal is
3 to maximize shareholder wealth?

4 A Correct.

5 Q Okay. If we were to look at the revenue side
6 -- there's been discussion today about some of
7 the revenue that FullTel -- that CenturyTel
8 rather may either get or not get depending on
9 the outcome of this and perhaps even other
10 proceedings.

11 If CenturyTel bills an end user for
12 service, does CenturyTel collect that
13 revenue?

14 A By billing an end user?

15 Q Right.

16 A I hope to collect.

17 Q Okay. So you were compensated for the services
18 that CenturyTel provides to end user customers
19 of CenturyTel?

20 A For the specific service that CenturyTel
21 provided, that's correct.

22 Q Right.

23 A Depending upon if it's built into that cost
24 structure. Yes.

25 Q Okay. Well, let's look at what some of these

1 service might be. If you have an end user
2 customer located in, for example, Branson,
3 Missouri --

4 A Correct.

5 Q -- is it CenturyTel's responsibility to handle
6 the origination of calls from that customer?

7 A In what instance?

8 Q In all instances.

9 A I could handle the origination of that call,
10 but it is compensated through different
11 mechanisms.

12 Q Correct. You originate that call. You
13 physically transport the call from an end user
14 customer to either another CenturyTel customer
15 or an IXC, to an ISP or to any other entity who
16 that end user customer of CenturyTel might be
17 calling.

18 A I could transport yes, a portion of it. Yes.

19 Q What portion would you not transport?

20 A If it was local in nature, for example, I could
21 provide the loop. I mean, I would transport it
22 from the loop to my switch for the origination
23 portion.

24 Q Well, let me -- let me try this again. If I'm
25 a CenturyTel end user customer, I'm in your

1 service territory, and I call you up and I get
2 local CenturyTel service and I make a phone
3 call, a local phone call. Does CenturyTel
4 handle that call?

5 A Yes, we do.

6 Q Okay. And if I make a long distance call,
7 would CenturyTel be involved in the transport
8 of that call?

9 A The origination portion.

10 Q Okay. And if someone else called me, would
11 CenturyTel, likewise, be involved in the
12 termination of that call?

13 A Correct.

14 Q And is that -- those are all part and parcel of
15 services that CenturyTel will provide. --

16 A I'm assuming when you said me, you are the
17 CenturyTel customer?

18 Q Yes.

19 A Okay. Yes, sir. I'm sorry.

20 Q And those components are part of the service
21 that CenturyTel would provide for its
22 customers?

23 A Yes. But the compensation for that loop to
24 that customer's premises is still compensated
25 through different mechanisms.

1 Q Correct. I'm not asking about compensation.
2 I'm just asking about the customer/CenturyTel
3 relationship. As between CenturyTel and the
4 customer, the customer pays CenturyTel for
5 these services?

6 A Well, yes, sir. But you -- you are again
7 getting into compensation. They pay for a
8 portion of that. But when you're mixing local
9 and interexchange, there's different
10 compensation mechanisms for that same loop
11 facility.

12 Q Okay. Well, let me -- let me ask you this
13 request question: If the CenturyTel local
14 customer in this case, me, makes a local call,
15 does CenturyTel receive compensation from me,
16 the end user, for handling that service for me?

17 A Correct.

18 Q Is that part of my monthly service?

19 A Yes, sir.

20 Q If another local customer of CenturyTel or
21 anyone else calls me as a local customer of
22 CenturyTel, would you deliver that call to me?

23 A Yes, we would.

24 Q Okay. Now, if I were a local CenturyTel
25 customer and I was calling a competitor --

1 assume there's competition in your territory.
2 And if I'm calling someone else's local
3 customer, would CenturyTel pay reciprocal
4 compensation for that local call assuming it is
5 a local call under all facts and circumstances?
6 A Depended upon the interconnection agreement
7 between the two providers.
8 Q Under what circumstances would reciprocal
9 compensation not apply to a local call?
10 A In many instances. The traffic is balanced in
11 nature, and it's a bill and keep arrangement.
12 Q So that's -- that's correct so if it was a
13 reciprocal compensation arrangement and not
14 bill and keep, CenturyTel would pay reciprocal
15 compensation for that local call to the
16 receiving carrier?
17 A Under your assumption, yes.
18 Q Okay. Telecommunications is a regulated
19 industry, is it not?
20 A Yes, it is.
21 Q That's why we're here today in front of a
22 regulator. Regulations oftentimes come with
23 costs, do they not?
24 A I assume so.
25 Q In other words --

1 A Generic statement.

2 Q Sometimes there are rules or orders or

3 decisions that affect regulated entity, and

4 sometimes there is a cost of compliance, is

5 there not?

6 A I'd say that there's a cost of compliance for

7 many things, yes.

8 Q So is it fair to say that regulations become a

9 cost of doing business? For telecom carriers,

10 in particular.

11 A Are you asking would it be built into the local

12 rates or into the access -- into the

13 compensation rates? I -- you would have to ask

14 a cost witness on how those costs were put into

15 the rate development and recovered.

16 Q Well, I would do that if that was question.

17 But the question is simply, you know, is there

18 a cost of doing business that regulations

19 sometimes impose?

20 A I would assume. And I would assume that cost

21 is recoverable.

22 Q Well, you are the Director of Regulatory

23 Compliance for CenturyTel, correct?

24 A No, I am not.

25 Q What's your title?

1 A I'm Director of External Affairs.

2 Q Okay. Does that come within it regulatory the

3 compliance issues?

4 A Actually, no, I do not handle regulatory

5 compliance.

6 Q So in what matter then were you involved in the

7 interconnection dispute with FullTel?

8 A Only in the actual -- the interpretation of the

9 interconnection agreement and the determination

10 of whether the traffic was local or non-local

11 and apply to the interconnection agreement

12 itself.

13 Q And you did, in fact, submit affidavits in this

14 regulatory proceeding, have you not?

15 A Yes, I have.

16 Q Okay. Let me ask a real fundamental question.

17 Is CenturyTel obligated to follow whatever the

18 prevailing law is?

19 A Yes, as any carrier.

20 Q Okay.

21 A Or company or individual.

22 Q Did -- did the Communications Act and,

23 specifically, the Telecommunications Act of

24 1996 impose certain obligations on local

25 exchange carriers?

1 A Yes, it did.

2 Q And some of those new obligations that came
3 about with the '96 Act came with costs
4 associated with their limitation; isn't that
5 right?

6 A I mean, I would assume that there's costs
7 involved to implement.

8 Q The '96 Act required local change carriers such
9 as CenturyTel to unbundle its network, provide
10 UNEs, U-N-Es; isn't that right?

11 A That's correct.

12 Q To provide colocation to competitors?

13 A That's correct.

14 Q And to provide interconnection of its networks
15 to competitors?

16 A That's -- that's correct. But they're also
17 compensatable. But, yes, I agree that there
18 were.

19 JUDGE JONES: Mr. Klein, let me
20 interrupt you for a minute. I realize that
21 attorneys have strategies and that you try to,
22 you know, get witnesses to agree to certain
23 things and then you trick them. Don't ask her
24 questions that we all know the answer to like
25 are they regulated? Yeah, they are. Do they

1 have to follow the law? Yes, they do.

2 Ask her questions that are specific to the
3 case. We've already gone a lot longer than I
4 anticipated in all my life this case would be.
5 So try to be specific and to the point. Okay?

6 MR. KLEIN: Thank you. I'm frankly
7 surprised that this is going as slow as it is
8 myself.

9 JUDGE JONES: All right.

10 MR. KLEIN: I thought this would be
11 easier.

12 Q (By Mr. Klein) When CenturyTel bought the
13 Verizon Missouri territory at issue here, it
14 did undertake certain obligations, did it not?

15 A Yes, we did.

16 Q It did sign a stipulation that was approved by
17 the Missouri Public Service Commission?

18 A I believe that's correct.

19 Q And those stip -- that stipulation became a
20 condition for the approval of the transfer of
21 the territory from Verizon to CenturyTel,
22 correct?

23 A I believe that there was a stipulation part of
24 that. That is correct.

25 Q Okay. And one of those conditions of that

1 stipulation was that CenturyTel would continue
2 to adhere to the interconnection terms then
3 being offered by Verizon to competitive
4 carriers; is that correct?

5 A There -- there was a stipulation for existing
6 interconnection with carriers that we would
7 continue under that same agreement, I believe,
8 for up to one year or until that they were
9 renegotiated. I would have to look at the
10 exact language, but that's my recall.

11 Q I don't have it in front of me either, but my
12 recollection is there were some ongoing
13 commitments. My question is whether some of
14 those commitments incurred or imposed costs on
15 CenturyTel in order to be met?

16 A I can't answer that.

17 Q Let's turn specifically to interconnection
18 since that's what we're here for today. Is it
19 your understanding that interconnection must be
20 provided by CenturyTel to competitive carriers
21 pursuant to Section 251 of the Communications
22 Act?

23 A Yes, it is.

24 Q And that CenturyTel must also provide
25 colocation pursuant to the Act?

1 A Yes, sir.

2 Q Is colocation a technically feasible method of
3 interconnection?

4 A Yes, sir.

5 Q And is it reasonable in terms of cost, or is it
6 an excessively expensive method?

7 A I can't answer that.

8 Q Well, if -- if -- under your interpretation of
9 what would be technically feasible method of
10 interconnection, does CenturyTel believe that
11 incorporated cost-based issues or does not
12 involve cost at all and simply focuses on
13 technical feasibility?

14 A Can you rephrase your question, please?

15 Q Certainly. If a request was made for
16 interconnection and CenturyTel was evaluating
17 whether it was technically feasible, would
18 CenturyTel look at it purely from an
19 engineering standpoint, or would CenturyTel
20 also consider how expensive that particular
21 method of interconnection was or inexpensive,
22 for that matter?

23 A You know, if you were looking at just
24 technically feasible, I guess you -- we would
25 only review it from the standpoint is it

1 technically feasible.

2 Q Again, I think you --

3 A And then would you produce rates associated

4 with that form of interconnection that would be

5 your compensation for that technically feasible

6 form of interconnection.

7 Q Okay. Mr. Baresel testified earlier that

8 FullTel has paid \$5,000 to CenturyTel to

9 establish a space -- colocation space on a rack

10 in the Branson central office. Does that sound

11 correct to you?

12 A Colocation is tariffed in the state of

13 Missouri, so I cannot tell you what he's paid.

14 I can tell you that if he is not utilizing the

15 space that we are more than willing to refund

16 his money.

17 Q Okay. But CenturyTel has been compensated for

18 the colocation established by FullTel?

19 A I don't know.

20 Q Okay. Is the method of interconnection

21 selected by FullTel technically feasible?

22 A I -- I assume so. Yes.

23 Q Okay. So there's no issue there?

24 A Not that I'm aware of.

25 Q Let's talk about the trunking that's been

1 discussed here today, the transport. Has
2 CenturyTel updated its network in order to
3 satisfy the interconnection obligations under
4 the Telecom Act of 1996?

5 A In what manner?

6 Q In making local interconnection trunks
7 available to competitive carriers.

8 A We make local interconnection trunks available
9 to competitive carriers every day, which
10 doesn't necessarily require a -- I think you
11 used the terminology an update in our network.

12 Q Here your -- I think it's been represented by
13 CenturyTel today and before this in this
14 proceeding that the interconnection that
15 CenturyTel would provide to FullTel is to be
16 provided over CenturyTel's toll network. Why
17 is that the case?

18 A Because the -- the tandem in which FullTel is
19 wishing to interconnect which is the vast
20 difference between our tandem, for example, and
21 the -- the other interconnections which he
22 referenced in Oklahoma City, SBC provides local
23 tandems, which means that similar to the way
24 that they handle interexchange carrier. All
25 their local calls also go through a tandem

1 facility. CenturyTel has no local tandems.

2 So the -- what Branson is, for example, is
3 an access tandem, meaning that all traffic
4 that's going from those exchanges behind
5 Branson to the Branson tandem are all toll in
6 nature. That's what the facilities were
7 designed and built for.

8 Q So it's fair to say that CenturyTel is relying
9 on its historic toll network to meet its
10 interconnection obligations under the Telecom
11 Act of 1996?

12 A I -- I don't know that that's fair to say.

13 Q Well, how is that not fair to say in light of
14 your characterization of the network as you
15 just described it?

16 A We have multiple companies that interconnect
17 and have different forms of interconnection.
18 So for you to make that statement I don't think
19 is absolutely correct.

20 Q Thank you. I think the record will speak for
21 itself on that point.

22 CenturyTel has represented here today and
23 prior to today that the interconnection
24 requested by FullTel will overburden its
25 network, that it will stress the CenturyTel

1 network. Is that accurate?

2 A They -- yes. That is a portion of it. Yes.

3 Q And that their interconnection that's been

4 requested may cause congestion or may

5 overburden the toll trunks that CenturyTel has.

6 A I think the point is -- is that in order to

7 accommodate this traffic that it would cause us

8 to duplicate existing facilities by

9 approximately 150 percent.

10 Q So in other words, CenturyTel would have to

11 expand its network?

12 A The network would have to be expanded.

13 Q Okay. Yesterday when I was -- I was driving

14 down here, I passed Columbia, and there was 18

15 miles worth of construction going on on

16 Interstate 70. Why do you think that expansion

17 or construction was taking place? Do you think

18 it's perhaps to accommodate an increase in

19 traffic?

20 A The road could have been in bad shape. I don't

21 know.

22 Q Okay. Is it CenturyTel's decision to put the

23 traffic that's been requested here by FullTel

24 onto its toll network as opposed to some other

25 interconnection network?

1 A That is the only network between the two. Yes.

2 Q Well, my question is whether or not
3 CenturyTel's decision to accommodate the
4 traffic over its existing network rather than
5 expanded to accommodate the interconnection
6 required by the Telecom Act.

7 MR. SIMSHAW: Your Honor, I -- I
8 object. It's -- I think it's been asked and
9 answered because he's asked whether it was
10 their decision, and the answer was there's only
11 one network. So what decision is there to be
12 made?

13 MR. KLEIN: Not withstanding the
14 testimony by counsel, I think the question
15 hasn't been answered. I think that the witness
16 hasn't indicated whether it's the decision
17 between one choice or the other. And that's
18 really the only question that's pending right
19 now.

20 JUDGE JONES: I'll overrule the
21 objection. Ask your question again, Mr. Klein.

22 Q (By Mr. Klein) Is it CenturyTel's decision as
23 to whether to put the traffic that's been
24 requested by FullTel onto its existing toll
25 network or to expand its network to accommodate

1 interconnection that's required by the 1996
2 Telecom Act?

3 A Could you rephrase your question? You have
4 multiple questions in there.

5 Q I'll attempt to. Is it the decision -- is it
6 the decision of CenturyTel to make as to how to
7 accommodate the traffic required by FullTel?
8 Let's get that part out of the way.

9 A Is it CenturyTel's decision to make?

10 Q Yes.

11 A If -- I'm -- I'm assuming if you're saying that
12 if there is a connection in Branson, would it
13 be CenturyTel's then decision on what to do to
14 get it to Branson? Then, yes, it would be.

15 Q Okay. Thank you. I'll leave it at that.
16 You've indicated earlier that -- in response to
17 a question before Mr. Simshaw that CenturyTel
18 had not denied the interconnection to FullTel.
19 Is that an accurate characterization?

20 A That is correct.

21 Q Let me read to you a letter sent by you to
22 Mr. Baresel which was attached to the
23 Stipulation of Fact that was already filed in
24 this docket dated June 2nd, 2005.

25 In the second paragraph, you indicate,

1 Traffic between CenturyTel customers in the
2 Ava, Mansfield, Willow Springs, Gainesville
3 calling areas, local calling areas and FullTel
4 customers in the Oklahoma City, Oklahoma, area
5 would not be local traffic. Instead, this
6 would be non-local vendor exchanged traffic.
7 Consequently, there is no basis for local
8 interconnection trunks as FullTel does not
9 appear to have or plan to have any local
10 customers.

11 Is that an accurate statement?

12 A Yes, sir.

13 Q And based on that, did you tell FullTel that it
14 could not interconnect through the local
15 competition provisions of the Telecom Act?

16 A Based upon that sentence that you just read,
17 which was that the traffic was interexchange in
18 nature and that they had no plans to provide
19 local service, then yes -- yes, sir, that the
20 agreement itself would not apply to the traffic
21 in question.

22 Q On what were you relying in determining whether
23 the traffic was local or not when you wrote
24 that letter?

25 A That the -- the calls themselves were

1 originating in one local calling area and
2 terminating to the customer in Oklahoma City,
3 which is non-local traffic.

4 Q Were you aware of what the nature of the
5 traffic was at that time, whether it be local,
6 ISP bound traffic or interexchange traffic?

7 A Yes. I was aware that it was ISP.

8 Q Are you -- were you then aware that the FCC has
9 had proceedings addressing reciprocal
10 compensation?

11 A Yes, I am aware.

12 Q Okay. And in those proceedings -- what's your
13 understanding of what those proceedings are
14 designed to accomplish?

15 A It's my understanding that those proceedings
16 strictly looked at traffic that was already
17 falling under what was presumed to be a
18 reciprocal compensation regime, which meant
19 that the traffic existed under what was
20 perceived to be 251(b)(5) traffic, meaning that
21 it was originating and terminating within the
22 local calling area, and whether reciprocal
23 compensation applied to that ISP traffic.

24 So the traffic that was addressed in that
25 order had to do with traffic that was

1 origination -- was local in nature. It was
2 traffic that the originating and terminating to
3 an ISP within a given local calling area.

4 At that point, the FCC chose to carve out
5 that traffic. In order to carve out that
6 traffic, which we have defined in this
7 agreement as ISP bound traffic, it had to or
8 originally be local in nature.

9 Q And what's the basis for that conclusion?

10 A I believe that, if you will refer to the brief
11 that was filed by CenturyTel, there are cites
12 to that opinion.

13 Q Well, I've read the brief. I don't know what
14 the basis for that is. I was hoping you could
15 elaborate on that. You seem to be very
16 conversant in this area.

17 A I think that there was a -- there's a cite
18 that's given in here for -- let me refer to
19 the --

20 MR. SIMSHAW: Your Honor, I'm going
21 to object because I'm not sure what purpose
22 this serves here. The question has is already
23 exhausted this witness as a layperson's
24 understanding and interpretation.

25 JUDGE JONES: Are you objecting more

1 specifically because she can't immediately put
2 her hand on what it is she's looking for?

3 MR. SIMSHAW: Well, she's going --
4 no. I'm objecting because she has already
5 responded to what her layperson opinion is as
6 to what was behind those proceedings and what
7 they meant. We're now getting into the area
8 of, oh, what's the legal opinions?

9 And the witness seems to be gravitating
10 towards CenturyTel's legal brief written by
11 CenturyTel's lawyers. And I'm not sure what
12 purpose that serves.

13 JUDGE JONES: Mr. Klein?

14 MR. KLEIN: I think the witness did a
15 fairly adequate job of explaining her company's
16 position as it relates to the company's
17 interpretation of the FCC order.

18 JUDGE JONES: That means she's a
19 legal expert in your opinion?

20 MR. KLEIN: No, it does not. But I'm
21 not asking necessarily for a legal opinion.
22 I'm asking for a regulatory interpretation
23 which she appears willing and --

24 JUDGE JONES: What's the difference
25 between a regulatory interpretation and legal

1 opinion?

2 MR. KLEIN: Well, there are many
3 regularity personnel at various companies who
4 are not lawyers, and they do help ensure
5 compliance with regulatory requirements. And
6 it appears that Ms. Smith is one of those
7 people.

8 JUDGE JONES: Well, I'll tell you
9 what. This is all cloudy to me right now. I
10 have no idea where you are in this ocean. So
11 I'm going to ask you to move on while
12 sustaining the objection for whatever reason it
13 could possibly be sustained.

14 MR. KLEIN: Okay. Very well, your
15 Honor.

16 Q (By Mr. Klein) The FCC now has on going
17 proceedings addressing intercarrier
18 compensation, does it not?

19 A I believe so.

20 Q Okay. And CenturyTel has been a somewhat
21 active participant in those proceedings, has it
22 not?

23 A I believe so.

24 Q Okay. And CenturyTel has, in fact, had
25 meetings with FCC Commissioners and Senior

1 Legal Advisors to Commissioners regarding these
2 very issues, hasn't it?

3 A I have not been involved in those meetings.

4 Q Okay. Do you know if -- whether CenturyTel's
5 characterized the FCC's 1999 and 2001 ISP
6 orders as, quote, special rules for ISP bound
7 traffic, end quote?

8 A I don't know.

9 Q Did you think that would be an unfair
10 characterization?

11 A I don't know.

12 Q You wouldn't use the term special rules for ISP
13 bound traffic to characterize what the FCC has
14 done?

15 A I believe Mr. Baresel characterized it as take
16 advantage. I don't know.

17 MR. KLEIN: I'd like to strike the
18 answer as non-responsive.

19 Q (By Mr. Klein) And the question is whether
20 you --

21 JUDGE JONES: But the answer won't be
22 stricken. If her answer is she doesn't know,
23 she doesn't know.

24 MR. KLEIN: Okay. Well, she answered
25 with referencing Mr. Baresel's testimony, which

1 through the work of finding it and taking
2 administrative notice of it?

3 MR. KLEIN: We'll be happy to file it
4 on Monday with the Commission.

5 JUDGE JONES: Does CenturyTel have
6 any objections?

7 MR. SIMSHAW: I do have an objection,
8 your Honor. Well, first may I inquire as to
9 whether the --

10 JUDGE JONES: I don't even know what
11 it is.

12 MR. SIMSHAW: Yeah. Whether the
13 Missouri Commission takes administrative notice
14 of filings in front of the FCC --

15 JUDGE JONES: Well, we can take
16 notice of anything, I suppose. Just --

17 MR. SIMSHAW: Without seeing it yet,
18 my --

19 JUDGE JONES: Well, why don't you
20 take a look at it so we can resolve the issue?

21 MR. SIMSHAW: My first reaction is
22 going to be, well, then let's have everything
23 in the record that CenturyTel has filed in this
24 proceeding, which would probably take a pickup
25 truck to bring here.

1 JUDGE JONES: While he's looking that
2 over, Mr. Klein, what's the point of us even
3 looking at that piece of paper?

4 MR. KLEIN: The point is it
5 differentiates between the positions that
6 CenturyTel has taken here before the Missouri
7 Commission and the position it has taken at the
8 federal level regarding what the current rules
9 provide.

10 This pleading does indicate that
11 CenturyTel's position at the federal level is
12 there are certain rules right now that relate
13 specifically to ISP bound traffic.

14 JUDGE JONES: So you're just saying
15 that they're inconsistent in different forums?

16 MR. KLEIN: That, in addition to the
17 fact that their position taken federally is a
18 lot more consistent with the position FullTel
19 is taking in this proceeding.

20 MR. SIMSHAW: Your Honor, I haven't
21 even read it yet, but I --

22 MR. KLEIN: Well, he asked me what
23 the purpose is.

24 MR. SIMSHAW: I'd state that there is
25 no inconsistency. And I'll read it, but

1 counsel -- counsel is just saying there is.

2 JUDGE JONES: I'm wondering,
3 Mr. Klein, if it's true that there is an
4 inconsistency, what difference does that make
5 to us here? The argument that they -- that
6 they have posed here is the argument that we
7 have to consider, right?

8 MR. KLEIN: That is correct.

9 JUDGE JONES: Then the -- I won't
10 have that in the record then.

11 MR. KLEIN: Okay. I think the
12 inconsistency goes to their credibility or lack
13 of credibility before this Commission.
14 Nonetheless, I --

15 JUDGE JONES: You know, this
16 proceeding has been going on, I'm sure both
17 parties agree, longer -- not just today, just
18 over the months longer than it should have.
19 There have been affidavits filed. There have
20 been briefs filed.

21 This is something that could have came up
22 a long time ago. So at this stage in the game,
23 I don't think it's fair to -- to pile up the
24 paper as it -- as it were.

25 MR. KLEIN: Well, this is really for

1 purposes of impeachment of the witness since
2 the witness has testified as to one aspect of
3 the company's position, and this indicates
4 there is another aspect of it. So I think it
5 -- it should be admissible for that purpose.

6 And regardless, Judge, I don't mean to
7 quarrel. I mean, I don't necessarily need it
8 in the record. I would just like to use for
9 purposes of asking Ms. Smith some follow-up
10 questions.

11 JUDGE JONES: Well, why don't you
12 show it -- why don't you -- let me see the
13 document. What is it?

14 MR. SIMSHAW: Well, your Honor, I'm
15 just getting through it, but here's one bold
16 underlined statement, If the ISP's premises are
17 located outside of the calling party's local
18 call area, the FCC should conclude that the ISP
19 bound traffic is interexchange in nature. It
20 sounds totally consistent.

21 MR. KLEIN: Well, if they should
22 conclude, it indicates they have not concluded.

23 JUDGE JONES: That's a play on words.
24 I'm not going to --

25 MR. KLEIN: Judge, I'll show this to

1 you. I mean, the entire pleading is focused on
2 the FCC changing its rules from what they
3 currently are. CenturyTel has taken the
4 position that the FCC rules are one thing
5 today, and then they're saying they are not one
6 thing today but they should be in the future.

7 So what CenturyTel -- what they've done
8 here is portray the current rule as what they
9 would like the rule to be. And I believe that
10 FCC filing demonstrates that quite clearly.

11 MR. SIMSHAW: Your Honor, there is, I
12 think it's evident from this hearing,
13 significant controversy in the industry in
14 interpreting the ISP remand order.

15 It's not so much rules as much as it is
16 all the parties running around the country
17 giving their interpretation trying to take
18 advantage of their interpretation.

19 And there are pending proceedings in front
20 of the FCC that will hopefully, if they ever
21 get around to addressing them, put this matter
22 to rest. So all the -- all the parties are
23 going to be seeking ex partes and saying in
24 this area of controversy, as you clear it up,
25 this is what you ought to make very clear,

1 probably saying it's what it already means, but
2 would you please make it clear that's -- so all
3 the parties can recognize that is what was
4 meant.

5 JUDGE JONES: Now, let me ask --

6 MR. SIMSHAW: No contradiction.

7 JUDGE JONES: Let me ask you this,
8 Mr. Simshaw: You, without even reading this --
9 this letter, was able to say there's no
10 inconsistency with CenturyTel's position here
11 or at the federal level.

12 MR. SIMSHAW: Right.

13 JUDGE JONES: So why would you care
14 if this is even considered?

15 MR. SIMSHAW: Because he has stated
16 -- I mean, he has stated it is inconsistent,
17 and that may be the only part of the record
18 that the Commission looks to.

19 JUDGE JONES: Then it would seem you
20 would want us to be able to actually read this
21 letter to belie his statement of inconsistency.

22 MR. DORITY: We haven't had an
23 opportunity to review that. As I think
24 Mr. Simshaw stated, there's been numerous ex
25 partes at the FCC and on this particular

1 docket. Just to -- you know, as you said,
2 Judge, here we are at the eleventh hour. This
3 is the first time we've seen this. And I just
4 think it's unfair to now to have the Commission
5 take administrative notice of it.

6 COMMISSIONER MURRAY: Judge, can I
7 ask a question?

8 JUDGE JONES: Yes, you may,
9 Commissioner Murray.

10 COMMISSIONER MURRAY: Mr. Dority,
11 you're not denying that this was filed at the
12 FCC, are you?

13 MR. DORITY: I won't deny that. No

14 COMMISSIONER MURRAY: Do you have any
15 reason to doubt that this is the document that
16 you actually presented at the FCC?

17 MR. DORITY: I -- I haven't seen it.
18 I don't know.

19 COMMISSIONER MURRAY: I mean, it
20 seems like it's public record. I don't know
21 what the objection to having it recognized here
22 would be, what the harm would be. It's a
23 public record at the FCC.

24 JUDGE JONES: It is a public record
25 at the FCC.

1 MR. SIMSHAW: Your Honor, in
2 deference to the Commission and your Honor and
3 the -- in attempting to put this thing to bed
4 and, as you pointed out, this has gone on
5 longer than it should, I'm going to withdraw my
6 objection and let this one out of context
7 document be taken notice of. That's fine.

8 JUDGE JONES: Now, in light of that,
9 because of purpose of document is to simply
10 impeach the witness, then use it for that
11 purpose.

12 MR. KLEIN: Very well. Thank you,
13 Judge.

14 Q (By Mr. Klein) The filing that was made at the
15 FCC by CenturyTel states, The CenturyTel
16 customers dial a, quote, local, unquote, number
17 according to the NPA-NXX code, but the traffic
18 must be delivered to a distant ISP that does
19 not have facilities in the local calling area
20 in which the call originates and in some
21 instances not even in the same state.

22 MR. SIMSHAW: Keep going. I like it.

23 MR. KLEIN: You like the part about
24 the requirement to deliver the traffic?

25 JUDGE JONES: Don't -- don't start

1 going back and forth.

2 MR. DORITY: Judge, it's one thing to
3 take administrative notice of the document. If
4 -- if Counsel is going to simply stand up there
5 and read out piece parts of it, I don't know
6 where we're going here.

7 MR. KLEIN: I'll -- I'll move on,
8 Judge. I know this has gone on long enough. I
9 think that the point is made, and I think, you
10 know, clearly, the statement in letter will
11 speak for itself. And it is a matter of public
12 record.

13 I'd be happy to provide a citation to
14 where it is at the FCC in addition to the
15 docket numbers.

16 JUDGE JONES: Well, why don't you
17 provide that citation on the record so we don't
18 have to receive any more filings? And just
19 read the record.

20 MR. KLEIN: Okay. Very well. It is
21 a filing dated January 27th, 2005, addressed to
22 Marlene H. Dorsch, Secretary, Federal
23 Communications Commission from Karen Brinkmann,
24 B-r-i-n-k-m-a-n-n, of Lathrom & Watkins, LLP on
25 behalf of CenturyTel Inc., who apparently,

1 along with John Jones of CenturyTel, met with
2 Jennifer Manner and Jessica Rosenmorsel (ph.)
3 And others who are listed in the letter. And
4 it was filed in CC Dockets 9645, 9698, 9968 and
5 01-91.

6 MR. SIMSHAW: Excuse me, Counsel. I
7 didn't pick up the date. What was the date
8 that was filed?

9 MR. KLEIN: January 27th, 2005.

10 Q (By Mr. Klein) Let me just ask you, if I may,
11 one final question on that -- on that issue.
12 Is it CenturyTel's position that if the FCC
13 adopted rules that ISP bound traffic is not
14 subject to access charges, then the Commission
15 should also rule that the terminating carrier
16 serving the ISP must establish a direct point
17 of interconnection within the ILEC's local
18 calling area?

19 Is that the -- an accurate recitation of
20 the position that CenturyTel is currently
21 advocating at the FCC to the best of your
22 knowledge?

23 A Are you reading that from the letter? I --

24 Q Yes.

25 A I was not a party to that. I'm not familiar

1 with that at all.

2 Q Okay. There was discussion earlier today about
3 the interconnection agreement that's in effect
4 between the parties. Do you dispute that there
5 is an interconnection agreement that's in
6 effect between the parties?

7 A No, sir.

8 Q Your counsel had previously focused on the
9 question of whether traffic is local. Could
10 you locate for us where that comes up in the
11 interconnection agreement, the question of
12 whether traffic is local or non-local?

13 A I believe that -- in the letter that I wrote,
14 there's a reference to Section 2.83 that refers
15 you back to the interconnection agreement and
16 where the calls originate.

17 They're to defined by the existing tariffs
18 and the exchanges within that. I think it
19 says, The parties agree that the definition of
20 reciprocal compensation traffic is adopted by
21 the parties in conjunction with their adoption
22 of the provisions of this agreement.

23 And -- well, wait a minute. I'm not
24 reading -- I'd have to refer back to the
25 interconnection agreement. But it does say

1 that the -- it is traffic that's within the
2 Verizon tariffed areas.

3 Okay. The determination of whether
4 telecommunications traffic is exchange access
5 or information access must be based upon
6 Verizon's local calling area as defined in
7 Verizon's effective customer tariffs and in
8 applicable Commission and FCC orders for
9 purposes of this definition of Verizon local
10 calling scope, including a Verizon non-optional
11 extended local calling scope arrangement, but
12 does not include a Verizon optional extended
13 local calling scope arrangement.

14 I believe that's Section 2.83 of the
15 interconnection agreement.

16 Q Okay. And I believe you testified earlier that
17 the traffic to be exchanged, as you understood
18 it, between CenturyTel and FullTel was to be
19 ISP bound traffic; is that correct?

20 A That's correct.

21 Q And does the interconnection agreement account
22 for the treatment of ISP bound traffic; in
23 other words, how the parties would interconnect
24 and exchange that traffic?

25 A My interpretation of the agreement is that

1 first you have to determine if it's telephone
2 exchange access traffic. Then you determine if
3 it falls within the agreement. And then again,
4 the ISP bound traffic that would be included
5 under this agreement would fall within that --
6 that same definition.

7 Q Okay. If it was ISP bound traffic, as you've
8 just described it, what would be the obligation
9 of the parties to exchange that traffic under
10 the interconnection agreement that's in effect
11 between the parties?

12 A If it's ISP bound traffic, which is telephone
13 exchange traffic in nature, then it would be
14 over the same interconnection facilities that
15 provides for local interconnection.

16 Q Okay. So as long as it qualified as ISP bound
17 traffic, it would be handled as -- in the
18 manner you've just described? Is that
19 accurate?

20 A For the interconnection? Yes.

21 Q Over the local interconnection charges.

22 A If it is ISP bound traffic, in the manner I
23 just described, then, yes, it would.

24 Q Is it fair to say that the agreement requires
25 each party at its own expense to provide for

1 the delivery to the relevant interconnection
2 point of the other party reciprocal
3 compensation traffic and ISP bound traffic?
4 A Yes, it does.
5 Q Is it also fair to say that the ISP bound
6 traffic shall be governed by the terms of the
7 FCC Internet order and other applicable FCC
8 orders and regulations?
9 A Yes, it does.
10 Q And is it also fair to say interconnection
11 point of the party for ISP bound traffic
12 delivered to the receiving party shall be the
13 same as interconnection point for reciprocal
14 compensation traffic?
15 A I believe that's what I just said. Yes, sir.
16 Q So does that leave the only question in your
17 mind as to whether the traffic at issue falls
18 within the FCC's definition of ISP bound
19 traffic?
20 A Yes, sir.
21 Q And is that the only basis that CenturyTel has
22 asserted for denying the interconnection
23 service to FullTel in this proceeding?
24 A That the traffic is non-local? Yes.
25 Q Well, that wasn't my question.

1 A That is the only basis that we've denied inter
2 -- a local interconnection. We have not denied
3 an interconnection. That is the basis that we
4 have denied an interconnection under this
5 agreement is that the traffic is non-local or
6 it does not fall within this definition of
7 telephone exchange service.

8 Q Well, it's interesting. I'm look at your June
9 2nd, 2005, letter to Mr. Baresel instructing
10 FullTel that it had to order interexchange
11 access trunks in accordance with CenturyTel's
12 approved access tariffs, but it doesn't mention
13 anywhere in here that the traffic is ISP bound
14 traffic. At least that I can see.

15 A I'm sorry. I'm -- I guess I'm not making
16 myself clear. The first qualifier, whether
17 it's ISP bound traffic or anything, according
18 to our interpretation of the FCC
19 interconnection order that you continue to
20 reference, is still you must determine the
21 jurisdiction of the call.

22 It still has to be telephone exchange
23 service. So it still has to fall within the --
24 the local calling area.

25 Q But I believe --

1 A And there's a separate category under that
2 local qualification that would be interpreted
3 under this agreement as ISP bound. But it
4 still must be within the local calling area.

5 Q But I believe you just stated that the only
6 reason why CenturyTel would deny the FullTel
7 interconnection is because the traffic doesn't
8 qualify under the FCC's definition of ISP bound
9 traffic. And yet your denial of
10 interconnection on an interconnection trunk
11 basis doesn't reference ISP bound traffic at
12 all.

13 A That's right. Because under the first
14 qualifier, it wouldn't matter.

15 Q But you characterized the traffic as
16 interexchange traffic.

17 A Exactly, because it is. And if it's
18 interexchange -- if it's ISP in nature, if we
19 use the definition that you seem to be
20 implying, then it wouldn't matter whether the
21 ISP call was terminating in Mexico or Oklahoma
22 City or New York, that it would still be
23 carried over that trunking facility.

24 You still have to go to the original
25 qualifier if the traffic is local in nature or

1 if it is interexchange?

2 Q Isn't it true that after FullTel called
3 CenturyTel's attention to the FCC's ISP remand
4 order that CenturyTel then began to address
5 whether this traffic did or did not qualify as
6 ISP bound traffic?

7 A Are you referring to a -- a letter from
8 Mr. Simshaw or --

9 Q No. I believe it was a letter from you. Let
10 me take a look. No. I stand corrected. It
11 was from Mr. Simshaw dated three weeks after
12 your initial letter to FullTel.

13 A Right. I immediately -- on June 2nd after our
14 conference call on the forecast, I immediately
15 drafted that letter restating the position that
16 we took on the conference call. So my letter
17 of June 2nd was merely a reinstatement of our
18 conversation.

19 Then Mr. Baresel responded to my letter in
20 which Mr. Simshaw responded back because it had
21 some legal issues contained therein.

22 Q Okay. But I -- I believe we've just covered
23 the part of the interconnection agreement that
24 says reciprocal compensation traffic and ISP
25 bound traffic shall be handled the same,

1 interchange at the same interconnection point
2 and compensated -- each party at its own
3 expense would deliver that traffic to the POI.
4 Is that -- is that correct? Did we just cover
5 that?

6 A We covered my interpretation of it. Yes.

7 Q Well, think I we were in agreement on that
8 point, but -- you seem familiar, Ms. Smith,
9 with the legal requirements attended to this
10 type of traffic and how the traffic is to be
11 handled.

12 Is that based on your reading of court
13 opinions or just your understanding of -- of
14 them as has been explained to you or something
15 else for that matter?

16 A Probably somewhat of a combination of both.

17 Q Are you familiar with the FCC Rule 51 CFR
18 51.703 called reciprocal compensation
19 obligations of LECs? I believe it was
20 referenced by your counsel.

21 A I believe you referenced it. Yes.

22 Q Okay. And do you know what that provides
23 offhand?

24 A I believe it's the obligation for reciprocal
25 compensation.

1 Q Again, to -- to the best of your knowledge,
2 does it say a LEC may not assess charges on any
3 other telecommunications carrier for
4 telecommunications traffic that originates on
5 the LEC's network?

6 A Yes. In the form of reciprocal compensation.

7 Q Yes.

8 A And reciprocal compensation, then again, I must
9 refer you to back 251(b) (5).

10 Q Okay. And how has 251(b) (5) been interpreted
11 by courts in that respect? Have the courts
12 allowed or disallowed the charging of traffic
13 of access charges or charges for the
14 origination of traffic to interconnecting
15 carriers?

16 A When it is local in nature, then, no, we do not
17 charge each other for origination of calls. If
18 it is access in nature, we do charge for
19 origination of calls.

20 Q Okay. What if there is a point of
21 interconnection that's located outside of the
22 CenturyTel local calling area and we're talking
23 about just basic voice traffic. Would
24 Centurytel treat that as basic reciprocal
25 compensation traffic, or would it impose

1 charges on the receiving local exchange
2 competitor for -- for receiving that traffic?
3 Do you understand the question, or should I
4 rephrase?

5 A Rephrase the first portion, please, at least.

6 Q Okay. Assuming a scenario where there's a
7 competitive provider serving a customer and
8 their point of interconnection is outside of
9 the originating customer's local calling area,
10 point of interconnection in some distant
11 location within the LATA, CenturyTel would then
12 hand off the traffic at that point of
13 interconnection to be terminated by the other
14 carrier to their end user customer, correct?

15 A Give me an example.

16 Q If I'm calling from here to Columbia and I'm a
17 CenturyTel customer, and the person I'm calling
18 in Columbia, is that within the CenturyTel?
19 It's not? Kimberling City? So I'm talking
20 from here to Kimberling City. I don't think
21 that's that far, but I believe it's outside the
22 local calling area.

23 If I'm served by CenturyTel and the person
24 I'm calling is not served by CenturyTel and the
25 POI happens to be in some remote location but

1 within the LATA, would you transport that
2 traffic to that point of interconnection as
3 reciprocal compensation traffic, or would
4 CenturyTel attempt to impose charges on the --
5 on my call -- calling party's carrier?

6 A I believe the example that you just used is in
7 our exchange, and, yes, I would be entitled to
8 terminating access.

9 Q Under what authority?

10 A Under my access tariffs.

11 Q Okay. Do you know if that would be consistent
12 with court -- court decisions from the United
13 States Court of Appeals for the Fifth Circuit?

14 A I -- I don't know the answer to that.

15 Q Do you know if it would be consistent with the
16 Court of Appeals decision from the Fourth
17 Circuit?

18 A I -- I don't know the answer to that.

19 Q So you don't know whether your access tariff,
20 as you've just described, is consistent with
21 Federal Court decisions from two different
22 Courts of Appeal?

23 MR. SIMSHAW: Counsel is still -- I'm
24 going to have to object, your Honor.

25 JUDGE JONES: To -- to the last

1 question or the last ten questions?

2 MR. SIMSHAW: The last ten. But I
3 realize that I've only had the opportunity on
4 the last one.

5 JUDGE JONES: The last one question
6 has been answered by the previous two, so
7 there's no point in asking her that.

8 MR. KLEIN: Excuse me one minute,
9 your Honor.

10 JUDGE JONES: Sure. The objection is
11 sustained, by the way.

12 Why don't we take a five-minute break
13 here? We've been going for about an hour and a
14 half already. So we'll take a five-minute
15 break and start back up at ten after three.

16 (Break in proceedings.)

17 JUDGE JONES: Okay. Let's go ahead
18 and go back on the record. You can go ahead
19 and proceed.

20 MR. KLEIN: Thank you, Judge. I'm
21 pleased to say that I have no further questions
22 for the witness at this time.

23 JUDGE JONES: All-righty, then.
24 Commissioner Murray?

25 COMMISSIONER MURRAY: Sorry, Judge,

1 but I do.

2 JUDGE JONES: I figured you did.

3 COMMISSIONER MURRAY: In fact, I've
4 got so many scribbles here, I hope I can keep
5 them all straight.

6 CROSS-EXAMINATION

7 BY COMMISSIONER MURRAY:

8 Q First, I'd like to ask you, is the -- is the
9 issue the location of the POI as to whether
10 this is local traffic or not?

11 A Absolutely not.

12 Q That's not the issue?

13 JUDGE JONES: Don't forget to speak
14 into the microphone.

15 A Okay.

16 Q (By Commissioner Murray) And that, I guess, is
17 because the FCC required interconnection to be
18 provided at the CLEC's option at a single POI
19 anywhere within the ILEC service area if the
20 CLEC requests that; is that correct?

21 A Anywhere where it's technically feasible within
22 the network.

23 Q Okay. Within the ILEC's network?

24 A Correct.

25 Q And the POI in Branson that is under discussion

1 here is within CenturyTel's network, correct?

2 A Yes, it is.

3 Q Okay. Now, are you still disputing that it's

4 not technically feasible?

5 A No. The issue has never been the POI. The

6 issue is does this traffic fall under this

7 interconnection? Is it --

8 Q I understand that. That's the question that

9 I'm trying to get there.

10 A I'm sorry. I'm sorry.

11 Q So if you'll let me -- isn't it true that any

12 traffic from an ILEC's customer, from the

13 CenturyTel customer, that is delivered to the

14 CLEC at a POI anywhere within CenturyTel's

15 network would be local traffic?

16 A Could you rephrase?

17 Q All right. Isn't it true that any traffic from

18 a CenturyTel customer that is delivered or

19 dropped to the CLEC at a -- at the POI within

20 CenturyTel's network would be local traffic?

21 A No. That's not correct.

22 Q Okay. Tell me why that's not true.

23 A Because the jurisdiction of the call is still

24 depending upon the customer location. It's

25 still depending upon the origination and the

1 termination point of the customers that still
2 determine the jurisdiction of the call. It's
3 not the POI that determines the jurisdictional
4 nature of the call.

5 Q All right. Then in terms of the
6 interconnection agreement, the interconnection
7 agreement would be, it seems to me would be
8 governing interexchange calls as well if you're
9 delivering -- if you're delivering non-local
10 calls, dropping them at the POI.

11 A No. Those particular calls are still governed
12 by the access tariff. It just tells me a point
13 -- just like an interexchange carrier that I
14 may hand off the call. But the agreement
15 itself is that -- a 251 agreement that tells us
16 how to handle local traffic, local
17 interconnection. Everything else is governed
18 by interconnection tariffs.

19 Q Okay. I'm going to -- I'm going to move on to
20 some other things that are related to the
21 location of the call. What are -- let's see.

22 You referenced, I believe, the
23 interconnection agreement at 2.83 earlier. I
24 believe that was you. Somebody referenced it.

25 A Okay.

1 Q And about the determine -- that states the
2 determination of whether telecommunications
3 traffic is exchange access or information
4 access shall be based upon Verizon's local
5 calling area as defined in Verizon's effective
6 customer tariffs and in applicable Commission
7 and FCC orders.

8 And my question there is, since this would
9 be related to CenturyTel's customer tariffs,
10 what are CenturyTel's local calling areas as
11 defined in CenturyTel's tariffs?

12 A Each exchange in their tariff has a defined
13 local calling area. So depending upon the
14 exchange where -- where the call originated
15 would govern whether it was local or not based
16 upon that tariff.

17 So, for example, if a call was originating
18 in Branson, you would look to that tariff. You
19 would look at the Branson local calling area.
20 And if the call terminated to a customer
21 anywhere within that Branson local calling
22 area, then it would be considered local in
23 nature. If it terminated outside the local
24 calling area, it's access.

25 Q And a call from Ava to Branson?

1 A Is a toll call. It is not --

2 Q Regardless of the type of call, regardless of

3 whether it's ISP bound or voice -- strictly a

4 voice call or --

5 A A call to Ava to Branson is always toll.

6 Q Now, is CenturyTel still -- CenturyTel still

7 claiming that FullTel must interconnect with it

8 at each end office? That's no longer -- you're

9 no longer claiming that, are you?

10 A Well, CenturyTel never, quote, you know,

11 claimed that we had to interconnect -- that

12 they had to interconnect with us at every end

13 office.

14 What -- originally, when we had the

15 meeting on June 2nd, my response was that this

16 traffic is not local in nature. However, we

17 had this exact dispute, as we discussed

18 previously, with Brooks Fiber under this

19 agreement. And the question there was where

20 identical to -- to this situation where Brooks

21 Fiber, MCI, was assigning telephone numbers to

22 customers outside the local calling area.

23 We refer to that as -- as virtual NXX,

24 which that means that the customer does not

25 have a presence in the local calling area, but

1 he's assigned a telephone number with no
2 facilities and he appears to have a number in
3 the local calling area.

4 So when we were reviewing the
5 interpretation of this contract with -- with
6 MCI, we came to an agreement of how we would
7 handle that traffic. That agreement was that
8 MCI would pay for the facilities, and they're
9 paying for them at an incrementally cost-based
10 rate. So it's not -- it's not a retail rate.
11 They're paying for the facility-based upon
12 CenturyTel's incremental cost of providing the
13 trunking facilities to that end office.

14 They agreed that anywhere where they had a
15 code that had been assigned and that they were
16 using this virtual NXX arrangement that they
17 would bring the trunking facilities all the way
18 up to that end office.

19 We, in turn, offered that same arrangement
20 to FullTel as a settlement since we had already
21 -- we had agreed to that under this exact same
22 arrangement with MCI.

23 We have since agreed to that also with
24 another company which is on file here, CD
25 Telcom with this Commission.

1 Q But you would -- and I'm still confused, I
2 guess, because I need to -- to read these
3 orders and rules further. But I thought that
4 you were required to provide a single point of
5 interconnection when requested.

6 A The rules, first of all, don't say that you are
7 required to provide a single point of
8 interconnection for local interconnection. It
9 says that -- that you would have at least one
10 point of interconnection within the network.

11 So when looking at this virtual NXX
12 traffic, the point was is that it was not local
13 in nature. So --

14 Q That's CenturyTel's interpretation, that it is
15 not local in nature?

16 A That is correct.

17 Q There's not agreement on that, correct?

18 A That seems to be the dispute herein, yes.

19 Q And how does CenturyTel pass traffic to its ISP
20 affiliate?

21 A They have a presence in every local calling
22 area, so the traffic never leaves the local
23 calling area.

24 Q The ISP has a -- has a trunking arrangement in
25 every local calling area? Is that what you're

1 saying?

2 A Our ISP orders out of the CenturyTel retail
3 tariff and has a presence in every local
4 market.

5 Q I guess I'd like a better definition of what
6 you mean by has a presence in every local
7 market.

8 A They order facilities just like any other end
9 user out of the CenturyTel local tariff. And
10 so they actually have facilities in every local
11 market that they provide service, is my
12 understanding, so that the calls when we hand
13 them off to them are always in the local
14 calling area.

15 Q They're not using virtual NXXs?

16 A Exactly.

17 Q Now, ordinarily when you enter -- when
18 CenturyTel enters into an interconnection
19 agreement with another carrier, at the time
20 that interconnection agreement becomes
21 effective, does the establishment of that
22 interconnection facility, whatever it would be,
23 go ahead and take place, then, when the -- when
24 the interconnection agreement is effect, do you
25 go ahead and establish what you would have to

1 do to provide interconnection?

2 A You have some companies that enter into an
3 interconnection agreement that never, ever
4 order facilities. So -- but, generically, what
5 would happen is that after they've entered into
6 an interconnection agreement, then they would
7 supply us with their forecast and diagrams, and
8 we would have a joint planning meeting to
9 discuss how to implement the interconnection
10 arrangements.

11 Q And suppose you don't agree? Next step?

12 A Well, in most cases, you -- we -- we come to an
13 agreement. It's not -- it's not like this. I
14 mean, in most cases, if they are a local
15 exchange provider, they are a local exchange
16 provider. And it --

17 Q Now, do they have to have customers, or do they
18 have to just have a plan?

19 A And like, for example, the POI issue that you
20 -- that you brought up, in most cases, you
21 know, if you're going to be a basic local
22 exchange provider, you will have facilities
23 into those exchanges because you are going to
24 be exchanging local traffic, both parties.

25 And so they, in most instances, will have

1 either a colocation arrangement or some other
2 type of interconnection because they are
3 actually marketing in that area.

4 Q Now, in this instance, CenturyTel does have a
5 colocation in the Branson area; is that
6 correct?

7 A I --

8 Q I mean, FullTel has colocation with CenturyTel
9 in the --

10 A FullTel -- I'm not aware of what all FullTel
11 has in the Branson office. I --

12 Q So your basis in -- in, as you understand it,
13 for CenturyTel's denial of FullTel's request to
14 interconnect, you can just state that?

15 A Is that the traffic in question here is not
16 subject to this interconnection agreement. It
17 is interexchange.

18 Q And that is not because it is ISP bound
19 traffic; is that correct?

20 A It's because the traffic in total -- you know,
21 again, what we do is -- as we're discussing
22 traffic, the traffic must originate and
23 terminate, which means it will transverse the
24 public switch telephone network. I don't --
25 you know, I don't -- the switch location, the

1 POI, none of that matters. It's at what point
2 does the originating customer -- where are they
3 located and where is the terminating customer
4 located that would determine if it falls under
5 this interconnection agreement.

6 Q So it doesn't matter where you drop it to the
7 -- to the CLEC?

8 A Correct.

9 Q It just matters where that CLEC's customer is?

10 A Correct.

11 Q So that if have you an exchange, say, Ava
12 exchange and an Ava customer -- an Ava
13 CenturyTel customer wants to call an Ava
14 FullTel customer, that would go to the POI in
15 Branson if that is the -- the --

16 A That --

17 Q The location in which they have established
18 interconnection; is that correct?

19 A Yes. That was the determined point from mutual
20 exchange of traffic, yes.

21 Q But that would still be a local call?

22 A Correct.

23 Q Whereas if it went from a -- from a CenturyTel
24 customer in Ava to a FullTel customer in, I
25 don't know, Reed Springs -- I guess that's

1 probably not local, not in the same exchange, I
2 would assume. Correct me if I'm wrong. And I
3 don't even know if Reed Springs is in your
4 area.

5 A I think it is. Yes, it is.

6 Q But if it went to another exchange that was not
7 within a local CenturyTel tariff exchange, then
8 that would not be a part of -- that wouldn't be
9 delivered according to the interconnection
10 agreement, correct?

11 A That would be delivered according to the
12 access, the access tariffs.

13 Q And whether there was an interconnection
14 agreement in place wouldn't even matter?

15 A Correct.

16 Q Nothing to stop the CLEC from delivering
17 interexchange traffic under an access tariff?

18 A Rephrase that. Nothing to stop -- I'm not sure
19 I --

20 Q Okay. There's nothing to stop a CLEC, then,
21 from having a customer in another exchange who
22 would be -- who would receive a call from a
23 CenturyTel customer that would be carried by an
24 interexchange carrier that --

25 A That's right. And -- and, you know, a CLEC can

1 act as an interexchange carrier. So you still
2 have to look at the jurisdiction of the call to
3 determine where it falls. Does it fall under
4 the reciprocal comp. arrangement? Does it fall
5 under this 251 interconnection agreement? Does
6 it fall under an access regime? So you have to
7 look at the jurisdiction of the call.

8 Q Before for determining compensation?

9 A Correct.

10 Q And you also have to look at the jurisdiction
11 of the call to determine whether it's subject
12 to -- whether it falls under the
13 interconnection agreement?

14 A Correct.

15 Q Okay. What if a -- a CenturyTel customer calls
16 another customer -- a -- a CLEC's customer who
17 doesn't physically reside within the local
18 exchange but has a number that is the same
19 number as the local numbers within that
20 exchange? Is that a local call?

21 A How -- can you expand -- give me an example of
22 when that customer would not have -- I mean,
23 when he would take his number outside the local
24 calling area? There are -- I mean, for
25 example, he could have his phone number

1 forwarded to say that I have a Jefferson City
2 number, but I'm going to be in Columbia that
3 day, and I could forward any telephone number
4 to --

5 Q That's one instance. Is that a local call?

6 A It would be a local call to there. And then it
7 would be a toll call from Jefferson City to
8 Columbia.

9 Q So there would be two -- two aspects to that
10 call?

11 A Correct.

12 Q Okay. What if it is a -- and I don't know.
13 This may be complicating it to bring in a -- a
14 cellular number. But a cellular number with a
15 local -- cellular customer with a local number
16 that goes to New York and receives a call. Is
17 that a local call or --

18 A Yeah. And with cellular, they have their own
19 specific interconnection agreements because the
20 FCC treated their local calling area for
21 reciprocal compensation purposes differently.
22 So cellular is a little bit different.

23 But what is the same is that we do agree
24 to -- for example, that example that you said,
25 I mean, cellular is set up within an MTA. So I

1 mean, say, for example, we'll just say that the
2 whole state of Missouri is one MTA. And that
3 customer is in New York, as you mentioned.

4 Well, what I have with that cellular
5 provider is a mechanism to say that a certain
6 percentage of the time, even though it appears
7 to be local in nature, it is not. That
8 customer we know a certain percentage of time
9 is in New York.

10 And so we do agree that of their total
11 traffic a certain percentage of that will be
12 billed access.

13 Q I remember that now. Thank you. The only
14 other example I can think of is a -- a -- a
15 voice customer who has a -- well, I'm not even
16 sure if a voice customer -- a voice customer
17 has a local telephone number. Never mind. I
18 won't go there. It's getting too complicated.

19 In your opinion, is -- is an ISP with a
20 virtual NXX located where its bricks and
21 mortars exist or is it located where that
22 number exists?

23 A It's located where it leaves the public switch
24 telephone network where its bricks and mortars
25 exist.

1 And in this case, when you connect that
2 CLEC, that CLEC is part of the public switch
3 telephone network. So it's at the point that
4 it leaves the public switch telephone network
5 and terminates to the customer that it always
6 has to be defined to determine the jurisdiction
7 of a call.

8 COMMISSIONER MURRAY: Excuse me a
9 minute, Judge.

10 Q (By Commissioner Murray) So the dispute here
11 is not -- you're not denying interconnection
12 based on compensation. You're denying
13 interconnection based on the jurisdiction of
14 the calls?

15 A Correct. That these calls don't follow this --
16 this interconnection agreement.

17 Q And, of course, that has compensation issues.
18 But that's not the basis upon which CenturyTel
19 is saying the interconnection agreement doesn't
20 apply?

21 A Correct.

22 Q Now, excuse me for jumping all around here
23 subject-wise, but this is the way I took my
24 notes. Is CenturyTel claiming that it -- it
25 should be compensated for its cost to transport

1 its own customers calls to the POI?

2 A Only if it's interexchange.

3 Q Okay. And if it is to be treated as local,
4 you're saying that the -- that FullTel must
5 establish more POIs?

6 A And, again, that was a compromise that -- that
7 we agreed to that we have offered to them is
8 when we -- when we looked at was the settlement
9 that they had these virtual NXXs --

10 JUDGE JONES: Could you stop just for
11 a minute? The court reporter has to change
12 over.

13 MS. SMITH: I'm sorry.

14 JUDGE JONES: You may continue.

15 A Okay. That amendment, what it said was -- is
16 that in that instance where we determined that
17 the calls were not local in nature and were not
18 governed by the -- the same interconnection
19 agreement, so -- but they have -- they were
20 offering a virtual NXX product, we came to a
21 compromise that if you will pay -- if you will
22 -- you, as the cost causer, if you will bring
23 your point of interconnection all the way up to
24 the end office, thereby, you know, minimizing
25 our cost exposure, then we will allow these

1 calls to be treated under a local bill and keep
2 mechanism. That -- that was a compromise under
3 that in which we offered FullTel.

4 Q And I'm going back to this ISP bound traffic
5 and the different exchanges of CenturyTel if
6 the -- it's really not -- I mean, correct me if
7 I'm wrong, but it's really not relevant where
8 the call goes after it's dropped at the POI; is
9 that right? The relevance is the origination,
10 exchange and where it eventually --

11 A Where it -- yes. Where it went to the -- where
12 it was delivered to the customer.

13 Q Okay. So you're saying it is -- it does matter
14 after -- after it is dropped to the CLEC?
15 You're still tracing it on --

16 A Where he delivered it to the customer. At what
17 point -- yeah. It's not relevant on where I
18 handed it off to the CLEC.

19 Q Why not? Because that's where your cost is,
20 isn't it?

21 A But that's what -- for jurisdictional purposes,
22 that's the exact same place that I hand off to
23 an interexchange carrier. But I'm still
24 entitled to compensation for their use of my
25 network. So it -- it -- still, you have to go

1 back to the jurisdiction of the call to
2 determine the cost -- the compensation
3 mechanism for that particular call.

4 Q Okay. So let's take an exchange where the --
5 the CenturyTel customer and the POI are in the
6 same exchange, same local exchange, but the --
7 but FullTel has this ISP customer with an NXX
8 that's within that exchange. You're saying
9 that doesn't qualify for a local delivery?

10 A Under the -- the settlement, under the
11 addendum?

12 Q No. I'm not talking about the settlement.

13 A Yes.

14 Q I'm talking about --

15 A What we decided to do was under our virtual NXX
16 arrangement, which is what you are bringing up
17 here, that we would deliver that call as a
18 local bill and keep call.

19 What happens is -- I mean, when you assign
20 NXX codes to a customer that is not located in
21 the local calling area, then it confuses
22 everything. I mean, you -- the billing of the
23 customer, the end user, you know, how -- how it
24 should be rated on the end user's bill. And so
25 even though when you look at the end to end of

1 the call in a virtual NXX scenario, it is an
2 interexchange call.

3 It's no difference than a normal
4 interexchange carrier would have to carry that
5 call. For example, if it was going from Ava to
6 Oklahoma City, that would normally be a toll
7 call, correct?

8 So when that Ava customer would call a
9 normal customer in Oklahoma City, they would
10 dial an Oklahoma City number. They would incur
11 a toll charge, and that toll charge would
12 compensate us for the use of the facility, our
13 portion of the facility.

14 The interexchange carrier would still be
15 in Branson to pick up that call to take it to
16 Oklahoma City. So it's still only using
17 CenturyTel's network from Ava to Branson, but
18 I'm compensated with access to pay for that
19 portion of the CenturyTel facility.

20 But what happens is when you take that
21 Oklahoma City customer and you assign them an
22 Ava telephone number, now to that Ava customer
23 that's dialing that Ava customer, it looks like
24 it's a local call, but it's jurisdictionally
25 not a local call.

1 So we came up with an arrangement where if
2 they would bear the cost of that facility that
3 was normally bore under access based upon the
4 jurisdiction of the call, then I would usually
5 receive compensation for that piece of the
6 facility between Ava and Branson that -- so
7 they're bearing that expense.

8 And in lieu, I am billing my customer for
9 a local call, and we are treating it under a
10 bill and keep mechanism.

11 Q Okay. But take a customer in Ava calling
12 another customer -- calling a customer in Ava
13 has that virtual NXX.

14 A Yeah. Then that was the example I was giving.

15 Q I thought you were saying the customer was in
16 Branson.

17 A No. I'm saying that the customer is in --

18 Q Same exchange?

19 A That customer is in Oklahoma City, and he is --
20 is given an Ava telephone number.

21 Q Okay. Well, that's -- I'm sorry. That's what
22 I mean. We were -- I thought you were talking
23 about the Ava telephone number being given to a
24 customer --

25 A No.

1 Q --being dropped in Branson --

2 A No.

3 Q Okay.

4 A And I guess, you know, and it might be easier
5 if you looked at a picture. But, I mean, if
6 you look at Ava end office here, the Branson
7 office is here. In coming -- and then we have
8 a facility between Ava and Branson. Okay?

9 This facility is not part of my local
10 service. There's -- it's not built into my
11 cost compensation that this customer pays, say,
12 \$5 a month for. This isn't built in there at
13 all.

14 So every time a customer from Ava calls
15 anywhere, that's a toll call. They're going to
16 use this facility. They're going to get to the
17 Branson end office, and it's going to go to an
18 interexchange carrier in Branson. So they're
19 going to have a POI there in Branson to hit
20 that facility.

21 And this is paid for -- that pipe in
22 between Branson and Ava is paid for with access
23 charges.

24 Q All right. But you could have a customer in
25 Ava and you -- that was a CenturyTel customer,

1 and you could have another customer in Ava that
2 had a virtual NXX, correct?

3 A In this instance, that's what's being proposed.
4 Yes.

5 Q That's within the same exchange. That's not
6 Ava to Branson?

7 A Well, but the customer is not located in Ava.

8 Q Right. But --

9 A If they have a virtual NXX.

10 Q But the other scenario, the customer wasn't
11 weren't in Branson either. And I'm just trying
12 to narrow it down to an exchange where it's
13 truly -- truly a local -- the numbers at least
14 are truly within the same exchange.

15 A With the virtual NXX, that's what happens
16 because you are assigning telephone numbers to
17 a customer outside of the local calling area --

18 Q Right.

19 A -- which if you use the -- the numbering
20 guidelines, you were to assign telephone
21 numbers to customers located in that rate
22 center.

23 Q Okay. I'm going to move on because I think
24 we're talking past each other on this one.

25 A All right.

1 Q Let me see these -- you were asked earlier a
2 question that -- where you answered about
3 upgrades that would be required. Do you recall
4 that? What are you saying would necessitate
5 those upgrades?

6 A The increased traffic over the facility.

7 Q Okay. But the fact that you would have to
8 incur expenses to make up grades would not
9 necessarily mean that you weren't required to
10 do it; is that correct?

11 I mean, with the '96 Act and the onset of
12 competition and all, the ILECs were required to
13 do things that cost them in order to allow more
14 competition to take place; is that right?

15 A We -- well, we -- we constantly monitor usage
16 on trunks. And we upgrade based upon need. I
17 mean, that's a constant thing. It's just that
18 this particular facility that we're talking
19 about, I mean, because it's carrying toll
20 traffic, the -- this increase in traffic that
21 is being presented as local that we believe is
22 not would cause us to increase our trunking
23 facilities by approximately 150 percent.

24 So I guess usually in this scenario, under
25 an interexchange scenario, we would increase

1 that trunking as needed all the time. But
2 we're compensated for that.

3 Q I just want to make sure I'm covering all my
4 questions here. I'm just about finished.
5 Okay. Could you summarize CenturyTel's
6 objection to -- or reason for denial of
7 interconnection to FullTel being simply based
8 on what CenturyTel is determining to be the
9 nature of the traffic, local versus long
10 distance traffic? Is that --

11 A Right. I mean, it -- and we didn't deny
12 interconnection, you know.

13 Q As requested. Let's put it that way. Your
14 denial of interconnection as requested?

15 A Yeah. We just said that that was not the
16 proper forum for interconnection based upon the
17 jurisdictional nature of the calls.

18 COMMISSIONER MURRAY: Okay. Thank
19 you.

20 MS. SMITH: Thank you.

21 JUDGE JONES: Now we'll have
22 re-cross?

23 MR. KLEIN: Thank you, Judge. I just
24 have a couple of follow-up questions. I think
25 that Commissioner Murray has really helped us a

1 lot here in trying to understand what we're
2 talking about, so I'm hoping we can just get
3 really on the heart of the matter at the very
4 end here.

5 RECROSS EXAMINATION

6 BY MR. KLEIN:

7 Q One question that keeps coming up -- or one
8 issue that keeps coming up is this MCI
9 amendment. Is FullTel any part of MCI or
10 affiliated with MCI in any way?

11 A They're operating under the same agreement.
12 But that's the common thread.

13 Q Okay. But FullTel is not MCI?

14 A Not that I'm aware of.

15 Q Okay. Do they have the same network or same
16 network architecture as far as you know?

17 A I -- I do not know.

18 Q Okay. Let me -- let me ask a question
19 regarding local traffic. Traffic that's
20 arguably -- not arguably, but local traffic,
21 originates and terminates within the same local
22 calling area. Assume that local traffic is
23 passed between CenturyTel and a CLEC. Does
24 each party bring that traffic to the POI, to
25 the point of interconnection for exchange to

1 the other party?

2 A Yes, we do.

3 Q And bears the cost with the transport to that

4 POI?

5 A To that POI. Yes.

6 Q Okay. And you said, I believe, under

7 questioning by Commissioner Murray that the

8 CLEC or the CLEC has to establish at least one

9 POI in each LATA; is that right?

10 A Within our network.

11 Q On your network in the LATA?

12 A At least one POI.

13 Q Right. Does that mean that one is sufficient,

14 or does at least one mean more than one, in

15 your view?

16 A It depends upon, I think, the nature of the

17 traffic and the operation of the companies and

18 the traffic exchanged. And there's lots of

19 things that would affect the need for one or --

20 or many POIs.

21 Q Well, that's an important question. What would

22 determine specifically? I mean, if the parties

23 were only exchanging local traffic --

24 A Uh-huh.

25 Q -- no IXC traffic, no ISP bound traffic, just

1 local traffic originating and terminating back
2 in the same local calling area, but the POI was
3 outside that local calling area but on
4 CenturyTel's network in the LATA, would
5 CenturyTel bring that traffic to that POI?

6 A Rephrase.

7 Q If the POI is on the CenturyTel network within
8 the LATA but outside of the local calling area,
9 will CenturyTel attempt to charge the CLEC for
10 transport it to or from that POI for that local
11 traffic?

12 A You know, again, I mean, that POI is normally
13 established with -- normally, we have a joint
14 planning meeting. The carriers agree based
15 upon their nature and need of traffic. And,
16 yes, that -- that could be very well the
17 circumstance.

18 Q Assuming that's what the CLEC says they want,
19 will you allow them to have that single POI for
20 that type of traffic?

21 A Again, in many cases, that is the very nature
22 of it because the traffic is -- is pretty much
23 equal in nature that that is where their --
24 their need for operation is, and so that is the
25 POI.

1 And it may only be one POI in the LATA.

2 It's dependent upon how they plan on serving.

3 Q Well, you're introducing other issues regarding
4 the nature of the traffic.

5 A Yes, I am.

6 Q I'm just asking a very straightforward
7 question.

8 A Well, it's not just straightforward because,
9 for example, I mean, if you had a CLEC that was
10 just operating in Branson and they were -- they
11 were truthfully a local provider, then they
12 would normally have one POI.

13 However, if that CLEC also decided that
14 they were going to offer a local service, say,
15 in El Dorado Springs, which is behind Branson,
16 because of the expense of having to get their
17 traffic to and from Branson and to serve those
18 customers through loops from El Dorado Springs
19 all the way through that they would establish
20 another POI in that area.

21 So, I mean, it's not a simple yes or no
22 question to what you're -- what you've asked.
23 It depends upon the nature --

24 Q So --

25 A -- of the carrier and the traffic exchanged.

1 Q I thought that this was resolved, and I'm glad
2 I asked that question then. So it seems to me,
3 and correct me if I'm wrong, CenturyTel would
4 deny a request for a single POI on the network
5 in the LATA?

6 A No. I'm not saying that.

7 Q If -- if the traffic was distant, if the local
8 caller at issue was distant? In other words --
9 let me back up for a moment.

10 If a CLEC enters the market and they're
11 going to provide service in a number of local
12 calling areas, in El Dorado Springs, they're in
13 Ava and they're in Branson, so they're all
14 within CenturyTel's service territory within
15 the LATA and they interconnect at Branson, an
16 El Dorado Springs customer who calls another El
17 Dorado Springs customer, it's a local call?

18 A Correct.

19 Q But the POI is in Branson. Would CenturyTel
20 charge that CLEC for transporting the call to
21 the POI in Branson and the CLEC would then
22 obviously bring it back to El Dorado Springs
23 for termination? On the one way delivery to
24 the POI, would CenturyTel attempt to charge the
25 CLEC for that transport?

1 A No. In that instance, if that's where the POI
2 was determined that it needed to be --

3 Q By whom?

4 A -- by both parties, I mean, we -- usually meet
5 and determine the most efficient means to
6 interconnect. They come in, usually, and tell
7 us where they would like the POI. And then we
8 meet and determine okay. And in some
9 instances, that POI does change.

10 Q Okay. But --

11 A And it's also dependent upon, like, for
12 example, that carrier is offering UNEs or we're
13 -- if he's purchasing UNEs. That is also
14 dependent upon how many colocations that he
15 needs.

16 Q Well, he has one colocation. That's -- that's
17 the issue.

18 A No.

19 Q Do you understand what I'm --

20 A In this instance?

21 Q Yes.

22 A I mean, in which instance? But in that case,
23 are you saying that that -- that he is really
24 providing local service in these other areas?

25 Q Yes. That's the fundamental premise of the

1 question. The call is originating and
2 terminating within a local calling area, but the
3 POI happens to be outside of that local calling
4 area.

5 A We usually agree that, yes, that POI can be
6 outside the local calling area. But if traffic
7 meets a certain criteria, then they will agree
8 to establish new POIs.

9 Q Well, respectfully, I know how CenturyTel views
10 agreements versus how CLECs view agreements
11 with CenturyTel.

12 If the CLEC comes in and says, We believe
13 under the law that we're entitled to establish
14 a one point of interconnection in the LATA for
15 the exchange of local traffic, are they
16 entitled to do that? Or will CenturyTel say,
17 no, you must agree to do something else?

18 A Again, I mean, that's dependent.

19 Q Okay. So the answer is no?

20 A No, I'm not saying that the answer is no in
21 every instance.

22 Q Does the CLEC have the unilateral right to
23 dictate one point per LATA for exchange of
24 local traffic?

25 A To dictate one point?

1 Q Right.

2 A And it's not dependent at all on traffic
3 volumes or anything?

4 Q Not at all. It is CLEC right, or is it not a
5 CLEC right?

6 A No. I don't believe that -- that the CLEC can
7 totally dictate. It's a mutual exchange. And
8 that's no different than when I also
9 interconnect or choose to interconnect with SBC
10 or whoever for the exchange of local traffic.
11 That's exactly what we do.
12 We meet and we determine where the POI
13 should be. Because in every --

14 Q So --

15 A -- instance, you cannot have one single POI>
16 it's physically impossible.

17 Q Why?

18 A Because the networks aren't all combined.

19 Q But we're talking about calls within the
20 CenturyTel network within the LATA.

21 A Still, I still have fragmented networks. All
22 of our offices are not physically behind each
23 other. So you have to establish multiple POIs
24 to even deliver traffic.

25 Q So -- so it's because of the particular nature

1 of the CenturyTel network that this becomes an
2 issue?

3 A I wouldn't say that this is definitely unique
4 to CenturyTel. I --

5 Q Okay. So in CenturyTel's view, are there
6 circumstances under which CenturyTel would
7 attempt to assess transport costs to the POI if
8 it's for local traffic?

9 A No.

10 Q Under no circumstances?

11 A Do we assess transport costs?

12 Q From a CenturyTel customer.

13 A To the POI.

14 Q To -- to --

15 A No.

16 Q To the POI?

17 A We do not.

18 Q Even if it's outside the local calling area?

19 A If it's outside -- is the POI outside the
20 local --

21 Q Yes.

22 A No. It's not the POI that determines at this
23 point in time. I mean, what the future may
24 bring, I can't answer that. But at this point
25 in time, no, we do not charge transport costs

1 to the POI unless it was agreed to -- we have
2 some interconnection, for example -- agreements
3 that -- wireless, for example, where we agree
4 that that particular facility is not being just
5 used for inter -- for local traffic, and they
6 do pay for a portion of the facility.

7 Q Okay. I really want to cut to the chase if we
8 can here. I'm not interested in situations
9 where there's wireless traffic or where there's
10 agreement between the parties.

11 I want you to please focus the specific
12 facts I'm presenting here. And competitive
13 local exchange carrier and they're only
14 exchanging local traffic with CenturyTel. They
15 establish one POI, but it's outside the local
16 calling area, but on the CenturyTel network.
17 Would CenturyTel charge for transport to that
18 POI for CenturyTel originating traffic?

19 A No. If it is agreed to that that POI --

20 Q Without agreement. There's no agreement. The
21 client just says, Here is my POI.

22 A How would there not be an agreement? The
23 interconnection agreement says how we're going
24 to pay for the facility. And every
25 interconnection agreement does not say that you

1 are not going to be compensated beyond the POI.

2 Q Okay. But I want you just to assume here that
3 the CLEC believes it has the right to dictate
4 that single POI. You'd disagree with that?

5 A Yes. I disagree that -- that either party has
6 the right to dictate.

7 MR. KLEIN: Okay. Thank you. Okay.
8 Thank you very much. I have nothing further
9 for right now.

10 COMMISSIONER MURRAY: Mr. Simshaw,
11 could I just ask one quick follow-up to that?

12 JUDGE JONES: Commissioner Murray?

13 CROSS-EXAMINATION

14 BY COMMISSIONER MURRAY:

15 Q I would just like to know if you can cite to
16 the interconnection agreement as to where it is
17 that the parties have to agree flow on the
18 location of the POI?

19 A There is -- can I get back with you on that
20 reference? I will. There is reference about
21 the joint planning and the forecasting.

22 COMMISSIONER MURRAY: Okay. Thank
23 you.

24 JUDGE JONES: Mr. Simshaw -- Mr.
25 Klein.

1 MR. KLEIN: If I may, we would like
2 to wrap in up as quickly as possible if there
3 is a belief that there is a right to -- to
4 dictate mutual agreement on the POI location,
5 we'd like to now, if possible, because we'd
6 like to avoid further briefing proceedings, as
7 I'm sure the Commission would.

8 So, I mean, if there is a belief beyond
9 just the joint planning meeting, we'd like to
10 know that right now if possible.

11 COMMISSIONER MURRAY: Perhaps the
12 counsel would be -- CenturyTel's counsel would
13 be the appropriate person to provide that
14 information since it is really a legal
15 question. Where is it in the document?

16 MR. KLEIN: Can you identify where
17 that would be? I'll accept his representation.

18 MR. SIMSHAW: I'm not sure. I heard
19 him use the term "dictate" a mutual point of
20 interconnection, which just is nonsensical to
21 me. It does seem contradictory in terms.

22 COMMISSIONER MURRAY: The question is
23 where does the document say that the parties
24 have to enter into a negotiated agreement as to
25 the location of the POI and that the CLEC

1 cannot just say where they want the POI to be.

2 MR. SIMSHAW: Well, Ms. Smith is more
3 familiar with the agreement than I, so she can
4 probably get to it quicker. But we will
5 endeavor to do that.

6 A All right. If you refer to, please -- this is
7 page 31 as numbered before this Commission.
8 It's page 16 of the actual interconnection
9 agreement, but 31 of the seriated. It says,
10 Cooperation.

11 The parties will work cooperatively in a
12 commercially reasonable manner to install and
13 maintain a reliable network. ICG and Verizon
14 will exchange appropriate information. That
15 work information may be contract information,
16 escalation procedures and information required
17 to comply with requirements of law enforcement
18 and national security agency to achieve this
19 desired reliability.

20 In addition, the parties will work
21 cooperatively in a commercially reasonable
22 manner to apply sound network management
23 principles to alleviate or to prevent traffic
24 congestion and to minimize fraud associated
25 with third parties bill calling cards.

1 It -- interfering -- it goes on and on
2 within this agreement about how you are going
3 to work cooperatively to establish this
4 network.

5 Q (By Commissioner Murray) And yet doesn't the
6 FCC require that if a CLEC requests one single
7 POI within your necessary -- your LATA --

8 A It does not.

9 Q -- within a LATA within your network that you
10 have to provide it?

11 A It -- what it says is that there will be at
12 least one POI within our network. And we don't
13 disagree with that at all. And in many, many
14 instances, that is the case.

15 COMMISSIONER MURRAY: Okay. Perhaps
16 in -- I know we don't want further briefing.
17 But I -- I don't think that the attorneys have
18 provided this clearly enough. Maybe they have,
19 and I just haven't seen it. But -- and it's
20 probably in somebody's brief.

21 And if you can just point it out while
22 we're here today, that would be great, too.
23 But I would like to know what it is the FCC
24 actually has said is a requirement in terms of
25 what the ILEC has to provide for

1 interconnection. And I'm not asking you. I'm
2 asking legal counsel for that.

3 MR. KLEIN: Commissioner, if I may, I
4 have cited to the FCC's interconnection
5 arbitration decision that is issued in the
6 World Com AT&T and Verizon Virginia
7 arbitration, which does address that very
8 issue.

9 I can provide, of course, the entire
10 decision, but our brief -- FullTel's brief does
11 reference that decision by the FCC, and I gave
12 the citation to that document earlier where the
13 FCC did reject Verizon's attempt to require
14 what they GRIPs, which is Geographically
15 Relevant Interconnection Points, to determine
16 that a CLEC does have the right to establish
17 one POI per LATA, adopted the CLEC's language
18 on that issue and rejected Verizon's request
19 for GRIPs on -- for interconnection purposes.

20 I do also have here and I provide for the
21 Commission copies of two of the seminal
22 decisions on this very issue. And I was
23 planning to mention them in closing, but I do
24 have copies here if I can distribute those.

25 COMMISSIONER MURRAY: And I think

1 your reference to your brief is on page 8. Is
2 that --

3 MR. KLEIN: Is that right? Page 8.

4 JUDGE JONES: I've got the answer to
5 what he referred to, so we don't need whatever
6 it is he's about to distribute.

7 COMMISSIONER MURRAY: Yeah. I'd like
8 to have it to help to clarify.

9 JUDGE JONES: Okay.

10 COMMISSIONER MURRAY: Actually, it's
11 pages 7 and 8, I think.

12 MR. KLEIN: Yes. Page 7, Footnote 13
13 is the citation. No. I'm sorry. That is the
14 cases that I have here that are cited at that
15 footnote. Footnote 12 on page 6 at least of
16 the version I have of my own brief references
17 that FCC arbitration order.

18 COMMISSIONER MURRAY: Thank you.

19 MR. KLEIN: But I do have, as I
20 mentioned, copies of those decisions, if I may.

21 JUDGE JONES: Yes.

22 MS. SMITH: I will -- in the
23 interconnection agreement, too, it looks like
24 Section 2.2.4, 2.2.5, this is page 71 of the
25 seriated numbered agreement. It does say in

1 here, too, that in the event the traffic volume
2 exceeds a Verizon end office and the ICG POI
3 which is carried by a final tandem
4 interconnection trunk or it exceeds the busy
5 hour equivalent of one DS-1 at any time and/or
6 200,000 combined minutes of use for a single
7 month, a -- a -- a new POI basically is going
8 to be established.

9 The originating party shall promptly
10 establish new end office one-way
11 interconnection trunk groups between the
12 Verizon end office and the POI. It also goes
13 on further to say, too, that there is a maximum
14 number of trunks that they can even have at a
15 tandem level, which is equal to -- it looks
16 like ten DS-1s would be the maximum trunks you
17 could even have at a tandem level.

18 COMMISSIONER MURRAY: So that would
19 be the point at which it became technically
20 infeasible; is that right? Thank you. Judge,
21 are we going to be able to have a Staff witness
22 briefly?

23 JUDGE JONES: We can. Do we have a
24 staff witness here?

25 COMMISSIONER MURRAY: And I apologize

1 because we're not in any -- I understand we're
2 not finished with redirect of this witness.

3 JUDGE JONES: Mr. Simshaw, you may
4 continue.

5 MR. SIMSHAW: Thank you. I believe I
6 have only three questions.

7 REDIRECT EXAMINATION

8 BY MR. SIMSHAW:

9 Q Ms. Smith, Commissioner Murray, I think,
10 indicated at one point that you -- the two of
11 you may have been talking across each other,
12 and I sort of detected the same thing. Let me
13 take a quick run at the area where I think that
14 happened.

15 If CenturyTel has an Ava customer and
16 FullTel serves a customer in Ava and gives that
17 Ava customer an Ava number, in that situation,
18 there wouldn't be even be virtual NXS, would
19 there?

20 A No. The customer's located in Ava.

21 Q Okay. And in that situation, to the extent
22 those two customers called each other, that
23 would be local traffic?

24 A Correct.

25 Q And that would be subject to the

1 interconnection agreement?

2 A Yes, it would.

3 Q There was some discussion or has been some
4 discussion with opposing counsel regarding the
5 compliance with the Act imposing costs upon
6 CenturyTel.

7 Let me give you a couple of examples. For
8 instance, the requirement for colocation, to
9 the extent that would impose a cost on
10 CenturyTel, isn't it correct that CenturyTel is
11 allowed to recover those costs in the form of
12 rates?

13 A Yes, we do. They're built into the colocation
14 tariff rates.

15 Q And to the extent that the Act requires
16 CenturyTel to provide unbundled network
17 elements, is it also correct that at the same
18 time it does allow CenturyTel to recover from
19 the CLEC its costs of doing that?

20 A Yes, we do.

21 Q You were discussing again with opposing counsel
22 some of the some factors that might go into
23 determining the location of POI. Is part of
24 the problem here that -- that with regard to
25 the -- the traffic in dispute it only flows one

1 direction which is not -- was not anticipated
2 by the Act?

3 A That's correct. There is no exchange of
4 traffic.

5 MR. SIMSHAW: Thank you. That's all
6 I have.

7 JUDGE JONES: Thank you. Ms. Smith,
8 you may step down.

9 MS. SMITH: Thank you.

10 JUDGE JONES: At this time, we will
11 take testimony from the Staff witness.

12 MR. HAAS: The Staff calls Natelle
13 Wit -- Natelle Dietrich to the witness stand.

14 JUDGE JONES: Will you please raise
15 your right hand?

16 NATELLE DIETRICH,
17 being first duly sworn to testify the truth, the whole
18 truth, and nothing but the truth, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. HAAS:

21 JUDGE JONES: Thank you. You may be
22 seated.

23 Q (By Mr. Haas) Ms. Dietrich, would you please
24 state your name for the record?

25 A My name is Natelle, N-a-t-e-l-l-e, Dietrich,

1 D-i-e-t-r-i-c-h.

2 Q And what is your position?

3 A I'm an economist and supervisor in the
4 Telecommunications Department at the
5 Commission.

6 Q And what has been your involvement in this
7 case?

8 A I've been working with staff, Bill Voit, on the
9 interconnection agreement. He's taken a look
10 at the technical issues. I've concentrated on
11 the FCC's orders, the interconnection agreement
12 itself and kind of the policy issues.

13 MR. HAAS: Thank you. I was just
14 introducing the witness so that she may be
15 questioned.

16 JUDGE JONES: All right.
17 Commissioner Murray? And then I'll allow -- I
18 will allow cross-examination from the parties.

19 CROSS-EXAMINATION

20 BY COMMISSIONER MURRAY:

21 Q Good afternoon, Ms. Dietrich.

22 A Good afternoon.

23 Q I know you probably weren't expecting to have
24 to be on the witness stand, but I think you
25 could be helpful with a couple of questions.

1 First, do you think the FCC has determined
2 that ISP bound traffic is defined as
3 interexchange traffic?

4 A No, I don't think that that's what they've
5 said.

6 Q Okay. What do you think is the FCC's position
7 on the character of ISP bound traffic?

8 A I think what the FCC is saying in its ISP
9 agreement order is that it is not local and
10 it's not subject to 251, I believe it's (b) (5)
11 which would be the compensation -- reciprocal
12 compensation for local traffic.

13 But then it goes -- also goes on to say
14 that it is not specifically interexchange. And
15 it talks quite a bit about how it's interstate.
16 It, you know, trans -- trans -- transverses
17 throughout the country. There's no way per --
18 it has to track it.

19 And so they've determined that it is
20 subject to their jurisdiction. It's interstate
21 in nature, and it's kind of a hybrid of what
22 they're calling information services and they
23 create a separate mechanism for compensation
24 for it.

25 Q Now, you've reviewed this interconnection

1 agreement in this complaint case; is that
2 correct?

3 A Yes, I have.

4 Q And it's kind of -- it's kind of difficult to
5 ask questions about this specific case in that
6 the initial reason the complaint was brought,
7 the -- the requesting customer is no longer
8 requesting to be a customer.

9 But if -- if FullTel were only seeking to
10 deliver ISP bound traffic from CenturyTel, is
11 it your opinion that this interconnection
12 agreement would apply to -- for CenturyTel to
13 interconnect with FullTel?

14 A I don't know about the qualification of only
15 providing ISP service. In the FCC's order, it
16 talks about anticipating interconnection
17 agreements for ISP bound traffic. And it even
18 goes on to say that if traffic was exchanged
19 under interconnection agreements prior to a
20 certain date, I think it was April of 2001,
21 then it's one type of compensation.

22 And if it's after that date, then it's
23 another type of compensation, that
24 interconnection agreements don't have to be
25 necessarily modified, but the compensation

1 would be subject to what the FCC order says,
2 those types of things.

3 So I think it contemplates that ISP bound
4 traffic would be in an interconnection
5 agreement, but I don't know that the agreement
6 or the order makes the distinction of if it's
7 only ISP bound traffic.

8 Q Okay. The exchange that I had with Ms. Smith
9 -- it's a difficult name, I couldn't remember
10 -- about the nature of the traffic between an
11 Ava exchange and the Branson exchange --

12 A Right.

13 Q -- for example, where she characterized all of
14 that traffic flowing between those two
15 exchanges, I believe -- and I -- I'm getting
16 tired. I could be totally mischaracterizing
17 what she said.

18 But I think she said that all of those
19 would be non-local calls.

20 A I'm not sure because there were so many
21 different scenarios.

22 Q Okay.

23 A I guess if -- if I could kind of maybe explain
24 a little bit, and this may answer your question
25 or, you know, what you're trying to get to.

1 There's been a lot of discussion about the
2 location of the FullTel customer. And since we
3 don't have an actual customer, it's kind of
4 hard to say. But I know FullTel keeps
5 characterizing it as a Missouri ISP or Missouri
6 ISPs.

7 And it's not clear to me whether those
8 ISPs are located in Ava, Branson, St. Louis.
9 I'm not sure what a Missouri ISP is. It could
10 be perhaps somebody located in New York
11 providing service to customers in Missouri via
12 ISP. So that's one thing that's not clear to
13 me.

14 The other thing that's not clear is that
15 CenturyTel refers to the customer as being
16 located in Oklahoma City. And I think one of
17 the comments was that the reason that that
18 determination is being made is because the
19 company that was in question -- and I'm sorry,
20 I don't remember the name -- would be moving
21 their equipment to Oklahoma City. And I'm not
22 sure that that was clarified either because the
23 testimony I heard was that perhaps this
24 customer would not need to use all of its
25 equipment that it currently has to serve its

1 customers because it would be using some of
2 FullTel's equipment.

3 But I don't know that the additional loop
4 was made that all the customer's equipment
5 would be in Oklahoma City or by virtue of using
6 FullTel it would be in Oklahoma City and the
7 ISP would not still have something here in
8 Missouri in Ava or wherever it might be.

9 So I think there's still some questions
10 that way as to, you know, what this customer
11 would look like. And without having an actual
12 customer, I don't know that we can answer
13 those.

14 The other thing to me that's confusing,
15 when you read the actual agreement itself, it
16 talks about point of interconnection and
17 interconnection points. And it seems like it
18 makes a distinction between a point of
19 interconnection is the physical connection, but
20 the interconnection point is kind of the
21 compensation connection -- interconnection.
22 And so it -- it seems like it -- you know, the
23 POI could be in Branson and everybody would be
24 okay with that. But depending on where that
25 interconnection point is to determine the

1 compensation could make it a difference on
2 whether it's long distance traffic -- would be
3 ISP or bill and keep under the ISP bound order,
4 those types of things.

5 So that's another area that seems -- that
6 it's -- it's questionable in the
7 interconnection agreement.

8 Q Something I hadn't noticed. Thank you. If the
9 CLEC requests a single LATA POI, is the ILEC
10 required to provide it?

11 A As long as it's technically feasible, yes.

12 Q And is the -- when Ms. Smith talked about the
13 -- the negotiation process parties getting
14 together to arrive at an agreement about how
15 this interconnection was going to take place,
16 is it your opinion that the -- if -- well,
17 never mind. I think the answer to your last
18 question was enough to answer that.

19 Then can the ILEC legally charge for
20 delivering its local traffic to a POI outside
21 of the ILEC's local calling area?

22 A The -- in my opinion, it's been determined that
23 each party is responsible for delivering the
24 traffic on their side of the POI unless some
25 other agreement was mutually agreed upon.

1 Q And if the POI is outside of the ILEC's local
2 calling area but it's the ILEC's -- the ILEC is
3 delivering its customers' calls, the ILEC is
4 responsible for it then under that --

5 A Correct. Uh-huh. For instance, in the SBC
6 arbitration, some of the scenarios were a call
7 could come from the bootheel, but the POI would
8 be, say, in, you know, St. Louis. That's, you
9 know, several miles. It could be in northeast
10 Missouri.

11 As long as it's within the same LATA, it
12 doesn't matter. SBC in that instance would be
13 responsible for getting it up to the POI. And
14 so I think the same principle would apply here.

15 Q Now, we've got a -- we've got a case here
16 before us, a complaint that CenturyTel is not
17 granting the requested interconnection to
18 FullTel under the interconnection agreement
19 that -- that they have adopted.

20 Do you think that CenturyTel is in
21 violation of the interconnection agreement, or
22 do you think that -- and if your answer to that
23 is that you don't know or no, but do you think
24 that we need to do to determine how that
25 interconnection agreement would apply?

1 A It's -- it's my understanding that CenturyTel
2 is saying that FullTel would have to have a
3 point of interconnection in all four exchanges
4 in question. If -- and I think that's in
5 violation of the agreement and also some
6 federal requirements.

7 Now, as to the compensation for assuming
8 that the Commission ordered the single POI in
9 Branson, the compensation for that traffic I
10 think is still questionable because, like I
11 pointed out earlier, it sounds like the
12 interconnection agreement contemplates some
13 kind of different point for compensation
14 purposes. And so the compensation could
15 actually be access.

16 Q But the compensation is really not an issue as
17 to whether the interconnection agreement should
18 be implemented, is it?

19 A No. Huh-uh.

20 Q The -- there are two separate issues?

21 A Right.

22 Q So would it be your opinion that FullTel has
23 made its case that the interconnection
24 agreement that it adopted allows it to request
25 and receive the interconnection that it has

1 requested from CenturyTel?

2 A Yes.

3 Q Okay. All right. Thank you very much.

4 A Okay.

5 COMMISSIONER MURRAY: Thank you,
6 Judge.

7 JUDGE JONES: We'll start with --
8 we'll reverse the order here and start with
9 CenturyTel on redirect. Or recross. I'm
10 sorry.

11 MR. SIMSHAW: Thank you, your Honor.

12 RECROSS EXAMINATION

13 BY MR. SIMSHAW:

14 Q Good afternoon.

15 A Good afternoon.

16 Q Playing off that last response, when you say
17 that -- that CenturyTel would be obliged to
18 interconnect and exchange the traffic, are you
19 commenting upon -- upon terms?

20 A At what compensation rate?

21 Q Yeah. What compensation terms.

22 A No. I was simply responding that, in my
23 opinion, CenturyTel would be required to
24 provide interconnection in Branson as a single
25 POI, absent a showing that it's technically

1 infeasible.

2 Q So -- so, in your mind, the appropriate

3 compensation could be access charges?

4 A I think the interconnection agreement is

5 unclear on that, the way it talks about

6 whatever interconnection points are.

7 Q You commented on your interpretation of the ISP

8 remand order. And it's like opinions in

9 general, and I guess everybody's entitled to

10 one. Would -- would I be correct in

11 characterizing your opinion would be that all

12 traffic destined for an ISP is in a single

13 category?

14 A Not being an attorney, that's my interpretation

15 of the order, yes.

16 Q Okay. And would -- would your opinion also be

17 that within that category, all of that traffic,

18 all traffic destined for an ISP is not subject

19 to access charges?

20 A Reading just the FCC's ISP remand order, yes.

21 Q How about -- well, we have a disagreement

22 there. But how about if a customer dials one

23 plus a long distance call to an ISP located in

24 St. Louis?

25 A It -- if a -- okay. To clarify, if a customer

1 has to dial one plus to reach an ISP, then I
2 think that would be definitely an interexchange
3 call and would be subject to access.

4 Q But why is that not ISP bound traffic under the
5 ISP remand order? It's traffic destined for an
6 ISP.

7 A That's true. I -- I think what the -- the ISP
8 remand order is saying is that it's
9 characterizing all this traffic as information
10 services. It's creating a new compensation.
11 And I guess I should back up and say, no, it
12 would not be access. It would be one of the
13 new compensations, but it would be a toll call
14 for the customer.

15 Q But the ILEC whose network that originated on,
16 you're saying, would not be entitled to access?

17 A By my reading of the ISP remand order, yes.

18 Q Yes, they would not be entitled?

19 A Yes, they would not be entitled. They would be
20 entitled to either bill and keep or .0007.

21 Q If that was a one plus call, how would the ILEC
22 even know it went to an ISP so as not to bill
23 access charges?

24 A I, technically, don't know. I was more from
25 the policy aspect.

1 Q So would you agree there's a chance that that
2 interpretation really wouldn't even be
3 workable?

4 A Not necessarily. I mean, I know there -- there
5 are billing records. There's, you know, issues
6 with those. But as far as, you know, just how
7 far that goes, I'm just not familiar.

8 Q Okay. I know an ISP number back in Washington
9 State where I live. If I went to a phone right
10 now or went to somebody's computer and dialed
11 that as one plus, do you think access charges
12 would get applied to that call?

13 A I think if you dialed one plus, you -- you or
14 whose ever phone line it was would pay a toll
15 rate. But under my reading of the ISP remand
16 order, it would be in this hybrid category.

17 Q Going -- going back to the subject of the
18 location of the ISP, you were here during -- or
19 present during Mr. Baresel's testimony, weren't
20 you?

21 A Yes, I was.

22 Q Did he ever indicate where -- where that
23 traffic would be delivered in the ISP?

24 A That, as I was explaining to Commissioner
25 Murray, was one of the things that to me is not

1 clear because there was reference to a Missouri
2 ISP, but I don't know that it's ever been
3 clarified what a Missouri ISP is, where they
4 might be located, those types of things.

5 Q If an Ava customer makes a call to this ISP
6 served by FullTel and goes from Ava to Branson
7 and Branson to the FullTel switch in Oklahoma
8 City, would it make much sense then to turn
9 around and haul it back to the ISP in Ava?

10 A From FullTel's point of view? Or anybody's
11 point of view?

12 Q From FullTel's or the ISP's point of view.

13 A I don't know that it would make sense. But,
14 again, I don't know exactly what they had in
15 mind because I don't think it was fully
16 explained.

17 Q Don't you think it's much more likely that that
18 -- once it hit the FullTel switch they would
19 put it on ISP equipment when there and put it
20 on the Internet in Oklahoma City?

21 A They, meaning FullTel? Or they, meaning --

22 Q FullTel and the ISP together would arrange for
23 that to happen.

24 A I think that's a probability, but I don't think
25 that's been clarified.

1 MR. SIMSHAW: All right. Thank you.

2 That's all I have.

3 JUDGE JONES: Cross from FullTel?

4 MR. KLEIN: Thank you, Judge. I just

5 have one or two basic questions.

6 CROSS-EXAMINATION

7 BY MR. KLEIN:

8 Q I think Staff did a wonderful job in its report
9 that it filed in this proceeding. The only
10 clarifying question I would have relates to the
11 compensation that may or may not apply to the
12 exchange of ISP bound traffic.

13 I believe, Ms. Dietrich, that once traffic
14 is identified as terminating to an ISP, it's
15 subject to the FCC's regime; is that correct?

16 A That's my reading of the order. Yes.

17 Q And the FCC held that it doesn't matter where
18 the ISP is because it just doesn't matter?

19 Isn't that what the FCC held?

20 A Correct.

21 Q Because that's the nature of the Internet
22 traffic is that it goes out to the web and it
23 terminates at some distant end point?

24 A Correct.

25 MR. KLEIN: Okay. I have nothing

1 further. Thank you.

2 JUDGE JONES: Commissioner Murray,
3 any follow-up questions?

4 COMMISSIONER MURRAY: I just would
5 ask if anybody disagrees with the statement
6 that the FCC has said that state -- state
7 commissions don't have jurisdiction over
8 compensation or probably don't have
9 jurisdiction over compensation for ISP bound
10 traffic? Anybody disagree with that?

11 MR. SIMSHAW: Yes, Commissioner, we
12 do. We would like to limit that to say that
13 the ISP bound traffic as defined in the ISP
14 remand order which is only ISP bound traffic
15 where -- well, I'm sorry.

16 The -- the ISP remand order only addresses
17 ISP bound traffic where the ISP is located in
18 the same local calling area as the customer who
19 makes the call. And -- and -- and we would
20 agree that the FCC has said that for reciprocal
21 compensation purposes and only for that
22 purpose, that they were receiving jurisdiction.

23 Our opinion is -- is that ISP bound
24 traffic -- well, traffic bound for an ISP
25 that's located outside the local calling area

1 remain subject to the access charge regime.
2 If it's interstate, that location is across
3 state boundary, then it's interstate subject to
4 the FCC's jurisdiction. If it's within the
5 state, it's subject to state access charges.

6 MR. KLEIN: Would I be appropriate in
7 stating my objection to that characterization?

8 JUDGE JONES: Go right ahead.

9 MR. KLEIN: All right. Thank you. I
10 think that the characterization that counsel
11 for CenturyTel is using would be the FCC acting
12 to determine that something is local and taking
13 jurisdiction over something that's purely
14 local.

15 If the only ISP bound traffic that they
16 were attempting to resolve originated and
17 terminated within the same local calling area,
18 it would be intrastate traffic, the FCC would
19 have to acknowledge it had no jurisdiction over
20 that traffic.

21 Then fundamental point of the FCC's
22 control is that the traffic terminates at some
23 distant end point far outside the local calling
24 area. Nobody knows where that is. The FCC has
25 taken jurisdiction in determining that it's

1 appropriate that the parties exchange that
2 either under the temporary reciprocal
3 compensation rate that it set or under bill and
4 keep regime long-term. And we recognize --
5 FullTel recognizes at this point it wouldn't be
6 subject to bill and keep. It's not seeking
7 reciprocal compensation. By the same token
8 clearly understand there is no access that
9 would apply to the ISP bound traffic.

10 COMMISSIONER MURRAY: Mrs. Dietrich,
11 did you have anything to add to that?

12 MS. DIETRICH: I don't think so.

13 COMMISSIONER MURRAY: Okay. Thank
14 you.

15 JUDGE JONES: Okay. I -- I realize
16 -- Commissioner Murray, would you benefit from
17 closing arguments?

18 COMMISSIONER MURRAY: Yeah. If they
19 want to make them. If they don't want to make
20 them, that's fine.

21 MR. KLEIN: We'd be happy to limit
22 them to a couple minutes or something to that
23 effect.

24 JUDGE JONES: Sure. Sure. Okay.
25 Well, we're going to do that. Each of you will

1 have three minutes for closing arguments.

2 MS. DIETRICH: Am I excused?

3 JUDGE JONES: You are excused, Ms.

4 Dietrich. I'm sorry.

5 FullTel, you may proceed first.

6 CLOSING ARGUMENT

7 BY MR. KLEIN:

8 MR. KLEIN: Okay. Well, I think

9 despite the tediousness, we've made great
10 progress today, and we've succeeded in
11 narrowing the issues in dispute to two simple
12 questions.

13 One, is the ISP bound traffic really ISP F
14 bound traffic? And, two, if it is, whether it
15 must be exchanged at the same point as the
16 local traffic under the interconnection
17 agreement which says local traffic -- well,
18 which says reciprocal compensation traffic and
19 ISP bound traffic will be exchanged at the same
20 point and each party will bear the cost to
21 transport both reciprocal compensation traffic
22 and ISP bound traffic to the point of
23 interconnection.

24 I think we've also established that there
25 is an absolute right for a party to

1 interconnect at a single POI per LATA. It is
2 not something that's dependent on whether
3 CenturyTel agrees to grant that single point of
4 interconnection.

5 The FCC has held that a competing carrier
6 is entitled to a single the point of
7 interconnection in a LATA on the ILEC's
8 network.

9 The cases that have been provided, MCI,
10 Metro Access and Southwestern Bell case both
11 clearly hold that the FCC has established that,
12 that the FCC has rules establish that and that
13 the FCC in the interconnection arbitration for
14 Virginia clearly established that.

15 So you have FCC rules, FCC orders and
16 federal courts all in agreement that a single
17 point is -- is permitted and that the ILEC may
18 not assess a transport charge on the -- the
19 CLEC for traffic originating from that ILEC's
20 customer to bring that traffic to the point of
21 interconnection.

22 There is one other case which I -- which I
23 think is relevant. It's a recent decision,
24 and, therefore, I wasn't able to bring it to
25 the Commission's attention previously. It's a

1 case from Mr. Simshaw's home state of
2 Washington, Pacwest Telecom versus Quest
3 Corporation.

4 It completely and absolutely addresses the
5 same issues that we've been arguing about
6 today. And it says clearly that the order
7 requires Quest to comply with the ISP remand
8 order, including for ISP bound, VNX -- VNXX
9 traffic. And it clearly says that the FCC has
10 resolved this. The courts have resolved this.

11 It cites two additional court decisions --
12 additional Commission decisions, one of which,
13 by the way, was an interconnection arbitration
14 involving CenturyTel. So apparently CenturyTel
15 attempted the same regime or to get the
16 Washington State Commission to adopt the same
17 theories it's promoting here.

18 Washington State Commission rejected them.
19 It's my understanding that the Wisconsin
20 Commission has also reject these very same
21 arguments. There are other court decisions and
22 states that have done the same.

23 I don't think there's been much of a legal
24 argument put forth by CenturyTel as to what the
25 basis for its position other than it believes

1 that it's right and that's the way it
2 interprets the FCC's ISP remand order.

3 And, respectfully, I think that the law is
4 otherwise. Appreciate the opportunity to be
5 here today. Thank you.

6 JUDGE JONES: What's the cite for the
7 case you referenced?

8 MR. KLEIN: The Washington State
9 case?

10 JUDGE JONES: Yes.

11 MR. KLEIN: It's Docket No.
12 UT-053036, Order No. 05.

13 JUDGE JONES: Thank you. So we'll
14 have closing argument from CenturyTel.

15 CLOSING ARGUMENT

16 BY MR. SIMSHAW:

17 MR. SIMSHAW: You'd think by now I
18 would have learned how to run the microphone.

19 JUDGE JONES: Don't forget, you've
20 got three minutes.

21 MR. SIMSHAW: We've really -- and as
22 you can tell, we've established a couple of
23 things today. One is clearly the traffic at
24 issue is not local, despite Mr. Baresel's
25 evasiveness on where the customer is and where

1 they're delivering the traffic to the customer
2 hour. It's not local.

3 That leaves FullTel with their loan
4 argument that, well, it's ISP bound as that
5 term of art is established in the FCC's ISP
6 remand order. Well, that also fails.

7 As I've stated before, the ISP remand
8 order only addressed ISP bound traffic when the
9 ISP is located in the same local calling area.
10 So we still have the same question. Is it
11 local? No.

12 Our interpretation of that ISP remand or
13 -- I would ask the Commission to consider this.
14 The ISP remand order is 54 pages long.
15 Nowhere in the text of that order does it speak
16 to the ISP being located outside the local
17 calling area. In several instances, it refers
18 to instances of the ISP located within the same
19 local calling area. So just the text itself is
20 -- has got to lead to that conclusion.

21 If that's not good enough, I would direct
22 the Commission again to the Circuit Court of
23 Appeals that reviewed that very order. And
24 this is what they said. In this order before
25 us, the Federal Communications Commission held

1 that under Section 251(g) of the Act it was
2 authorized to carve out from Section 251(b) (5)
3 calls made to Internet service providers
4 located within the caller's local calling area.

5 There's the Court that reviewed the order
6 saying what the FCC did. And it matches with
7 what we've indicated to this Commission.

8 So it's not local traffic. It's not ISP
9 bound traffic as that term of art is used.
10 It's not subject to this particular
11 interconnection order.

12 Now, counsel has referenced the case in
13 the state of Washington. I'm aware of it. I
14 was tracking that one at about the same time,
15 and I think the -- the ALJ's recommended
16 decisions and the Commission's final decisions
17 are even just a few weeks apart in neighboring
18 Oregon. The same issue came up, and the ruling
19 is 180 degree the opposite. It supports
20 CenturyTel's view that the ISP remand order
21 only applied to ISP bound traffic where the ISP
22 was located within the same local calling area.

23 So, again, it's -- failing local traffic,
24 failing ISP bound traffic, this -- the traffic
25 in dispute is not subject to this particular

1 interconnection order. What that leaves for
2 FullTel is they can face up to the fact that
3 it's interexchange traffic that they want to
4 deliver -- have delivered to them, and they can
5 order access services, and that will allow a
6 customer in Ava to call their customer a
7 Oklahoma City, or they can negotiate with
8 CenturyTel in the same manner to come up with
9 an amendment or a new agreement that would
10 cover this type of traffic.

11 They can negotiate in the same manner as
12 did MCI who was doing the same thing and as did
13 CD Telcom who was doing the same thing. Thank
14 you.

15 JUDGE JONES: You mentioned two cases
16 there. Do you have cites for those? Well, you
17 said an Oregon case.

18 MR. SIMSHAW: I would have to provide
19 that.

20 JUDGE JONES: And you read text from
21 what?

22 MR. SIMSHAW: I read text -- oh,
23 that's the footnote at the bottom of page --
24 it's from my brief.

25 JUDGE JONES: It's from your brief?

1 MR. SIMSHAW: Uh-huh. It's the World
2 Com versus FCC 288 Federal Third 429 at page
3 430, D.C. Circuit, May 3rd, 2002.

4 JUDGE JONES: Okay. Thank you all.
5 With that, we'll go off the record.

6 (The proceedings were concluded at
7 4:45 p.m. on March 10, 2006.)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1	I N D E X	
2		PAGE
3	Opening Statement by Mr. Klein	16
4	Opening Statement by Mr. Simshaw	25
5	WITNESS: ROGER BARESEL	PAGE
6	Direct Examination by Mr. Klein	58
7	Cross-Examination by Mr. Simshaw	68
8	Cross-Examination by Commissioner Murray	96
9	Cross-Examination by Commissioner Clayton	103
10	Recross Examination by Commissioner Murray	117
11	Recross Examination by Mr. Simshaw	125
12	Recross Examation by Mr. Klein	130
13	WITNESS: SUSAN SMITH	PAGE
14	Direct Examination by Mr. Simshaw	132
15	Cross-Examination by Mr. Klein	147
16	Cross-Examination by Commissioner Murray	195
17	Recross Examination by Mr. Klein	220
18	Redirect Examination by Mr. Simshaw	237
19	WITNESS: NATELLE DIETRICH	PAGE
20	Direct Examination by Mr. Haas	239
21	Cross Examination by Commissioner Murray	240
22	Recross Examination by Mr. Simshaw	249
23	Cross-Examination by Mr. Klein	254
24	Closing Argument by Mr. Klein	258
25	Closing Argument by Mr. Simshaw	261

1	E X H I B I T S			
2	EXHIBIT	DESCRIPTION	MARKED	RECEIVED
3	1	Adoption Letter	91	91
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				