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2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS

7 Arbitration Hearing

8 April 11, 2006
9 Jefferson City, Missouri
Volume 3

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12 Petition of Socket Telecom, LLC)
for Compulsory Arbitration of)
13 Interconnection Agreements with)
CenturyTel of Missouri, LLC and) Case No. TO-2006-0299
14 Spectra Communications, LLC)
Pursuant to Section 252(b)(1) of)
15 the Telecommunications Act of 1996)

16

KENNARD L. JONES, Presiding,
17 REGULATORY LAW JUDGE.

18

19 NATELLE DIETRICH,
LARRY HENDERSON,
20 MIKE SCHEPERLE,
ADAM McKINNIE,
21 ADVISORY STAFF.

22

23 REPORTED BY:

24 KELLENE K. FEDDERSEN, CSR, RPR, CCR
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Spectra Communications Group, LLC.

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

2 JUDGE JONES: Good morning. This is
3 Hearing No. TO-2006-0299, arbitration of interconnection
4 agreement between Socket Telecom, LLC and CenturyTel of
5 Missouri, LLC, and Spectra Communications, LLC.

6 My name is Kennard Jones. I'm the
7 arbitrator in this matter. Also seated with me to my far
8 left is Larry Henderson. Next to me is Natelle Dietrich.
9 To my right is Mike Scheperle, and to my far right is Adam
10 McKinnie. They are my Advisory Staff here today, and
11 they'll be asking questions probably more so than myself.

12 At this time we'll take entries of
13 appearances, beginning with Socket Telecom.

14 MR. MAGNESS: Good morning, your Honor.
15 Bill Magness and Brad Bayliff, Socket Telecom.

16 JUDGE JONES: What's Brad's last name? I'm
17 sorry.

18 MR. MAGNESS: Bayliff, B-a-y-l-i-f-f.

19 JUDGE JONES: And for CenturyTel of
20 Missouri?

21 MR. DORITY: Good morning, your Honor.
22 Larry W. DORITY on behalf of CenturyTel of Missouri, LLC
23 and Spectra Communications Group, LLC. And also appearing
24 with me today, I'd like to introduce to the Judge and the
25 advisory Staff from the Hughes Luce law firm, Mr. David

1 Brown, sitting right here, Mr. Floyd Hartley and Mr. Gavin
2 Hill. Thank you, Judge.

3 JUDGE JONES: Thank you. Okay. I promised
4 a number of people we'd be streaming this. I should
5 probably do that. Sorry. Your introductions weren't
6 streamed.

7 Okay. At this time we'll go into
8 entries -- or I'm sorry -- opening statements, beginning
9 with Socket.

10 MR. MAGNESS: Thank you, your Honor,
11 members of the Advisory Staff. Bill Magness on behalf of
12 Socket.

13 Just as a process note, I know as you all
14 are aware, we have divided up the witness presentations by
15 agreement into various subject matter topics and have
16 further agreed that before each one of those subject
17 matter topics, we'll have a short opening that focuses on
18 those subject matter topics to try to keep us honed in on
19 particular sets of issues. This first panel is one that
20 deals with interconnection and reciprocal compensation
21 issues, and Socket will be presenting testimony from
22 Matthew Kohly of Socket and Steve Turner.

23 Socket has an interconnection agreement
24 with the largest and the third-largest ILECs in Missouri,
25 AT&T and Sprint, and in this case, this case is all about

1 completing the arbitration of an interconnection agreement
2 with the second-largest CLEC in Missouri, that is,
3 CenturyTel of Missouri, a company that has by report end
4 of last year 442,138 access lines in the state of Missouri
5 in all various parts of the state. Those are access lines
6 that Socket and other CLECs serve or want to serve on a
7 competitive basis.

8 Socket began its business as an Internet
9 service provider, has become a certified carrier, and
10 provides T1-based business services to small businesses,
11 in particular banks, court reporting services, various
12 companies throughout the state. And as I'm sure you can
13 tell from the testimony, the focus of a lot of Socket's
14 attention is on making sure it has affordable access to
15 DS1 loops, to the network elements it needs, to get to
16 those business customers in all parts of CenturyTel's
17 territory.

18 There is a lot of testimony in this case
19 about who CenturyTel is, what CenturyTel is and is not,
20 and I will -- I'll give you my story on that a bit later,
21 probably in one of the other panels. I think suffice it
22 to say for purposes of this panel, it simply doesn't
23 matter. This panel is about federal -- the implementation
24 of the federal statute that was written ten years ago and
25 federal rules, many of which were also written and began

1 to be implemented ten years ago, others which have been on
2 the books for less time than that that are fairly well
3 established.

4 And in the Act, Section 251, really
5 look at Section 251 and the interconnection obligations
6 thereunder, provides that all incumbent local exchange
7 companies are subject to certain obligations. Socket --
8 or rather CenturyTel is an incumbent local exchange
9 company. There's no dispute about that.

10 There are certain obligations in the Act
11 that only apply to certain incumbent local exchange
12 companies. For example, Section 271 is focused only on
13 the Bell operating companies, but all of the other
14 obligations under Section 251 apply to all incumbent local
15 exchange companies.

16 Congress was considerate of, concerned
17 about companies that were truly really rural phone
18 companies, and they provided an exemption in
19 Section 251(f) from interconnection obligations for those
20 companies that qualified under Section 251(f). CenturyTel
21 is making no claim in this case that it is qualified for
22 such an exemption under 251(f), and none of its testimony
23 seeks one from this Commission.

24 So there really is no legal basis on which
25 who CenturyTel is makes a difference. They are an

1 incumbent local exchange company. They are not excused by
2 251(f) rule requirements. Therefore, those obligations
3 apply to them.

4 When we look at what those obligations are
5 just very briefly, because it's well developed in the
6 testimony, interconnection is fundamental. Socket is a
7 facilities-based carrier. As I mentioned, it provides
8 service and wants to provide more to small business
9 customers, particularly with an integrated T1-type service
10 that mixes voice and data for those small business
11 customers.

12 Socket has facilities in Missouri. Socket
13 is serving customers using those facilities, but if a
14 competitive local exchange carrier cannot interconnect to
15 exchange traffic with the incumbent, they're not going
16 anywhere. Most of the customers are on the incumbent
17 network. If you can't reach those customers and deliver
18 your customers' traffic to them, if their customers cannot
19 reach you so that you can deliver their traffic for them,
20 there can't be any local competition.

21 The FCC recognized in 1996 right after the
22 Act was passed in a local competition order that you'll
23 hear a fair amount about, that interconnection is
24 fundamental and set forth standards by which incumbents
25 and competitive LECs would interconnect. Most of those

1 rules, most of them, haven't changed since 1996, and in
2 fact, the issues, particularly the issues regarding points
3 of interconnection, transit, indirect interconnection that
4 CenturyTel is disputing here were precisely exactly the
5 issues that were before this Commission recently in the
6 Missouri 271 agreement case involving SBC, now AT&T.

7 The language that Socket is requesting on
8 interconnection tracks what the Commission has already
9 approved. The rules haven't changed. And if you look at
10 what the Commission approved and why it approved it in the
11 M2A, it didn't say, well, we're going to grant a single
12 point of interconnection in a LATA because AT&T's a big
13 company or because AT&T has a lot of CLECs competing with
14 it or because AT&T has obligations that others don't have.

15 No. The Commission read and implemented
16 the straightforward rules the FCC has been applying for
17 ten years. So the language has nothing to do with AT&T.
18 It has everything to do with actually complying with
19 established federal rules. That's all Socket is asking
20 for you to do here today, is not reinvent the wheel that
21 we so painstakingly crafted not so long ago in that case,
22 but just apply that in the CenturyTel territory as well.

23 On the reciprocal compensation issues, most
24 of the controversy around reciprocal compensation is
25 around ISP traffic -- which is important, of course, but

1 declining as part of the industry as broadband moves to
2 the fore -- around ISP traffic and the arrangements by
3 which it is delivered; that is, FX or FX-like services
4 including VNXX -- there's various ways it's described --
5 that have been used by CLECs primarily to permit folks in
6 rural areas to have an alternative to the incumbent for
7 their Internet service.

8 Not many people are willing to dial a 1+
9 number to get on the Internet. They haven't been for
10 quite some time. Long distance calls to an ISP are
11 something you just don't want to do. And, in fact, there
12 has been an exemption from access charges for Internet
13 service providers of which Internet service providers are
14 a subset for years, prior to the Act's passage.

15 That's the essential thing that the VNXX is
16 about, and if CLECs are not able to terminate that
17 traffic, that is the traffic originated by CenturyTel's
18 own customers on an equitable basis, what's in danger here
19 is the alternative -- competitive alternatives in rural
20 areas for dial-up.

21 You can always use the incumbent, but that
22 was the way it was before the Act passed, and that's what
23 Socket is trying to change. This FX issue was not
24 litigated in the M2A case because the parties settled it.
25 There was agreed language that all FX traffic, whether

1 it's in the MCA areas where everything is terminated on a
2 bill and keep basis or outside the MCA areas, that the
3 compensation, the intercarrier compensation, and that
4 includes access charges and reciprocal compensation, all
5 the various types of exchange payments carriers make to
6 one another for carrying one another's traffic,
7 intercarrier compensation was agreed on a bill and keep
8 basis for the entire state of Missouri in the M2A.

9 That is exactly what Socket is proposing
10 here, that bill and keep be the method for exchanging
11 traf-- exchanging all ISP-bound FX and local --
12 traditional local traffic. Socket is not attempting to
13 rope into that traditional intraLATA traffic,
14 interexchange traffic that goes to an interexchange
15 carrier. But like the M2A for traditional local, FX and
16 FX-like services and ISP traffic, Socket's proposing bill
17 and keep.

18 CenturyTel objected that Socket had
19 language which would have permitted Socket to charge
20 reciprocal compensation to CenturyTel if traffic had gone
21 out of balance, if Socket started terminating a lot more
22 of CenturyTel's traffic. We removed that provision in the
23 contract, hopefully have removed a big roadblock to
24 getting to a bill and keep arrangement for this traffic in
25 Missouri.

1 On the FX issues, on the ISP issue, the
2 primary order we look to is a 2001 order of the FCC known
3 as the ISP Remand Order. The FCC has been tangling with
4 intercarrier compensation and its relationship to
5 universal service and its interrelationship to the access
6 charges and the whole tangled web for a long time. In
7 fact, they issued a Notice of Proposed Rulemaking in 2001
8 when they issued the ISP Remand Order, raising a lot of
9 these questions, how should we handle all these issues,
10 they ask. Everybody told them how they ought to solve it,
11 and they didn't act.

12 They issued a further Notice of Proposed
13 Rulemaking on these issues in 2005, about a year ago, and
14 there's still no action. So while there are a lot of
15 ideas, and some of them very good ones, floating around
16 there about maybe how we could come up with a solution to
17 all of these problems, what we're operating under and what
18 the Commission has to look at is the existing FCC rules
19 and the provisions of the ISP Remand Order as they apply
20 to these issues.

21 So again, there is nothing special about
22 the application of the FCC rules in these instances. When
23 you look at these rules, there's not a however, if you are
24 X kind of ILEC, they don't apply. They apply to all
25 incumbent local exchange carriers, and there is no

1 exemption that can legally be applied here in CenturyTel's
2 case, as it requests vociferously and repeatedly.

3 With that, I will leave it to the
4 witnesses. Thank you.

5 JUDGE JONES: Thank you, Mr. Magness. Now
6 we'll hear from CenturyTel.

7 MR. HARTLEY: Good morning, your Honor.
8 Floyd Hartley for CenturyTel.

9 As Mr. Magness mentioned, there's quite a
10 bit of testimony in this case about CenturyTel not being
11 AT&T, about operating in different markets, serving
12 different customers, serving different densities. In
13 looking through the CenturyTel testimony, you will not
14 find a single place where CenturyTel says that we need to
15 be exempt from the rules. Instead, we recognize that new
16 entrants are entitled to a single POI in a LATA.

17 That's all well and good, but how do you
18 apply that language and that rule to the facts? And
19 that's where the FCC's comments in the First Report and
20 Order about selecting expensive forms of interconnection,
21 that's where subsequent DC Circuit opinions come into
22 play.

23 It's not just about single POI per LATA in
24 perpetuity. It's about applying that law to the facts,
25 through Dr. Avera's testimony, through Guy Miller's

1 testimony, through Mr. Simshaw's testimony on this panel
2 in particular. You'll see countless places where we
3 describe why the facts of the way CenturyTel operates are
4 key to the application of that principle in this context.

5 There was never any argument that we ought
6 to be exempt from the rules. From the First Report and
7 Order to the UNE Remand Order to the TRO/TROO, things have
8 changed. We're never saying we're not exempt.

9 There are about 20 issues or so in this
10 panel. As Mr. Magness was describing, they run the gamut.
11 We have interconnection issues, we have CPM, we have meet
12 point billing. What's important is not to lose sight of
13 the forest for the trees, not to focus on any of the
14 individual single issues and lose sight of the big
15 picture.

16 In looking through those 20 issues, there's
17 really about three key things that arise. The first, of
18 course, is control, and this is the point that's not
19 touched on by Socket in its opening statement. In these
20 issues and conflict language dealing with methods of
21 interconnection, dealing with direct versus indirect
22 interconnection, dealing with two-way versus one-way
23 trunk, Socket repeatedly proposes language that gives
24 Socket unilateral control over how the parties
25 interconnect, how they route traffic, how they route

1 trunking, which facilities are used.

2 Now, it's all well and good for us to say
3 two-way trunking is more efficient. It's all well and
4 good for us to say CLECs are entitled to indirect
5 interconnection. CenturyTel doesn't have any dispute with
6 that. The problem is the absolute to the Socket language.
7 The problem is when CenturyTel, says, okay, we're
8 exchanging enough traffic where two-way trunking is
9 appropriate and we're willing to pay for it. The contract
10 language allows Socket to completely preclude that.

11 When we say two-way trunking is generally
12 efficient but, you know, this case it doesn't make sense
13 and there's problems with jurisdictionalizing traffic, so
14 we need to have one-way trunking, their language allows
15 them to preclude that.

16 What they miss is that we serve not just
17 Socket, but Missouri end users, other CLECs, IXCs. So
18 we've got to manage the network in a manner that's going
19 to allow us to most effectively and efficiently serve all
20 these in a technically feasible, economically efficient
21 manner.

22 The proposed contract language, however, in
23 many cases, Issues 5, 8, 12 -- 13, 12, 18. In all of
24 these cases, as we explained in the DPL, they're exerting
25 unilateral control over these methods of interconnection

1 and the way we route things.

2 The second theme Mr. Magness touched on a
3 little bit in his opening is about facilities-based
4 competition. And this has been inherent in the Act since
5 the first Report and Order in August of 1996, that the key
6 goal is the promotion of facilities-based competition.

7 Mr. Magness talks about Socket being a
8 facilities-based provider. It's been very clear how much
9 facilities they want to deploy. In fact, you go to
10 socket.net, where they market their ISPs and you'll see
11 that in marketing to those ISPs, they talk about you
12 can -- you can immediately expand your calling areas
13 without deploying facilities, avoiding the capital
14 expenditure, and how they do it is -- and we'll get into
15 it in a minute -- is by this VNXX situation.

16 And this is where we can't lose sight of
17 forest for the trees, because the third and most critical
18 theme in this panel is about the reasonable allocation of
19 responsibility. Who is responsible not just for costs but
20 for deploying facilities for doing things? And this is
21 most critical in the context of the single POI issue and
22 the intercarrier compensation.

23 Mr. Magness goes on at length about bill
24 and keep was just agreed to between AT&T and all these
25 people. We really don't know the backdrop into why the

1 agreement was reached, whether there were other issues,
2 puts and takes in the context of negotiation. But that's
3 all well and good. CenturyTel doesn't have a problem with
4 bill and keep but for the POI issue.

5 I think in Mr. Kohly or Mr. Turner's
6 rebuttal, it takes CenturyTel to task for trying to mix
7 intercarrier compensation and interconnection. That's
8 wrong. The key is you put the two together. You look at
9 the forest. You're seeing then by combining a single POI
10 in a LATA with a bill and keep arrangement allows Socket
11 to avoid deploying facilities throughout a LATA.

12 They can, for example, establish a POI in
13 Branson, serve more than 60 exchanges. The facilities
14 they're deploying is a single trunk group from Branson to
15 their switch in St. Louis, versus CenturyTel then taking a
16 facility from the Ava exchange, from 60-plus exchanges
17 throughout the LATA.

18 Facilities-based deployment --
19 facilities-based competition, the key goal in the Act, how
20 do we achieve that? How do we reasonably allocate
21 responsibility between the parties? I think -- may I
22 approach the board, your Honor?

23 JUDGE JONES: Yes, you may.

24 MR. HARTLEY: What I've enlarged on the
25 board is in Mr. Simshaw's direct testimony, and I've

1 enlarged it here so we can kind of look at it and see
2 what's going on. This is the situation I described where
3 what will happen is Socket has an ISP customer served out
4 of their switch in St. Louis, and they want to reach these
5 rural customers down in Ava. How do they do that? Do
6 they take facilities to Ava? No. That would constitute
7 too much capital expenditure.

8 What they do is they set up this VNXX-type
9 situation where they assign -- and this again is on
10 socket.net. You can see that they've got a list, two or
11 three pages of numbers that ISPs can choose from. They'll
12 assign this number as a local exchange, and they don't
13 have to do anything. They get CenturyTel to route it from
14 Ava to the tandem in Branson back to St. Louis.

15 What's important, as Mr. Magness was
16 mentioning, the FCC's struggling with these issues. In
17 April of 2001 in the ISP Remand Order, they cautioned that
18 the nature and character of communications changes over
19 time. Over the last decade communication services have
20 been radically altered by the advent of the Internet and
21 the nature of Internet communications.

22 That's all well and good, but what the FCC
23 then does in subsequent paragraphs 4 and 5 and paragraph
24 21 is talk about the potential for regulatory arbitrage
25 that arises in these situations.

1 For example, the FCC comments that carriers
2 have every incentive to compete, not on the basis of
3 quality and efficiency but on the basis of their ability
4 to shift cost to other carriers, a troubling distortion
5 that prevents market forces from distributing limited
6 investment resources to their most efficient uses.

7 We believe that this situation is
8 particularly acute in the case of carriers delivering
9 traffic to ISPs because these customers generate extremely
10 high traffic volumes that are entirely one directional.

11 What you see is, as Mr. Simshaw testifies
12 in his direct and rebuttal, is you've got all the traffic
13 in the example on the board flowing from Ava through
14 Branson to St. Louis. That's not coming back the other
15 way.

16 In Mr. Kohly's responses to CenturyTel
17 discovery, he acknowledges that at least 60 to 65 percent
18 of their locally dialed traffic, they expect that to be
19 ISP-bound. So that what you're going to have is that by
20 and far the bulk of the traffic exchange is going to be in
21 this manner. Does that promote facilities-based
22 competition? Does that promote the reasonable allocation
23 of responsibility between the parties?

24 I think, if I may approach the board again,
25 I'll show you another example. It's a little bit small,

1 but what we have here is the MTIA map that shows Missouri
2 has the different LATAs in the exchanges. The orange here
3 are the CenturyTel and Socket exchanges that they serve,
4 and what we're talking about is down here in Branson.
5 Smart Board's not working. But down here in Branson we've
6 got the single POI that Socket wants to deploy. And what
7 they want to do is they want to take a single facility
8 from Branson to their switch in St. Louis, which is fine.
9 They're allowed to do that.

10 But then what they want to do is they want
11 to serve this entire LATA out of that one POI. What that
12 means is, whereas as Mr. Simshaw testifies, they're
13 responsible for a single large-capacity facility from
14 Branson to St. Louis, they require CenturyTel then to
15 bring from Brawna, from Alton over here, from Ava, from
16 each of those 60-plus exchanges.

17 So what happens is, CenturyTel then is
18 responsible for all of the costs associated with taking
19 traffic from each of those 60-plus exchanges to the one
20 POI. And what is Socket's answer? Well, if we exchange
21 an OC3 level of traffic with any single one of those
22 exchanges, we will deploy additional POI.

23 An OC3? That's, what, in excess of 2,000
24 DS0s. With the exception of Ava and perhaps one other
25 exchange, there's not a single exchange in that LATA that

1 if every CenturyTel end user calls simultaneously Socket's
2 ISP, you'll ever get to that OC3. In effect, what Socket
3 has proposed is a single POI in perpetuity.

4 We're not trying to change the rules here.
5 What we're saying, as the FCC said, is that new entrants
6 are entitled to a single POI per LATA. When traffic,
7 however, rises to the extent additional POIs are necessary
8 or efficient, the CLEC should enter there. The single POI
9 issue was about an entry barrier.

10 How do we make sure a new entrant can enter
11 a market? What we do is we allow them to establish a
12 single POI. Once a new entrant's in the market, once they
13 exchange enough traffic -- in CenturyTel's testimony we
14 talk about 24 DS0s. When you have a DS1 level of traffic
15 from a local calling area, send a POI there.

16 At that point it's efficient, you're
17 exchanging enough traffic, you have a marketplace. If
18 you're going to serve that many customers in an exchange,
19 put some facilities out there. Get out there instead of,
20 as the FCC warned in the ISP Remand Order, shifting all of
21 your costs onto CenturyTel, but for the single high-cap
22 facility from your POI to the switch.

23 Don't lose sight of the forest for the
24 trees. There's a lot of issues, there's a lot of talk,
25 there's a lot of cites, quotes, references to various FCC

3 MR. HARTLEY: Your Honor, would it make
4 some sense to go ahead and swear in all the witnesses and
5 do that at once?

9 Is this Steve Turner and Matt Kohly? Would
10 you both raise your right hands.

12 JUDGE JONES: Mr. Kohly?

14 JUDGE JONES: And Mr. Turner?

16 R. MATTHEW KOHLY AND STEVE TURNER testified as follows:

18 (Answers by R. Matthew Kohly)

20 A. Good morning.

23 A. My name is Matt Kohly. Business address is
24 810 Cherry Street, Columbia, Missouri 65201.

1 microphone on?

2 MR. KOHLY: Now it is.

3 BY MR. MAGNESS:

4 Q. And did you cause to be filed in this
5 proceeding the direct testimony of R. Matthew Kohly on
6 behalf of Socket Telecom, LLC?

7 A. I did.

8 Q. In addition, did you cause to be filed the
9 rebuttal testimony of R. Matthew Kohly on behalf of Socket
10 Telecom, LLC?

11 A. I did.

12 Q. If the same questions were asked today,
13 would your answers be the same?

14 A. Yes, they would.

15 Q. And do you have any corrections or changes
16 to your testimony?

17 A. I have two corrections. One is to page 46
18 of my direct, where I refer to other vendors on lines 8
19 and 9. I would like to insert the word telecommunications
20 so that it reads, other telecommunications vendors.

21 Then my second correction is on page 64 at
22 line 20, where the word -- the third word appears as
23 collocation. That should be the word interconnection, so
24 that it reads, if the interconnection was... And those are
25 the only changes that I'm aware of.

1 Q. So with those changes, it would still be
2 your testimony today?

3 A. Yes, it would.

4 MR. MAGNESS: Your Honor, we'd move
5 admission of Mr. Kohly's direct and rebuttal testimony.

6 JUDGE JONES: Any objection?

7 MR. HARTLEY: No, your Honor.

8 JUDGE JONES: What exhibit is that? Has it
9 been marked as an exhibit?

10 MR. MAGNESS: It has not yet, sir.

11 JUDGE JONES: We'll mark it as Exhibit 1.

12 MR. MAGNESS: 1 and 2, direct and rebuttal?

13 JUDGE JONES: Yes, 1 and 2.

14 MR. MAGNESS: Thank you.

15 JUDGE JONES: And just so that CenturyTel
16 is aware, we'll use -- well, do you-all have more than
17 26 exhibits? Well, it doesn't matter. You should use
18 letters instead of numbers. How about that? Have you
19 already marked your exhibits?

20 MR. DORITY: No, we have not.

21 JUDGE JONES: Okay. Well, we'll start with

22 A.

23 (EXHIBIT NOS. 1 AND 2 WERE MARKED FOR
24 IDENTIFICATION BY THE REPORTER, AND RECEIVED INTO
25 EVIDENCE.)

1 BY MR. MAGNESS:

2 Q. Mr. Turner?

3 (Answers by Steve Turner)

4 A. Yes.

5 Q. Please state your name and business address
6 for the record.

7 A. Steven Turner, and my address is 2031 Gold
8 Leaf Parkway, Canton, Georgia 30114.

9 Q. Mr. Turner, are you the Steven Turner who
10 caused to be filed the direct testimony of Steven E.
11 Turner on behalf of Socket Telecom, LLC in this
12 proceeding?

13 A. Yes, I am.

14 Q. And did you also cause to be filed rebuttal
15 testimony of Steven E. Turner on behalf of Socket Telecom,
16 LLC?

17 A. Yes, I am.

18 Q. And there was -- is it correct that there
19 was a revised direct testimony filed?

20 A. That's correct.

21 Q. The -- if I asked you -- actually, let me
22 ask you before that, are there any changes or corrections
23 to your testimony?

24 A. No, there are not.

25 Q. And if I ask you the same questions today

1 that are asked and answered in your direct and rebuttal
2 testimony, would your answers be the same?

3 A. Yes, they would.

4 MR. MAGNESS: Your Honor, we would move
5 admission of Mr. Turner's direct testimony as Socket 3 and
6 his rebuttal testimony as Socket 4.

7 JUDGE JONES: Thank you. Any objection?

8 MR. HARTLEY: No, your Honor.

9 MR. MAGNESS: Your Honor, on Mr. Turner's,
10 there are redacted and confidential versions of his
11 testimony because it does contain some confidential
12 information. I just wanted to mention that before we
13 moved on, in case that affects your numbering.

14 JUDGE JONES: No. We'll just consider both
15 the public or the -- what was redacted -- the redacted and
16 proprietary as one exhibit.

17 MR. MAGNESS: Thank you very much.

18 JUDGE JONES: Exhibits 3 and 4 will be
19 admitted into the record.

20 (EXHIBIT NOS. 3 AND 4 WERE MARKED FOR
21 IDENTIFICATION BY THE REPORTER, AND RECEIVED INTO
22 EVIDENCE.)

23 MR. MAGNESS: And we would tender
24 Mr. Turner and Mr. Kohly for cross.

25 MR. HARTLEY: Good morning, Mr. Turner.

1 MR. TURNER: Good morning.

2 MR. HARTLEY: Good morning, Mr. Kohly.

3 MR. KOHLY: Good morning.

4 CROSS-EXAMINATION BY MR. HARTLEY:

5 Q. Mr. Turner, before filing your rebuttal
6 testimony, Socket advocated an OC12 traffic threshold for
7 establishing a single point in a LATA; isn't that correct?

8 (Answers by Mr. Turner.)

9 A. Yes, that's correct.

10 Q. What volume of traffic is an OC12?

11 A. Well, depends on how you are defining it,
12 but it's effectively the equivalent of 12 DS3s.

13 Q. About 8,000 DS0s, in excess?

14 A. No. An OC3 would be in excess of 8,000, so
15 OC12 would probably be in excess of 2,000.

16 Q. Socket is now, according to rebuttal
17 testimony, advocating an OC3 threshold; is that your
18 understanding?

19 A. I told you wrong. I'm just trying to do
20 the math in my head. You're right. It's 2,000 for an OC3
21 and 8,000 for an OC12.

22 Q. As of your rebuttal testimony, Socket is
23 advocating establishing an additional POI in a LATA once
24 traffic reaches an OC3 threshold; is that your
25 understanding?

1 A. Yes, sir.

2 Q. And that's the 2,000-plus DS0s?

3 A. That's correct.

4 Q. You were present for my opening statement,
5 weren't you?

6 A. Yes, I was.

7 Q. Referencing the Springfield LATA that's
8 still up on the Smart Board over there, are you aware of
9 any exchange other than the Branson one where -- and
10 possibly Ava -- where you would ever get to an OC3 level
11 if every CenturyTel end user simultaneously dialed a
12 Socket ISP?

13 A. Well, the problem with your example is I
14 think you're misrepresenting what the threshold refers to.
15 The threshold's not referring to a single exchange, which
16 is -- sounds good for an opening, but what it's applied to
17 is to --

18 Q. So you would have to combine multiple
19 exchanges to get to that OC3?

20 A. Right. In other words, if you look at the
21 traffic across the entire exchange, if there was more than
22 an OC3 worth, then there would be an establishment of a
23 second POI, and where that would go would be mutually
24 worked out between the companies.

25 Q. Basically you have to combine traffic along

1 multiple exchanges to reach the OC3 level?

2 A. That's right.

3 Q. And at that point, then, Socket would
4 deploy a second POI someplace?

5 A. In that LATA.

6 Q. Someplace in that LATA. But the contract
7 language never specifies where?

8 A. No. Normally POIs are worked out mutually
9 between companies.

10 Q. And Socket's willing to mutually work out
11 that location with CenturyTel?

12 A. Yes.

13 Q. When did Socket change its position on the
14 traffic threshold from going from OC12 to OC3?

15 A. I don't know the exact date. Mr. Kohly and
16 I had conversations about that in between the direct and
17 rebuttal rounds of testimony.

18 Q. Why did that threshold change?

19 A. We felt -- do you -- it may be better if
20 you direct that question to Mr. Kohly.

21 Q. I have some questions for Mr. Kohly in a
22 minute.

23 A. I can't tell you exactly why, but generally
24 it's that we looked at given the gives and takes of trying
25 to figure out how to come to contract language that would

1 work between companies, it seemed that that would be a
2 reasonable threshold to establish for setting a second POI
3 with CenturyTel.

4 Q. When did you communicate this change to
5 CenturyTel that you'd be willing to decrease the threshold
6 from the 8,000 DS0s to 2,000?

7 A. I don't know. I know when I put it in my
8 testimony was in rebuttal. I don't know when it was
9 communicated to CenturyTel.

10 (Answers by Mr. Kohly.)

11 Q. Mr. Kohly, it wasn't communicated to
12 CenturyTel until the rebuttal; is that correct?

13 A. That is correct.

14 Q. Is there a reason why you didn't let us
15 know?

16 A. We were rather frantically working on
17 direct testimony. These issues were not being really
18 negotiated at that time.

19 Q. There was a dispute between the parties in
20 Article 5 on the definition of routing point Issue 29, I
21 think?

22 A. Right.

23 Q. That's been resolved between direct and
24 rebuttal?

25 A. Yes, it has.

1 Q. And the resolution with CenturyTel
2 basically adopted Socket's language?

3 A. Correct.

4 Q. And we advised you of that before rebuttal?

5 A. Correct.

6 Q. Currently Socket has a switch or has a POI
7 in Columbia; is that right?

8 A. Yes.

9 Q. And you're currently developing a second
10 one in another LATA; is that right?

11 A. We are working on establishing a
12 collocation arrangement at Wentzville, which would be in
13 the St. Louis LATA.

14 Q. So the goal is to serve the St. Louis LATA
15 out of that single POI in Wentzville?

16 A. Initially.

17 Q. And then depending on the course of this
18 arbitration, you're contemplating establishing a single
19 POI in Branson --

20 A. Correct.

21 Q. -- to serve that LATA?

22 You heard Mr. Turner's testimony a moment
23 ago about where Socket would deploy its additional POI,
24 didn't you?

25 A. Yes.

1 Q. Your contract language doesn't speak to
2 once we get to the OC3 level, where that different POI's
3 going to be in the LATA?

4 A. No, it does not.

5 Q. You expect the parties to mutually agree on
6 where that would be?

7 A. We would follow the contract language in
8 the ICA at that point. If you want to refer me to a
9 specific section --

10 Q. Okay. How about Section 4.3.1.1 in the
11 Article 5 DPL.

12 JUDGE JONES: And I want to remind you all
13 to use the microphone. I can hear you okay. I doubt if
14 people in the back of the room can hear you, and I know
15 people over the web cast can't hear you, so --

16 MR. KOHLY: I'll try to do that.

17 JUDGE JONES: I'll remind you.

18 MR. KOHLY: Please do.

19 BY MR. MAGNESS:

20 Q. Are you there, Mr. Kohly?

21 A. What was the section again?

22 Q. 4.3.1.1 under Issue 7 in the Article 5 DPL.

23 A. Yes.

24 Q. It's page 25 of 103 in my version, but the
25 pagination may have changed in different versions. Are

1 you there, Mr. Kohly?

2 A. Yes, I am.

3 Q. Let me know if I read this correctly. In
4 any TSA apart from any existing POI arrangement when
5 traffic to/from that TSA exceeds an OC3 peak over three
6 consecutive months. Did I correctly read that?

7 A. Yes, you did.

8 Q. And TSA refers to tandem serving area?

9 A. Yes, it does.

10 Q. And in the Springfield LATA, for example,
11 the tandem serving area would be the entire LATA with
12 respect to CenturyTel?

13 A. That would be correct.

14 Q. So once you get an OC3 out of that
15 Springfield LATA, where does the contract language say the
16 additional POI is going to go?

17 A. Could you restate your question? I'm
18 sorry.

19 Q. Once you get to an OC3 level in the
20 Springfield LATA, where does the contract language say an
21 additional POI is going to go?

22 A. Well, you would follow either 4.3.1.1 that
23 you just read or 4.3.1.2, which would be at any CenturyTel
24 end office not served by the CenturyTel tandem.

25 Q. Right. But in the Springfield LATA each

1 one of those CenturyTel end offices is served out of the
2 Branson tandem; isn't that right?

3 A. I believe so.

4 Q. And that's an access tandem?

5 A. Yes.

6 Q. So 4.3.1.2 wouldn't apply in this
7 situation?

8 A. Correct.

9 Q. So going back to 4.3.1.1, where would the
10 additional POI go?

11 A. Well, we could put it at an end office or a
12 host switch where traffic thresholds exceeded that.

13 Q. So in an exchange where traffic exceeds
14 OC3?

15 A. Not necessarily an exchange, but a host.
16 For example, several of the switches are host switches
17 that have remotes off of them. So it's not one local
18 calling area. It could be four or five.

19 Q. Four or five local calling areas --

20 A. Or however many subtend that host.

21 Q. So it could be four or five local calling
22 areas within a single exchange or between a few exchanges?

23 A. It would be at a host end office which has
24 numerous -- could have numerous remotes sitting off of
25 that, all in different local calling areas.

1 Q. And what's the decision-making rubric for
2 deciding where that Springfield LATA additional POI is
3 going to go, if you ever get an OC3?

4 A. We would look, I would, at where the volume
5 of traffic was the greatest and establish the POI at that
6 point, would be -- I would think.

7 Q. In your rebuttal testimony, page 36,
8 lines 3 to 6 if you need to look at it.

9 A. Page 36?

10 Q. Yes, sir.

11 A. Lines?

12 Q. 3 through 6.

13 A. Yes.

14 Q. You talk about requiring additional POIs,
15 and continuing with this example, the second POI in the
16 Springfield LATA is going to, quote, certainly preclude
17 entry into smaller markets. Did I read that correctly?

18 A. Yes.

19 Q. But you don't know how much it's going to
20 cost Socket to deploy an additional POI, do you?

21 A. We have looked at it using some of the
22 numbers as if we leased interconnection facilities. We
23 have looked at it, looking at if there were other
24 facilities available from other carriers. In most of
25 these situations I'm addressing here, there are not

1 third-party facilities available.

2 Q. So you know how much it would cost to
3 establish a POI?

4 A. If we were able to lease interconnection
5 facilities from CenturyTel, to get to that arrangement, we
6 would know that, plus whether or not we'd have to
7 establish a collocation would be in addition to that.

8 Q. Sitting here today, do you know how much it
9 would cost Socket to deploy an additional POI in the
10 Springfield tandem LATA?

11 A. If you would give me a location of mileage,
12 I could give you a ballpark, but, no, today I don't know
13 where it would -- how much it would cost to randomly
14 establish a POI.

15 Q. But you talked about performing these
16 studies. Did you actually use numbers to decide in
17 various hypotheticals how much it would cost for a POI?

18 A. I don't know if it was actually a study as
19 much as discussions, using numbers, transport numbers.

20 Q. Okay. And CenturyTel served some discovery
21 on Socket; isn't that right?

22 A. Yes.

23 Q. And as part of that discovery we asked for
24 just this information, didn't we?

25 A. Yes.

1 Q. You're the responsible party on that
2 discovery?

3 A. Do you have a specific Data Request?

4 Q. 23 and 24.

5 A. Do you have a copy of the Data Requests?

6 Q. Mr. Kohly, I've just handed you Socket's
7 responses to CenturyTel and Spectra's first set of Data
8 Requests. Does that look familiar to you?

9 A. Yes.

10 Q. What is that?

11 A. Socket Telecom's responses to CenturyTel of
12 Missouri, LLC and Spectra Communication, LLC's first set
13 of Data Requests.

14 Q. And these appear -- this appears to be a
15 complete copy of Socket's responses to those Data
16 Requests?

17 A. Yes.

18 MR. HARTLEY: As far as numbering
19 convention, mark this as an exhibit. Do you want me to
20 start with A?

21 JUDGE JONES: No, don't start with A. This
22 is a Data Request that has to do with Mr. Kohly's direct
23 or rebuttal?

24 MR. HARTLEY: These are independent of
25 direct and rebuttal. In advance of testimony, CenturyTel

1 served a series of Data Requests. Socket responded. This
2 is the complete set of responses, which we'll get to in
3 this panel and others.

4 JUDGE JONES: Okay. Well, we'll just mark
5 it as 5. Just go in successive numbers as you do.

6 MR. MAGNESS: Your Honor, could counsel
7 provide a copy to counsel?

8 MR. HARTLEY: I was going to do that as
9 soon as I got the number, Mr. Magness.

10 BY MR. HARTLEY:

11 Q. Mr. Kohly, can you turn to Data Request 23,
12 please?

13 A. Yes.

14 Q. Let me know if I read this incorrectly.
15 For each Socket POI, please produce all documents relating
16 mentioning or pertaining to those costs. Did I correctly
17 read that request?

18 A. Yes.

19 Q. Socket never provided any such documents,
20 did it?

21 A. That one speaks to, in my mind, existing
22 POIs, direct you to filed objections.

23 Q. Exactly. Socket never provided any
24 documents relating to the cost of the one POI it has?

25 A. No, it did not.

1 Q. Turn to Data Request 24, please. Please
2 produce all documents relating, mentioning or pertaining
3 to relative cost to Socket of establishing a POI in each
4 CenturyTel local calling area, as opposed to establishing
5 a single POI in each LATA. Did I correctly read that?

6 A. You did.

7 Q. That's what we're discussing here, is it
8 not?

9 A. No, we're not. You're speaking to
10 establishing one POI. This one speaks to establishing a
11 POI in every single local calling area.

12 Q. Okay. Fair enough. You don't have any
13 documents on establishing additional POIs in local calling
14 areas?

15 A. In every local calling area?

16 Q. Correct.

17 A. No. That would be nonsensical.

18 Q. Do you have any for establishing an
19 additional POI in any local calling area?

20 A. As part of -- I'm trying to think. As part
21 of analyzing different contract language, we did an
22 informal study looking at cost of establishing POIs at
23 various traffic thresholds, not in specific calling areas
24 but in different traffic thresholds.

25 Q. So you evaluated cost by threshold, OC12,

1 OC3, for example?

2 A. Yes.

3 Q. What was the cost for establishing a POI at
4 the OC12 threshold?

5 A. I don't recall.

6 Q. How about the OC3 threshold?

7 A. Again, I don't recall.

8 Q. Yet in your testimony you say it will
9 certainly preclude entry into smaller markets. I
10 accurately read your testimony?

11 A. That's because there you would be
12 establishing POIs at much smaller exchanges that are going
13 to be a DS1 or below level.

14 Q. Do you know the relative cost of
15 establishing a single POI in the Springfield LATA versus
16 establishing two POIs in that LATA?

17 A. I assume it's approximately double for
18 establishing two.

19 Q. What would that cost be?

20 A. Well, actually, I should not say that.
21 You're going to have additional transport routes to move
22 out into more rural areas that will take mileage charges,
23 and as you move away from Branson it's going to get
24 progressively more expensive, because the distance
25 increases.

1 Q. But you don't know what any of those costs
2 are?

3 A. No.

4 Q. Just that it will certainly preclude your
5 entry?

6 A. It will certainly be expensive and
7 certainly preclude entry.

8 MR. HARTLEY: Your Honor, I'd like to offer
9 Exhibit 5, Socket's responses to CenturyTel Data Requests.

10 JUDGE JONES: Exhibit 5 is admitted into
11 the record.

12 (EXHIBIT NO. 5 WAS MARKED FOR
13 IDENTIFICATION BY THE REPORTER, AND RECEIVED INTO
14 EVIDENCE.)

15 MR. HARTLEY: I'm going to hand it to the
16 court reporter.

17 BY MR. HARTLEY:

18 Q. I'm sorry. Did I miss something?

19 A. No. Would you like me to repeat what I
20 said? I'd be glad to.

21 Q. That's all right.

22 A. I'd love the opportunity, actually.

23 Q. I'm sure you would.

24 In your rebuttal testimony, Mr. Kohly, you
25 talk at length about what -- you talk about Socket

1 offering FX service to ISPs. Do you recall that?

2 A. Yes. That's one of the services we offer.

3 Q. What facilities are involved in offering
4 this FX service to ISPs, or what Socket facilities, more
5 precisely?

6 A. We would have our transport routes from the
7 POIs back to our switching facilities, and then the
8 facilities to reach the ISP.

9 Q. So in the example I used in opening, it
10 would be the facility from Branson to St. Louis, the
11 switch, and then whatever facility from your switch in
12 St. Louis to where the ISP is located?

13 A. Assuming the POI is in Branson, yes.

14 Q. And with that FX arrangement, you would
15 then be serving potentially each of the other exchanges in
16 the Springfield LATA?

17 A. Unless another POI was established, yes.

18 Q. Okay. Sticking with the assumption that
19 there's one POI and that that one POI's in Branson, your
20 FX arrangements would allow you to serve customers in each
21 of those exchanges, and regardless of how many exchanges
22 in the Springfield LATA you serve, your facilities never
23 change?

24 A. My facilities would have to scale from
25 Branson back to my switch. My switch may have to be

1 augmented to handle any capacity.

2 Q. What size --

3 A. Capacity to the ISP.

4 Q. What size facility is that in your mind
5 from Branson to St. Louis?

6 A. We don't have one in place right now.
7 Initially, it would probably be a DS3.

8 Q. So as your service expands in the
9 Springfield LATA, you may augment the trunk facility from
10 Branson to St. Louis and potentially the switch capacity
11 in St. Louis?

12 A. Yes, as well as capacity to the ISP.

13 Q. And the facilities in the Springfield LATA
14 never change beyond the trunk that's the single trunk?

15 A. Unless we were to establish an additional
16 POI, right.

17 Q. Exactly. In offering this FX service,
18 Socket markets to ISPs?

19 A. The website that you looked at is actually
20 a service offered by the ISP. Socket Telecom does not
21 have a sales force dedicated to ISPs, so I question -- I
22 hesitate on your question. It's not something we actively
23 market.

24 Q. So you offer FX service without marketing
25 it?

1 A. It's tarified. We get contacted by ISPs.

2 We don't have a salesperson who targets ISPs.

3 Q. In that FX arrangement that we've been

4 talking about, this differs from the traditional FX

5 arrangement, doesn't it?

6 A. What do you mean by traditional?

7 Q. Traditional FX would have -- use a

8 hypothetical and assume this. You have an FX arrangement

9 that has a dedicated facility from one local calling area

10 to another, and in that other local calling area you have

11 the number assigned in the originating local calling area.

12 A. Okay.

13 Q. Isn't that what the FCC typically speaks

14 about in terms of the traditional FX service?

15 A. I don't know that I would agree with that.

16 I would agree that is one way to offer it.

17 Q. And that's not what Socket offers?

18 A. No.

19 Q. That's not what Socket plans to offer?

20 A. No.

21 Q. Socket has no plans, for example, in the

22 Springfield LATA except, as you keep pointing out, if an

23 additional POI is necessary to deploy any facilities from

24 the POI to any of the local calling areas?

25 A. Well, I would disagree with that. We also

1 serve voice customers, T1 customers, and as we serve
2 those, we would deploy facilities, general EELS, out to
3 local calling areas.

4 Q. And that --

5 A. And we are looking to do that in the
6 Branson/Springfield LATA, Springfield territory.

7 Q. And that will make up by far the minority
8 of your traffic, according to your estimates?

9 A. Not necessarily. Initially perhaps, but
10 that's the business we are focused on growing. That's
11 where we realize the future of Socket is, and that's where
12 we're trying to grow it.

13 Q. Do you have any forecasts on the expected
14 growth?

15 A. Not that I'm aware of in terms of minutes.
16 There are certainly sales goals that I don't recall off
17 the top of my head that are based on selling integrated
18 access T1s.

19 Q. Any forecast on the type facilities you'll
20 need from CenturyTel as your business expands?

21 A. We have not prepared those at this time.
22 Certainly once we know the interconnection agreement we're
23 operating under, we will do that.

24 Q. So there's no way, sitting here today, we
25 can estimate what's going to happen in the Springfield

1 LATA, other than in your mind a single POI, and then if
2 2000-plus trunk groups come in, maybe another one?

3 A. Yes.

4 MR. HARTLEY: I think I'll pass the
5 witnesses and reserve whatever time I have left for
6 potential recross or redirect.

7 JUDGE JONES: That will be fine. We'll
8 have questions now from Ms. Dietrich.

9 MS. DIETRICH: Good morning.

10 MR. KOHLY: Good morning.

11 QUESTIONS BY MS. DIETRICH:

12 Q. Mr. Turner, I'd like to start with a
13 follow-up question from CenturyTel's counsel. I perhaps
14 misunderstood what you said. He was asking you about when
15 an additional POI would be established, and I thought you
16 said that you would combine traffic across an exchange and
17 at that point determine. Can you clarify?

18 (Answers by Mr. Turner.)

19 A. If I said exchange, that was -- it was
20 across all the exchanges that would be in that LATA.
21 You're interconnected with a LATA, which basically the
22 threshold is established for is once there's sufficient
23 traffic within that LATA that you exceed an OC3 level,
24 then you would establish a second POI.

25 Q. Okay. Thank you.

1 Mr. Kohly, do you have Mr. Miller's
2 rebuttal testimony with you? That's okay --

3 (Answers by Mr. Kohly.)

4 A. I do not. I can get it. I'm sure counsel
5 can give me a copy.

6 Q. Okay. Can you turn to page 45? At lines 3
7 through 5 he says, in fact, it is my understanding that
8 CenturyTel and Socket have already agreed upon using the
9 arbitrated GTE/AT&T tandem switching, end office switching
10 and transport rate elements in using the appropriate tool
11 for transiting.

12 I just wanted to verify with you if that
13 was your understanding?

14 A. That is certainly the rates we are seeking,
15 as those are the cost-based rates. So if that has been
16 agreement to that, that would be fine. That's the rates
17 we're seeking.

18 Q. So you're not sure off the top of your head
19 whether that has been agreed upon?

20 A. I've not seen the Appendix A referred to.
21 I would want the rates on Appendix A to be the rates from
22 the AT&T/GTE agreement, and that's the rates Socket is
23 proposing.

24 Q. Okay. Now I'd like to turn to your
25 testimony. Actually, while you're there, if you could

1 look at page 53 and 54. I'm sorry. Page 53 and 54 of his
2 rebuttal testimony, he's talking about line side
3 interconnection. Can you explain to me what line side
4 interconnection is? It looks like --

5 A. This is the issue of two-way trunking?

6 Q. Correct.

7 A. If I could refer this to Mr. Turner, as he
8 addressed this issue.

9 Q. Okay. That's fine.

10 (Answers by Mr. Turner.)

11 A. And what was your -- you had a general
12 question about what line side interconnection was, right?

13 Q. Correct.

14 A. Not even looking at the testimony, just
15 generally, the FCC defined different technically feasible
16 points of interconnection, one being on the line side of a
17 switch and the other being on the trunk side of a switch,
18 just that you would be -- CLECs should be allowed to have
19 access for interconnection purposes on both sides.

20 Generally, a line side of a switch is where
21 loops terminate, if you want to be very simplistic about
22 it. Trunking typically terminates on the trunk side of a
23 switch.

24 Q. Okay. And I believe you said that the FCC
25 said that line side interconnection would be technically

1 feasible, yet on page 53, especially at
2 lines 5 through 8, he says it would be technically
3 infeasible. Can you explain?

4 A. Let me -- can I read this section real
5 quickly?

6 Q. Sure.

7 A. The part I'm having a problem with here is
8 the sentence that says, for example, CenturyTel is not
9 sure how a unilateral two-way trunking obligation would
10 fit with Socket's expressed desire for line side
11 interconnection.

12 To be honest with you, I was not aware that
13 Socket would be seeking line side interconnection. In
14 fact, I don't believe that would be the case for two-way
15 trunking. Two-way trunking, you would -- it would be used
16 on the trunk side of the switch, which the FCC has also
17 identified as a technically feasible point of
18 interconnection.

19 And so I guess my problem is, you're asking
20 me to respond to something that I don't think the premise
21 of his statement is correct.

22 Q. Okay. That was my next question, was were
23 you -- was Socket requesting line side interconnection and
24 two-way trunking --

25 A. Simultaneously?

1 Q. -- simultaneously?

2 A. No, I don't believe that they are.

3 Q. Okay. Thank you.

4 Mr. Kohly, going to your rebuttal testimony
5 at page 31.

6 (Answers by Mr. Kohly.)

7 A. Yes.

8 Q. On line 24, page 31, and then continuing on
9 line 1 of page 32, you're discussing the OC12, and you say
10 that the OC12 was ordered in the M2A order?

11 A. Yes.

12 Q. Can you point me to where that was in the
13 M2A order?

14 A. Actually, what the judge in the M2A case
15 ruled, and I quoted on page 20 through 22, was that an
16 additional POI will be established where SBC, in that
17 case, could demonstrate that the single POI was no longer
18 technically feasible.

19 One of the concerns Socket had with that
20 decision was it leaves it open to a series of fights over
21 what's technically feasible. So for that reason the
22 parties mutually agreed upon an OC12 as the threshold so
23 that you had a line in the sand, if you will, that here's
24 where you establish an addition POI.

25 And that's what my testimony is trying to

1 assert is that, rather than say where technically feasible
2 pick a traffic threshold, there's some other definitive
3 line to know when an additional POI is required.

4 Q. So the M2A did not specifically say the
5 point was at OC12?

6 A. No. It said, as I quote in 21 through 23
7 of my testimony, SBC may require an additional POI in a
8 LATA when it can establish that the CLEC's use of a single
9 POI is no longer technically feasible. I've got that
10 footnoted in the testimony.

11 Q. Okay. Thank you. On page 69 of your
12 rebuttal --

13 A. Yes.

14 Q. -- in the question for Issue 15, on
15 lines 14 and 15, you talk about an IP. What is an IP?

16 A. I do not know. It's not a defined term. I
17 assume it stands for interconnection point, but that is
18 one of my concerns with the actual contract language.

19 Q. And can you show me in the DPL at Issue 15
20 where CenturyTel is proposing this language? I think it's
21 around page 77 that this issue was discussed.

22 A. Well, in the final, final DPL that was
23 filed, it did not appear. It did appear in an earlier
24 version. That is what I was referring to. And there the
25 language did say, at least one IP on CenturyTel's network

1 within a local calling area.

2 Q. Okay. Thank you. On your rebuttal
3 testimony at page 76 at line 13, you mention October of
4 2004. Is Socket's proposed language attempting to recover
5 charges that have been incurred since October of 2004?

6 A. No. Using our call records and the
7 language that Socket is proposing in this case, we have
8 already billed CenturyTel for terminating access based on
9 our recordings for October, and actually I don't know if
10 we were able to go back to October, but somewhere starting
11 in at least December. The last bill went out in
12 September. We're looking at another quarterly bill that
13 will generate -- I'm sorry. The last bill went out in
14 December. We're looking at another quarterly bill.

15 So we're not seeking to recover past, as
16 we've been operating under this language and using it to
17 recover the charges as we went.

18 Q. Okay. So the language that you're
19 proposing would be just on a going-forward basis from the
20 effective date?

21 A. Yes. We currently have this language in
22 our existing agreement and are using it.

23 Q. Okay. Now I'd like to talk about resale a
24 little bit. I think that's in this same group, same area.

25 A. I'm certainly more than happy to talk about

1 it, but I didn't think it was in this section. I thought
2 it came up in the second panel.

3 Q. I'll hold off on that one. Okay. I
4 realize that you're not an attorney, so I'm asking this
5 question from the perspective that you're a regulatory
6 employee for Socket and that you look at the Act to apply
7 standards from that perspective. Are there any 271/270
8 obligations applicable to CenturyTel?

9 A. No, ma'am.

10 Q. Are there any implications on transiting,
11 transport or any of the other interconnection or
12 intercarrier compensation issues that would be affected by
13 271 or 272 that would not be applicable to Socket or does
14 everything in the interconnection agreement --

15 A. It's all 251 based.

16 MS. DIETRICH: That's all I have. Thank
17 you.

18 JUDGE JONES: Thank you, Ms. Dietrich.

19 We'll move now to Mr. Scheperle.

20 MR. SCHEPERLE: No questions.

21 JUDGE JONES: Mr. McKinnie?

22 MR. MCKINNIE: I just have a couple.

23 QUESTIONS BY MR. MCKINNIE:

24 Q. Let's go back to Issue 15 in the DPL, and I
25 think this is a question for Mr. Kohly. Can you tell me

1 whether or not Issue 15 talking about mutually agreeing on
2 one POI or IP or depending on the point per LATA, can you
3 tell me whether or not that issue is tied completely to
4 Issue 7, which is on page 23?

5 (Answers by Mr. Kohly.)

6 A. Okay. Issue 15 addresses CenturyTel's
7 language to require a POI in each local calling area when
8 traffic reaches 24 DS0s. Your other one was Issue 7?

9 Q. Yes.

10 A. Yes.

11 Q. It starts on page 23. So if we rule, I
12 guess, for one party on Issue 7, we have to rule for the
13 same party on Issue 15?

14 A. Yes.

15 Q. There's no way we can split that issue?

16 A. No. I think you would have complete
17 conflict if you did.

18 Q. All right. Can you turn to page 59 of the
19 DPL, please?

20 A. Okay.

21 Q. This is in Issue 10, the very last thing in
22 Socket's preliminary position, can you read that for me,
23 the in addition paragraph?

24 A. In addition, CenturyTel erroneously seeks
25 to apply intrastate access charges to FX traffic, even in

1 MCA areas where the Commission has held that bill and keep
2 applies.

3 Q. Okay. Can you provide me a little more
4 information there? Is that a situation we're discussing
5 where -- is the call being assigned an MCA code or is it
6 coming out of an MCA area, or can you just give me a
7 little more information about that?

8 A. The language that I just read is referring
9 to CenturyTel's contract language in 9.2.3 where
10 CenturyTel reserves the right to revert to its advocacy
11 position on this issue that access charges do apply to all
12 ISP-bound traffic. That language does not separate out
13 MCA traffic from it. It reverts -- the revert to the
14 right that advocacy position across the board, there are
15 no provisions of separated out MCA traffic from that. The
16 Commission has previously ruled that you may use the MCA
17 to reach an ISP, and it's bill and keep.

18 Q. That's my understanding. But at the same
19 time, I'm just trying to figure out whether or not it
20 applies if I apply, you know, an FX code out of an MCA
21 area or -- I mean, if it's FX traffic, kind of, and MCA
22 traffic, then, again, I know you're not an attorney, but
23 in -- but which kind of governs there? Does it become the
24 MCA traffic that's bill and keep or does it become the FX
25 traffic and subject to kind of the FX-type restrictions?

1 A. Certainly currently Socket has found
2 customers that are located outside of the MCA that have
3 MCA codes assigned to them via an FX arrangement. Those
4 always are passed into the MCA using -- you know, with an
5 originating code of an MCA number, and they're presumed to
6 be bill and keep because we do not know the location of
7 the customer. So I would assume you can't differentiate
8 between is the customer physically located in the MCA or
9 are they purchasing MCA with an FX arrangement.

10 Q. Okay. I have one more. Page 53,
11 Issue No. 8, regarding the indirect interconnection.

12 A. Page 53?

13 Q. Yes, please.

14 A. Okay.

15 Q. Okay. As I understand Socket's contract
16 language there, in each case where each party must have a
17 connect to the third party, there is no limit in that
18 language on that traffic that can be passed indirectly?

19 A. That's correct.

20 Q. And I'm trying to figure out the right
21 question here. Roughly how much traffic does Socket pass
22 indirectly now, if that's not an HC question?

23 A. If I had an answer, it might be HC, but I
24 honestly do not know.

25 MR. MCKINNIE: I'm afraid any other

1 questions would also probably get that answer, so I'll
2 pass.

3 JUDGE JONES: Mr. Henderson?

4 MR. HENDERSON: I think I'm going to hold
5 my questions 'til we see some diagrams on the board a
6 little bit later.

7 QUESTIONS BY JUDGE JONES:

8 Q. This is a very non-technical question.
9 CenturyTel is saying that you-all want to establish
10 interconnection through one single point of presence in
11 the whole -- in the LATA, right?

12 (Answers by Mr. Kohly.)

13 A. Yes.

14 Q. And you disagree with that? I mean, do you
15 want to do that? Is that what you want to do?

16 A. Certainly initially we would have a single
17 point of interconnection.

18 Q. Well, yes.

19 A. For example, we have the same legal rights
20 with SBC; however, in other LATAs we have multiple points
21 of interconnection. So I can't say forever we would
22 establish a single point of interconnection. Certainly
23 that would be our intent when we enter the market.

24 Q. To have a single point forever or just to
25 have a single point initially?

1 A. Initially.

2 Q. So what conditions would arise that would
3 necessitate a second point of interconnection?

4 A. The contract language we're proposing would
5 require us to deploy an additional POI when traffic
6 volumes exceed an OC3. We might have other reasons for
7 wanting to do that, such as if we established a
8 collocation cage or collocation arrangement in another
9 location, we would cut our EEL costs down by probably
10 picking the traffic up there.

11 Q. What I understand from CenturyTel is that
12 an OC3 level won't be reached. I take it you disagree
13 with that?

14 (Answers by Mr. Turner.)

15 A. The thing is, the way they're presenting it
16 is it won't be reached, but they're trying to look at a
17 single exchange or a single end office. The threshold is
18 across the entire LATA and the -- as Socket Telecom grows,
19 I would anticipate that they would eventually exceed that
20 and would, in fact, require another POI.

21 But what the FCC rules don't require is
22 that new entrants immediately have to establish more than
23 one POI. So all that we're pursuing here is to allow
24 Socket Telecom to have what the FCC already provides for,
25 and that is to recognize that Socket Telecom doesn't have

1 the ubiquity of network that --

2 Q. What does ubiquity mean?

3 A. They're not everywhere in the LATA the way
4 that CenturyTel is. And so allow them to interconnect at
5 a single point, and then as they grow -- and there's a
6 threshold built into the contract. As they grow, they
7 would establish additional points of interconnection.

8 Q. So you-all simply disagree at what
9 threshold that additional POIs would be added?

10 A. Well, I mean, the threshold that they're
11 suggesting is a DS1. I mean, 12 simutan-- or 24
12 simultaneous calls in the busy hour, and you immediately
13 have to have a POI.

14 Q. Have there been any traffic studies
15 conducted to know what this -- I mean, what if right now
16 at a certain local calling area there's only two
17 simultaneous calls going on at any given time, 24 would be
18 a lot, wouldn't it?

19 A. The problem is what you're talking about
20 doing, though, is having to deploy facilities from
21 Socket's network in St. Louis out to all of those
22 different end offices. For only 24 calls, that is going
23 to be prohibitive in the extreme for Socket Telecom to be
24 able to do that. Certainly CenturyTel might want that
25 because they're already there, and in fact, they already

1 have facilities connecting those switches back to the
2 tandem at which Socket Telecom is wanting to interconnect
3 at.

4 And what the FCC's rules -- and I quote the
5 rules. I can read them for you now. They are in my
6 testimony, but the rules are basically set up to allow the
7 new entrant to only interconnect at a single point so that
8 you're not penalizing a new entrant that has only a few
9 customers spread throughout the LATA by immediately having
10 to interconnect in all those different locations.

11 Q. Well, I understand that, and I don't think
12 CenturyTel disagrees that initially one POI is
13 appropriate, but again, at what level do we add POIs?
14 That's the question. I want to try to stay focused on
15 that, if that is the question. Is it?

16 A. Well, I don't -- it's the -- it seems to be
17 where the question is going.

18 Q. Well, you said they said, what was it, DS1,
19 and you said OC3. That's the issue, isn't it, DS1 or OC3?

20 A. Right.

21 Q. Or something in between or --

22 A. But I wouldn't lose track of the fact as
23 well that the FCC's rules are that you only have to have
24 one, and there is no traffic threshold.

25 Q. Initially you have to have one?

1 A. No. Permanently you can only have one.

2 Q. The FCC says that you can interconnect at a
3 single point of interconnection forever regardless of
4 traffic volumes?

5 A. There's just there no rules that say --

6 Q. Does the FCC affirmatively say that?

7 A. You can interconnect at any technically
8 feasible point. It doesn't say traffic volumes associated
9 with that or anything.

10 Q. Is traffic volume relevant to technical
11 feasibility?

12 A. In the extreme, it could become, but I
13 mean, you're dealing with environments now where you
14 can -- I mean, you can interconnect enormous amounts of
15 traffic, technically. So I mean, I would say no, it would
16 not be a technical feasibility issue.

17 Q. Okay. Now, I know you-all did some
18 diagrams earlier. The questions that I'm asking, do they
19 seem to be relevant to those diagrams that you-all worked
20 out earlier that we'll be talking about here shortly?

21 (Answers by Mr. Kohly.)

22 A. I think the diagrams -- the diagrams were
23 more for how calls will be routed, not DS1 versus an OC3.

24 JUDGE JONES: Did you have a follow-up
25 question, Ms. Dietrich?

1 FURTHER QUESTIONS BY MS. DIETRICH:

2 Q. Mr. Turner, in the discussion about DS1
3 versus OC3, if the level of traffic is not the threshold
4 that determines technical infeasibility, what are some
5 items that would be considered to determine whether it
6 would be technically infeasible to no longer have a single
7 POI?

8 (Answers by Mr. Turner.)

9 A. Well, the technical feasibility, I don't --
10 I can't think of any. It's not a -- whether you have one
11 or two or three is not a technically feasible issue. What
12 you're trying to do is take rules that have been
13 established by the FCC and translate them into contract
14 terms that go into an interconnection agreement. But it's
15 not a technically feasible issue as to whether or not you
16 interconnect at a single point or you interconnect at two
17 points or three points.

18 So I apologize if that's -- it's not that
19 I'm trying to not answer your question. It's just I don't
20 think it's a technical feasibility issue at that point.

21 Q. Okay.

22 A. Matt, did you want to add anything?

23 (Answers by Mr. Kohly.)

24 A. I can add that in the recent M2A
25 replacement arbitration, in reading that, there were

1 different traffic -- SBC was proposing a different traffic
2 threshold of 24 DS1s, and there was a struggle with them
3 to jus-- and I think that's why the arbitrator's report
4 actually reads where they demonstrated the single POI is
5 no longer technically feasible, because nobody can point
6 to a specific traffic law and say, oh, once you add one
7 more DS0, it's not technically infeasible. You've crossed
8 a line.

9 The parties after this decision where it
10 was ruled where one becomes no longer technically
11 feasible, the parties went back and then negotiated a
12 threshold so that you would not have that persistent
13 argument about when do you cross the line, and that's when
14 the traffic threshold was kind of correlated with
15 technically feasible.

16 Q. Well, then how do you, as a company,
17 determine it's necessary to deploy another POI or how does
18 CenturyTel make that determination or how do the two of
19 you working collaboratively make that determination?

20 A. Here I'm seeking to avoid arguments about
21 whether it's technically feasible or not, and putting in a
22 definitive traffic threshold so that we know at an OC3
23 level we will deploy additional POI, and we may want to do
24 that at a lower threshold for whatever reason.

25 Q. CenturyTel is proposing DS1 as a threshold

1 and you're proposing OC3. Those still seem to be pretty
2 far extremes. Is there somewhere -- as the Judge
3 mentioned, somewhere in between that the two parties could
4 meet or that would make sense that would not be onerous on
5 Socket but yet it would not be onerous on CenturyTel?

6 A. We have in the course of negotiations
7 looked at different traffic thresholds but have not been
8 able to reach agreement.

9 Q. I wanted to also follow up on a question
10 from Mr. McKinnie on the indirect network interconnection
11 that you were discussing.

12 A. Okay.

13 Q. I think you said that there was no
14 limitation on when to go from indirect to direct, at least
15 in Socket's proposal.

16 A. Yes.

17 Q. In CenturyTel's language they talk about
18 indirect network connection is intended to handle
19 de minimis mutual local traffic. Does Socket have a
20 number that it considers would no longer be considered de
21 minimus or when it would be appropriate to transfer from
22 indirect to direct interconnection?

23 A. Not that I would be able to offer today.
24 I've thought of this in terms of the MCA where you're
25 allowed to indirectly interconnect with other carriers in

1 the MCA and there are no transit charges. I don't know
2 there that you could pick a traffic threshold, and
3 certainly the MCA orders didn't say, you may no longer
4 transit at above a certain level.

5 Q. Okay.

6 A. So I don't have an amount I would offer
7 today.

8 MS. DIETRICH: Thank you.

9 MR. HENDERSON: I do have a question.

10 JUDGE JONES: Mr. Henderson?

11 QUESTIONS BY MR. HENDERSON:

12 Q. Mr. Kohly, Mr. Turner, either one, is there
13 any guidelines for setting the threshold? But I
14 understand there is not. One of the companies wants it
15 LATAwide for total traffic, and the other one wants it by
16 exchange. Okay. There's nothing anywhere that says that
17 it has to be that way?

18 (Answers by Mr. Turner.)

19 A. Yeah, the only -- the only thing that I
20 know of that's a guideline is again where the FCC speaks
21 in terms of interconnection at a LATA level.

22 Q. Okay. For new entrants; is that correct?
23 Is that what you're referencing?

24 A. Right. But I don't know if you mean by new
25 versus after you've been there for a while. It's actually

1 just talking in general about interconnection between a
2 CLEC and the incumbent. It speaks of it in terms of
3 LATA-wide.

4 MR. HENDERSON: Okay. Thank you.

5 JUDGE JONES: I just have one final
6 question, I suppose.

7 FURTHER QUESTIONS BY JUDGE JONES:

8 Q. If Socket has the right to interconnect at
9 a single POI and it does, and then later the traffic
10 increases or probably what happens is the cost increases
11 for CenturyTel to move traffic further distances -- I'm
12 not sure. I'm assuming POIs have something to do with the
13 cost of distances -- and they say, no, we're not going to
14 do that unless you establish a second POI, they've already
15 abided by the law that says you have the right to
16 interconnect. You're already interconnecting. So at
17 minimum you are interconnected. Is that how you read
18 that? Either of you can respond to that.

19 Once you're interconnected, the -- not the
20 FCC but the Teleco Act is satisfied. You're now
21 interconnected.

22 (Answers by Mr. Turner.)

23 A. Right.

24 Q. The extent of your interconnection,
25 however, in the future is governed by you-all being able

1 to get along, not by the Telecommunications Act?

2 A. Correct. I think I understand where you're
3 going, but I think what -- there's still the issue of
4 which language is going to define how the parties are
5 going to get along. And they're wanting to establish
6 interconnection at each local exchange. We're seeking
7 interconnection at a LATA level. There's a pretty big
8 difference between what the two sides are seeking as to
9 define how the parties are going to get along in this
10 instance.

11 Q. Is there something in between a LATA and a
12 local exchange? I mean, I know you can say two local
13 exchanges is in between a LATA and local exchange, but I
14 mean something that has been defined in the industry, some
15 type of area? There isn't?

16 A. I have not seen that.

17 MR. KOHLY: If I can follow up?

18 BY JUDGE JONES:

19 Q. Mr. Kohly?

20 (Answers by Mr. Kohly.)

21 A. As I understood your question, as long as
22 we interconnect at one point, you seem to say that, well,
23 they can make you -- the ILEC can force you to
24 interconnect at additional points and still be consistent
25 with the Teleco Act. Did I infer that correctly from your

1 question?

2 Q. Right.

3 A. I think that would stand their rules on
4 their head that says that a CLEC may designate one
5 technically feasible point within the LATA by saying,
6 okay, you've got your point. Now I can require 60.
7 They're very inconsistent with that rule.

8 JUDGE JONES: Okay. Mr. Henderson, did you
9 have any follow-up questions?

10 FURTHER QUESTIONS BY MR. HENDERSON:

11 Q. When you establish a POI, and we're going
12 to say Branson hypothetically, what is the boundaries of
13 that POI? Is there boundaries that that will cover? Is
14 that spelled out initially? Would it be for the Branson
15 exchange, would it be for the whole LATA, what would it
16 be?

17 (Answers by Mr. Turner.)

18 A. It would be for the LATA, and typically --
19 and I think we even had some discussion about this in
20 cost. Typically what happens in practice is that you then
21 establish trunks through that POI between Socket Telecom's
22 switch and the tandem that is behind the POI, and the
23 tandem being the switch that CenturyTel has. And then
24 CenturyTel's switch is already connected to its local end
25 offices within the LATA.

1 So it's not as if there are -- there's
2 facilities having to be put in all over the place for
3 CenturyTel to be able to deliver this traffic to Socket
4 Telecom or Socket to deliver it to CenturyTel. The
5 trunking facilities that are internal to CenturyTel's
6 network are there. So really what you're talking about is
7 the interconnection that occurs between that tandem and
8 Socket Telecom's switch through the POI.

9 MR. HENDERSON: Okay. Thank you.

10 JUDGE JONES: Okay. At this time, we'll
11 move on to -- let's see. Actually, why don't we take a
12 break here, just a five-minute break, then we'll come back
13 with recross and redirect.

14 (A BREAK WAS TAKEN.)

15 JUDGE JONES: We're back on the record with
16 TO-2006-0299. Before we move on to recross, Mr. Turner
17 indicated to me off the record that there was a question
18 he responded to that he needs to clarify.

19 Mr. Turner?

20 MR. TURNER: Thank you. Mr. Henderson had
21 asked me if the OC threshold applied at the LATA level or
22 something along those lines, and I'd indicated it did.
23 The LATA I had in mind when I answered that was the one we
24 had been discussing earlier, which was Branson, but the
25 language itself actually refers to the OC3 threshold

1 applying to a tandem serving area or to a wire center, and
2 that's in Section 4.3.1.1, and in that area as well.

3 I mean, there's a couple sections that it
4 applies to, but in any TSA apart from any existing POI
5 arrangement when traffic to or from that TSA exceeds an
6 OC3 at peak over three consecutive months, and then in
7 4.3.1.2 it says, at a CenturyTel end office in a local
8 calling area, but I'm just -- it's more specific than just
9 at a LATA. In Branson, the TSA and the LATA are the same,
10 but it wouldn't necessarily be that way everywhere.

11 MS. DIETRICH: Just for clarification, what
12 is a TSA again?

13 MR. TURNER: I believe it stands for tandem
14 serving area. And that was all the clarification that I
15 had.

16 JUDGE JONES: Okay. We'll move on now to
17 recross by CenturyTel.

18 RECROSS-EXAMINATION BY MR. HARTLEY:

19 Q. Mr. Turner, with respect to your
20 clarification on the tandem serving area, for the
21 Springfield LATA that we were talking about earlier, we're
22 still talking about over here in Branson, that's going to
23 be for the Springfield LATA, that Bransfield (sic) tandem
24 is going to serve that whole LATA; is that correct?

25 (Answers by Mr. Turner.)

1 A. Well --

2 Q. With respect to CenturyTel facilities?

3 A. My understanding is that's correct. I
4 mean, when you're -- what you're waving at, it would just
5 be whatever that LATA is that Branson is the tandem for.

6 Q. So at least for the Springfield LATA, when
7 you apply the contract language, that's going to refer to
8 the entire LATA. You have to take that whole LATA in
9 there before you get the OC3 to move on to a second POI?

10 A. Again, yes, that would be correct. I'm not
11 sure that all the area that you're encircling is that
12 LATA.

13 Q. Right. I may have been off on the laser
14 pointer the parameters of the LATA, but nonetheless, the
15 whole Springfield LATA would be included in that example?

16 A. That's correct.

17 Q. And you're looking at the language for
18 4.3.1.1, I think?

19 A. That's correct.

20 Q. Looking at that language, you talked at
21 length in cross and in response to some of the Staff's
22 questions about when you trigger that threshold and when
23 you establish an additional POI. And under that language,
24 once you get to OC3 in the tandem serving area, in this
25 case the entire Springfield LATA, you'll deploy an

1 additional POI; is that correct?

2 A. That's correct.

3 Q. And that's it in perpetuity, correct?

4 A. If that -- let's say that the new POI was
5 established and the old or the new POI exceeded an OC3
6 threshold again, then you would add a third POI. If one
7 of those three exceeded it again, you would add a fourth
8 POI.

9 Q. Can you point me in your contract language
10 to where it says that? The way I read it is -- and
11 correct me if I'm wrong -- once the TSA reaches OC3, you
12 establish an additional POI and that's it for that TSA.

13 A. Well, it says in any TSA, apart from an
14 existing POI arrangement.

15 Q. So in our hypothetical, that would be
16 excluding the Branson exchange?

17 A. I mean, my reading 4.3.1.1 is that it's
18 connected to not just the TSA, but it's connected to the
19 POI arrangement as well.

20 Q. So under this contract language, is there
21 ever an instance where you'll be required to deploy a
22 third POI?

23 A. Yes.

24 Q. In a single LATA?

25 A. I believe that that could occur, consistent

1 with this contract language.

2 MR. HARTLEY: May I approach the board,
3 your Honor?

4 JUDGE JONES: Yes, you may. I should
5 mention, though, that there's been some problems with your
6 voice transmitting over the web when you're standing right
7 next to the board, so you might use that mic, if you
8 could.

9 MR. HARTLEY: Thank you. Is that better,
10 hopefully?

11 JUDGE JONES: I suppose it is. I don't
12 know what it sounds like over the web. I can hear you
13 without the mic.

14 MR. HARTLEY: I think my wife's watching.
15 I'll say hi.

16 BY MR. HARTLEY:

17 Q. We've been talking at length about the POI
18 in the Springfield LATA being down here in Branson and,
19 Mr. Turner, I think what you're saying is, once you get to
20 an OC3 level for this entire LATA, Socket will deploy an
21 additional POI; is that correct?

22 A. That's correct.

23 Q. And, Mr. Kohly, you said that's going to be
24 in some location the parties mutually agree to?

25 (Answers by Mr. Kohly.)

1 A. Yes.

2 Q. I think was your testimony on cross, right?

3 And in looking at that, you said it would likely be an
4 area where there's the highest volume of traffic you're
5 experiencing in that LATA?

6 A. Yes.

7 Q. So we could, for example, select Ava. So
8 under this scenario we now have two POIs in this LATA, one
9 in Branson, one in Ava. Does that address traffic
10 concerns for volume of facilities coming from anywhere
11 else in that LATA?

12 MR. TURNER: What do you mean by your
13 question? What do you mean by address volume concerns?

14 BY MR. HARTLEY:

15 Q. For example, Mr. Kohly, you've read
16 Mr. Simshaw's and Mr. Miller's direct and rebuttal
17 testimony?

18 (Answers by Mr. Kohly.)

19 A. Yes.

20 Q. And as part of that testimony, they talk
21 about the capacity of facilities and the need for
22 CenturyTel to augment facilities to deal with increased
23 volume serving these ISPs; is that correct?

24 A. Yes.

25 Q. You generally recall that testimony? So

1 we're seeing under your contract language if you have OC3
2 level throughout this LATA, you deploy a second POI in Ava
3 because that may be your highest volume area. Are you
4 with me?

5 A. Yes.

6 Q. But if you have traffic coming from these
7 facilities up in the northwest portion of the LATA coming
8 down, the additional POI over here does nothing to address
9 tandem exhaust or facilities exhaust issues requiring
10 augmentation from this portion of the LATA. Would you
11 agree with that?

12 A. Well, addressing your tandem exhaust
13 concerns, we have agreed to direct trunking that would
14 alleviate any tandem exhaust. That would be on
15 CenturyTel's side of the POI, so they'd be responsible for
16 it, but it would not necessarily wrap through the tandem.

17 Q. So if we have traffic from all over this
18 LATA, your selection of a second POI may not address
19 volumes from different sections of the LATA?

20 A. It would depend upon how traffic is routed,
21 could traffic be routed to Ava and what interconnection
22 facilities there were.

23 Q. Mr. Turner, in response to some of the
24 Staff's questions, you were talking about the new entrant
25 shouldn't be required to deploy the additional POIs when

1 they're only serving, I think your words were only a few
2 customers. Do you recall that?

3 (Answers by Mr. Turner.)

4 A. Yes, I do.

5 Q. Of course, with the Socket context, those
6 few customers are all going to be businesses initially; is
7 that right?

8 A. My general understanding is that they would
9 be, yes.

10 Q. According to Socket's direct testimony and
11 marketing material, they're not -- and discovery answers,
12 they're not targeting residences yet, that may come later?

13 A. That's my understanding.

14 Q. In your mind, Mr. Turner, is technical
15 feasibility the only restriction on a CLEC's ability to
16 deploy a single POI in a LATA?

17 A. According to my understanding of the FCC's
18 rules, that would be correct.

19 Q. So whether it's 2,000, 8,000, OC48,
20 whatever, but for your agreement at the OC3 level, you
21 could deploy just one to serve whatever volume of traffic,
22 assuming technical feasibility?

23 A. Again, that would be consistent with the
24 OC -- or excuse me -- the FCC's rules.

25 MR. HARTLEY: Thank you, Mr. Turner. I'm

1 going to pass the panel.

2 JUDGE JONES: Okay. At this time we'll
3 have redirect.

4 MR. MAGNESS: Thank you, your Honor.
5 Your Honor, before I begin, if I may
6 approach, I have a copy of the FCC rules, in particular
7 interconnection rule at 47 CFR Section 51.305, if I could
8 distribute that to the Bench. I've given it to counsel.

9 JUDGE JONES: That's fine.

10 MR. MAGNESS: I'd like to start with
11 Mr. Turner.

12 REDIRECT EXAMINATION BY MR. MAGNESS:

13 Q. Mr. Turner, on this continuing question
14 that was raised during cross about the conditions under
15 which additional POIs are added, I'd ask you to look at in
16 the rules I have handed out 51.305(e). It's on the second
17 page, left-hand column.

18 (Answers by Mr. Turner.)

19 A. Yes, I see that.

20 Q. And that I think goes more to His Honor's
21 question concerning whether the ILEC's interconnection
22 agreement is met by interconnecting the first time. How
23 do you read what's required by 51.305(e)?

24 A. It says, an incumbent LEC that denies a
25 request for interconnection at a particular point must

1 prove to the State Commission that interconnection at that
2 point is not technically feasible.

3 So in relation to His Honor's question,
4 it's not just an initial interconnection. It's an ongoing
5 obligation that if a denial for interconnection was made,
6 the incumbent would have to demonstrate that it was not
7 technically feasible.

8 Q. And as you understand the FCC's rules on
9 this, is there any other requirement besides the showing
10 of technical feasibility that must be made?

11 A. No, there's not.

12 Q. I want to ask you, we've talked a lot about
13 POIs or points of interconnection, and just to try to
14 clarify, could you describe as a matter of what's required
15 for equipment or facilities when a new POI -- let's say
16 one of these new POIs is going to be established or any
17 POI. What's required on Socket's side in order to
18 establish a point of interconnection?

19 A. On Socket's side, generally it depends if
20 they're leasing or building the facilities. But since
21 Socket's switch is in St. Louis, and let's use Branson as
22 the example of where you're wanting to interconnect at and
23 establish a POI. Socket would be required to either
24 construct facilities from St. Louis out to Branson or
25 alternatively lease facilities from St. Louis to Branson.

1 Q. And what kind of facilities are you talking
2 about?

3 A. Generally, these are high-speed fiberoptic
4 facilities. And Mr. Kohly indicated earlier that
5 generally you would at least establish a DS3 over that to
6 begin with, but generally the facilities themselves are
7 fiberoptic facilities that would be established between
8 those two locations, and they would either, again, be
9 constructed or another carrier would have constructed
10 them, and Socket Telecom would lease those facilities.
11 That would allow you to have a connection between the two
12 locations.

13 Additionally, to establish a POI, typically
14 what you have to do is establish a collocation arrangement
15 as well. So Socket Telecom would be obligated to order
16 collocation at the Branson location, or not obligated, but
17 typically this is what they would do, is they would order
18 a collocation arrangement and put the equipment in that
19 site that would allow for them to terminate a DS3 facility
20 coming from CenturyTel and also receive the DS3 facility
21 that they've either leased or constructed coming from St.
22 Louis. It would be basically a cross-connect point and
23 within the collocation arrangement.

24 Q. And what -- I guess I'll ask you a similar
25 question. What on the other side, on the CenturyTel side

1 is required when the second point of interconnection comes
2 through?

3 A. Well, on CenturyTel's side, normally it's a
4 cable that's extended from that cross-connect point back
5 towards their frame, and so it's a -- to put it in some
6 perspective, St. Louis to Branson, I mean, how many miles
7 would that be, roughly?

8 MR. KOHLY: 144.

9 MR. TURNER: Let's say 150 miles, but
10 you're probably talking on the Socket -- or CenturyTel
11 side running a cable that might run 100 feet. So in terms
12 of the --

13 BY MR. MAGNESS:

14 Q. And that's 100 feet where?

15 (Answers by Mr. Turner.)

16 A. Within the central office in Branson. And
17 so you're talking a very short cable that has to be run.
18 Once you have that established, then you have to establish
19 trunk terminations as well so that you can actually
20 exchange traffic. Your facilities allows you to establish
21 the connection, but then the trunking would actually be on
22 the -- on the switches in St. Louis on Socket's end and at
23 the Branson switch on CenturyTel's end.

24 In terms of the facilities themselves, the
25 way that the -- we've been discussing this, CenturyTel has

1 a fairly short cable they have to extend and Socket
2 Telecom has a fairly lengthy facility they have to
3 install.

4 Q. If I could ask you to turn to your direct
5 testimony at page 32.

6 A. Page 32?

7 Q. Yes, sir.

8 A. Okay. I'm there.

9 Q. Are you ready?

10 A. Oh, I found it.

11 Q. Okay. You include a quote from the FCC's
12 First Report and Order, a rather long quote --

13 A. Yes.

14 Q. -- under the question, can you provide an
15 example of this approach to interconnection in an FCC
16 order?

17 A. Yes.

18 Q. In the beginning of that quote, is the FCC
19 discussing some of these methods you're talking about for
20 interconnection?

21 A. Yes, they are.

22 Q. And are there particular ones that they
23 talk about being permissible or impermissible?

24 A. They are describing examples of ones that
25 are permissible.

1 Q. And in that context, would you agree that
2 the FCC order itself says that -- and I think it's in a
3 provision you have highlighted here -- although the
4 creation of meet point arrangements may require some
5 build-out of facilities by the incumbent LEC, we believe
6 that such arrangements are within the scope of the
7 obligations imposed by Sections 251(c)(2) and 251(c)(3).
8 To your knowledge, is 251(c)(2) the interconnection
9 requirements?

10 A. Yes.

11 Q. And this paragraph, I believe after the
12 three dot ellipses there where you've taken out some text,
13 has this reference to new entrants requesting
14 interconnection. Is it your view that that is a
15 limitation on anything the FCC has said, that is new
16 entrants?

17 A. No. It's not like a baby entrant versus a
18 middle-aged entrant. It's -- I think they were just using
19 that term there as a substitute for saying CLEC yet again.

20 Q. Is there anything that you're aware of in
21 the FCC's rules that limits the interconnection
22 obligations that the FCC ordered in its rules to a
23 particular kind of entrant?

24 A. No, there's no limitation. In fact, one we
25 looked at earlier, 51.305(e), the obligation for denial of

1 interconnection actually falls on the incumbent, which is
2 irregardless of the newness of the CLEC.

3 Q. So would it be in your understanding that
4 the ILEC, it would not be permissible for the ILEC to just
5 say, I've interconnected with you, I'm not passing any
6 more traffic unless you do a new POI?

7 A. No, they would not be permitted to do that
8 unless they could show that it was technically infeasible
9 for them to continue to interconnect traffic, which in my
10 experience they would -- they wouldn't be able to
11 demonstrate that just off of a traffic limitation basis or
12 traffic quantity basis.

13 Q. In your experience in working in the
14 industry, could you identify various factors that drive
15 the decision to deploy a new POI or not from the CLEC
16 perspective?

17 A. Often the deployment of a new POI is tied
18 to -- I've seen it tied to several things. Often, if you
19 end up collocating at a new office, you may establish a
20 POI there, as well to facilitate simpler trunking
21 arrangements. I have seen situations where reciprocal
22 compensation is not bill and keep. I have had companies
23 that I have worked with where the payment of reciprocal
24 compensation ends up becoming a factor in determining
25 whether or not to establish another POI, because when you

1 establish an additional POI, you may avoid some tandem
2 reciprocal compensation elements that you might otherwise
3 pay for if you were routing everything through a single
4 point.

5 So those are -- those are factors that I've
6 seen companies consider. A third one would be diversity,
7 traffic diversity, but that's generally for companies that
8 have, you know, developed a fairly large amount
9 of customer base and want to start setting up perhaps more
10 than one way to route traffic.

11 Q. Now, as to the questions about the
12 CenturyTel proposed threshold of 24 DS0s, is that the same
13 thing as one DS1?

14 A. That's correct.

15 Q. If a company -- well, let's say Socket, had
16 a business plan that was focused on provision of this
17 integrated T1 service that's been referenced, does that
18 involve provision to a small business customer of a single
19 DS1?

20 A. Yes, it does.

21 Q. What kind of impact could it have on a
22 company that's providing those sort of small business
23 voice and data services if a new POI was required with one
24 DS1 worth of traffic on a network?

25 A. Put Socket Telecom in a situation where one

1 customer behind a wire center would lead it to not only
2 have to, of course, establish the loop side of the
3 connection from that wire center back to Socket Telecom,
4 which as Mr. Kohly indicated would likely be done through
5 an EEL, but would also require that a trunk and POI --
6 first of all, a POI be established back to that wire
7 center as well for trunking connections also.

8 So you're effectively -- I'm being somewhat
9 simple here, but you effectively would double the
10 transmission cost each time you pick up a customer behind
11 a wire center, because you're going to establish a DS1
12 minimum to connect to the customer, as well as a DS1
13 minimum to connect to Socket Telecom's -- or excuse
14 me -- CenturyTel's switch.

15 Q. And then what happens to the CLEC
16 investment if somebody else offers that same customer a
17 smoking deal and the customer leaves and isn't served
18 there anymore?

19 A. The interconnection facilities are going to
20 still be there without the customer. I mean, you could --
21 theoretically, Socket could turn those back down, but
22 that's an incredibly inefficient way to handle
23 interconnection.

24 Q. There were some questions I think on
25 recross concerning -- and maybe Mr. Kohly will be the one

1 to answer, but you might, too -- about once the second POI
2 was established, the opportunity for a third POI to be
3 established, do you remember those questions?

4 A. Yes.

5 Q. Mr. Kohly mentioned direct trunking, and I
6 just wanted to ask, is that a way of dealing with
7 increasing traffic volumes or making sure that traffic
8 volumes don't get out of control?

9 (Answers by Mr. Kohly.)

10 A. Yes, it would certainly prevent tandem
11 exhaust because in that situation you would have -- each
12 carrier would establish trunking on their side of the POI.
13 Trunks would be interconnected. You'd have direct
14 trunking between our switch, and the facilities in the
15 exchange would not be routed through a tandem

16 Q. So as traffic levels increase in a LATA,
17 there are other ways of addressing that with the
18 incumbent, as opposed to just having to build a new POI?

19 A. Right.

20 Q. And does Socket have any business incentive
21 not to cooperate in doing direct trunking if traffic
22 levels increase?

23 A. No. We would like to do that. The
24 contract language actually would require it.

25 Q. And does Socket have any incentive in

1 having the incumbent from whom it is -- with whom it is
2 exchanging traffic having a sort of blockage on the
3 network?

4 A. We would not want that.

5 Q. And these points of interconnection, just
6 in their simplest way of looking at it, are -- they are
7 places where traffic is going to be exchanged both ways,
8 are they not?

9 A. Yes.

10 Q. So when CenturyTel customers call Socket,
11 that traffic goes through the interconnection point, just
12 as when Socket's customers call CenturyTel, correct?

13 A. That is correct.

14 Q. Okay. I want to ask you a question about
15 two-way trunking. Ms. Dietrich I think had a question on
16 it. And ask you to look again at the FCC rule at
17 51.305(f) as in Frank. I'll just read it. If technically
18 feasible, an incumbent LEC shall provide two-way trunking
19 upon request.

20 Mr. Kohly, is the language that you have
21 seen from CenturyTel concerning that issue consistent with
22 this rule?

23 A. No, it's not.

24 Q. And there was some discussion earlier about
25 line side interconnection.

1 A. Yes.

2 Q. Is that something Socket has expressed any
3 interest in doing with CenturyTel?

4 A. No.

5 Q. Do you know of any condition in which you'd
6 gen up some interest on that?

7 A. I can't think of one.

8 Q. On the questions concerning indirect
9 interconnection, do you recall those?

10 A. Yes.

11 Q. Really just two questions here to follow
12 up. One, could you explain for the Commission, for the
13 Panel your concerns with the -- there was a discussion
14 about whether there -- whether any limitation on direct
15 interconnection as a matter of traffic volume is
16 permissible or not. Setting that aside, what is your
17 practical concern about the, quote, unquote, de minimus
18 language that CenturyTel is requesting?

19 A. There's really no basis for the de minimis
20 language. In the MCA areas, the Commission has already
21 determined that parties will transit traffic, will be
22 indirectly interconnected under a bill and keep
23 arrangement. There is no threshold that will suddenly
24 trigger direct connection. And so CenturyTel's language
25 would be inconsistent with that, and there is no cost

1 because it's all done under bill and keep.

2 Q. So in this indirect interconnection
3 situation, as I understood the testimony you referred to
4 of CenturyTel's where there is indirect interconnection,
5 if CenturyTel was originating on the originating end, they
6 may have to pay a transit charge?

7 A. Not within the MCA area, they will not.

8 Q. So anywhere within an MCA, that's not a
9 financial concern?

10 A. Absolutely not.

11 Q. And finally, there were a few questions, I
12 believe, in cross about FX services. Mr. Kohly, did the
13 -- in your view, did the ISP Remand Order change the,
14 let's say, attractiveness of serving Internet service
15 providers from a telecom company's perspective?

16 A. I would say it actually lowered it, as it
17 took away or certainly at that time reduced the
18 opportunity for receiving recip comp, reciprocal
19 compensation. Socket is here proposing bill and keep.

20 Q. And what is the -- you said the marketing
21 focus was not towards Socket Telecom serving ISPs. What
22 is the market focus of the company at this point?

23 A. The market focus is on rolling out
24 integrated access products throughout the state, not
25 focusing on metropolitan areas, but focusing on basically

1 the remainder of the state. And Socket is looking at
2 rolling out residential service.

3 Q. To your knowledge, are there arrangements
4 that incumbents, perhaps including CenturyTel, use that
5 are similar in nature to what CenturyTel describes as a
6 VNXX?

7 A. Certainly CenturyTel itself offers an ISDN
8 PRI product with an FX option. That would allow an ISP in
9 Branson to have an Ava phone number and CenturyTel would
10 carry that back to Branson. We did some looking in some
11 of my testimony at locations in CenturyTel territory where
12 the terminal server was located, I believe, based on the
13 name of it, in Van Buren, and there were four switches
14 when you tested the call that you know went to that
15 terminal -- or not four switches. There were four local
16 calling areas served by that terminal server, which is
17 where CenturyTel is at, that all routed to that terminal
18 server.

19 So in that case, ISP was being served by
20 terminal server in I believe Van Buren, but the local
21 calling area where the customers placed the call was in
22 another exchange.

23 Q. So when an incumbent provides such a
24 service for itself, does the ISP involved incur access
25 charges?

1 A. No.

2 Q. Is it your understanding of CenturyTel's
3 position that it believes it's entitled to access charges
4 when you terminate its customers' traffic that's ISP
5 traffic?

6 A. That is a concern.

7 MR. MAGNESS: That's all I have. Thank
8 you, your Honor.

9 JUDGE JONES: Thank you. We'll move now
10 into CenturyTel's witnesses. Just so you-all have an idea
11 of where I'm going, we began at about 11 o'clock. I'm
12 sure by noon someone in here will be hungry, but you'll
13 have to hold off for another half-hour because we'll break
14 for lunch at 12:30.

15 Have you-all raise your right hands. I'll
16 ask you individually whether or not you affirm to tell the
17 truth.

18 (Witnesses sworn.)

19 JUDGE JONES: Mr. Bill Avera?

20 MR. AVERA: I do.

21 JUDGE JONES: Guy Miller?

22 MR. MILLER: I do.

23 JUDGE JONES: Cal Simshaw?

24 MR. SIMSHAW: I do.

25 JUDGE JONES: And -- you're not Susan

1 Smith, are you?

2 MR. DAVIS: No.

3 JUDGE JONES: Is there supposed to be a
4 Susan Smith here? Well, if not --

5 MR. HARTLEY: She is here, too.

6 JUDGE JONES: Is she? Do you intend to
7 call her?

8 MR. HARTLEY: Yes. She's on this panel as
9 well. And on the end, that's Mr. Wayne Davis. He filed
10 rebuttal testimony on this issue. We inadvertently
11 omitted him from the panel.

12 JUDGE JONES: Wayne Davis?

13 MR. HARTLEY: Yes, sir.

14 JUDGE JONES: Okay. And Ms. Susan Smith?

15 MS. SMITH: I do.

16 JUDGE JONES: And again, Mr. Wayne Davis?

17 MR. DAVIS: I do.

18 JUDGE JONES: Okay. Thank you all. You
19 may be seated.

20 WILLIAM AVERA, GUY MILLER, CAL SIMSHAW, SUSAN SMITH AND
21 WAYNE DAVIS testified as follows:

22 DIRECT EXAMINATION BY MR. HARTLEY:

23 Q. Dr. Avera, would you please state your
24 name.

25 (Answers by Mr. Avera.)

1 A. William E. Avera, 3907 Red River, Austin,
2 Texas 78751.

3 Q. Are you the same Dr. Avera that filed
4 direct and rebuttal testimony in this proceeding?

5 A. I am.

6 Q. If we asked you the same questions and
7 answers today, would your answers be the same?

8 A. They would be.

9 Q. Do you have any corrections to your direct
10 or rebuttal testimony?

11 A. I do not.

12 MR. HARTLEY: Your Honor, we'll offer
13 Dr. Avera's direct and rebuttal testimony as Exhibits
14 A and B.

15 JUDGE JONES: Any objections? Exhibits A
16 and B are admitted into the record.

17 (EXHIBITS A AND B WERE MARKED FOR
18 IDENTIFICATION BY THE REPORTER, AND RECEIVED INTO THE
19 RECORD.)

20 BY MR. HARTLEY:

21 Q. Mr. Miller, will you please state your name
22 and address for the record.

23 (Answers by Mr. Miller.)

24 A. Guy E. Miller, 100 CenturyTel Drive,
25 Monroe, Louisiana.

1 Q. Are you the same Guy Miller that filed
2 direct and rebuttal testimony in this proceeding?

3 A. Yes, I am.

4 Q. Do you have any changes to either your
5 direct or your rebuttal testimony?

6 A. Yes. In my direct testimony, I believe
7 it's the top of page 59, there is a typo.

8 Q. Which line is that on?

9 A. It's on line 2. It should say Socket's
10 proposed language, not CenturyTel's.

11 Q. Do you have any other changes to your
12 direct or rebuttal testimony?

13 A. Not that I recall.

14 Q. Having made that typographical change, if
15 we asked you the same questions today, would you provide
16 the same answers?

17 A. Yes, I would.

18 MR. HARTLEY: Your Honor, we'll offer
19 Exhibits C and D as Mr. Miller's direct and rebuttal
20 testimony.

21 JUDGE JONES: Exhibit C and D are admitted
22 into the record.

23 (EXHIBITS C AND D WERE MARKED FOR
24 IDENTIFICATION BY THE COURT REPORTER, AND RECEIVED INTO
25 THE RECORD.)

1 BY MR. HARTLEY:

2 Q. Mr. Simshaw, would you please state your
3 name and address for the record.

4 (Answers by Mr. Simshaw.)

5 A. Calvin Simshaw, 805 Broadway, Vancouver,
6 Washington.

7 Q. Are you the same Calvin Simshaw that filed
8 direct and rebuttal testimony in this proceeding?

9 A. Yes, I am.

10 Q. Do you have any changes or corrections to
11 either your direct or your rebuttal testimony?

12 A. No, I have no changes.

13 Q. If we asked you the same questions today,
14 would your answers be the same?

15 A. Yes, they would.

16 MR. HARTLEY: Your Honor, we'll offer
17 Exhibits E and F, Mr. Simshaw's direct and rebuttal
18 testimony.

19 JUDGE JONES: Exhibits E and F are admitted
20 into the record.

21 (EXHIBITS E AND F WERE MARKED FOR
22 IDENTIFICATION BY THE REPORTER, AND RECEIVED INTO
23 EVIDENCE.)

24 BY MR. HARTLEY:

25 Q. Ms. Smith, will you please state your name

1 and address for the record.

2 (Answers by Ms. Smith.)

3 A. Susan Smith, 911 North -- 911 North Bishop
4 Road, Suite CT07, Texarkana, Texas 75501.

5 Q. Are you the same Susan Smith who filed
6 rebuttal testimony in this proceeding?

7 A. Yes, I am.

8 Q. You did not file direct; is that correct?

9 A. That is correct.

10 Q. Do you have any changes to your rebuttal
11 testimony?

12 A. No, I do not.

13 Q. If we asked you the same questions today,
14 would your answers be the same?

15 A. Yes, they would.

16 MR. HARTLEY: Your Honor, we'll offer
17 Exhibit G, Ms. Smith's rebuttal testimony.

18 JUDGE JONES: Exhibit G is admitted into
19 the record.

20 (EXHIBIT G WAS MARKED FOR IDENTIFICATION BY
21 THE REPORTER, AND RECEIVED INTO EVIDENCE.)
22 BY MR. HARTLEY:

23 Q. Mr. Davis, will you please state your name
24 and address for the record.

25 (Answers by Mr. Davis.)

1 A. Wayne Davis, Post Office Box 43, Gena,
2 Louisiana.

3 Q. Are you the same Wayne Dave who filed
4 direct and rebuttal testimony in this proceeding?

5 A. Yes, I am.

6 Q. Do you have any changes to either your
7 direct or rebuttal testimony?

8 A. No, I do not.

9 Q. If we asked you the same questions today,
10 would your answers be the same?

11 A. Yes, they would.

12 MR. HARTLEY: Your Honor, we'll offer
13 Exhibits H and I, Mr. Davis' direct and rebuttal
14 testimony.

15 JUDGE JONES: Exhibits H and I are admitted
16 into the record.

17 (EXHIBIT H AND I WERE MARKED FOR
18 IDENTIFICATION BY THE REPORTER, AND RECEIVED INTO
19 EVIDENCE.)

20 MR. HARTLEY: With that, your Honor, we'll
21 tender the panel.

22 JUDGE JONES: Okay. We'll have
23 cross-examination.

24 MR. MAGNESS: Your Honor, if we could
25 approach, we have some documents we'll probably use on

1 cross, if we could go ahead and hand them all out now.

2 JUDGE JONES: That's fine.

3 You may proceed.

4 MR. MAGNESS: Thank you.

5 CROSS-EXAMINATION BY MR. MAGNESS:

6 Q. Mr. Simshaw, start with you.

7 Is it CenturyTel's position that a CLEC may
8 not interconnect for delivery of ISP-bound traffic?

9 (Answers by Mr. Simshaw.)

10 A. No.

11 Q. Is that interconnection pursuant to
12 Section 251(c)(2) in CenturyTel's view?

13 A. If it meets the definition of local
14 traffic, it would be.

15 Q. And would you agree that the FCC addressed
16 the area of intercarrier compensation for ISP-bound
17 traffic in the ISP Remand Order in 2001?

18 A. Again, for local ISP-bound traffic, they
19 addressed the issue.

20 Q. Setting aside whether it's local or not,
21 ISP-bound traffic was a subject of the ISP Remand Order,
22 correct?

23 A. Well, according to the review in court, the
24 ISP-bound traffic that was subject to the Order was where
25 the call was placed to an ISP located within the same

1 local calling area. So again, I would say the ISP Remand
2 Order -- and this is according to the reviewing court --
3 applied to that limited category of ISP-bound traffic.

4 Q. Have the FCC's rules concerning
5 intercarrier compensation changed since the ISP Remand
6 Order was issued in 2001?

7 A. I'm sorry. Could you repeat that?

8 Q. Sure. Have the FCC's rules concerning
9 reciprocal compensation changed since the ISP Remand Order
10 was issued?

11 A. I guess it depends on when you're talking
12 about rules or rulings. The rulings have definitely
13 changed.

14 Q. Well, let's say rules. Have the rules
15 changed? You understand the FCC adopts rules, right?

16 A. Yes. Yes, I do.

17 Q. Have the rules changed?

18 A. All interconnection rules?

19 Q. No. Reciprocal compensation rules in
20 51.701 of 47 CFR. There's a copy of it with the package
21 here. Subpart H 47 CFR, have those rules changed since
22 the issuance of the ISP Remand Order?

23 A. I have not done a study to compare them.
24 My sense would be that they have not. The FCC has pretty
25 much been acting in paralysis ever since that order,

1 recognizing there are so many moving parts to intercarrier
2 compensation, that they do have a docket pending, and I
3 think until they finish that docket they're probably not
4 going to change the rules.

5 Q. And as part of the ongoing paralysis, would
6 you agree the FCC has issued two Notices of Proposed
7 Rulemaking concerning these issues in 2001 and 2005?

8 A. Yes, they have.

9 Q. But they have acted on neither one,
10 correct?

11 A. No. They've been active. They've taken a
12 series of comments. They have very much encouraged NARUC
13 and the industry to work together, to work out the issues
14 of intercarrier to the point where the NARUC force has now
15 come out with a proposal. So they've been active.

16 Q. Okay. What I meant by acted was, have they
17 issued any subsequent orders or rules concerning those
18 issues?

19 A. No. I believe the second -- the further
20 Notice of Proposed Rulemaking would be the last formal
21 issuance of an order in that docket.

22 Q. Okay. So the things that are said in the
23 further Notice of Proposed Rulemaking may express
24 questions the FCC was asking or views of the FCC, but they
25 do not constitute orders or rules as you understand it,

1 right?

2 A. That would be right, yeah.

3 Q. And if we could look at the ISP Remand
4 Order -- and I've provided a copy of it -- you agree
5 that -- I guess we'll just look at paragraph 1 to start --
6 that the FCC found in the ISP Remand Order that ISP-bound
7 traffic, which it calls telecommunications traffic
8 delivered to Internet service providers in the first
9 sentence of paragraph 1, that telecommunications traffic
10 delivered to Internet service providers constitutes an
11 interstate service over which the FCC has jurisdiction?

12 A. That's what it says.

13 Q. And in paragraph 4, would you agree that
14 the FCC found that it would establish federal compensation
15 mechanisms for that traffic based on its assertion of
16 jurisdiction over ISP-bound traffic?

17 A. Again, it established an interim
18 compensation mechanism only in those cases where the ISP
19 is located in the same local calling area. I can go back
20 to the reviewing court, and that's what they said they
21 did. Also in paragraph 13 of the same order, you can see
22 the FCC framing the issue that way.

23 Q. Okay. Let me back up to the answer to the
24 question because I don't think we have a disagreement
25 here. The interim compensation mechanism was one where

1 the FCC essentially said, we are taking this ISP-bound
2 traffic out of reciprocal compensation and providing an
3 interim mechanism for its compensation?

4 A. They said they were taking it out of
5 Section 251(b)(5), correct.

6 Q. And that interim compensation mechanism
7 remains in effect today, some five years later, correct?

8 A. To the extent they modified it in a
9 subsequent decision.

10 Q. Did they?

11 A. Yeah, in the core decision.

12 Q. In the core decision?

13 A. Yes.

14 Q. And that was an issue where some of the
15 restrictions on ISP compensation were lifted; is that a
16 fair statement?

17 A. It's a generalization, but...

18 Q. Okay. I don't know that it's important for
19 our purposes, other than what was done in the core
20 petition. Well, let me ask it this way: Did the actual
21 FCC rules on this issue change as a result of --

22 A. No. I think as we've already discussed,
23 they haven't changed.

24 Q. Okay. Let's look at that paragraph 13 that
25 you talk about as limiting ISP-bound traffic to -- how do

1 you put it? Traffic that originates and terminates in the
2 same, what?

3 A. Local calling area.

4 Q. Okay. In paragraph 12, actually, let's
5 start there, the FCC notes that they originally set
6 standards for reciprocal compensation in the local
7 competition order, correct?

8 A. Well, if you want to give me time to read
9 it.

10 Q. Sure.

11 A. Yes, that's what it says.

12 Q. And in that last sentence, they note that
13 in the local competition order, the FCC held at 251(b) (5)
14 reciprocal compensation obligations, quote, apply only to
15 traffic that originates and terminates within a local area
16 as defined by state commissions, correct?

17 A. You're talking about the last sentence of
18 the paragraph?

19 Q. Yes.

20 A. Yes, that's what it says.

21 Q. And again, in paragraph 13 they say, as a
22 result of this determination -- and I take it unless you
23 read it differently that's the determination in the local
24 competition order about local traffic limitations -- the
25 question arose whether reciprocal compensation obligations

1 apply to the delivery of calls from one LEC's end user
2 customers to an ISP in the same local calling area that is
3 serving a competing LEC, right?

4 A. That's what it says.

5 Q. Okay. And the question arose, and then
6 they go on to discuss how there was then a court case
7 about it and they came back and now they're changing those
8 rules in this order. Is that a fair summary?

9 A. No, I don't think they changed the scope of
10 what they were addressing, at least not according to the
11 reviewing court.

12 Q. Did they change the rules that apply to
13 reciprocal compensation as part of the ISP Remand Order?

14 A. Well, I'd have to turn to the ordering
15 section.

16 Q. Just let me know when you've satisfied
17 yourself that they did change the rules.

18 A. I apologize. You gave me the dissenting
19 opinions as well. It didn't do me any good to turn to the
20 end. Yes.

21 Q. Okay. Okay. And in this paragraph 14, I
22 believe the FCC explained that their next move after the
23 local competition order when they said reciprocal
24 compensation was limited to local traffic was to find that
25 that was not true of -- well, that ISP traffic was not

1 local traffic. And I'll just -- I'll read the provision
2 I'm talking about.

3 In paragraph 14, over on page 10 of this
4 copy of the order, applying this end-to-end analysis, the
5 Commission determined Internet communications originate
6 with the ISP's end user customer and continue beyond the
7 local ISP server to websites or other servers and routers
8 that are often located outside the state. The Commission
9 found, therefore, that ISP-bound traffic is not local
10 because it does not originate and terminate within the
11 local area.

12 When you talk about this order being
13 limited to ISP traffic that originates and terminates in a
14 local area, how does that square with this determination
15 by the FCC?

16 A. First of all, that's not me talking about
17 it. That's the reviewing court, in their opinion.

18 Q. Okay. The reviewing court -- and tell me
19 if this is wrong, but the reviewing court said that one
20 partial sentence linking this to local traffic in
21 something that was akin to paragraph 13 here, which is a
22 description of the background of what they were looking
23 at; isn't that correct?

24 A. I'm sorry. Can you repeat that?

25 Q. Well, was this -- this claim you make that

1 ISP-bound traffic, the entire consideration of ISP-bound
2 traffic in the ISP Remand Order was limited to traffic
3 that originates and terminates in the local calling area,
4 was that a part of the DC Circuit's holding?

5 A. Yes. They said in the Order before us, the
6 FCC found that pursuant to Section 251(g), they had
7 authority to carve out from Section 251(b)(5) calls to
8 ISPs when the ISP was in the same calling area as the
9 calling party. That's what they said in the Order before
10 us, this Order. That's what the FCC did.

11 Q. And is there any reference in the DC
12 Circuit's opinion besides the fragments of a sentence you
13 quote, is there any other discussion of why it is that
14 it's limited to local or anything else, or is that one
15 reference? You quote one reference in your testimony. Is
16 there anything else?

17 A. The one that states that in the Order
18 before us, that's the one I quote.

19 Q. Is there anything else in the ISP Remand
20 Order that supports the notion that the entire ISP Remand
21 Order is limited to the consideration of ISP-bound
22 traffic?

23 A. We already talked about paragraph 13.

24 Q. Is there anything else?

25 A. Well, in the 54 pages that I've read, I

1 found nothing where it said it was addressing cases where
2 the ISP was not located in the same local calling areas.
3 There's 54 pages there, and never do they talk about that.

4 Q. Okay. Is there ever any other reference
5 where they say that what they are limiting it to is local
6 traffic?

7 A. Well, there's obviously enough there to
8 convince the reviewing court.

9 Q. Okay. Now, continuing through the
10 tortured history of compensation for ISP traffic, look at
11 paragraph 17. The FCC, after the DC Circuit struck down
12 its 2000 declaratory ruling on this issue, asked for
13 comment on ISP traffic. And just to quote, the public
14 notice specifically requested the parties comment on the
15 jurisdictional nature of ISP-bound traffic, the scope of
16 the reciprocal compensation requirement of Section
17 251(b) (5) and the relevance of the concept of, quote,
18 termination, unquote, telephone exchange service, exchange
19 access service and information access.

20 In addition, in the FCC notes it also
21 sought comment on any new or innovative intercarrier
22 arrangements for ISP-bound traffic the parties may have
23 considered or entered into during pendency of the
24 proceeding.

25 I read this because I'm puzzled why the FCC

1 in your view would be asking for -- would be casting the
2 net this broadly concerning exchange access service,
3 information access, et cetera, if all they were looking at
4 was traffic that originates and terminates in the same
5 local calling area.

6 A. That's probably a better question for the
7 reviewing court, but I would agree with your first
8 statement, that this is a tortured process. It is very
9 much. A lot of parties have picked this Order apart, as
10 you're doing, paragraph by paragraph, sentence by
11 sentence, trying to make it support or say things that it
12 never even tried to address. It's dated back to 2001.

13 Q. Well, let's keep reading what they actually
14 said, then. If you could turn to paragraph 34, and I
15 think we agreed that the FCC did change the reciprocal
16 compensation rules when it issued this Order. And
17 specifically in paragraph 34, I'm thinking the last two
18 sentences here, this analysis -- that is the analysis
19 they're undertaking in this Order, differs from our
20 analysis in the local competition order in which we
21 attempted to describe the universe of traffic that falls
22 within subsection B5 as all, quote, local, unquote,
23 traffic. We also refrain from generically describing
24 traffic as local traffic because the term local, not being
25 a statutorily defined category, is particularly

1 susceptible to varying meaning and significantly is not a
2 term used in 251(b) (5) or 251(g).

3 Would you agree that whatever limitation on
4 the application of reciprocal compensation that was
5 directed towards it being limited to, quote, local,
6 unquote, traffic was removed by the FCC in the ISP Remand
7 Order?

8 A. I'm sorry. Could you repeat that?

9 Q. Sure. Would you agree that whatever
10 limitation on the application of reciprocal compensation
11 to, quote, unquote, local traffic that existed under the
12 local competition order was removed by the ISP Remand
13 Order?

14 A. Are you asking me whether a limitation in
15 the ISP or in the local competition order was removed by
16 the ISP Remand Order?

17 Q. I'm asking if you know whether when the FCC
18 changed the rules it deleted the references to local
19 traffic as a designation that was important in the
20 reciprocal compensation rules?

21 A. They removed that reference.

22 Q. And if I could ask you to turn to
23 paragraph 46, and here in the first sentence, first two
24 sentences, I guess, they're describing what we discussed,
25 that they're changing their analysis that limited

1 reciprocal compensation to, quote, unquote, local traffic,
2 saying, we now hold that telecommunications subject to
3 those provisions are all such telecommunications not
4 excluded by Section 251(g).

5 So would you agree with me that the FCC
6 ordered that reciprocal -- that traffic would be eligible
7 for reciprocal compensation if it constituted
8 telecommunications as it's defined in the statute but did
9 not fall into one of those categories in 251(g)?

10 A. I'm sorry. There's a lot of parts to that
11 question. Could you repeat it?

12 Q. Okay. Back before the rules changed,
13 reciprocal compensation was limited to, quote, local
14 unquote, traffic, right? Is that your understanding?

15 A. Well, there were two compensation regimes.
16 There was 251(b)(5), and then there was all the access
17 charge regime that was untouched by the Act.

18 Q. Fair enough. Reciprocal compensation under
19 251(b)(5) was limited to, quote, unquote, local traffic,
20 correct?

21 A. I don't know that that was defined that
22 well in the Act or defined exactly that way. That's what
23 this whole thing is, is a struggle to determine what was
24 in 251(b)(5) originally and what they were carving out.

25 Q. Well, 251(b)(5) itself just says

1 telecommunications, right? And then the FCC further
2 limited it to local telecommunications in the local
3 competition order, right?

4 A. They used that term.

5 Q. Uh-huh. And then --

6 A. Earlier on, yes.

7 Q. So all I'm trying to get at is, is it fair
8 to say that post-ISP Remand Order, if you look at the FCC
9 rules on reciprocal compensation, they are not limited by
10 the concept of local traffic?

11 A. No. I think as we already discussed, they
12 removed the term local from the rule, but I would say
13 that -- as I said, there are two pieces. There's
14 251(b)(5) and then there's 251(g), which left all the
15 access charge in the regime. Now, if the ISP's not in the
16 same local calling area, it's interexchange traffic,
17 subject to access charges. Always has been, and there's
18 nothing in ISP Remand Order that removes this ISP-bound
19 traffic --

20 Q. I understand that's your position.

21 A. -- from access charges.

22 It only carved out from 251(b)(5), so if it
23 was never in 251(b)(5), if you're talking about a body of
24 traffic that was never in 251(b)(5) to begin with, it was
25 hardly carved out in the ISP Remand Order.

1 Q. Let's look at paragraph 59. I'll give you
2 a moment to read it. Just let me know when you've had a
3 chance to read it.

4 A. I've read it.

5 Q. Okay. Would you agree that the FCC in
6 looking at the actual nature of dial-up Internet traffic
7 in the ISP Remand Order found that that traffic does not
8 terminate locally?

9 A. In one context they said that, yes.

10 Q. Okay. What context did they not say that?

11 A. I think when you're dealing with the public
12 switch telephone network, which is the issue that the
13 Commission has jurisdiction over is the intercarrier
14 compensation between carriers and their use of the public
15 switched telephone network, then I think talking about
16 what happens once the call gets -- hits a modem bank or
17 server and gets converted to IP and you've left the realm
18 of the jurisdiction of the Commission, and I don't think
19 that the Commission needs to concern themselves with how
20 it all happens in the Worldwide Web and goes through
21 various IP routers and all of that.

22 So in this context, you're right, they were
23 talking about the entire communication. On the public
24 switched telephone network where a call is made to a
25 telephone number, it's answered by a telephone customer, a

1 modem bank, an ISP, and then continues on in the IP world,
2 they were talking about all of that end to end.

3 Q. Uh-huh. And based on that conclusion,
4 didn't they find that that end-to-end analysis dictated
5 that it's interstate traffic, that it doesn't really
6 terminate locally?

7 A. They asserted jurisdiction on that basis.

8 Q. Right. And they couldn't have asserted
9 jurisdiction if they were claiming that the traffic was
10 local, could they? Could they have jurisdiction over
11 local traffic?

12 A. You can have local interstate traffic.

13 Q. So is it your claim that the FCC was saying
14 this was local interstate traffic?

15 A. No. I'll agree with the judge. They were
16 addressing calls to an ISP located in the same local
17 calling area, they asserted jurisdiction on the basis that
18 it was interstate.

19 Q. So what makes it interstate -- wouldn't you
20 agree that what makes it interstate is that it doesn't
21 terminate in the same local area?

22 A. No, that's not the definition of
23 interstate. There are interstate local calls.

24 Q. Okay. Did the FCC say anywhere in the ISP
25 Remand Order that that's what they thought was going on

1 here?

2 A. That what was what they thought?

3 Q. That they thought they were creating a
4 category of interstate local calls?

5 A. Well, no.

6 Q. Okay. If you could look at Rule 51.701,
7 which we also passed out, this is -- we referred to this
8 earlier, the reciprocal compensation or transport and
9 termination of telecommunications traffic rules from
10 47 CFR subpart H.

11 A. I'm sorry. Which document?

12 Q. It says Federal Communications Commission
13 at the top, Section 51.707 and then the page has --

14 A. Okay. I'm there.

15 Q. Okay. Thanks. And would you agree with me
16 that the Part A of the rule notes that provisions apply to
17 reciprocal compensation for transport and termination of
18 telecommunications traffic between LECs and other
19 telecommunications carriers, then defines
20 telecommunications traffic in Part B as, for purpose of
21 this subpart, telecommunications traffic means
22 telecommunications traffic exchanged between a LEC and a
23 telecommunications carrier other than a CMRS provider,
24 except for telecommunications traffic that is interstate
25 or intrastate exchange access, information access or

1 exchange services for such access.

2 So would you agree with me that here the
3 FCC is saying traffic may be telecommunications traffic
4 for purposes of reciprocal compensation even if it is not
5 strictly local in the traditional sense, as long as it
6 doesn't fall into one of these categories?

7 A. I'm sorry. I was reading again. Could you
8 repeat the question?

9 Q. Sure. Would you agree that the FCC's
10 criteria for the application of reciprocal compensation is
11 not whether the traffic is local, but whether it is
12 telecommunications traffic except for certain types of
13 traffic that are defined there --

14 A. Yes.

15 Q. -- in Part B(1)?

16 A. Yes.

17 Q. Okay. And those types include interstate
18 or intrastate exchange access, information access or
19 exchange services for such access. Would you agree that
20 in the ISP Remand Order, the FCC found that ISP-bound
21 traffic is information access or best characterized as
22 information access?

23 A. No.

24 Q. And what do you think they characterize it
25 as?

1 A. Which traffic are you talking about?

2 Q. ISP-bound traffic that is going back to
3 paragraph 1, telecommunications traffic delivered to
4 Internet service providers.

5 A. Well, I think it can meet two of the
6 carbots (phonetic spelling) that you just mentioned. The
7 other one is access, exchange access, depending upon the
8 location of the ISP.

9 Q. Okay. So ISP-bound traffic can be exchange
10 access and/or information access, correct? That's your
11 view? I think that's what you just said. If you didn't,
12 please let me know.

13 A. I'm maintaining there is a category of
14 ISP-bound traffic that was not carved out of exchange
15 access. The only thing that got carved out in the ISP
16 Remand Order was a certain body of that traffic got carved
17 out at 251(b) (5) as the Court stated.

18 Q. Again, that's -- in order to support that
19 proposition, we look at the sentence in the Court Order in
20 paragraph 13, right?

21 A. That's a pretty important sentence, when it
22 says in the Order before us, here's what the FCC did.

23 Q. But I'm just asking again, is there any
24 other support in the Order for that?

25 A. I am referring to the judgment of the

1 reviewing court.

2 Q. Okay.

3 A. I mean, I have my own opinion. I tend to
4 agree with them. But I can have one and you can have one.
5 I think theirs is the one that counts.

6 Q. Okay. If you look at paragraph 42 of the
7 order -- actually, I think we go to paragraph 44. I'm
8 sorry. Here we find the FCC stating that -- I guess the
9 second sentence, ISP-bound traffic at issue here falls
10 within that category, that is, the category of information
11 access, because it is traffic destined for an information
12 service provider?

13 A. Yes, it is the ISP-bound traffic at issue
14 here today.

15 Q. And so that ISP-bound traffic -- and let's
16 take your -- the limitation you've advocated in testimony,
17 that it is only ISP-bound traffic that, quote, unquote,
18 terminates in a local calling area. That traffic in your
19 view qualifies as either exchange access or information
20 access pursuant to the FCC's Order, fair enough?

21 A. It constitutes traffic -- if you're talking
22 about intercarrier compensation, it constitutes traffic
23 that is subject to the interim rules that were established
24 in the ISP Remand Order. You did ask me about ISP-bound
25 traffic for the ISPs in the same local calling area,

1 right?

2 Q. Uh-huh.

3 A. Yeah. No, I would agree that that body of
4 traffic is subject to the ISP Remand Order.

5 Q. What I asked you was, would you -- is it
6 correct to characterize that subset of traffic as exchange
7 access or information access?

8 A. Well, not exchange access.

9 Q. Well, then I'm -- then I'm missing
10 something. I think earlier I was asking you, did the FCC
11 characterize ISP-bound traffic in this Order as
12 information access, and you said yes, either that or
13 exchange access.

14 A. We were talking about when the ISP was not
15 in the local calling area.

16 Q. Okay. So your contention is that the FCC
17 said in its Order that if the ISP is located in -- if the
18 ISP's modem where a call hits but doesn't terminate is
19 located in the same local calling area as the originating
20 customer, in that situation, ISP-bound traffic is
21 information access? Do you agree that it's information
22 access?

23 A. It's information access that is subject to
24 the carve-out that the ISP Remand Order established and
25 the interim rules that it established.

1 Q. Okay. Now, let's say the modem is right
2 over the exchange boundary line so it doesn't originate
3 and terminate in the same local calling area. Is it your
4 contention that that traffic is no longer information
5 access?

6 A. It's over the exchange boundary and outside
7 the calling area?

8 Q. Let's say yes.

9 A. It's exchange access and information
10 access.

11 Q. Okay. And in paragraph 45, at the bottom
12 of paragraph 45, there's further discussion up above in
13 the paragraph about eliminating local from the definition,
14 but at the bottom it says, in the context of ISP-bound
15 traffic, as the court observed -- I'll just make a
16 reference here. I believe that was the DC Circuit that
17 overturned the prior FCC decision. As the Court observed,
18 our use of the term local created attention that
19 undermined the prior Order because the ESP exemption
20 permitted ISPs to purchase access through local business
21 tariffs, yet the jurisdictional nature of this traffic has
22 long been recognized as interstate.

23 I read that just to introduce into the
24 already -- I can't remember the word you used originally.

25 A. You used tortured and I agreed with you.

1 Q. Tortured. There it is. Tortured context
2 of the ESP exemption. And do you believe that it is a
3 fair summary or a fair statement that the ESP exemption
4 permits an ISP, an Internet service provider to purchase
5 off local tariffs, even though the FCC has acknowledged it
6 is using interstate access?

7 A. Counselor, in order to answer your
8 question, I think I have to put it in some context. The
9 context in this case is -- and I'm going to supply some
10 facts to your question -- that if Socket is serving an ISP
11 in St. Louis, and they do, and they want to give that ISP
12 in St. Louis numbers in Ava, for instance, so you've now
13 got three entities involved. You've got the ISP in
14 St. Louis that Socket is serving, you've got Socket and
15 you've got Socket relying on CenturyTel to get the traffic
16 to Ava.

17 I would agree with you that the
18 relationship between the ISP and Socket or between Socket
19 and the ISP that it's serving, yes, the FCC has addressed
20 that and says that that relationship and that that service
21 that the ISP takes from Socket, although again in the
22 end-to-end analysis may end up in interexchange or
23 interstate traffic, but that the enhanced service provider
24 exemption applies to that relationship. That enhanced
25 service provider exemption does not apply to the

1 relationship in that scenario between Socket and
2 CenturyTel.

3 Q. Okay. And I think if you look at
4 paragraph 57, I think there may be a similar summary, I
5 think it's a little more short, but I think that's your
6 same point.

7 A. 57?

8 Q. Yes, sir. The last sentence where it says,
9 Internet service providers are a class of ESPs.
10 Accordingly, the LEC provided link between an end user and
11 an ISP is properly characterized as interstate access.

12 Now, given this conclusion by the FCC, I
13 take it when you talked about Socket connecting to the
14 ISP, that would constitute the LEC-provided link?

15 A. No.

16 Q. No?

17 A. No. That the -- the local service that the
18 ISP would purchase from Socket is what historically the
19 FCC has applied the ESP exemption to. In this sentence, I
20 see end user and I'm not sure what that's applying to, but
21 no, I don't think they're referring to the same thing.

22 Q. Well, when they're talking about the link
23 between an end user and an ISP being interstate access, do
24 they limit that by saying if that link originates and
25 terminates within the same local calling area?

1 A. Well, you're taking one sentence out of the
2 whole order, and in that sentence, no, they don't say
3 that.

4 Q. Okay. I just -- I can't understand how if
5 the FCC is saying that link between a LEC, supposing
6 you're incumbent or competitive, is interstate access,
7 that then some part of it is not interstate access, even
8 though it's all bound for the ISP, who is the ESP.

9 How do you make that distinction? If the
10 traffic bound for the ESP is interstate access and the ISP
11 is the ESP, what yanks this out of the category?

12 A. Out of which category?

13 Q. Out of the interstate access category.

14 A. Counsel, all I can tell you is I've already
15 agreed with you this entire Order is tortured. The --
16 about the only authoritative thing that I think anyone can
17 take away from it is what the court said, and if you try
18 to read into it more than the FCC, addressing traffic
19 where the ISP is in the same local calling area and
20 carving that out of 251(b)(5), I think we're all on a
21 fool's errand.

22 Q. And the reviewing court actually remanded
23 this back to the FCC saying its reasoning was --

24 A. Yes, they did. I think they agreed with
25 you and I that the whole thing was pretty tortured.

1 Q. But it's still the rules, right?

2 A. The rules that were adopted as part of the
3 Order.

4 Q. Uh-huh.

5 A. Yes.

6 Q. Yeah. And in those rules, where is that
7 distinction that you draw about it being limited to local?
8 I guess we looked at them before.

9 A. Because access traffic is excluded in the
10 sense that you -- or in the paragraph you referred me to,
11 exchange access.

12 Q. Okay. So if exchange access is excluded
13 and the traffic -- is the traffic that goes across that
14 exchange boundary you said is exchange access, but it's
15 not --

16 A. But if it's leaving the area. I don't want
17 to use exchange boundaries.

18 Q. Okay. But not if it terminates within?

19 A. A local calling area?

20 Q. Uh-huh.

21 A. No. That's traditionally been a dividing
22 line between exchange access and not access, is it within
23 the local calling area, as defined by the state public
24 service commissions.

25 Q. And didn't the FCC establish a new

1 compensation regime -- I think we talked about this in the
2 beginning -- for ISP-bound traffic?

3 A. For this limited category of ISP-bound
4 traffic. And it was to be interim, which again points out
5 how tortured this process is. That was in 19-- that was
6 in 2001. The court reviewed it in 2002.

7 At this same time, they put out the ISP
8 Remand Order, the FCC, you've already mentioned it, the
9 initial Notice of Proposed Rulemaking on Inter-carrier
10 Compensation. They realized there needed to be more
11 clarification and study on this. We're now several years
12 later, which points out how complicated all these moving
13 parts are.

14 Q. Could you look at paragraph 82? About
15 midway through the FCC notes, this Order does not preempt
16 any state commission decision regarding compensation for
17 ISP-bound traffic for the period prior to the effective
18 date of the interim regime we adopt here, because we now
19 exercise our authority under Section 201 to determine the
20 appropriate inter-carrier compensation for ISP-bound
21 traffic, however, state commissions will no longer have
22 authority to address the issue.

23 And so is it your contention that the FCC
24 preempted the states only as to ISP-bound calls that
25 originate and terminate within a local calling area?

1 A. Yes. That's the traffic they were
2 addressing. That is the traffic that they carved out of
3 251(b) (5) .

4 Q. Okay. So the local ISP call is interstate,
5 but the interexchange ISP call remains intrastate?

6 A. I'm sorry. Repeat that.

7 Q. Okay. The local ISP call, the one that you
8 contend originates and terminates in the same local
9 calling area, the local ISP call is interstate. The FCC
10 said, state commissions, you're preempted, that is to be
11 regulated under our jurisdictions?

12 A. That was their basis for preempting.

13 Q. But if that same ISP-bound information
14 access call travels across an exchange boundary, it's your
15 contention it's still in the intrastate jurisdiction?

16 A. A local calling boundary?

17 Q. Yeah.

18 A. Or an exchange boundary?

19 Q. Either one. You tell me.

20 A. Well, there's a difference.

21 Q. Well, tell me the difference.

22 A. It can still be within the traffic offered
23 by the ISP Remand Order if it crosses an exchange boundary
24 but stays in the local calling area.

25 Q. Okay. But let's say it goes -- so it goes

1 outside the local calling area. Let's say it is intraLATA
2 but outside the local calling area. That traffic is still
3 subject to intrastate jurisdiction?

4 A. Not necessarily, no, but it's exchange
5 access.

6 Q. Okay. But it's not ISP-bound traffic?

7 A. Within the context that the FCC used that
8 term in the ISP Remand Order.

9 Q. If you could look at paragraph 74, and I'll
10 give you an opportunity to read the paragraph, ask you a
11 couple questions about it.

12 A. I appreciate it. Okay.

13 Q. Okay. I'm sorry. Go ahead.

14 A. Okay.

15 Q. Here I think throughout this Order, as you
16 know from reviewing it, the FCC expressed a concern about
17 arbitrage opportunities related to reciprocal
18 compensation. And would you agree that the FCC expressed
19 more confidence that those arbitrage opportunities would
20 not be available if the traffic was exchanged on a bill
21 and keep basis?

22 A. The arbitrage opportunities they
23 identified in this Order, I think they're outlined in
24 paragraph 2.

25 Q. Uh-huh.

1 A. Again, I may put this in the time context
2 again. It was like 2001 -- were as they pointed out in
3 paragraph 2, that a lot of CLECs were purposely serving
4 just ISPs or they were an ISP that turned themselves into
5 a CLEC and they did so for the specific purpose of
6 capitalizing -- arbitraging the existing interconnection
7 rules, capitalizing on reciprocal compensation, basically
8 making no investment, just setting up a CLEC right in
9 their -- or setting up an ISP right in their local
10 presence there.

11 And recognizing the traffic only flows one
12 direction, it's always going to come from the ILEC to the
13 CLEC, the FCC recognized, yes, there was this arbitrage
14 where these huge amounts of reciprocal compensation
15 payments were being incurred where the ILECs had to pay a
16 CLEC.

17 They at that -- the reason I mention the
18 time context is at that time, as far as I'm aware,
19 basically the model was that the CLEC would set this up
20 locally, and that was the arbitrage that the FCC was
21 dealing with. That's why they applied an interim, and
22 they wanted to move towards bill and keep and say, all
23 right, CLECs, no more playing this game, or if you do,
24 you're going to have to get your money from the ISP.

25 Q. I've just got one question. Is there

1 somewhere in the Order where you could verify that at that
2 time CLECs were doing this through what you call a local
3 setup?

4 A. Yeah. There's a paragraph, it's quoted in
5 my testimony, where they say typically that's how it
6 worked.

7 Q. In the ISP Remand Order, then, the FCC
8 attempted to address the problem that you described by
9 changing the rate structure and the amount of reciprocal
10 compensation that was available, right?

11 A. Yeah, the paragraph you just cited me to
12 says that.

13 Q. Okay. And they noted that bill and keep
14 may be a pretty effective way in the future to prevent any
15 such arbitrage opportunities, right?

16 A. They noted that that would require the
17 CLEC and the ISP -- and they were teaming up to play this
18 game -- that the CLEC would have to rely on getting their
19 revenue from the -- from the ISP.

20 Q. And the interim compensation plan was put
21 in effect about five years ago, I guess; is that right?

22 A. With the effective date of this Order, yes.

23 Q. And in this case, Socket is proposing use
24 of bill and keep for exchange of ISP-bound traffic; isn't
25 that correct?

1 A. That's been kind of confusing. Initially,
2 they proposed bill and keep, because that was what was in
3 the M2A. Then at some point they supplied modified
4 language to that provision which would have implemented a
5 60 percent trigger where mutual -- and I use the term
6 loosely -- mutual compensation per minute would have
7 applied.

8 And then sometime, must have been after the
9 direct testimony, because I was still working from the
10 non-bill and keep in my rebuttal testimony. Then they --
11 well, I guess it was Friday, they reversed themselves
12 again and went back to bill and keep. That's my
13 understanding.

14 Q. Okay. And you read Mr. Kohly's rebuttal
15 testimony --

16 A. Yes.

17 Q. -- where he discusses the issue?

18 A. Yes.

19 Q. And in that testimony, he does note that in
20 an attempt to meet that concern about the traffic balance
21 threshold, Socket was saying no opportunity to go back,
22 we're taking that language out and our renewed offer is
23 bill and keep?

24 A. He never said they were taking that
25 language out, and the current language on the table at

1 that point in time had a 60 percent trigger with a per
2 minute charge.

3 Q. Are you aware the 60 percent number and the
4 trigger was -- originated in CenturyTel's proposed
5 language?

6 A. CenturyTel proposed language would apply
7 that, but not to ISP-bound traffic.

8 Q. And is the bill and keep proposal that
9 Socket has made at this point acceptable?

10 A. Counselor, we've agreed to bill and keep
11 with CD Telecom in an agreement that's on file with the
12 Commission. We've agreed to it with MCIMetro that's on
13 file with the Commission. We've agreed to it with Socket
14 in the interim agreement here. But you have to take all
15 the pieces together.

16 Q. Uh-huh.

17 A. It's bill and keep, but it's also point of
18 interconnection in the local calling area when the traffic
19 justifies it. So, yes, bill and keep.

20 Q. Okay.

21 A. We've agreed to it before.

22 Q. Uh-huh. So even though bill and keep would
23 remove these arbitrage concerns, I suppose, at least
24 according to the FCC, you won't agree to a bill and keep
25 arrangement unless it's tied to accepting your position on

1 an interconnection issue?

2 A. Bill and keep removes the arbitrage
3 concerns with regard to recip comp. Those are the ones
4 that the FCC addressed in the ISP Remand Order, and they
5 make a point to say, that's all we're addressing is recip
6 comp.

7 In my testimony, I describe additional
8 arbitrage concerns and, quite frankly, much larger
9 concerns with regard to who bears the cost of the
10 transport, recognizing when virtual NXX dial-up ISP
11 traffic service is rolled out by Socket, let's say they
12 want to get their ISP in St. Louis, connected with Ava,
13 that creates distance. Distance creates cost. It's going
14 to require transport from Ava all the way to St. Louis.
15 Particularly costly is the transport from Ava to Branson.

16 Q. So is it --

17 A. There is an additional arbitrage
18 opportunity that bill and -- that your bill -- Socket's
19 bill and keep proposal does not begin to address.

20 Q. So is it impossible to settle the question
21 of, from CenturyTel's view, the question of what
22 compensation applies on an intercarrier compensation basis
23 unless Socket also accepts CenturyTel's views on point of
24 interconnection?

25 A. That's the way the negotiations occurred in

1 the CD Telecom agreement --

2 Q. Is that still your position?

3 A. -- in the MCIMetro agreement, in the
4 interim agreement with Socket.

5 I'm aware that, for instance, Citizens has
6 negotiated those same terms nationwide with Level 3.
7 That's basically the give and take that's inherent in the
8 intercarrier compensation task force's current proposal,
9 is that, yes, you would no longer treat it as access, you
10 would treat it as local. But that -- on my bigger concern
11 on the transport, that the ILEC would not be required to
12 transport that particular kind of traffic outside the
13 local calling area. So, yes, it's a give-and-take
14 process.

15 Q. Okay. But I'm asking about a particular
16 give and a particular take.

17 A. Okay.

18 Q. Is it just not going to be possible for the
19 parties to agree to a bill and keep solution to reciprocal
20 compensation, or let's call it intercarrier compensation,
21 unless Socket agrees to CenturyTel's positions on when a
22 POI must be established?

23 A. Well, it -- you know, I don't know that I
24 can answer that without a caucus with my client.

25 Q. Okay.

1 JUDGE JONES: With that, we'll have to
2 stop. It sounds like you-all have been going around in
3 circles for 45 minutes. I don't know. But we'll come
4 back here at a quarter to two. So that will give you an
5 hour and 15 minutes to eat and resolve some issues maybe.

6 With that, we'll go off the record.

7 (A BREAK WAS TAKEN.)

8 JUDGE JONES: We are back on the record
9 with TO-2006-0299, continuing with the cross-examination
10 of Mr. Simshaw.

11 MR. MAGNESS: Thank you, your Honor.

12 BY MR. MAGNESS:

13 Q. Mr. Simshaw, you described a scenario
14 earlier in testimony, I think maybe in your prefiled as
15 well, of what you perceived as a VNXX arrangement that
16 Socket might have to serve an ISP. Do you recall that?

17 A. Yes.

18 Q. In that arrangement, as you depicted it, is
19 it your view that Socket is acting as an IXC?

20 A. Yes, to the extent that they are the
21 carrier because they are a retail provider, they are the
22 ones achieving revenue from that service, and because the
23 service does leave the local calling area, if that's how
24 you want to define an IXC, then yes, they are.

25 Q. I guess I wonder about that definition

1 because when Socket and CenturyTel collaborate to complete
2 that call, they exchange traffic at their point of
3 interconnection, correct?

4 A. That particular traffic ought to be subject
5 to the access tariff and it ought to be subject to an IXC
6 POP.

7 Q. I'm just asking as a factual matter, are
8 they exchanging that traffic at a point of
9 interconnection?

10 A. Today, I think that's what's happening,
11 yes.

12 Q. In that scenario you described, is Socket
13 Telecom acting as an information service provider?

14 A. It shouldn't be.

15 Q. Mr. Miller, good afternoon. I had a
16 question. On page 43 of your rebuttal, I believe this is
17 in the section where you were discussing indirect
18 interconnection issues; is that right?

19 (Answers by Mr. Miller.)

20 A. Let me go back a page or two and be sure.
21 Yes. Yes, it is.

22 Q. And you have a statement on page 43 that
23 says a prior -- at line 3, a prior study of a similar type
24 of CLEC showed a potential of almost a half million
25 dollars per year in transiting costs to CenturyTel for

1 each LATA-wide indirect interconnection to a single ISP
2 CLEC. Is that a correct reading?
3 A. Yes.
4 Q. Is that study -- did you put that study in
5 evidence?
6 A. No.
7 Q. So it wasn't provided with your testimony,
8 I take it, right?
9 A. No, it was not.
10 Q. Okay. When was that study conducted?
11 A. At the end of 2005. I don't remember the
12 exact month or date, but it was late 2005.
13 Q. And was it conducted in Missouri where
14 there is MCA traffic?
15 A. No, it was not.
16 Q. Do you know what state it was conducted in?
17 A. It was the state of Michigan.
18 Q. And do you know who the CLEC is?
19 A. I do.
20 Q. Did you conduct the study?
21 A. No, I did not personally.
22 Q. Okay. Do you know who did?
23 A. Yes, I do.
24 Q. Who did?
25 A. It was a gentleman who worked for me at the

1 time.

2 Q. Okay. So was it conducted on CenturyTel's
3 behalf?

4 A. Yes.

5 Q. Were the transiting costs that were the
6 subject of that based on rates or terms that are
7 applicable in Michigan?

8 A. It was based upon AT&T transiting rates and
9 actual traffic from that particular ISP CLEC.

10 Q. But using AT&T's rates that are applicable
11 in Michigan; is that correct or not?

12 A. Yes, that's correct.

13 MR. MAGNESS: Okay. Thank you, your Honor.
14 That's all I have.

15 JUDGE JONES: Thank you. Thank you. Let's
16 see, Natelle Dietrich.

17 QUESTIONS BY MS. DIETRICH:

18 Q. Mr. Simshaw, I just had a couple questions
19 for you. In your rebuttal testimony you talk about
20 establishing a POI once traffic reaches a DS1 level; is
21 that correct?

22 (Answers by Mr. Simshaw.)

23 A. Yes.

24 Q. How did you come up with the DS1 level?

25 A. That is, I believe, in one of the

1 agreements I've referred to, MCIMetro, already negotiated
2 and approved by the Commission. It also matches up with
3 the discussion earlier today about when Socket would agree
4 that there would be indirect connection, that that was
5 sufficient traffic to justify relieving the tandem and
6 establishing a direct connection.

7 Q. When you say Socket would agree, is that
8 CenturyTel's language or has Socket actually agreed?

9 A. I think we have both agreed that a DS1
10 would be an appropriate trigger for sustaining a direct
11 connection. The question is, of course, who pays for it.

12 Q. How is the location for another POI
13 determined?

14 A. CenturyTel's language ties that to traffic
15 at a given local calling area. I think it's been
16 mischaracterized several times that it was at an end
17 office. That's not correct. Our language measures the
18 trigger at a local calling area.

19 Our position is that initially, for
20 instance, if Socket was to enter the Branson market, that
21 they could have a single POI at Branson, and CenturyTel
22 would go ahead and open up the numbers they might assign
23 in various end offices and local calling areas behind
24 Branson, up to a point, and that point being when there's
25 sufficient traffic, non-de minimus traffic of a DS1.

1 But the key thing is again it's at the
2 local calling area level. I have a problem with the --
3 Socket's approach in saying that, well, No. 1, their
4 trigger is way too high. It's an OC3. At least they've
5 acknowledged that an OC12 is a little ridiculous.

6 Q. But going back to when it reaches the level
7 of DS1 or whatever the level might be, how is it
8 determined where to put the next POI?

9 A. Under our language, if the traffic
10 leaving -- if the traffic being exchanged associated with
11 a given local calling area, and let's use Ava for
12 instance, reached a DS1, the point of interconnection
13 would be at Ava because that's where the traffic is.

14 The problem I have with doing it on a
15 LATA-wide basis is, to give you an example, they're using
16 an OC3, which is over 2,000 -- it's 2,016 trunks. We
17 could have -- start with a single point at Branson and
18 have Ava local calling area grow to 2,000 trunks and you
19 could have Kimberling City grow to 2,000 trunks. Together
20 that would be over 4,000, which would trigger Socket's OC3
21 trigger, and -- but under their language it begs the
22 question, okay, there needs to be a second point of
23 interconnection, but where?

24 The traffic that's burdening the network at
25 that point is between Kimberling City and Branson on that

1 particular route, and between Ava and Branson on that
2 particular route. If you have a second point of
3 interconnection and, again, you put another one in
4 Branson, that's not going to help. If you put the second
5 point of interconnection in Kimberling City, that's not
6 going to help the Ava situation. If you put just the
7 second point of interconnection in Ava, that's not going
8 to help the Kimberling City situation.

9 So you really need to go where the traffic
10 is, so the trigger should be applied to each local calling
11 area.

12 Q. Okay. And I'm going to ask you the same
13 question I asked Mr. Kohly. The DS1 proposal from
14 CenturyTel and the OC3 proposal for Socket still seem
15 pretty far apart. Is there somewhere in between that
16 would make more sense or that could be utilized that
17 wouldn't be onerous on either one of the companies?

18 A. Let me put that in perspective using Ava,
19 again, as an example. Currently there are 204 trunks that
20 CenturyTel operates between Ava and Branson. On those
21 trunks is the traffic when an Ava customer calls long
22 distance to Branson or they call long distance to
23 St. Louis or they call long distance to anywhere else in
24 Missouri or anywhere in the world, New York City. Those
25 204 trunks are accommodating all that traffic right now.

1 Our experience is if you put virtual NXX
2 dialup ISP on that, expect to put that on those same
3 trunks, they will almost instantly overload because it's
4 flat-rated traffic because it has long holding times. So
5 it's 204 trunks currently. Socket is saying there
6 shouldn't be -- you shouldn't worry about a POI there
7 until it hits an OC3. That is ten times the amount of
8 traffic going from Ava to the entire world.

9 Q. Can I stop you right there?

10 A. Sure.

11 Q. Okay. You said that the trunks would
12 exhaust almost immediately using your example?

13 A. Yes.

14 Q. So would that qualify as technical
15 infeasibility and would allow CenturyTel to use that
16 provision in order to say, no, we need something else in
17 Ava, for example?

18 A. I'm going to almost agree with Mr. Kohly
19 that getting your arms around technical feasibility, it's
20 in the eye of the beholder almost. My thought is, if you
21 throw enough money at something, almost anything becomes
22 technically feasible. The issue is if it can be done, you
23 know, at a cost, who bears the cost?

24 I think I did have a question in my direct
25 testimony that asked it a little bit similar to what you

1 just said, whether or not the virtual NXX dialup ISP
2 traffic to the ISPs in St. Louis, would it be technically
3 feasible to put that traffic on the existing trunks or
4 facilities? And I did answer that no, that's not
5 technically feasible, but that's a more narrow question.

6 Would it be feasible if you increased the
7 number of those trunks ten times over? Yeah, I think it
8 would -- it could probably become feasible, but that's
9 very costly. So the issue becomes who bears the cost, and
10 that's determined by where is the point of
11 interconnection?

12 If it remains in Branson all the way up to
13 ten times that level of traffic, CenturyTel would be
14 forced to bear that cost, even though the traffic that's
15 causing you to have to increase it tenfold is traffic
16 that's directly attributable to Socket's virtual NXX ISP
17 service, and only Socket is deriving revenue from that
18 traffic.

19 JUDGE JONES: Let me interrupt you for a
20 second. Natelle, what was your question?

21 MS. DIETRICH: I don't remember now.

22 Once Ava -- if the traffic did go to Ava,
23 which is only 204 trunks, which he said were basically
24 exhausted almost immediately, would that be considered
25 technical infeasibility?

1 JUDGE JONES: And the answer is no?

2 THE WITNESS: The answer is, it would be
3 technically infeasible to put those on the existing
4 trunks. It would become feasible if somebody spent the
5 money to augment the trunks.

6 MS. DIETRICH: Okay. Thank you.

7 BY MS. DIETRICH:

8 Q. Mr. Miller, I have some questions for you,
9 please.

10 (Answers by Mr. Miller.)

11 A. Sure.

12 Q. In your direct testimony, at page 19.

13 A. Okay.

14 Q. In line -- at line 4 you use the word --
15 the words mirroring facilities, and at line 6 you use the
16 words matching facilities. Could you explain mirroring
17 and matching, please?

18 A. Let me look at the context, please, for a
19 moment.

20 I think essentially I was using the words
21 to mean the same thing, that the other party would be
22 providing facilities equal in quantity to what CenturyTel
23 would be providing.

24 Q. Okay. And then at page 22 --

25 A. Also in the direct?

1 Q. Yes. I'm sorry. You're talking there
2 about a CLEC that you had had some relationships with, and
3 apparently at one point they came back and asked for 800
4 trunks in one location and you talk about how you were
5 able to work that out and reach agreement with the CLEC.
6 Was that a case before this Commission or was that all
7 just informal between CenturyTel and the CLEC?

8 A. I do not recall that that was a case before
9 the Commission, but I was not personally involved with all
10 the cases before the Commission, so...

11 Q. To the best of your recollection, it was
12 between the two companies?

13 A. I know that there was -- there was a case
14 before the Commission that involved this particular
15 company. Whether it involved this particular issue, I do
16 not recall.

17 Q. Is it highly confidential to release the
18 name of the CLEC so that we can look in our records?

19 A. It was -- I've been informed by a person
20 directly involved that this was not before the Commission.
21 It was settled between the parties, which is what I
22 believed it to be.

23 Q. Okay. Thank you. In your direct on
24 page 23 at lines 13 through 17, you're talking about CLECs
25 should provide telecommunications service in a market or

1 at least simultaneously with the provision of ISP
2 services. How does CenturyTel know if Socket plans to
3 provide telecommunications services or ISP-only services
4 in a particular market?

5 A. Actually, the context of that question, if
6 I may, was pertaining to applicable law. Again, I'm not a
7 lawyer, and I don't want to make a citation without being
8 able to pull it up directly, but there is a definition, I
9 believe, in Part 51 that says that a telecommunications
10 provider may use interconnection facilities to also
11 provision Internet services so long as it also is
12 providing common carriage.

13 Q. And is CenturyTel aware of that when they
14 enter into arrangements or receive orders from Socket,
15 actually what Socket is going to use that particular
16 facility for?

17 A. No. I think the question becomes if an
18 interconnection facility is being used only for the
19 provision of your own Internet services and there is no
20 marketing or no effort being made to provide common
21 carrier services over that, at some point that becomes a
22 problematical issue and probably should be dealt with by
23 the Commission.

24 That has happened to CenturyTel, where a
25 provider ostensibly requested facilities for common

1 carriage and over a year later was still doing nothing but
2 providing its own Internet services over that, and wanting
3 more, by the way.

4 Q. And your direct on page 29 --

5 A. Yes, ma'am.

6 Q. -- at line 17 you say, and when Century --
7 when CenturyTel is willing to bear those costs.

8 A. Uh-huh.

9 Q. What costs are you referencing there?

10 A. Well, there may be times when you have a
11 direct connection where, based upon the specific terms of
12 an agreement or specific terms that are reached in
13 discussion between the parties, that CenturyTel might be
14 willing to bear the interconnection costs. In other
15 words, the context of this is indirect connection, and it
16 goes to some questions which came earlier today as part of
17 this hearing as to the triggering level and so forth.

18 It comes down to an economic decision, and
19 typically the type of transiting costs that are imposed by
20 tandem owners such as AT&T and others, those are at a
21 level that, by the time you reach the equivalent of a DS1,
22 you're paying transiting charges that you could be paying
23 for that facility.

24 Q. And if you go from an indirect connection
25 to direct connection, what costs would CenturyTel bear and

1 what costs would the CLEC bear?

2 A. Again, it depends upon the facility, the
3 traffic and the specific terms of the agreement.

4 Q. Okay. Now I'd like to move to your
5 rebuttal testimony, if we could.

6 A. Yes.

7 Q. On page 37, beginning at line 20, you're
8 talking about the parties should meet and agree on
9 trunking, forecasting of traffic, availability of
10 facilities and other requirements. How long do the
11 parties meet before -- or in order to agree on these
12 things?

13 A. I don't believe there's a definitive time,
14 and I don't think that it's a very timely thing either.
15 The question is, should the parties get together and
16 actually discuss the needs of each party, in this case
17 specifically Socket's, and understand what their needs
18 are, what their trunking's going to be used for, what's
19 their forecasted traffic, what availability of facilities
20 does CenturyTel have and so forth and then actually meet
21 those.

22 It goes back to the question you just asked
23 me a minute ago about the 800 trunks. I mean, if we had
24 had a proper forecast, proper timing, understood the
25 nature of what the request was all about and we could

1 share with them what our facility constraints are, what
2 our build-out was that was already in progress, by the
3 way, and what kind of a rolling schedule we could meet to
4 try to accommodate their needs, you reach agreement. In
5 that case we did.

6 Q. Does CenturyTel have a panel or a process
7 or team that addresses these types of things, or is it
8 just as needed?

9 A. I'm not sure I understand the context of
10 your question.

11 Q. Well, you're talking about CenturyTel and
12 the CLEC should meet to discuss these various items, so I
13 guess I'm trying to figure out what triggers that and if
14 it's something that's discussed in the agreement where if
15 these certain things are needed, this will be established.
16 Is it a separate group of people that meet, you know?
17 Just what type of procedures are set up to take this --

18 A. It's not a set group of people per se for
19 all situations. The issue is when Socket or any other
20 CLEC provides a forecast, that is provided to the
21 appropriate personnel here in Missouri, would be routed to
22 the personnel that are in charge of the network as a
23 whole, in addition to the local people.

24 So in other words, it would go to the local
25 operations personnel for the area that the forecasts

1 pertain. And then when the forecast request is actually
2 triggered pursuant to an Order, you would get more local
3 personnel involved for that.

4 Now, having said all that, if we receive a
5 forecast from Socket which requests to use a previous
6 example 800 trunks, for example, in Ava or Mount Vernon or
7 somewhere else and if at that point in time CenturyTel has
8 constraints and does not have them, we would be discussing
9 that with Socket immediately and trying to understand
10 better the timing, is it absolute, what can we do, you
11 know, give them a sense of what our needs would be to
12 facilitate resolving their needs.

13 Q. Is there anything in the proposed language
14 that would allow either company or both companies some
15 sort of comfort level that this wouldn't be, you know, a
16 process that would go on from now to Doomsday?

17 A. Realistically, I don't know that I can
18 answer that question without having to go study the
19 language from the parties.

20 Q. Okay. In your rebuttal testimony, page 64,
21 you're discussing the Service Guide. Are CLECs informed
22 of updates to the Service Guide?

23 A. They are when it's -- when they look
24 online. We have it posted online and it shows the most
25 current version.

1 Q. Is there something that tells a CLEC that
2 there have been changes, so go look, or do they just
3 periodically is it their responsibility to go out there
4 and see the changes?

5 A. Well, the whole purpose of having it online
6 is so they do have the ability to go any time they please
7 to check on that. If there's a major change to the guide,
8 we would notify people. But as we have agreed in this
9 process, I'd like to point out that CenturyTel has
10 indicated that we are not going to change the Service
11 Guide if it materially affects Socket without notifying
12 them first of the change and discussing that with them.

13 Q. And this notification, is it something that
14 says, there's been a change, go out and look, or is it
15 something that says, there's been a change to Section 3
16 or --

17 A. In the context, again, of these terms that
18 we're talking about in this arbitration, and understanding
19 that this actual process hasn't been fully developed, but
20 the way the terms read to me and I interpret them, would
21 be that CenturyTel would have an obligation prior to
22 implementing a change to the Service Guide to notify
23 Socket that we would have a change to the guide, what that
24 change would be, and allow them to indicate whether or not
25 they believe it would materially affect their business.

1 So CenturyTel would be developing a notification process.

2 Q. And does that same type of process apply to
3 updates to the website or CenturyTel procedures in
4 general?

5 A. I'm not sure how to answer that. It seems
6 more of an open-ended question.

7 Q. Well, I know there's some -- throughout the
8 testimony there's some discussion about CLECs can go to
9 the website and do various things or, of course, there's
10 procedures that CenturyTel has that are internal but that
11 may affect CLECs. So if any of those processes change,
12 are the CLECs notified or is it strictly if it's something
13 that affects the Service Guide?

14 A. I guess the best way to answer that is that
15 there would be some changes that really are not affecting
16 to a CLEC at all. For example, if a person decides to
17 leave the company, we do have posted on the website names
18 and so forth, but the telephone number wouldn't change, so
19 they would still have access, and we might not have the
20 ability to notify them ahead of time.

21 However, if there is a major process
22 change, and that's not something that really happens on a
23 regular basis, we do have regular contact with CLECs all
24 the time. Our CLEC service group understand processes
25 orders on a daily basis, has contacts with CLECs, has

1 relationships built with CLECs and is communicating with
2 them all the time. So there would be notification through
3 channels such as that.

4 Q. Well, and this is off the top of my head.
5 I don't remember the specifics, but I know there was one
6 instance cited in testimony where apparently CenturyTel
7 changed its process from writing something in a textbook
8 to actually checking a box. So if it was a change like
9 that on a service order, say, for instance, would the
10 CLECs be notified of that change, or is it just something
11 that's updated on the website and they review it
12 periodically, you know, changes like that that actually
13 affect how they process the orders, how they get their
14 customers up and running, how the two of you are linked?

15 A. I don't believe I can answer that question,
16 since I don't have that end of the business.

17 Q. Okay.

18 A. I understand your question.

19 Q. Your rebuttal at page 69 at the top of the
20 page, you have some text that's in italics, and it says,
21 Socket has the right to raise a valid dispute under the
22 terms of this agreement?

23 A. Yes.

24 Q. What happens to the service request or the
25 service to the CLEC customer -- depending on what type of

1 request it is, what happens to the service to the CLEC as
2 this dispute's going on?

3 A. Well, understand the context. If you go
4 back to page 68, it says, CenturyTel will provide Socket
5 with advance notice of changes to procedures, as stated in
6 the Service Guide, which is what I just talked about. We
7 would be providing advanced notice. And if Socket
8 believes that those new procedures materially affect their
9 service, they have a right to raise a valid dispute, which
10 means we haven't implemented the change yet.

11 Q. But things that are currently in place
12 would continue status quo while you're working out that
13 process?

14 A. Yes.

15 Q. And your rebuttal at page 75, down at the
16 bottom, again, you have some text where you're referencing
17 language, and specifically starting at line 18, it looks
18 like, at the end of that line you start an exception
19 clause, and it says, except that the obligation regarding
20 transiting traffic is limited only to the unaltered
21 transmission of call detail information as provided by the
22 call originator. Can you explain what the exception
23 means?

24 A. Absolutely. The rest of that language on
25 this is Socket's actual language. The underlined sentence

1 is the first sentence that CenturyTel added to address our
2 concern. This is a concern which Socket and CenturyTel
3 reached agreement verbally, but we can't seem to agree to
4 put this down in writing in the actual thing.

5 What it means is that if CenturyTel is
6 transiting a call to Socket, we understand we have an
7 obligation to pass the call detail information to Socket,
8 and we will do so. However, we can only pass the call
9 detail information we are given. We cannot create call
10 detail information that doesn't exist.

11 So, for example, if somebody on the other
12 end gives us incorrect call detail information, incomplete
13 call detail information or somehow wants to play games and
14 modify it to be something that is not accurate, CenturyTel
15 has no way of changing it. All we are doing is passing
16 what is given to us directly to Socket, as if it had been
17 given to us for our own call termination.

18 Q. And isn't that already covered by the
19 reference to complying with Chapter 29 of the Commission's
20 rules, or is that exception not covered by the Commission
21 rules?

22 A. It is my understanding the exception's not
23 covered.

24 Q. And on page 78 at line 1, you start the
25 first full sentence with, because the FCC has preempted

1 the VOIP issue. Can you explain to me what you mean by
2 the FCC has preempted the VOIP issue?

3 A. Yes. The FCC is currently investigating
4 the voice over Internet protocol as to how that should be
5 traded from an intercarrier compensation standpoint. I
6 believe that is part of the -- one of the existing MPRNs
7 which is out there today and is definitely part of the
8 intercarrier compensation reform process that is going on
9 right now.

10 Q. Okay. And then earlier I asked Mr. Kohly,
11 not from an attorney standpoint, but from his position as
12 a regulatory employee with Socket whether CenturyTel had
13 any 271/272 obligations, and he said no, that CenturyTel
14 does not. Do you agree with that?

15 A. I do agree with that.

16 Q. Okay. And are there any implications on
17 transiting, transport, any of the interconnection or
18 intercarrier compensation issues that are in the proposal
19 or the agreement that are affected by 271/272?

20 A. There should not be.

21 MS. DIETRICH: Okay. Thank you. That's
22 all I have.

23 JUDGE JONES: Mr. Scheperle?

24 MR. SCHEPERLE: No questions.

25 JUDGE JONES: Mr. McKinnie?

1 MR. McKINNIE: I have some questions for
2 Mr. Miller, but I'm going to give him a short break and
3 ask some of the other parties first for a moment.

4 QUESTIONS BY MR. McKINNIE:

5 Q. Mr. Simshaw?

6 (Answers by Mr. Simshaw.)

7 A. Yes.

8 Q. The very last thing -- or one of the first
9 things you were talking about with Ms. Dietrich was
10 talking about the DS1 level.

11 A. Yes.

12 Q. And you were talking about some language
13 where they would agree to establish a direct connection
14 instead of an indirect interconnection?

15 A. Yes.

16 Q. Is that language in an agreement that is
17 not before the Commission today? Like, is that one that's
18 been previously agreed to?

19 A. No. It's language in this proceeding.

20 Q. Okay. Can you point me towards what issue
21 that language is in?

22 A. Yes. Well, I can point you to the contract
23 language. I don't know that it is an issue.

24 Q. Okay. I'm sorry. Could you point me to
25 the contract language?

1 A. I apologize. It will take a couple
2 minutes.

3 Q. That's fine.

4 A. It's at --

5 Q. It's possible that maybe I can ask
6 Mr. Miller some questions and come back to you. Would
7 that be okay?

8 A. I'd appreciate that. I think I may have to
9 actually go into the contract language itself.

10 Q. Actually, that's kind of what I was
11 maybe -- well, looks like maybe we have an answer.

12 MR. HARTLEY: Hopefully.

13 I think on page 24 of Mr. Simshaw's direct,
14 he refers to this.

15 MR. SIMSHAW: That's it. It's in
16 Article 5, Section 11.1.2.1.

17 BY MR. MCKINNIE:

18 Q. So just to make sure I'm looking at the
19 right place, that's in Issue No. 14 of Article 5?

20 A. I'm sorry. I don't have the DPL in front
21 of me.

22 Q. I'll take a look at it later. Let me ask a
23 question that I believe either goes to you, Mr. Simshaw,
24 or Dr. -- I'm not going to say your name correctly, but
25 it's Avera, or --

1 MR. AVERA: Well, it's a Hispanic name that
2 didn't survive Georgia. So my father changed it to Avera.

3 BY MR. McKINNIE:

4 Q. Mr. Avera, accent on the first syllable.
5 On page 101 of the DPL, in CenturyTel's preliminary
6 position in Issue No. 32, there's a line that says,
7 however, VNXX dial-up ISP service in the manner
8 contemplated by Socket is not true FX service, and I know
9 that I believe Mr. Hartley kind of provided a definition
10 when he was asking a witness of what true FX service was,
11 but I think I'd rather get something from a fact witness.

12 Would either of you like to define in the
13 context of this what true FX service is?

14 A. Yes. The distinction CenturyTel makes
15 is -- well, let me explain the points that are in common
16 and I'll get to the distinction. FX would involve giving
17 a customer a telephone number for a local exchange that
18 they don't reside in. For instance, in Branson you could
19 get a customer an Ava number. In fact, I think that may
20 be what one of the diagrams that the Commission asked for
21 earlier is.

22 That allows the customer in Branson to have
23 service as if they were located in Ava. They could
24 receive local calls from Ava. They could place local
25 calls to Ava. What's necessary to accomplish that is, you

1 need a connection from that customer in Branson back to
2 the serving Ava local exchange dedicated to that customer,
3 so that they actually have a presence in Ava.

4 Now, the distinction is -- and I think
5 everybody can agree up to that point. The distinction is,
6 who pays for that service? Under CenturyTel's FX tariffs,
7 the customer in Branson would pay for that dedicated
8 circuit.

9 Q. May I stop you there?

10 A. Yes.

11 Q. Is it possible for a CLEC to provide true
12 FX service?

13 A. Yes, if they would -- if CenturyTel is the
14 party providing the direct connection back to the local
15 calling area or where the customer isn't, but back to be
16 that local calling area, if CenturyTel is the carrier
17 providing that direct connection and either the CLEC or
18 their customer would compensate CenturyTel for that, sure,
19 that would be legitimate FX service.

20 Q. So if the CLEC used a CenturyTel trunk and
21 was willing to compensate, then it would be true FX
22 service?

23 A. True. And I would contrast that virtual
24 NXX dial-up by ISP where Socket has an ISP in St. Louis
25 and they're giving them Ava telephone numbers. Then you

1 need a connection between St. Louis and Ava dedicated to
2 that customer.

3 Q. And --

4 A. And Socket is not willing to pay for the
5 portion from Ava to Branson.

6 Q. So just to make sure, true FX, CenturyTel
7 trunk, CenturyTel's compensated and CenturyTel facilities
8 end to end, is what would have to be necessary for a CLEC
9 to provide that?

10 A. CenturyTel needs to be compensated for the
11 portion of the connection that it provides.

12 Q. So if they just provided just a short range
13 of the connection, it would be that they would have to be
14 directly compensated?

15 A. Right. And in my example, CenturyTel would
16 be providing -- if the point of interconnection was
17 established in Branson, CenturyTel would be providing from
18 Ava to Branson. Socket would be providing from Branson to
19 St. Louis.

20 Q. And is true FX a term of art?

21 A. I've seen a lot of language that defines FX
22 as two different kinds, FX and FX-like, and to me true FX
23 is the first FX.

24 Q. Okay. I think that answered my question.

25 Mr. Miller, do you mind if I return to you?

1 (Answers by Mr. Miller.)

2 A. Not at all.

3 Q. Okay. I want to ask you a factual
4 question about Issue 11, Section 10.1 of the DPL, and this
5 may be -- this may be ignorance on my part, but the bottom
6 says that the applicable rate for this charge is in the
7 tandem transiting charge identified in Appendix A.

8 A. I'm sorry. Can you tell me what page
9 you're on?

10 Q. I'm sorry. I'm on page 61 of 103.

11 A. Okay. I'm there.

12 Q. And I just wanted to know, is Appendix A in
13 the record?

14 A. I don't know.

15 Q. Okay. And -- well, I guess that might take
16 up the second part of that question. Okay.

17 A. I do believe I've testified, though, that
18 the parties have reached agreement on using those existing
19 rates that is in my testimony, that the two components
20 that comprise transiting would be used and would be what's
21 in Appendix A.

22 Q. So then how is that last part of the
23 paragraph in dispute then, if the applicable rate for this
24 charge is in the transiting charge? Is it the
25 applicability of the charge that's under dispute here?

1 A. I think there's a question as to what the
2 actual rate is, because what Socket has in theirs is not
3 what we agreed to. I'd need to look at my testimony to
4 refresh my memory.

5 Q. Okay. So the rates in Appendix A, then,
6 are still under dispute or -- I'm sorry. I thought I
7 heard you say that everybody had agreed we were going to
8 use the past rates.

9 A. We have agreed, but there seems to be some
10 confusion on the part of Socket that I can't explain.
11 Again, it's in my testimony if you would like me to turn
12 to that and refresh my memory.

13 Q. Sure.

14 A. I guess I should look at the table of
15 contents.

16 Q. It looks like it starts on page 45 of your
17 rebuttal.

18 A. Yes. Yes. As you see in the middle of the
19 page, CenturyTel and Socket have already agreed upon using
20 the arbitrated GTE/AT&T tandem switching and office
21 switching and transport elements, and the two of those
22 that combine to make transit would be in Appendix A. But
23 Socket apparently has some other rates, and we do not know
24 where they were derived, and I believe that they appear in
25 their proposed UNE section as a transit charge, and we are

1 confused as to why.

2 Q. Okay. I just have two more real quick
3 questions. All right. Moving back to the ERE rule in
4 Issue No. 20 on page 1 of the DPL, this is where we end up
5 kind of talking about the physical location of -- the
6 physical location of the customers. I guess my question
7 is, does CenturyTel currently check the physical location
8 of calls that go to a Socket customer, do you know?

9 A. I'm sorry. Can you rephrase?

10 Q. Sure. Does CenturyTel currently check the
11 physical location of where calls go to a Socket customer?

12 A. I am not aware that we consistently do so,
13 no.

14 Q. Are you aware of any instance in which
15 that's been done?

16 A. I cannot speak with specific facts on the
17 matter, no.

18 Q. And I have one final question on page 94 of
19 the DPL, talking about the CPN that Ms. Dietrich also
20 referred to. About a third of the way down in the
21 CenturyTel language that doesn't seem to be in dispute,
22 the parenthetical clause, it talks -- I'll read up to the
23 parenthetical clause.

24 For traffic that is not covered by that
25 rule, each party will include the information transmitted

4 So is it fair to say that where CenturyTel
5 appears to be concerned about being asked to transmit CPN
6 where none exists, is there language that is covered by
7 the rule?

9 Q. Okay. Then in what -- is it where
10 CenturyTel is transiting carrier? Is that where the
11 concern is about the CPN?

13 Q. Okay.

19 In other words, a party could be passing us
20 information, it's technically available to us, we can pass
21 it, but I can only pass what they give me. I cannot add
22 to it, change -- in fact, I'm not allowed to add to it,
23 change it, do anything else. I can only transmit what it
24 is.

1 our first sentence on top of it, another party who adopts
2 this agreement could be reading that to mean I would be
3 obligated to provide everything, even if it's not sent to
4 me.

5 MR. MCKINNIE: Okay. Thank you. I pass.

6 JUDGE JONES: Okay. Earlier, when we first
7 got started, there were some, I don't know, drawings that
8 were made. I don't know what you call them. Diagrams,
9 flowcharts that you-all constructed. Do you-all have
10 those?

11 MR. HARTLEY: Yes, we do. CenturyTel has
12 those.

13 JUDGE JONES: Both sides?

14 MR. MAGNESS: Yes, sir, we do.

15 JUDGE JONES: We'll be using this overhead
16 projector in the corner there.

17 MR. MAGNESS: Your Honor, would you like us
18 to have witnesses supporting the diagrams come up?

19 JUDGE JONES: The witnesses that we'll be
20 needing to ask questions of will be Mr. Miller and
21 Mr. Kohly. Did he just leave?

22 MR. HENDERSON: What we want to do is walk
23 through these diagrams and see if we can find out the
24 hangups and what it's going to take to resolve some of
25 these issues. As we both look at the first map up there,

1 we see we're looking at Ava exchange. By looking at that,
2 we have a two-wire circuit from one telephone into the
3 central office tap to another telephone; is that correct?

4 MR. SIMSHAW: Yes. With your permission,
5 your Honor, I was actually -- this is Mr. Simshaw, the one
6 who prepared the diagram, so I'll respond, if that --

7 JUDGE JONES: That's fine. Is that okay
8 with you?

9 MR. HENDERSON: That's fine. The outside
10 border represents what?

11 MR. SIMSHAW: The Ava exchange boundary.

12 MR. HENDERSON: Mr. Kohly, do you agree
13 with that?

14 MR. KOHLY: My diagram looks entirely
15 different.

16 MR. HENDERSON: Okay. Let's --

17 MR. KOHLY: I drew it as if we were -- if
18 Socket were providing it, and I apologize for the diagram.
19 I am no artist. And I drew it from Socket's perspective,
20 where I had a couple of assumptions, one that there was a
21 POI in Branson, as that was the example we've talked about
22 this morning, where the call would actually be carried
23 back to the POI at Branson past the Socket collo. Socket
24 would carry that call back to its switch in St. Louis,
25 transport it back to Branson, then via EEL to the customer

1 in Ava.

2 I was assuming it was a CenturyTel end user
3 placing a call to a Socket customer that we were serving
4 via an EEL. If we had a switch in Ava, obviously, would
5 not leave but --

6 MS. DIETRICH: Can I just for clarification
7 ask what each one of those little boxes says? It's very
8 hard to read. That helps.

9 MR. KOHLY: First one is my misspelling of
10 Ava. Then, of course, we have the Branson wire center,
11 Socket collo and then Socket switch.

12 MS. DIETRICH: Thank you.

13 JUDGE JONES: From here on out, whenever
14 anyone speaks, use this microphone at the podium, would
15 you please? Thanks.

16 You already have your mic, so you can just
17 use that one.

18 MR. HENDERSON: In that scenario there,
19 then the call is originated, and what did you say the
20 first one was, the call was originating from a CenturyTel
21 customer calling a Socket customer, or is it the other
22 way?

23 MR. KOHLY: CenturyTel customer calling a
24 Socket customer. It would also if it were a Soc-- if
25 Socket had two customers in Ava, it would look the same as

1 well.

2 MR. HENDERSON: Then it would go out on a
3 trunk, two-way trunk to Branson?

4 MR. KOHLY: Yes.

5 MR. HENDERSON: DS0 or equivalent,
6 voice-grade equivalent?

7 MR. KOHLY: It would actually, given our
8 POI is in Branson in this example, it would ride a trunk
9 group, be handed to us in Branson. I don't know what size
10 trunk group that would be.

11 MR. HENDERSON: Okay. Same scenario in the
12 next one down, or is it just another drawing that you have
13 to answer another question?

14 MR. KOHLY: That's for the next question.

15 MR. HENDERSON: The diagram CenturyTel put
16 up there would be a traditional ILEC provided inside their
17 exchange; is that correct?

18 MR. SIMSHAW: That's correct. And I
19 apologize if there was a misunderstanding, but we did not
20 realize that there was to be a CLEC involved in the call.
21 It simply said show the flow of a call in the Ava exchange
22 phone to phone.

23 MR. KOHLY: That would be the call flow if
24 you had a host switch and not a remote. That would be the
25 switch if you had a stand-alone host switch and it was not

1 a remote. That would be how the call would work.

2 MR. HENDERSON: Okay. So everybody agrees
3 that would be a call that would stay inside the Ava
4 exchange and the transport of that call would be paid by
5 the basic local service.

6 Okay. The next one I think we asked to
7 draw a diagram there that showed a call being made from
8 Ava to Branson. What kind of a call is that?

9 MR. SIMSHAW: This is Mr. Simshaw. Under
10 the tariffs on file with the Commission and the calling
11 areas established by the Commission, that is a long
12 distance toll call.

13 MR. HENDERSON: It's compensated for the
14 transit between the two? Is CenturyTel compensated for
15 the transit cost between the two exchanges?

16 MR. SIMSHAW: Yes, under our access tariff.

17 MR. KOHLY: Matt, you got any comments on
18 that?

19 MR. KOHLY: Now, we have an IXC in that
20 drawing, so I assume that was a non-PIC'd intraLATA toll
21 call.

22 MR. SIMSHAW: There were no assumptions in
23 the question, but yes, there would be an IXC. It's an
24 interexchange call.

25 MR. HENDERSON: What is transmitted for --

1 with that call to the terminating end that I could tell
2 what was there?

3 MR. SIMSHAW: Well, it could go to the
4 PIC'd carrier. And I would defer to maybe Mr. Davis or
5 somebody more technical to tell you if you're looking for
6 the call detail and records that would be transmitted.

7 MR. DAVIS: I'll address it to a point
8 because there's a lot of things that --

9 MR. HENDERSON: Yes, I understand that.

10 MR. DAVIS: But you would get the called
11 party, the calling party, you'd get the carrier ID, who
12 was providing the service, the PIC'd carrier the end user
13 had chosen, and that would be then transmitted to
14 CenturyTel, being the tandem provider there, and then
15 would go out off the tandem to the local exchange switch.

16 But CenturyTel, if they were not the
17 interexchange carrier, the PIC carrier, then would receive
18 that and then have the compensation arrangement with the
19 carrier.

20 MR. HENDERSON: The IXC carrier?

21 MR. DAVIS: The IXC carrier, yes.

22 MR. HENDERSON: Matt, do you have a diagram
23 on that also?

24 MR. KOHLY: Yes. Again, I drew that
25 assuming a CLEC and how that call would flow back to the

1 POI in Branson, past -- passed to Socket at the
2 collocation where Socket would route that call to and from
3 its switch, back via a UNE loop to a Socket customer,
4 where Socket was serving the customer in Branson via a UNE
5 loop.

6 MR. HENDERSON: In that transport, your
7 second diagram, is there any compensation between Ava and
8 Branson?

9 MR. KOHLY: We would bill non-PIC'd
10 intraLATA toll. I'm sorry. We would bill terminating
11 access.

12 MR. HENDERSON: You said you would bill
13 terminating access?

14 MR. KOHLY: Yes. Assuming that is a
15 CenturyTel customer in Ava calling a Socket customer in
16 Branson.

17 MR. HENDERSON: Then you would bill --

18 MR. KOHLY: We would -- if it was a
19 non-PIC'd intraLATA toll call, we would bill CenturyTel
20 terminating access. If it were routed through an IXC, we
21 would bill -- and the diagram would be different because I
22 have IXC POPs and all that fun stuff in there, but we
23 would bill the IXC terminating access.

24 MR. HENDERSON: And you're showing your POP
25 located in Branson there, correct, or POI?

1 MR. KOHLY: I have a collocation -- the POI
2 is in Branson. It would be handed to us in Branson, where
3 we would take it and switch it in St. Louis where our
4 switch currently is, routed back to Branson, and then to
5 the customer we were serving out of that collocation
6 arrangement.

7 MR. HENDERSON: But there's no cost to
8 transport between Ava and Branson on that call?

9 MR. KOHLY: Correct. We would only bill a
10 portion of the access services we provide, which would be
11 the terminating CCL and end office switching. CenturyTel
12 to an IXC would be able to bill the tandem charges.

13 MR. HENDERSON: Okay. Let's go to the next
14 drawing.

15 MR. SIMSHAW: This is Mr. Simshaw again.
16 Our drawing depicts -- and, again, we did not realize that
17 there was any assumption that there was a CLEC involved.
18 These would be two CenturyTel customers, and the
19 CenturyTel customer in Branson has an FX circuit back to
20 Ava. So they would have an Ava telephone number and have
21 local service as if they were in Ava.

22 The important thing to note is that there
23 is a dedicated -- they would be charged by CenturyTel a
24 dedicated FX service from their location in Branson back
25 to the Ava central office, and that's how CenturyTel would

1 be compensated for the circuit from Ava to Branson.

2 QUESTIONS BY MR. HENDERSON:

3 Q. Okay. Matt, or Mr. Kohly?

4 (Answers by Mr. Kohly.)

5 A. Mine again assumed a CLEC. And the call
6 was from an Ava FX line located in Branson to Ava. So the
7 call would flow -- again, I'm assuming Socket's providing
8 the FX service to the customer located in Branson. The
9 call would get passed to the Socket at its switch. Socket
10 would carry that call back to -- or within its
11 collocation, Socket would carry that call to its switch,
12 back to Branson, and then the call would be routed to Ava.

13 Q. The little box I see up there, is that your
14 switch in St. Louis; is that right?

15 A. Yes, it is.

16 Q. Now, the phone in Ava -- or in Branson will
17 have Ava dial tone, right?

18 A. It will have an Ava NPA/NXX. Dial tone
19 will be provided by our switch in St. Louis, just as every
20 customer in all these examples is.

21 Q. Okay. How would the transport between
22 Branson and Ava, how is that covered cost-wise? And is
23 that another two-wire circuit?

24 A. If this were calling a customer, a
25 CenturyTel customer in Ava, we would hand it to CenturyTel

1 at our POI in Branson, and they would carry it back. In
2 all of these drawings I've done, I've assumed there is a
3 point of interconnection in Branson. All traffic
4 exchanged between Socket and CenturyTel would occur at
5 that POI.

6 Q. And all traffic between Ava and Branson is
7 whose responsibility?

8 A. It's each carrier's responsibility to get
9 that traffic to the POI. We're responsible to get the
10 traffic on our side of the POI to the POI. They're
11 responsible on their side.

12 Q. So all the traffic, in all the diagrams
13 we've listed there is the responsibility of CenturyTel's
14 if you've got a POI located in Branson?

15 A. Yes. We're responsible on our side of the
16 POI. They're responsible on their side of the POI.

17 Q. If that POI is located in Ava, who's
18 responsible for that?

19 A. That would shift. They would be
20 responsible for delivering it to Ava. We would be
21 responsible from Ava on our side.

22 Q. That is also the traffic we've talked about
23 whether it reaches an OC3 level or whether it is a DS1
24 level, whether another POI would be required?

25 A. So assuming we had a POI in Branson and

1 traffic hit whatever threshold you choose, that would
2 trigger a POI in Ava.

3 Q. Let's look at the next drawing. If I'm
4 looking at it correctly, it shows me a computer modem that
5 dials into the Ava exchange, and I can't read the box
6 going over -- I guess that's an ISP. Then it comes out of
7 there and directs to an ISP?

8 (Answers by Mr. Simshaw.)

9 A. That's correct. The assumption was that
10 you had a customer with a computer and ISP service located
11 in Ava, and that the ISP was also located in Ava. So what
12 the flow shows is that once the computer modem dialed the
13 dial-up number, it would travel over the loop serving that
14 subscriber to the central office in Ava, and then over a
15 local service to the ISP in Ava. And then the ISP would
16 convert it to Internet protocol and ship it out to the
17 worldwide web from there. There's no -- how they get it
18 to the web once it's converted to IP, it may go to
19 Branson, it may go any number of ways.

20 Q. But there would be transport out of there?

21 A. In an IP environment. It would not be any
22 kind of transport that is covered by tariff or
23 interconnect agreements. That's in an IP room.

24 Q. Okay. Mr. Kohly?

25 (Answers by Mr. Kohly.)

1 A. This was -- I want to apologize for my
2 computer drawing. Everybody made fun of me for that.
3 This is a CenturyTel end user placing a call to an Ava
4 ISP, where the ISP is located in Ava and Socket is serving
5 the ISP. A call will be placed -- again, I've assumed the
6 POI in Branson -- will be carried to the POI in Branson,
7 will then be routed to Socket's switch in St. Louis,
8 carried back to Branson down a loop, then to the ISP.
9 CenturyTel is responsible for carrying that call to the
10 location of the POI in Branson. We do the rest.

11 Q. You said it was a CenturyTel customer
12 dialing an ISP that was Socket? Is that what you said?

13 A. I'm assuming in this example that Socket is
14 serving as the ISP.

15 Q. And when that call goes into St. Louis, it
16 goes into your switch --

17 A. Correct.

18 Q. -- correct?

19 Has that got identifying identifiers on it,
20 like CPN, things of that nature that you can record?

21 A. It was supposed to.

22 Q. And you record that records to bill back
23 CenturyTel for terminating access; is that correct?

24 A. Absolutely not. It would have an NPA/NXX
25 originating from a Branson number, terminating to a

1 Branson number. It would be bill and keep under our
2 proposed compensation.

3 Q. Okay. Let's look at the next one.

4 (Answers by Mr. Simshaw.)

5 A. This is actually the diagram in my
6 testimony.

7 Q. Excuse me. I didn't hear you.

8 A. I said, this is actually the diagram that's
9 in my testimony. It shows a customer in Ava who has a
10 computer modem and wants to dial up an ISP served by
11 Socket in St. Louis. The call would again go over the
12 local loop to the Ava central office. It would go from
13 the Ava central office to Branson. Then it would go from
14 Branson to the Socket switch in St. Louis. It would go
15 from the Socket switch to the ISP, and then the ISP would
16 convert it to Internet protocol and it would go out to the
17 Worldwide Web.

18 The only thing that's different from the
19 diagram in my testimony is I didn't have that last little
20 piece to the web in there. And then the point of
21 interconnection, depending upon which diagram you look at
22 and what testimony, would either be at the Branson switch,
23 which would cause CenturyTel to absorb the cost of the Ava
24 to Branson link, or the point of interconnection would be
25 at the Ava switch, which would cause Socket to absorb the

1 cost of the link from Ava to Branson.

2 Q. That's basically the same as yours, isn't
3 it, Matt?

4 (Answers by Mr. Kohly.)

5 A. My corresponding -- using the same
6 scenario, the customer would place a call, the call would
7 be handed to Socket in Branson. Socket would carry the
8 call from Branson to its switch. At the switch the call
9 would be routed to the ISP, traffic could enter the ISP.
10 CenturyTel's marginal cost of that is no different than
11 where you put the ISP. They still have to deliver that
12 traffic to the POI, just as it's our responsibility to
13 take it from the POI to the customer.

14 MR. SIMSHAW: Is your Honor going to allow
15 editorializing on the document?

16 JUDGE JONES: I'll certainly think about
17 that since it's now been put to me.

18 MR. HENDERSON: Can we put both of them up
19 there, the last one that you just put up?

20 JUDGE JONES: Mr. Simshaw, is there
21 something in particular you wanted to say?

22 MR. SIMSHAW: I wanted to respond to
23 Mr. Kohly's characterization of the cost and who's
24 providing what and who's bearing the cost.

25 JUDGE JONES: I take it you disagree with

1 what he said?

2 MR. SIMSHAW: I do. I mean, if the point
3 of interconnection is in Branson, then CenturyTel's
4 bearing the cost of carrying it from Ava to Branson on the
5 other 60 exchanges where this might be happening to
6 Branson. Those are all costs. And meanwhile Socket gets
7 100 percent of the revenue.

8 This is a service provided at an ISP in St.
9 Louis. It's an expanded calling service, you can see
10 that. It's described on their website. They market it to
11 the ISPs that they can remove their Internet equipment
12 from Ava, recentralize it in St. Louis, expand the calling
13 area, and Socket will sell them that service, they will
14 collect revenue from them, and CenturyTel will get no
15 additional revenue but it will absorb all these costs from
16 all these links to Branson.

17 MR. KOHLY: May I say in response, I do not
18 know if you want to get into that or not.

19 JUDGE JONES: Go ahead and respond, in all
20 fairness.

21 MR. KOHLY: Under what we've proposed, each
22 party is responsible for the cost on their side of the
23 POI. Mr. Simshaw is assuming the call would not have
24 taken place. They do derive revenue from their customers'
25 purchasing ability to make and receive calls. I can tell

1 you you derive revenue from me as a CenturyTel customer.
2 I would cancel my landline if I couldn't reach an ISP. So
3 you do derive revenue from us. I disagree with your
4 characterization.

5 MR. SIMSHAW: Centurytel -- your Honor, may
6 I, just real quick?

7 JUDGE JONES: Go ahead.

8 MR. SIMSHAW: CenturyTel derives revenue
9 from its local rates from local calls. That's Ava to Ava.
10 We don't collect extra from our Ava customers when they
11 start calling this ISP in St. Louis. We have no
12 additional revenue when Socket rolls out this service.

13 JUDGE JONES: And, Mr. Kohly, you think
14 they do have additional revenue?

15 MR. KOHLY: Not additional revenue. They
16 don't have additional cost. They are responsible for the
17 facilities on their side of the POI. If the POI is in
18 Branson, all traffic is exchanged in Branson. It doesn't
19 matter if it goes back to Branson -- or goes back to Ava.
20 It doesn't matter if it goes to Branson. All traffic is
21 exchanged at that POI. We're responsible for it on our
22 side of the POI, they on theirs.

23 JUDGE JONES: And, Mr. Simshaw, you say you
24 do have more costs?

25 MR. SIMSHAW: Yes. Those facilities

1 between Ava and Branson are instantly going to have to be
2 doubled or up to ten times before they will begin --
3 before Socket would begin to take responsibility at an OC3
4 level.

5 JUDGE JONES: Oh, so you're saying the
6 additional cost is not the transport but the amount of
7 traffic that has to --

8 MR. SIMSHAW: It is the transport between
9 Ava and Branson. And as Mr. Davis can testify, adding or
10 augmenting those existing circuits between Ava and Branson
11 is quite costly.

12 MR. HENDERSON: In several of the
13 testimonies that I've read, it mentioned arbitrage. Okay.
14 Whoever wants to take a shot at it, on that diagram that I
15 see up there, show us arbitrage and how it can happen.

16 MR. SIMSHAW: If I may, the arbitrage that
17 occurs is having this call when a customer in Ava dials a
18 number and have that call answered in St. Louis and claim
19 that it's local. There is nothing local about a call from
20 Ava to St. Louis. Just because Socket gave that ISP
21 customer in St. Louis an Ava telephone number doesn't
22 eliminate that, quote, long distance. There's a long
23 distance involved here and it generates cost. And that's
24 why the ISPs see the value in it. That's how they're
25 arbitraging.

1 The CLEC and the ISP together take the
2 opportunity to claim that this is local, just because it's
3 a local telephone number. When it crosses, it not only
4 leaves the Ava local calling area, it crosses several
5 other local calling areas to get to St. Louis.

6 That's not a local call, yet Socket is
7 seeking to exchange that traffic under a definition they
8 create called local interconnection traffic. Again,
9 there's nothing local about it. That's the arbitrage.

10 MR. KOHLY: And again from my perspective,
11 I see no arbitrage. The arbitrage the FCC spoke to was
12 recip comp. That is obviously not involved in what we are
13 proposing. CenturyTel is merely delivering that traffic
14 to the point of interconnection, where it is responsible
15 for delivering all of this traffic to that point of
16 interconnection, just as we are. There is no arbitrage.

17 MR. SIMSHAW: The arbitrage as explained by
18 counsel for Socket addressed in the ISP Remand Order had
19 to do with recip comp payments. This arbitrage that I
20 have described has to do with the transport costs. It's
21 completely different and more critical and a more
22 expensive form of arbitrage.

23 MR. MILLER: If I may, your Honor?

24 JUDGE JONES: You may, Mr. Miller. I'm
25 sorry.

1 MR. MILLER: From an economic perspective,
2 arbitrage is when two similar items sell for different
3 prices in different markets, so that people can gain an
4 advantage by going from one market to another market, and
5 I think this would qualify as arbitrage because one way --
6 if you have an ISP in St. Louis, one way to achieve
7 serving a customer in Ava would be for the customer to
8 have to call St. Louis through an FX arrangement or some
9 arrangement, which would cost money.

10 This arrangement achieves the same result,
11 so it's the same product, but there is no incremental cost
12 to the ISP, and that's an economic advantage that the CLEC
13 can take advantage of.

14 But there is an economic cost to CenturyTel
15 and society, because these facilities that connect Ava to
16 Branson cost money and they have finite capacity. So when
17 you increase the traffic, especially Internet traffic
18 because people get on the Internet and stay a long time,
19 much longer than they would talk on the phone to another
20 person, checking their mail and doing all the things you
21 do on the Internet, that uses up capacity. And that means
22 first that CenturyTel's other customers might run into
23 congestion, making CenturyTel have to spend money to add
24 capacity between Ava and Branson.

25 So you're incurring and imposing an

1 economic cost on CenturyTel and ultimately on its
2 customers, and the result is two products, essentially the
3 same, have a different cost in the marketplace, and that
4 is, from an economic perspective, a disorganization
5 because what's supposed to happen in a market is the
6 trading causes similar products to have the same price.
7 And if you don't have that, you have economic
8 inefficiency.

9 And I heard Mr. Turner earlier today
10 talking about economic inefficiency being a bad thing. I
11 saw in the FCC's report that we've been talking about
12 economic inefficiency is a bad thing. I think this
13 represents economic inefficiency.

14 MR. KOHLY: May I respond?

15 JUDGE JONES: Mr. Kohly, you may respond.

16 MR. KOHLY: May I walk over there? I'll
17 talk as loud as I can.

18 JUDGE JONES: You can. Use the mic at
19 Mr. Simshaw's table.

20 MR. KOHLY: Can you lower it so we can see
21 both examples?

22 This is the example of the POI in Branson
23 which we are entitled to. This is an example of Socket
24 serving an ISP located in Ava. CenturyTel carries that
25 call from Ava to our POI in Branson. There's where --

1 there's their cost responsibility, right? Down here
2 (indicating), same situation. They carry the call to the
3 POI in Branson. The same cost is incurred.

4 And finally I guess I'll throw this up.
5 CenturyTel provides this service, the same service to
6 ISPs. They can market to them also. That's the test
7 calling we did at Socket where you have calls from Birch
8 Tree, Eminence and Winona terminating at a terminal server
9 based on the address up there we believe is in Van Buren
10 routed to Columbia where it hits the Internet cloud. They
11 provide the same service. Under either scenario, their
12 marginal cost does not vary.

13 MR. SIMSHAW: Your Honor, with specific
14 regard to an example I heard this morning, and it's in a
15 footnote in Mr. Kohly's rebuttal testimony, I saw that
16 footnote so I checked into it.

17 And indeed, the CenturyTel Internet
18 company, and it's an affiliated company that provides
19 Internet service, does have a situation in -- where they
20 aggregate traffic in Van Buren from other exchanges in
21 other local calling areas. I believe it's Birch Tree and
22 Eminence and Winona are the ones that are mentioned. And
23 that could be a form of FX. If it's going to be
24 legitimate FX, they have to be paying for a connection
25 from Van Buren back to these local calling areas.

1 I checked into that, and they, in fact, do.
2 They pay a per mileage charge in order to have that
3 presence in Birch Tree and Winona and Eminence. Under the
4 example we're looking at, and also in response to
5 Mr. Kohly, they would never serve an ISP that actually was
6 physically located in Ava.

7 MR. KOHLY: You asked for the calling
8 schematics. I addressed it. In either scenario the
9 marginal cost is the same.

10 JUDGE JONES: Okay. I'm going to just stop
11 everyone right there. It's obvious that you-all can go
12 back and forth on this issue. You've gone back and forth
13 for months because you haven't resolved it, and it's a
14 good time to take a break. We're coming to recross here.
15 The issue can be further explored in recross, and then
16 again on redirect, if you'd like, but this is just getting
17 to be ridiculous.

18 MR. KOHLY: I apologize.

19 JUDGE JONES: It's no one's fault. It's
20 just that you-all have different theories, and I
21 understand that. So with that, then, we'll go off the
22 record.

23 (A BREAK WAS TAKEN.)

24 JUDGE JONES: Okay. We can go ahead and go
25 back on the record. We'll move to -- I believe we're on

1 recross of CenturyTel's witnesses.

2 MR. MAGNESS: Your Honor, I had just a -- I
3 think, probably one question of recross, and then since
4 Mr. Kohly was called up, I had a little bit of redirect.

5 JUDGE JONES: That's fine. Make sure your
6 microphone's on.

7 Okay. I can hear you now.

8 MR. MAGNESS: The question is for
9 Dr. Avera.

10 RE CROSS-EXAMINATION BY MR. MAGNESS:

11 Q. When you were discussing arbitrage, you
12 referenced the longer holding times associated with ISP
13 traffic?

14 (Answers by Dr. Avera.)

15 A. Yes.

16 Q. As traffic -- let's say the traffic on the
17 line that was ISP traffic, would you expect shorter
18 holding times for non-ISP traffic, for example, voice
19 traffic?

20 A. Well, I think as a general principle, voice
21 conversations are shorter than Internet periods, and I
22 think I've seen empirical data that suggests that to be
23 the case as a fact.

24 Q. And if a carrier was to move away from
25 provision of serving ISPs, more into the voice service

1 provision model, you would expect the holding times you'd
2 see with them to decrease because of that reason?

3 A. Well, I think the average holding time, if
4 they're adding customers, their total use of the network
5 might increase, but the average period of network
6 engagement would probably go down per call.

7 MR. MAGNESS: Okay. Thank you.

8 JUDGE JONES: Did you have questions for
9 Mr. Kohly?

10 MR. MAGNESS: Yes, sir. I can do that now
11 if you'd like.

12 JUDGE JONES: Yeah, I'd rather you go ahead
13 and do it now.

14 R. MATTHEW KOHLY testified as follows:

15 FURTHER REDIRECT EXAMINATION BY MR. MAGNESS:

16 Q. Mr. Kohly, there were some questions from
17 the Bench concerning the diagrams that went a lot to
18 Socket's provision of services to ISPs. How would you
19 characterize what is the situation currently with Socket's
20 service ISPs?

21 (Answers by Mr. Kohly.)

22 A. I think it needs to be put in perspective.
23 The dial-up Internet market is dying. Those minutes are
24 dropping. Socket, instead, is aggressively marketing its
25 voice products throughout Missouri. That is a market

1 that's expanding. If you look at it, we had our first
2 voice customer, according to CenturyTel's testimony, in
3 February. The traffic in Columbia is already 65/35. So
4 as you can see, our originating minutes are growing. Our
5 terminating is tanking.

6 Q. That's 65/35 what to what?

7 A. 35 percent originating, 65 percent
8 terminating.

9 Q. And ISP traffic would be terminating?

10 A. ISP traffic would be 100 percent
11 terminating. So I think the focus, this whole ISP issue
12 needs to be put in perspective. This agreement is going
13 to cover more than ISP. It's going to cover our
14 fastest-growing segment of our business.

15 Q. And is this decline in dial-up ISP traffic
16 an industry-wide phenomenon?

17 A. Yes, it is.

18 Q. Why is that?

19 A. People are converting from dial-up Internet
20 to broadband access. So as they do that, they obviously
21 leave -- are going to quit calling the Internet.

22 Q. So the nature of the connection is
23 different?

24 A. Yes. If they convert to broadband, they
25 would have a dedicated 24-hour-a-day, 7-day-a-week

1 connection. They would not be placing dialed calls.

2 Q. When CenturyTel received competitive
3 classification for Columbia, did it identify Socket as one
4 of its, I suppose, non-ISP competitors?

5 A. Yes, it did.

6 Q. And explain that.

7 A. In order to qualify for competitive
8 classification, CenturyTel had to identify one CLEC that
9 was serving voice customers. They identified Socket.

10 MR. MAGNESS: That's all I have, your
11 Honor.

12 JUDGE JONES: Thank you. At this time
13 we'll move on to redirect.

14 REDIRECT EXAMINATION BY MR. HARTLEY:

15 Q. Ms. Smith, I want to start with you. You
16 were on the panel when Ms. Dietrich asked Mr. Miller some
17 questions about some notification of changes in the
18 CenturyTel service agreement; is that right?

19 (Answers by Ms. Smith.)

20 A. Yes, I was.

21 Q. Have the parties addressed this in the
22 context --

23 MR. MAGNESS: Your Honor, I'm sorry. I'd
24 object to -- this witness was never asked a question on
25 cross-examination, recross, anywhere else, and now we're

1 throwing in when there was no -- there were no questions
2 directed to her. I don't understand how she can be
3 subject to redirect.

4 MR. HARTLEY: May I explain?

5 JUDGE JONES: You can explain. I take it
6 that would be an offer of proof?

7 MR. HARTLEY: Certainly.

8 JUDGE JONES: Okay.

9 MR. HARTLEY: Ms. Dietrich asked Mr. Miller
10 some specific questions about whether CenturyTel would
11 advise or notify Socket when there are changes in
12 CenturyTel's Service Guide. This panel deals only with
13 Article 5. Mr. Miller was not aware that Ms. Smith, who
14 addresses this issue in a different panel in a different
15 context, is aware of the parties' negotiations and
16 agreement on this point in another context.

17 So I was -- we can certainly take it up
18 tomorrow or Thursday when another panel comes up, but to
19 clarify the questions about whether we would notify Socket
20 of changes to the Service Guide, I thought we'd just
21 address it now.

22 JUDGE JONES: Was Mr. Miller able to answer
23 the question?

24 MR. HARTLEY: He was not. He said he
25 wasn't familiar with that area, he'd have to go back and

1 study it.

2 JUDGE JONES: Then that means there was no
3 answer.

4 MR. HARTLEY: Well, that was the answer,
5 that he didn't know, but Ms. Smith behind him did.

6 JUDGE JONES: So there being no answer,
7 what are you redirecting?

8 MR. HARTLEY: To get to the answer
9 Ms. Dietrich was seeking.

10 JUDGE JONES: We'll get to it later on.
11 The objection, in other words, is sustained.

12 BY MR. HARTLEY:

13 Q. Mr. Simshaw?

14 (Answers by Mr. Simshaw.)

15 A. Yes.

16 Q. You were asked a series of questions about
17 the trunking arrangements, the trunks coming out of Ava
18 and Branson and feasibility on the POI issue. Do you
19 recall that testimony?

20 A. Yes.

21 Q. With respect to that arrangement where you
22 have the facility from Ava to Branson then to St. Louis,
23 who bears the cost on each element of that leg?

24 A. That will depend on where the point of
25 interconnection is established.

1 Q. Going with the hypothetical, assuming the
2 POI remains in Branson.

3 A. If it remains in Branson, then Socket would
4 absorb the cost between their switch in St. Louis and that
5 point of interconnection under the terms of the agreement,
6 and as they should. I mean, they made the decision to not
7 have a switch in Branson, to instead have the switch in
8 St. Louis, and that's fine. That's their prerogative.
9 The tradeoff is, you have fewer switches but you have more
10 transport costs.

11 So on the section from Branson to
12 St. Louis, Socket would absorb that, but on the section
13 from -- using Ava as an example -- from Branson on to Ava,
14 if the point of interconnection is in Branson, then
15 CenturyTel would absorb that cost and would have to double
16 the facilities or triple them or whatever is necessary.

17 Then the other thing to keep in mind is
18 that's just Ava. There's potentially 50 or 60 other end
19 offices behind Branson where, as long as Socket chose to
20 give telephone numbers out of those local calling areas to
21 the ISP in St. Louis, not only would CenturyTel have to
22 enhance the facilities from Ava to Branson, but from
23 Kimberling City to Branson, from Gainesville to Branson,
24 50 or 60 times over.

25 Meanwhile, the portion from Branson to

1 St. Louis that Socket is absorbing won't change, other
2 than the already thick pipe might get a little thicker.

3 Q. Do you have any idea of the relative cost
4 of between Socket and CenturyTel, between Socket paying
5 for that one I think you said relatively fat pipe versus
6 CenturyTel's 50 or 60 relatively shorter, thinner pieces?

7 A. Well, generally, economics being what they
8 are, the high-volume route from Branson to St. Louis will
9 have a much lower per unit cost than the thinner routes in
10 the rural areas back to Branson. So there's that
11 difference. So you can't just compare the relative
12 mileage and draw a conclusion. You've got to take that
13 into consideration as well.

14 I would say generally the cost from Branson
15 to St. Louis is going to be much, much less than
16 establishing all these other remote connections back to
17 Branson.

18 Q. What about that portion once you get to the
19 switch in St. Louis to the ISP, who's responsible for that
20 cost of -- the cost of that facility?

21 A. Well, that's between Socket and the ISP
22 that they're selling this service to. This other ISP pays
23 them for that connection. I suspect those -- their own
24 ISP, their own affiliated ISP's probably collocated with
25 them in their switch in St. Louis, and to the extent

1 they've sold the service to other ISPs as they seek to do,
2 based on the information on their website, it's also
3 either going to be collocated or very close.

4 So there's not a lot of facilities involved
5 there, but they do charge their ISP for that. And I also
6 believe that when they charge the ISP, it's not just for
7 that little connection between their switch and the ISP's
8 location in St. Louis, but it's for this expanded local
9 calling, when they tell them they're going to give them
10 Ava and Kimberling City and everywhere else in the
11 hinterlands.

12 Q. Now, you heard both in response to Staff
13 clarifying questions and earlier in Mr. Kohly's testimony
14 again refer to this Van Buren situation?

15 A. Yes.

16 Q. Can you distinguish what's happened with
17 the CenturyTel ISP affiliate in Van Buren versus what
18 Socket is doing here?

19 A. Sure. In both instances you've got an ISP
20 that's being given phone numbers for a local calling area
21 where they're not located physically. In the Socket
22 situation, it's St. Louis, and actually could be back to
23 the -- let's use Birch Tree, and there's a cost. There
24 still has to be a connection so that Birch Tree customers
25 can call the ISP served by Socket in St. Louis.

1 The example that Mr. Kohly identified was
2 that the CenturyTel Internet company, which was -- had a
3 presence in Van Buren also was getting phone numbers for
4 Birch Tree -- or service, local service from Birch Tree.
5 The difference is that the CenturyTel Internet company was
6 specifically paying CenturyTel ILEC to establish that
7 connection back to the local calling area in Birch Tree.
8 The difference is exactly that.

9 In both instances, CenturyTel ends up
10 paying the last part of the connection from -- in one
11 instance, from Branson to Ava or could be potentially over
12 100 of those examples. And -- but in both instances
13 CenturyTel is paying that connection back to the local --
14 providing that connection back to the local calling area.

15 In the CenturyTel service that Mr. Kohly
16 mentions and the CenturyTel ISP, the CenturyTel ISP is
17 paying for that connection back to the local calling area.
18 In the virtual NXX situation that Socket has set up,
19 neither Socket nor the ISP are paying for that connection
20 that CenturyTel is providing back to the local calling
21 area.

22 Q. I think it was in response to one of
23 Mr. McKinnie's questions about FX and FX-like services,
24 would one or the other of those instances fall into the
25 FX, as you traditionally explained it, or the FX-like

1 scenario?

2 A. Yes. Where I draw the line is, in both
3 instances they achieve local service from an exchange
4 they're not in. True FX service, they pay to have a
5 presence back in that local calling area. They pay for
6 the connections necessary, under FX -- legitimate FX
7 service.

8 Under service that's not like true FX, like
9 virtue NXX dial-up ISP, that customer expects to get a
10 presence back to that local calling area, but they don't
11 pay for the facilities necessary to make that possible.

12 MR. HARTLEY: We'll pass the panel, your
13 Honor.

14 JUDGE JONES: If we don't have any
15 redirect, we're done with this panel. We should move
16 right into the next panel, those issues having to do with
17 pricing, UNEs and resale.

18 You may go forward with your opening
19 statement.

20 MR. MAGNESS: Thank you, your Honor. As
21 your Honor noted, this panel we divided up to include
22 issues about rates and costs, UNEs and resale issues.
23 I'll note on the UNE and resale issues, as I noted in the
24 first opening statement, there are no exemptions or
25 disqualifications or any reason why the federal rules

1 should not apply to CenturyTel as they apply to other
2 ILECs on resale and UNEs.

3 The unbundled network element issues, I
4 note in CenturyTel's exchanges there is no delisting of
5 those UNEs for loop and transport, DS1 loops being, as
6 you've heard already, one of the big issues for Socket.
7 And the treatment that Socket seeks in the few issues that
8 are remaining, this is an area, and UNE's often
9 controversial, where we have been able to settle quite a
10 bit. The few issues that are remaining weren't really
11 asking for anything different than what the Commission did
12 on similar issues or the same issues in the recent M2A
13 arbitration.

14 But this is an area where CenturyTel's
15 assertion of specialness does have a direct impact in that
16 CenturyTel says it should influence their rates, the level
17 of their rates, the level of their cost of capital, and
18 the various factors and inputs that go into cost studies
19 establishing TELRIC rates. And that is why I want to
20 address that issue here.

21 As I noted, there is no legal --
22 permissibly legal reason to exempt CenturyTel from the
23 obligations under Section 251. I may think I'm different
24 and I may not want to pay my taxes next week, but unless I
25 can come up with a legally cognizable reason why I get out

1 of that, those are the obligations, and there isn't such
2 an exemption or release for CenturyTel.

3 So as I've said, it is not relevant who
4 they are. But then we do run into the question,
5 particularly in the testimony of Dr. Avera, who are they?
6 They self identify as a small rural provider serving
7 scattered service territories around the country. That is
8 certainly what they're telling the Commission.

9 They tell Wall Street that they are a
10 sophisticated provider of telecommunications services in
11 bundles, integrated packages that are increasing
12 penetration all the time. They tell Wall Street that they
13 are financially healthy. In fact, in Mr. Kohly's rebuttal
14 it notes that CenturyTel just weeks ago announced a
15 \$1 billion stock buy-back that it plans to do in the year
16 2006. That is cash that is going straight back -- free
17 cash going straight back to the shareholders, essentially,
18 as part of a stock buy-back.

19 So this is not a financially strapped or
20 unhealthy company. This is a company that was noted in
21 the last panel has obtained competitive classification in
22 a number of its exchanges here in Missouri and is serving
23 areas of the state that are increasingly attractive
24 markets for business opportunities generally. And this
25 gets to a point in the theory of specialness that is

1 troubling.

2 CenturyTel asserts that there are
3 obligations that it does not want to meet, contract
4 provisions that it will not agree to because Socket cannot
5 demonstrate that there's very much competition. For
6 example, why we should go to the expense of buying an
7 operational support system if Socket's the only company
8 that's going to use it. And this is where the Catch 22
9 is.

10 CLECs want to enter these service
11 territories, and there's testimony to that effect. Socket
12 most certainly does or we wouldn't be here, and wants to
13 enter it to provide voice and data services. It's
14 difficult to get in and provide those competitive services
15 efficiently, however, if you're going into a market area
16 of an ILEC that doesn't have the operational support
17 systems, for example, or doesn't have reasonable rates,
18 terms and conditions.

19 And I bring that up here because rates are
20 an extremely important issue to that equation. So to say
21 that a company should be excused from reasonable rates,
22 terms and conditions because there aren't really enough
23 CLECs there to justify going to the trouble is going to be
24 a self-fulfilling prophecy.

25 And this is being -- this is the testimony

1 even in areas where CenturyTel has made the claims that
2 give it competitive classification under state law, and
3 yet are saying that there's hardly enough here to justify
4 bothering with competition under the federal standards.

5 What is special, what is rather
6 extraordinary is the cost data, the cost studies that have
7 been presented in this case. Socket, I think it's in
8 Mr. Kohly's testimony, during the negotiations process
9 requested cost support for CenturyTel's rate proposals for
10 months. We received the CenturyTel cost studies the
11 evening -- fairly late in the evening -- unfortunately, I
12 was in my office when the 19 e-mails came in -- the
13 evening of March 15th, a Wednesday. Direct testimony was
14 due the following Tuesday.

15 As this Commission knows, that is not
16 enough time to review a cost study to set a TELRIC rate.
17 This Commission has been through these rate proceedings
18 and has done them in a way that has provided sufficient
19 time to review these. It was nearly impossible even to
20 get a sense of what was in these cost studies, much less
21 do an intelligent analysis of them.

22 Mr. Turner, who is here to testify and has
23 testified before in Missouri cost proceedings, analyzed
24 these as quickly as possible and as thoroughly as
25 possible, and what Socket discovered and the evidence

1 shows is that these cost studies are insufficient to be
2 the basis for the rates, that the cost studies generate
3 rates that are simply astronomical compared to what the
4 Commission has seen from any ILEC for similar services.

5 The justification for the higher rates in
6 Mr. Avera's testimony actually really only applies to the
7 recurring rates, and let me note that the recurring rates
8 for the most part are agreed to, with the exception of DS1
9 and DS3 loops, but the rates that are generated for those
10 DS1 and DS3 loops are extraordinary. And as Mr. Turner
11 can tell you, and I will certainly let him deal with the
12 facts of the situation, there is something amiss with
13 these cost studies if they're generating those sort of
14 outcomes.

15 In addition, these cost studies simply
16 don't meet the standard that the FCC has required for
17 TELRIC studies, and there's debate in the testimony about,
18 are they transparent, are they verifiable to the standards
19 that the FCC requires. And I'll direct you to
20 Mr. Turner's rebuttal at page 27, beginning at page 27,
21 where he lists in detail any number of examples of how and
22 why these cost studies are not transparent and are not
23 verifiable, and as pointed out in his rebuttal testimony,
24 a number of the problems with the studies.

25 So what is the Commission to do? Socket

1 has made a recommendation in our testimony, and I want to
2 summarize real briefly, and unfortunately, that summary's
3 at my desk. Let me get it real quickly, because I don't
4 want to misstate.

5 As I noted, for most recurring rates, the
6 parties have agreed to use the recurring rates that are in
7 I'll call it the underlying GTE agreement; that is the
8 GTE/AT&T agreement that the parties have been operating
9 under. So for most recurring rates, the GTE rates take a
10 lot of them off the table. And those rates were
11 arbitrated and approved by the Commission in the prior
12 docket when that interconnection agreement was originally
13 approved. They were subject to a thorough cost study
14 review.

15 As to DS1 and DS3 loops, Mr. Turner
16 explains in his rebuttal that he, after receiving these
17 CenturyTel cost studies, made the effort to see if there
18 was a way that he could restate them based on the very
19 limited information we have with, as a practical matter,
20 no significant opportunity for discovery or getting
21 additional data as one normally would in a full-blown cost
22 proceeding, but his recommendation is that those be
23 restated incorporating the four-wire analog loop rate that
24 was used in the GTE cost studies.

25 For DS3 loops, Mr. Turner can explain that

1 such an adjustment simply did not appear to be possible or
2 practical as to the DS3 loops and he has proposed a rate
3 that works off of CenturyTel's own special access tariff
4 to set a DS3 loop rate for the time being.

5 For the nonrecurring charges, in the old
6 GTE/AT&T agreement, when the Commission arbitrated that
7 case, it after review and vetting approved a set of
8 recurring rates. Those are the recurring rates that we
9 still agree to, for the most part. It did not approve the
10 nonrecurring rates. In fact, it did not permit GTE to
11 charge them. And while those, as CenturyTel points out,
12 those rates have been incorporated in some negotiated
13 agreements which have been put before the Commission for
14 approval on a negotiated agreement basis, they were never
15 approved in an arbitrated contested proceeding such as
16 this one or the one that GTE went through before.

17 So for nonrecurring rates, Mr. Turner has
18 proposed utilizing the nonrecurring rates in the recently
19 arbitrated M2A, and in his testimony, particularly in
20 rebuttal, you will find discussions of why as to
21 nonrecurring rates the AT&T/SBC costs, there's no reason
22 to believe they should be tremendously different than they
23 would be for CenturyTel.

24 In addition, Socket has proposed in
25 Mr. Kohly's testimony a resale discount, a resale discount

1 for Spectra, one for CenturyTel. What we understand
2 CenturyTel to be proposing is DS3 and DS1 loop rates that
3 are derived from these new cost studies recently received,
4 and the nonrecurring charges they would ask the GTE
5 vintage nonrecurring charges. But as we contend, those
6 were not actually approved in an arbitrated case before
7 the Commission. And in addition, propose a resale
8 discount. Again, we have differences in our resale
9 discount as to those presented by Mr. Kohly.

10 So that is where we believe there is record
11 support, where there is support for using the previously
12 arbitrated rates, where there are not good rates going
13 forward, and believe that it presents a practical and
14 competitively meaningful set of rates going forward, where
15 CenturyTel would probably continue to experience the lack
16 of competition that it notes in its own testimony if the
17 rates it proposes go into effect. Thank you.

18 JUDGE JONES: Mr. Hartley?

19 MR. HARTLEY: Good afternoon.

20 JUDGE JONES: You may proceed.

21 MR. HARTLEY: Good afternoon. As
22 Mr. Magness said when he started, this panel is about
23 resale, UNEs and pricing. The resale should be pretty
24 easy. The parties have arrived at an agreement.
25 CenturyTel has decided with respect to the avoided cost

1 discount, there was a dispute as to whether it would apply
2 that to the nonrecurring charges. We've resolved that
3 dispute, so there's no need to address it. We still have
4 the dispute as to what the avoided cost discount is, but
5 its applicability to recurring charges in the resale
6 article is no longer at issue.

7 With respect to UNEs, we have a few
8 discrete issues that we touch on, but the primary thrust,
9 as you can tell from Mr. Magness' opening statement, is
10 the recurring and nonrecurring costs that will be
11 incorporated into the contract going forward. This theory
12 of specialness Mr. Magness refers to, it's a nice catch
13 phrase. It's a nice sound bite. It not what's going on
14 here.

15 There's a reason why so much of the
16 CenturyTel testimony discusses the fundamental differences
17 in the network's architecture and structure in the areas
18 served, and that's because the areas served, the
19 population densities, the facilities used, how those
20 facilities are architected and deployed fundamentally
21 impact the costs. If we have longer loop length, if we
22 have to deploy higher level electronics or stronger
23 electronics, there are differences that bleed into the
24 cost structure.

25 I mean, it's easy enough to say this theory

1 of specialness is just a way of getting out of
2 obligations, but like I told you this morning, CenturyTel
3 is not trying to avoid any obligation imposed on it.

4 Rather, it's saying, as you look at the
5 law, you look at the TELRIC methodology that the FCC
6 implemented in the First Report and Order, as the Wireless
7 Competition Bureau discussed at length in the Verizon
8 Virginia arbitration award, you look at what those are,
9 what the standards are, and you apply them to the facts.
10 You decide, what are the costs of CenturyTel? There is no
11 evidence on Socket's side that they've done that, that
12 they've explored any of these facets.

13 With respect to both the recurring and the
14 nonrecurring charges, you have competing proposals that
15 are in some respects pretty significantly different. In
16 looking at the Socket side first, you'll notice in both
17 direct and rebuttal a notable lack of support. It's well
18 and good to say, we're proposing the SBC nonrecurring
19 charges that were just approved by the Commission last
20 year. After all the Commission approved them, what's
21 wrong with them.

22 What Mr. Turner never does, though, is
23 explain why those charges are applicable or comparable to
24 what costs CenturyTel would incur. He talks about what
25 the four elements of a nonrecurring cost study are. You

1 list the tasks, you determine the probability of
2 occurrence of tasks, you evaluate task times, and then you
3 apply a labor rate to them. If you look at his testimony
4 closely, you see a lot of wiggle words in there.

5 In fact, Mr. Magness in opening said
6 there's no reason to believe they would be tremendously
7 different in terms of costs. That's a lot different than
8 saying the costs aren't different or the costs are
9 applicable. What is tremendously different? There's no
10 reason to believe.

11 Mr. Turner may assume that labor rates are
12 saying, he may assume the network engineers are equally
13 efficient. What you see is, their affirmative case is
14 built on a lot of assumptions, presumptions and
15 speculation. Mr. Turner says he was involved in the rate
16 proceedings that originally derived these nonrecurring
17 charges. He says he provided 37 restatements on the SBC
18 cost studies.

19 He never says -- he never goes the next
20 step to say, and here's why they're applicable here or
21 here's why the labor rates are going to be the same,
22 here's why the tasks that SBC must do apply here, here is
23 why probability of occurrence is the same. None of that's
24 there. He just assumes that they should be the same. And
25 I think that can be disproven at any number of levels, but

1 a good example would be something like dispatch time.

2 Now, it may take an SBC technician
3 15 minutes to get out to a remote terminal or DLC
4 provision someplace, out at a more urban exchange? What
5 happens when you take it to the rural center. What
6 happens when it's a two-hour transit time to get to a
7 remote terminal? Do you think that might significantly
8 impact the NRCs, it might increase when you apply the
9 labor rate to how often the probability of the occurrence
10 of that task is?

11 None of that is presented in Mr. Turner's
12 testimony, direct or rebuttal. Just a lot of speculation,
13 a lot of assumptions, a lot of it should be the same, it
14 ought to apply, after all the Commission approved them.
15 That's not the case.

16 Similar problems exist with respect to
17 their recurring studies -- or their recurring rate
18 proposals. There simply isn't any evidence that those
19 represent CenturyTel costs. That's what TELRIC requires.
20 You start with CenturyTel costs and you build in these
21 factors and you get to a rate. There isn't any evidence
22 from the Socket side.

23 So how can the Commission looking at the
24 evidence in the record adopt those rate proposals when
25 there isn't any evidentiary support? Simple answer is, it

1 can't. What you have instead is substantial evidence from
2 CenturyTel on each of the two different types of rates,
3 recurring and nonrecurring, as to why they should be
4 adopted here.

5 Starting first with the recurring rates,
6 CenturyTel conducted a cost study in limited time.
7 Mr. Magness is correct. We got them to him March 15th.
8 That was as quick as we could get it done.

9 What he didn't mention, to his credit, was
10 there's one piece we didn't get to him until later, but
11 we're working under strict deadlines. We got them to him.
12 That doesn't change the fact the underlying methodology
13 employed, the inputs used are forward-looking, reasonable,
14 and are consistent with TELRIC methodology.

15 For example, cost of capital, which
16 Mr. Magness mentions in opening statement. CenturyTel
17 adopts a very conservative 11.25 percent cost of capital,
18 which is the FCC prescribed default value. Dr. Avera has
19 substantial testimony in the case supporting a range up to
20 12.19 percent, I think. The Wireline Competition Bureau
21 approved 12.9 percent.

22 We could go much higher, given that the
23 FCC's guidance, you have to take into account the risks in
24 the marketplace. We've not done that. We've used a very
25 conservative estimate that mirrors what the FCC prescribed

1 as a default value and has used for years. There's no
2 evidence from Socket challenging that.

3 In Mr. Turner's direct testimony, all he
4 says is cost of capital is important. In his rebuttal
5 testimony he says Dr. Avera's testimony is pretty similar
6 to the CAPM study he did in Texas, and the Texas
7 Commission adopted a lower cost of capital. It doesn't go
8 in the direction of short-term debt, anything that
9 dictates a higher cost of capital here. There simply
10 isn't a credible challenge.

11 A similar thing happens on depreciation.
12 In costing out the UNEs, CenturyTel has to recover its
13 depreciation costs and depreciation rate. Part of that is
14 the, how long do we think competition's going to exist in
15 the network? How long do we think a finer facility, over
16 what period of time do we recover our costs?

17 Instead of using an aggressive assumption,
18 you know, with all these new fiber deployments, all this
19 new technology that are putting competitive pressures on
20 ILECs to deploy newer and greater facilities, and as
21 competition develops, instead of lower that we've gone
22 within the FCC range and selected from within what the
23 appropriate asset life should be. Again, there's no
24 challenge to this.

25 Mr. Magness mentions in his opening two of

1 the factors the FCC or the Wireline Competition Bureau
2 have discussed in terms of a TELRIC cost model,
3 transparency and verifiability. You'll see in
4 Mr. Turner's testimony a sub-- especially in his rebuttal,
5 a substantial amount of testimony challenging the
6 transparency of the data, referring to these hard-coated
7 inputs. There's nothing hard-coated about them.

8 When Mr. Buchan's up here testifying,
9 you'll ask him about that and he'll tell you we've got
10 these Excel workbooks. You go into any single one of
11 them, say you want a different fill factor, plug in the
12 fill factor, hit enter. It flows through that workbook
13 and changes the inputs. If you want to do cost of
14 capital, change the cost of capital, what you then do is
15 you take the bottom line result in the workbook and plug
16 it into the separate workbook that develops the ultimate
17 rate.

18 So you've got 19 workbooks in development,
19 various costs. You cut and paste those into the final
20 ones that develop the rates. There's no hard coating. If
21 the Commission decides for whatever reason to adjust
22 specific inputs, you could. You adjust inputs, flows
23 through, you get a new rate. It's completely transparent.

24 Similarly with the verifiability. Socket
25 could have verified the underlying inputs. Say they

1 challenge our fiber cost input. All they have to do is
2 call a major fiber provider, check out what the fiber
3 costs are, see if the data we're using in our cost studies
4 is commercially reasonable. Does this fit with what the
5 market profile demands? None of that was done.

6 CenturyTel also developed in the DS1 and
7 DS3 loop study forward-looking loop design. In many cases
8 what an ILEC does is they look at their existing network
9 and they say, this is forward-looking, so let's go with
10 it.

11 That's not what we did here. What we did
12 was we looked at an area and divided it up into five zones
13 based on the distance between serving wire center and the
14 end user, which are the assumptions that don't change in
15 TELRIC and forward-looking model, and for each of those
16 areas divide by loop length. We designed what the ideal
17 loop network would look like, and we tried that out.

18 In some cases, that happened to mirror what
19 we actually have now. In some cases it didn't. Doesn't
20 matter. We still priced out what a forward-looking
21 network's going to look at. Wayne Davis has spent many
22 years designing networks across the greater part of rural
23 America. He's spent years designing networks and
24 evaluating forward-looking technology in these cost
25 studies. He did the same thing, said what is

1 forward-looking both design and technology, modeled it in
2 the cost study and developed recurring rates.

3 Similarly, with the nonrecurring rates,
4 CenturyTel's default position is, as Mr. Magness mentioned
5 in his opening, just to go with the GTE-based UNE NRCs
6 that are in existing agreements. They are an adequate
7 proxy for our costs because CenturyTel of Missouri and
8 Spectra Communications Group acquired those underlying GTE
9 assets. So there's assumptions.

10 Mr. Hankins testifies in his direct about
11 how those are comparable cost-wise and how they would be
12 an adequate proxy, but that's assuming there's not this
13 electronic access to OSS implemented.

14 If that's required, then, of course,
15 CenturyTel is entitled to recover its costs, and in that
16 event, you've got to recover the costs someplace. We
17 decided to model it under the nonrecurring, and that's
18 where you get substantial disparity. Whether it's in the
19 nonrecurring or someplace else, the cost recovery we are
20 entitled to.

21 What you see from the testimony, what you
22 see from Socket as rebuttal is a lack of substance in the
23 challenges. It sounds real good when you've looked
24 through some of this testimony to have five pages of
25 bullet points challenging, hard coating and verifiability,

1 but look deeper. Look at the cost studies in the models,
2 ask the witnesses what's going on, what they did, and see
3 that we complied with TELRIC methodology and we developed
4 loop rates that are specific to CenturyTel of Missouri and
5 Spectra Communications Group in Missouri.

6 It's not good enough to just say, let's go
7 with the SBC rates, especially -- especially when there's
8 no evidence suggesting comparability or applicability of
9 those rates to the CenturyTel ILECs in Missouri.

10 Thank you.

11 JUDGE JONES: Okay. Socket can present its
12 witnesses on this issue.

13 MR. MAGNESS: Your Honor, Mr. Kohly's and
14 Mr. Turner's testimony is already admitted, so unless
15 there's any need to do anything else, I'll tender them for
16 cross.

17 JUDGE JONES: There isn't.
18 Cross-examination of Mr. Kohly and Mr. Turner?

19 R. MATTHEW KOHLY AND STEVE TURNER testified as follows:

20 CROSS-EXAMINATION BY MR. HARTLEY:

21 Q. Mr. Kohly, this morning we discussed that
22 CenturyTel asked discovery requests in this proceeding.
23 Do you recall that testimony?

24 (Answers by Mr. Kohly.)

25 A. Yes.

1 Q. And you were the responsible person
2 responding to the discovery requests?

3 A. Yes.

4 JUDGE JONES: You may need to pull the
5 microphone closer to you.

6 MR. KOHLY: Yes.

7 BY MR. HARTLEY:

8 Q. Do you still have those before you, by
9 chance? I think it was Exhibit 5. Can you turn your
10 attention to Data Request 3, please? Give you a moment to
11 look at that. Let me know when you've read that.

12 A. Yes.

13 Q. For each rate, please produce copies of all
14 studies, if any, that relate, mention or pertain to
15 Socket's proposed rate. Did I accurately read that?

16 A. Yes.

17 Q. Socket never produced any studies at all
18 related to either recurring or nonrecurring costs in this
19 proceeding; is that correct?

20 A. At the time this was asked, we didn't -- or
21 the time the response was due, we didn't have any.
22 Mr. Turner did present restated costs, restated rates in
23 his rebuttal testimony based on CenturyTel's. We've not
24 conducted our own.

25 Q. Other than the two-wire/four-wire material

1 discussed in Mr. Turner's rebuttal, you didn't produce any
2 cost studies?

3 A. Do you include resale analysis in that?

4 Q. For the recurring or nonrecurring rates.

5 A. No, we did not.

6 Q. Data Request 4, if you would. Let me know
7 when you've had an opportunity to read that.

8 A. Yes.

9 Q. For each rate, please produce a copy of all
10 work papers and supporting material documentation relating
11 to the studies relating, mentioning or pertaining to those
12 rates. Did I adequately read that?

13 A. Yes.

14 Q. Did Socket ever produce any work papers or
15 supporting material or documentation relating to either
16 recurring or nonrecurring rates it's producing in this
17 proceeding?

18 A. I did provide -- we did provide responses
19 to those. I don't have those in front of me.

20 Q. Were those cost studies relating to the
21 recurring rates you're proposing that were adopted for
22 SBC?

23 A. There was a -- yes, it related to the
24 initially proposed DS1 and DS3 loop studies. I don't know
25 that they're relevant now that we're proposing ones based

1 upon CenturyTel's restated cost studies.

2 Q. So there aren't any work papers or
3 supporting material relating to the rates you're now
4 proposing in the proceeding, with the exception of
5 Mr. Turner's rebuttal testimony?

6 A. Other than what we've already given you and
7 what's in Mr. Turner's testimony.

8 Q. What nonrecurring rates are you proposing
9 or the source of those? Not the specific numbers.

10 A. Mr. Turner describes that. Those are the
11 rates generally from the SBC agreement.

12 Q. Mr. Turner, you testified that you were
13 involved in the proceeding that originally developed those
14 rates; is that correct?

15 (Answers by Mr. Turner.)

16 A. The -- I was involved in the second one in
17 which there were 37 cost studies. There was actually --
18 as I recall, there were actually two proceedings that were
19 conducted by the Commission to establish nonrecurring
20 charges.

21 Q. So you provided, I think you said,
22 37 restated nonrecurring cost studies?

23 A. That's what I recall, yes.

24 Q. Did you provide any of those to Mr. Kohly
25 in this proceeding?

1 A. I did not, but I would also not be able to
2 because they are confidential to AT&T under the Protective
3 Order entered in the proceeding in which I did the study
4 analysis.

5 Q. In that proceeding, did you file both
6 proprietary and nonproprietary testimony?

7 A. I did.

8 Q. Did you provide Mr. Kohly the
9 nonproprietary testimony supporting those restated cost
10 studies?

11 A. No, I did not. I mean, the cost -- I'm
12 sorry. The cost studies wouldn't have any -- there
13 wouldn't be a nonproprietary version of the cost studies.

14 Q. Maybe I didn't ask the right question. Did
15 you ever provide Mr. Kohly your nonproprietary testimony
16 in support of the nonrecurring cost studies that you
17 restated?

18 A. No, I did not.

19 Q. In testifying in this proceeding on the
20 nonrecurring charges, did you look back at that material,
21 whether your nonproprietary testimony or otherwise?

22 A. No, I did not.

23 Q. You didn't look back at any of the task
24 time assumptions?

25 A. No, I did not.

1 Q. Any of the labor rates for SBC?

2 A. No, I did not.

3 Q. Didn't look at any of the probabilities of
4 occurrence?

5 A. No. Again, I would not -- wouldn't be
6 permitted to do that.

7 Q. With respect to the tasks for nonrecurring
8 charges, I think you testified in your direct that there's
9 a great deal of similarity for tasks within a central
10 office. Do you recall that?

11 A. Where are you looking perhaps?

12 Q. Page 56, line 17. I believe that runs
13 through page 57, line 2.

14 A. You're in the rebuttal?

15 Q. I thought I said direct. I may have
16 misstated.

17 A. There seems to be a difference in our page
18 numbers, but...

19 Q. This seems to happen to me all the time.

20 A. Can you just read the sentence that you're
21 looking at? I can probably get close to where you're at.

22 Q. It's right after you list the four
23 components of a nonrecurring cost study. The next
24 sentence, in my experience reviewing. You said there was
25 a great deal of similarity in the tasks that must be

1 performed.

2 A. Okay. I apologize.

3 Q. Are you with me now?

4 A. Yes, I am.

5 Q. You didn't compare any of the SBC tasks
6 themselves to CenturyTel tasks that would be performed
7 within a central office, did you?

8 A. Well, just to put this in context,
9 CenturyTel did not file a cost study, and so I wouldn't
10 have a listing of tasks there, and -- but in the context
11 of this discussion here, is that I have reviewed and
12 restated nonrecurring cost studies for several different
13 incumbent companies. And so my experience has been, is
14 that across many different companies the listings of tasks
15 are very similar.

16 Q. Let me start back at the beginning. Would
17 the list of tasks themselves be proprietary?

18 A. Generally those are not treated as
19 proprietary.

20 Q. Did you look back at the FCC task for the
21 nonrecurring rate element in dispute here from the SBC
22 proceeding?

23 A. No, I did not.

24 Q. For the task times themselves -- and we're
25 going to have a problem here because pagination is

1 different. It's a sentence starting, moreover the
2 efficiency of a technician. Are you there?

3 A. Yes, I am.

4 Q. You said it should not be fundamentally
5 different; is that right?

6 A. That's correct. In the example I'm talking
7 about in a cross connect, that's correct.

8 Q. And the only example you talk about there
9 is a cross connect?

10 A. Yes, but the principle would be general,
11 that I -- you would anticipate task times to be very
12 similar.

13 Q. Did you perform any time and motion
14 studies?

15 A. I did not in this particular case. I have
16 done them.

17 Q. Did you perform any studies of any tasks or
18 task times for CenturyTel technicians, engineers, any
19 personnel?

20 A. Again, within the time frames allowed here,
21 I was unable to do anything of that nature.

22 Q. How about with respect to labor rates, did
23 you compare SBC labor rates to CenturyTel labor rates?

24 A. Yes. Generally I was able to do that, but
25 again, from my memory of SBC compared to a labor rate that

1 was identified in one of CenturyTel's cost studies.

2 Q. Where was that in your testimony?

3 A. I didn't discuss it in my testimony. I
4 mean, I discussed that I would anticipate that the labor
5 rates for personnel between SBC Missouri and CenturyTel
6 Missouri would not be materially different, and for the
7 labor rate that I was able to view from Centurytel's
8 study, that in fact would be the case.

9 But again, I can't -- I can't give the
10 Commission the labor rates from the SBC case, but I think
11 intuitively we would have a sense that labor rates would
12 be fairly similar, and in my review, there is only one
13 labor rate included in the study and it wasn't used by
14 CenturyTel. And again, you did not file nonrecurring cost
15 studies. But for that labor rate, it's roughly in line
16 with what I've observed in SBC cost studies in the state.

17 Q. You've reviewed Ted Hankins' direct and
18 rebuttal testimony, haven't you?

19 A. Yes, I have.

20 Q. He explains nonrecurring rates and their
21 development in this proceeding in some detail, doesn't he?

22 A. I roughly recall his testimony, that he
23 discusses it. I didn't remember it being in much detail.

24 Q. Did he also attach some schedules showing
25 how CenturyTel derived its proposed nonrecurring charges,

1 assuming the implementation of electronic access to OSS?

2 A. I recall that. That's not a cost study,
3 though.

4 Q. I want to turn to your rebuttal testimony
5 at page 54 -- well, page 54 of my version.

6 A. Still in direct?

7 Q. Rebuttal.

8 A. Okay. Rebuttal. I apologize.

9 Q. You're generally familiar with CenturyTel's
10 nonrecurring charge proposal in this proceeding, aren't
11 you?

12 A. Yes, I am.

13 Q. So assuming that there's no electronic
14 access to OSS required, you understand CenturyTel's
15 proposing these UNE-based or GTE-based UNE NRCs?

16 A. Yes.

17 Q. And that if electronic access to OSS is
18 ordered, CenturyTel's proposing these higher NRCs to
19 recover that cost. Do you understand that as well?

20 A. Yes.

21 Q. On page 54 of the version of your rebuttal
22 I have, it discusses the difference between two-wire
23 cross-connect nonrecurring charge. There's a question at
24 the very top of the page.

25 A. Yes.

1 Q. In the question that starts at line 1, and
2 your answer goes through line 13, you discuss a difference
3 in the two-wire cross-connect nonrecurring charge between
4 the two companies; is that right?

5 A. Yes.

6 Q. And then in the question at line 14, you
7 ask yourself, is there any chance that this level of
8 difference could be accounted for with the "we are not
9 AT&T" explanation offered by Mr. Hankins.

10 Did I accurately read that question?

11 A. That's correct.

12 Q. Then your answer, a variance in labor
13 rates, times or probability of having to perform a task
14 has no chance whatsoever of explaining an increase of
15 1623 percent over the nonrecurring rate that this
16 Commission approved for AT&T.

17 Did I accurately read that answer?

18 A. Yes, you did.

19 Q. So what you're comparing here is the NRC
20 Socket proposes and the OSS additive NRC CenturyTel
21 proposes; is that right?

22 A. I don't have CenturyTel's rate schedule in
23 front of me and Mr. Hankins' schedule, so it's hard for me
24 to recall just sitting here right immediately, but I
25 believe the answer to that would be yes, subject to check.

1 Q. So the 1623 percent that you're talking
2 about here is CenturyTel never says that's explained by
3 differences in labor rates, times or probability to do
4 that?

5 A. Again, I'd have to see the -- both of those
6 two pieces of information to be able to answer that
7 question.

8 Q. Do you have Mr. Hankins' testimony with
9 you?

10 A. No, I don't.

11 Q. Mr. Turner, I'm going to hand you
12 Schedule TMH-3 attached to Ted Hankins' direct testimony.
13 Direct you to the cross-connect nonrecurrings on a
14 two-wire cross connect. Let me know when you've had an
15 opportunity to look at that.

16 A. Okay. I see that.

17 Q. So it appears that the two-wire cross
18 connect nonrecurring you're comparing is the Socket
19 proposed NRC as compared to the OSS additive alternative
20 NRC that Socket -- or CenturyTel was proposing?

21 A. When I looked at this schedule, my
22 understanding of the rate comparison here was that the
23 \$463 nonrecurring charge that CenturyTel was proposing
24 compared to the 26.87 was without the OSS additive.

25 Q. Okay. So the comparison was between those

1 two but not, for lack of a better term, just a
2 misunderstanding?

3 A. I'm not even sure it's a misunderstanding.
4 I think you may perhaps be misunderstanding. I mean,
5 every place that I've been able to check, that is the
6 proposed rate, but I don't believe it's the OSS additive
7 rate. So I'm not -- unless you know -- you would almost
8 need to see all three side by side, Socket, CenturyTel
9 without OSA additive, CenturyTel with OSS additive, and
10 then it would be definitive. But my understanding of that
11 analysis was that was without the OSS additive.

12 Q. You've reviewed Mr. Hankins' testimony,
13 haven't you?

14 A. Yes, I have.

15 Q. Did you review his rebuttal testimony?

16 A. Yes, I did.

17 Q. Did you review the portion of his rebuttal
18 testimony where he discusses the methodology in the OSS
19 additive and how he mislabeled the original charts in his
20 direct?

21 A. I believe I read that.

22 Q. Did you have an opportunity to review
23 Schedule TMH-REB-1?

24 A. Not that I immediately have recall of.

25 Q. Do you have it in front of you? Because I

1 have a copy I can show you, unless you already have one.

2 A. I have that in front of me now.

3 Q. You understand the manner in which
4 CenturyTel is proposing this alternative NRC, assuming the
5 electronic access to OSS?

6 A. Yes.

7 Q. So there's three columns. There's a Socket
8 proposed price, a CenturyTel proposed additive, and then a
9 CenturyTel proposed rate. That's how the chart is set up?

10 A. Right. But again, if I understand the
11 chart correctly, the price that I used is the lower one,
12 and then there's higher price labeled Socket proposed
13 prices plus Socket proposed full electronic access to OSS
14 additive.

15 Q. Right. Isn't that what Mr. Hankins
16 explained in his rebuttal?

17 A. Okay. Yes, I know what you're talking
18 about there. Yes.

19 Q. So the 1623 percent differential is not --
20 CenturyTel never said that that was because of differences
21 in probabilities or rates. It was because of this OSS
22 issue?

23 A. Well, the difference that I'm describing is
24 not the OSS issue, per my understanding of the analysis
25 here. There is an incremental charge, but that's not the

1 one that I compared to. I'm comparing to what the lower
2 number that CenturyTel is putting forth.

3 Q. Which was just the --

4 A. OSS additive part.

5 Q. On that schedule that you have, TMH-REB-1,
6 can you scroll down and find that two-wire cross connect?

7 A. Yes.

8 Q. Have you found that?

9 A. Uh-huh.

10 Q. What is the price in the OSS additive in
11 that element?

12 A. 489.92. It's roughly -- it's very strange,
13 but it's \$26.87 higher.

14 Q. Right.

15 A. So it would appear that the OSS additive, I
16 guess is what this is indicating, is that it's the
17 \$463.05. I mean --

18 Q. You're not disputing, are you, that
19 CenturyTel is entitled to recover its costs to develop and
20 implement the access to OSS that Socket seeks?

21 A. No, I'm not disputing that.

22 Q. The dispute tends to be where that should
23 be recovered and the methodology for doing so?

24 A. Correct. I mean, but generally what I've
25 observed is that OSS cost recovery isn't in the -- it's a

1 fairly minor cost that ends up being incurred by CLECs,
2 but --

3 Q. In your experience, the CLECS are solely
4 responsible for the cost recovery to the ILEC for the
5 development and implementation costs?

6 A. Could you say your question again?

7 Q. Certainly. In your experience -- I think
8 you testified that you've done these cost proceedings all
9 around the country -- the CLECs are the ones that have
10 solely been responsible for reimbursing the ILEC for those
11 OSS implementation and development costs; is that right?

12 A. Generally, that -- that's the general
13 principle behind it. Exactly how it works out in
14 different states is different.

15 Q. You participated in the Wireline
16 Competition Bureau's Verizon Virginia proceeding involving
17 costs?

18 A. Yes, I did.

19 Q. And the Wireline Competition Bureau in that
20 case allowed Verizon to recover both its original
21 implementation costs for access to OSS as well as its
22 ongoing maintenance and upkeep costs?

23 A. That is generally my recollection.

24 Q. And in that case, Verizon didn't implement
25 a completely new OSS; it was trying to recover costs for

1 its middleware for getting the access to what it already
2 had?

3 A. I wasn't the witness in that area, so I
4 don't recall all the details there.

5 Q. That's fair enough. Do you recall that the
6 Wireline Competition Bureau permitted recovery over the
7 same ten-year time frame that CenturyTel is seeking here?

8 A. I don't recall. I wasn't the witness in
9 that area.

10 Q. You testified a little bit on cost of
11 capital in both your direct and your rebuttal. Do you
12 propose alternative cost of capital in this proceeding in
13 either your direct or your rebuttal?

14 A. No, I do not.

15 Q. You talked some about Dr. Avera's testimony
16 back in Docket 28-600 in Texas and that the Texas
17 Commission adopted a lower cost of capital. Do you
18 generally recall that testimony?

19 A. Yes, I do.

20 Q. Did you do any studies of interest rates or
21 economics to see what circumstances might have changed
22 since that time in 2003?

23 A. I went back and read Dr. Avera's testimony
24 from Texas and the Commission decision in Texas and
25 compared that to the testimony that he filed here. And

1 there are some differences, but when all those differences
2 are factored in, the cost of capital that Dr. Avera
3 calculated between the two states and two companies was
4 100th of 1 percent difference, 12.18 percent versus 12.19.

5 Q. Did you look at the difference in, for
6 example, T-bill rates between then and now?

7 A. I looked at the numbers in his schedules,
8 but I can't recall them off the top of my head.

9 Q. All right. Did you perform any CAPM or any
10 other kind of study on cost of capital?

11 A. No, I did not.

12 Q. Okay. Have you provided any testimony in
13 direct or rebuttal challenging the asset lives CenturyTel
14 has selected?

15 A. That's one of the black boxes in the
16 CenturyTel study that I wasn't able to identify or even
17 what asset life you were using.

18 Q. Among those workbooks doesn't one include a
19 5 percent depreciation rate, which would equate to a
20 20 percent life -- or 20-year life, rather?

21 A. Not that I recall, and I don't believe that
22 you would use a 20-year life on every dif-- every asset,
23 even if that was in there. Generally, you have different
24 asset lives for different assets.

25 Q. In your experience, don't CLECs in

1 proceedings you've been involved with generally propose
2 use of FCC prescribed lives for depreciation rates?

3 A. Generally, that's what I've observed.

4 Q. You've not challenged the selection by
5 CenturyTel of using FCC prescribed lives?

6 A. I haven't challenged that. The problem is,
7 you just can't tell, and the net result is you have -- and
8 this is in my testimony, but you have exceedingly high
9 factors compared to what I've observed in states such as
10 Missouri and here, being closest to home. So the problem
11 I have is, I have cost of capital numbers that are
12 slightly higher or close to what Missouri's used, but you
13 have very little information about the other information
14 that was used to come up with the factors. And yet the
15 factors that CenturyTel's proposing here are extremely --
16 extreme, much higher than what you -- the Commission has
17 typically used for those same asset classes in Missouri.

18 Q. By what factor?

19 A. It depends on which one that you look at,
20 but I would say roughly --

21 Q. Did you put this in either your direct or
22 rebuttal?

23 A. No, I did not.

24 Q. Other than the statement that it's higher
25 than what you've seen in other proceedings?

1 A. No. Again, the numbers in Missouri are
2 proprietary, the ended-up final factors that were
3 utilized, so I have a rough sense of the difference. The
4 factors that were utilized in Texas were made public by
5 the Texas Commission, and so there I could give something
6 of a more accurate estimate.

7 But what you're dealing with is for the
8 copper accounts, the factors used by CenturyTel are
9 roughly 80 to 90 percent higher. For the fiber accounts
10 they're roughly 60 percent higher than what you typically
11 would observe being approved by commissions.

12 MR. HARTLEY: Thank you, Mr. Turner. Pass
13 the panel, your Honor.

14 Oh, I'm sorry. We have UNE issues on this,
15 I almost forgot. We have cross-examination on those UNE
16 issues.

17 JUDGE JONES: Go right ahead.

18 MR. HILL: Good afternoon, your Honor and
19 Staff.

20 JUDGE JONES: Good afternoon.

21 STAFF: Good afternoon.

22 MR. HILL: I have a question real quick.
23 We had one issue outstanding other than pricing that was
24 disputed in the resale DPL. We have since resolved that.
25 I think there was an understanding we were going to put

1 the stipulation on the record. Do we want to do that now,
2 since it's this panel, or save that for another time?

3 JUDGE JONES: What issue is it?

4 MR. HILL: It's Issue No. 7 in the resale
5 attachment, and it has to do with the application of
6 avoided cost discount to NRCs.

7 JUDGE JONES: We can just note for the
8 record that that's been resolved. Has it been resolved?

9 MR. HILL: Yes, your Honor, it has. And I
10 think for the record, it's basically CenturyTel is
11 adopting Socket's language on that point.

12 JUDGE JONES: Just don't ask any questions
13 about it and we won't either.

14 CROSS-EXAMINATION BY MR. HILL:

15 Q. Good afternoon, Mr. Kohly. I've got a few
16 questions on some of the outstanding UNE issues, and I
17 direct you specifically to Issue 13B. In your
18 testimony -- this is the issue that has to do with whether
19 or not Socket has to pay a manual service charge for a
20 manual UNE conversion order. Are you familiar with that
21 issue?

22 (Answers by Mr. Kohly.)

23 A. Yes, I am.

24 Q. Now, you testified that -- well,
25 essentially, Socket is proposing that they would only be

1 required to pay an electronic service order charge for
2 this type of process, correct?

3 A. That's correct.

4 Q. And you have testified in your rebuttal at
5 least -- I'm sorry -- in your direct that Socket's primary
6 reason for proposing that this electronic service order
7 charge applies is to basically provide CenturyTel with an
8 incentive to automate its process, correct?

9 A. Can you direct me to the page you're
10 looking at?

11 Q. You can look at either your direct
12 testimony, page 100 or 101.

13 A. Okay.

14 Q. So the question still stands. Do you need
15 me to repeat it?

16 A. Yes.

17 Q. Your primary reason for proposing that the
18 electronic service order charge applies for a manual UNE
19 conversion order is to incentivize or provide an incentive
20 for CenturyTel to move to an electronic ordering process,
21 correct?

22 A. I say that's not our primary reason for
23 proposing the charge based on an automated process. Our
24 reason is, we believe we are entitled to efficient
25 processes and we should pay rates that reflect that. As I

1 say in my testimony, it's a perverse incentive to retain
2 manual systems and then charge higher rates for that.

3 Q. You're not disputing that today the current
4 process is a manual UNE conversion order process, are you?

5 A. I assume it would be manual today. We've
6 not done any conversions. So unless there's a mysterious
7 OSS out there, I will assume it's manual.

8 Q. You recently -- or are you aware that
9 Socket recently submitted two UNE conversion orders,
10 recently?

11 A. Oh, that is correct. We did. We converted
12 two special access arrangements to EELS. I apologize for
13 that.

14 Q. So a manual process does exist today,
15 correct?

16 A. Yes. We submitted ASRs for that.

17 Q. In fact, let's talk about those particular
18 orders. You requested that those conversions take place
19 by a particular due date, correct?

20 A. I did not directly work on those orders. I
21 know they were submitted. I don't know if we put a due
22 date on them or if one was given to us.

23 Q. Were you aware whether or not they've been
24 provisioned?

25 A. Sitting here today, no, I don't.

1 Q. Let's assume that -- just assume for me, if
2 you had a UNE conversion order that was finished that was
3 not done or if it affected the customer's perception of
4 service for those services that were converted, that you
5 would likely hear about it, correct?

6 A. Yes.

7 Q. And you haven't heard anything?

8 A. No, I have not.

9 Q. Let's switch to UNE Issue 22. This has to
10 do with, in this particular section, Section 2.37 of the
11 UNE article. Your -- Socket has proposed that in the
12 event that CenturyTel denies a request for a UNE, that we
13 be required to do certain things, correct?

14 A. Yes.

15 Q. And one of those things has to do with
16 providing a detailed explanation for the reason why,
17 correct?

18 A. Yes.

19 Q. Now, your rebuttal testimony on page 89 and
20 90, I believe, you have testified about a dispute
21 regarding whether or not there are -- what kind of
22 explanation has to be provided, correct?

23 A. Correct.

24 Q. And that issue's been resolved, correct?

25 A. Yes.

1 Q. The other two things that Socket is
2 proposing in this instance -- or Socket is proposing when
3 CenturyTel rejects a UNE order is that CenturyTel will be
4 required to, one, submit or at least identify its reserve
5 capacity, correct?

6 A. Can you actually show me the contract
7 language?

8 Q. Sure.

9 A. I did not bring a DPL up here with me.

10 Q. This is double sided. It starts here
11 (indicating). It's Issue 22, Section 2.37.

12 A. Okay.

13 Q. So getting back, in your proposal one of
14 the things you've requested or purport to require
15 CenturyTel to do is to identify its reserve capacity,
16 correct?

17 A. If there is any, yes.

18 Q. And this --

19 A. Heard through the testimony that CenturyTel
20 does not reserve capacity for its own use, so if that is
21 the case, the answer would be simply none.

22 Q. Or basically the entire requirement, or at
23 least purported requirement put into the contract was to
24 address a potential abuse by CenturyTel of this practice
25 of reserving capacity, correct?

1 A. Not just of reserving capacity. It was to
2 address the potential for insufficient facilities.

3 Q. Mr. Kohly, did you or did you not testify
4 in your direct testimony that one of the reasons that you
5 were doing -- one of the reasons Socket has proposed this
6 requirement was to make sure that CenturyTel was not
7 abusing the practice of reserving spare capacity so it
8 could only use it for its retail customers and not provide
9 it to you?

10 A. If that was its practice, yes.

11 Q. So essentially, let's assume -- I mean, I
12 know you can't testify about it, but let's assume that
13 CenturyTel doesn't reserve any spare capacity or
14 facilities -- UNE facilities for its own use. Let's start
15 with that assumption.

16 A. Okay.

17 Q. Okay. So that basically means that this --
18 that Socket's proposed language here intends to address
19 the potential for abuse of a practice that doesn't even
20 exist, correct?

21 A. If it does not exist, yes.

22 Q. Now, the second requirement that Socket is
23 proposing to impose on CenturyTel has to do with the
24 filing of construction plans with the Commission, correct?

25 A. And providing Socket with a construction

1 plan setting forth the time line for adding additional
2 capacity, and that plan shall also be submitted to the
3 PSC.

4 Q. So your proposal is that if we deny -- or
5 if CenturyTel denies a UNE due to lack of facilities, that
6 it basically has to file a construction plan with you,
7 with Socket, as well as with the Commission, correct?

8 A. Yes. And by construction plan, I'm looking
9 for something that will tell me when there will be
10 additional capacity.

11 Q. So Socket's primary concern here is making
12 sure that facilities are augmented or facilities are
13 expanded, correct?

14 A. Yes.

15 Q. And we're talking about facilities that do
16 not currently exist at the time that your -- that Socket's
17 UNE order is denied for that reason, correct?

18 A. Correct.

19 Q. Could you -- I don't know if you want to
20 use the DPL to look at the contract language. I'd like to
21 talk about Issue 35. This is the last issue, I believe,
22 on the DPL. Section 7.10.1. Just let me know when you
23 get there.

24 Are you there?

25 A. Yes.

1 Q. Now, you would agree with me that the
2 entire issue -- or the entire issue that's at issue in
3 Section 7.10.1 has to do with the application of the cap
4 for DS1 transport, correct?

5 A. Yes.

6 MR. HILL: Your Honor, would you mind if I
7 use the overhead real quick?

8 JUDGE JONES: No, I don't. You may.

9 MR. HILL: Your Honor, I'm just going to
10 put up an FCC rule. I don't intend to mark it and put it
11 in evidence. I just want to make sure we're all looking
12 at the same rule.

13 MR. MAGNESS: Your Honor, Socket objects to
14 the extent that Mr. Kohly, as a non-lawyer, is going to be
15 asked to interpret an FCC rule.

16 MR. HILL: Your Honor, he's not going to be
17 asked to interpret it.

18 JUDGE JONES: Objection overruled.

19 MR. MAGNESS: Okay.

20 BY MR. HILL:

21 Q. Now, as we're focusing in on the applicable
22 rule, my understanding -- correct me if I'm wrong --
23 Socket's position is that this rule ought to be
24 interpreted as not applying any cap at all on routes with
25 a Tier 3 wire center on either end, correct?

1 MR. MAGNESS: I would object again, your
2 Honor. He just said -- he asked Mr. Kohly for a statement
3 on Socket's interpretation of the FCC rule.

4 MR. HILL: I'll rephrase, your Honor.

5 MR. MAGNESS: The rule speaks for itself.
6 Mr. Kohly is not an attorney.

7 MR. HILL: I'll rephrase, your Honor.

8 JUDGE JONES: Well, if you rephrase it and
9 ask the same question --

10 MR. HILL: It's not going to be the same
11 question.

12 JUDGE JONES: Okay.

13 BY MR. HILL:

14 Q. Are you familiar with the contract language
15 that Socket proposed for Section 7.10.1?

16 A. Yes.

17 Q. What is your understanding of when a DS --
18 of when there would be a cap at all on a wire center route
19 with a T3 wire center at one or both ends?

20 A. It would be on routes where DS3 transport
21 is not available.

22 Q. Now, you're aware that virtually all of
23 CenturyTel's wire centers are Tier 3 wire centers,
24 correct?

25 A. DS3 transport is available to those wire

1 centers.

2 MR. HILL: I object as nonresponsive.

3 JUDGE JONES: I'm not sure I like the
4 questions anyway, so let him respond however he wants.
5 Actually, move to strike would be a better one.

6 MR. HILL: How about move to strike now?
7 I'll rephrase the question.

8 BY MR. HILL:

9 Q. You said you do understand that you have
10 been informed that CenturyTel's wire centers are all
11 Tier 3 wire centers, correct?

12 A. Yes.

13 Q. And based on the negotiations you've had
14 with CenturyTel, you understand that CenturyTel is making
15 DS3 transport available for unbundling throughout its
16 network, correct?

17 A. Where it has capacity.

18 Q. And so the language that Socket has
19 proposed virtually means that there would never be a cap
20 applied to D -- to the number of DS1 transports that
21 CenturyTel would have to provide Socket by order, correct?

22 A. There would be -- in our counter language,
23 we did address the issue that was in testimony, which was
24 the maximum number of DS1s. We capped that.

25 Q. And would you -- I'm sorry. I didn't mean

1 to interrupt you.

2 A. Is that what you're getting to?

3 Q. I would like to understand. Let's go back
4 to your original proposal. Your original proposal here
5 was that there would never be a cap on the number of DS1
6 transports that Socket could order under this agreement,
7 correct?

8 A. I had no idea that was a concern, so no, it
9 did not have a cap. So the minute we heard it was a
10 concern, we revised the contract language to address that
11 and put a cap on the maximum number of DS1s we could
12 obtain.

13 Q. And the maximum number now per Socket's
14 proposed language is 346 DS1 transports, correct?

15 A. Yes.

16 MR. HILL: Nothing further.

17 JUDGE JONES: Thank you. We would normally
18 go right into questions from the Panel now, but because
19 it's quarter to five, that effort may not make a lot of
20 sense. So it might be good to stop right here and start
21 up tomorrow with questions from the Panel, continue with
22 recross and then redirect, and just call it a 15-minute
23 early day.

24 Since everyone is in town now, let's go
25 ahead and make it 8:30. Is that okay with everyone?

1 Okay. 8:30 it is. With that, we'll go off
2 the record.

3 Whereupon, the hearing of this case was
4 recessed until April 12, 2006.

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I N D E X

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