

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MISSOURI

PUBLIC SERVICE COMMISSSION

In the Matter of the Master)
Interconnection and Resale)
Agreement by and between)
Sprint Missouri, Inc., and)Case No. TK-2003-0535
ICG Telecom Group, Inc.,)
Pursuant to Sections 251 and)
252 of the Telecommunications)
Act of 1996.)

PREHEARING CONFERENCE

TRANSCRIPT OF PROCEEDINGS

Friday, July 11, 2003

10:00 a.m.

Volume 1

VICKY RUTH, Presiding,
SENIOR REGULATORY LAW JUDGE

and

KENNARD JONES, Presiding,
REGULATORY LAW JUDGE

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

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

2 For Public Service Commission:

3 Mr. William K. Haas
4 Deputy General Counsel
5 200 Madison Street
6 P.O. Box 360
7 Jefferson City, MO 65102
8 (573) 751-7510

9 For ICG Telecom Group, Inc.:

10 Mr. Carl J. Lumley
11 Attorney at Law
12 130 S. Bemiston, Suite 200
13 Clayton, MO 63105
14 (314) 725-8788

15 For Sprint Missouri, Inc.:

16 Ms. Lisa Creighton Hendricks
17 Attorney at Law
18 6450 Sprint Parkway
19 Overland Park, KS 66251
20 (913) 461-5765

21 For MITG:

22 Mr. Craig Johnson & Lisa Chase
23 Andereck, Evans, Milne, Peace & Johnson
24 700 East Capitol
25 Jefferson City, MO 65102
 (573) 634-3422

 For BPS, Cass County, Citizens, Craw-Kan, Ellington,
Farber, Goodman, Granby, Grand River Mutual, Green
Hills, Holway, Iamo, Kingdom, KLM, Latrop, Le-Ru,
McDonald County, Mark Twain Rural, Miller, New
Florence, New London, Orchard Farm, Oregon Farmers
Mutual, Ozark Peace Valley, Rock Port, Seneca,
Steelville and Stoutland Telephone Companies:

 Mr. W.R. England, III
 and Mr. Brian T. McCartney
Brydon, Swearengen, & England, PC
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
(573) 635-7166

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

EXHIBIT

NO.	DESCRIPTION	PAGE
1	Drawing	148

(Original exhibits were retained by Mr.
England.)

1 TRANSCRIPT OF PROCEEDINGS

2 JUDGE RUTH: Good morning. We are
3 here for a prehearing conference in two cases,
4 Case No. TK-2003-0535, which involves an
5 interconnection agreement between Sprint and ICG
6 Telecom, and Case No. TK-2003-0540 in the matter
7 of an interconnection agreement between Sprint
8 and Comm South.

9 My name is Vicky Ruth, and I'm the
10 regulatory law judge assigned to the ICG case.

11 And to my left is Judge Jones. He is
12 assigned to the Comm South case, which is
13 2003-0540.

14 Today's date is July 11th. That clock is
15 wrong. It is 10:00, not 7:45. And I'd like to
16 begin by taking entries of appearance. Sprint?

17 MS. CREIGHTON HENDRICKS: Appearing
18 on behalf of Sprint, Missouri, Inc., Lisa
19 Creighton Hendricks. My address is 6450 Sprint
20 Parkway, Overland Park, Kansas, 66251. And I'm
21 appearing in both cases.

22 JUDGE RUTH: Thank you. You
23 reminded me that I meant to clarify that -- on
24 the record that the two cases are not
25 consolidated. We are just holding the

1 prehearing conference jointly. And ICG?

2 MR. LUMLEY: Good morning. Carl

3 Lumley with Curtis Edding (ph.) law firm

4 Representing ICG Telecom Group, Inc. My address

5 is 130 South Bemiston, Suite 200, Clayton,

6 Missouri, 63105.

7 JUDGE RUTH: Thank you. Comm South?

8 We do not have someone here? Okay. That one's

9 not my case. Do you remember who the attorney

10 is?

11 MS. CREIGHTON HENDRICKS: I'm not so

12 sure that someone has entered an appearance for

13 Comm South.

14 JUDGE RUTH: Okay. Then we'll let

15 the record reflect that Comm South does not have

16 counsel present, and I assume no one in the

17 audience is from Comm South. I don't see

18 anyone. MITG?

19 MR. JOHNSON: Thank you, your Honor.

20 Craig John and and Lisa Chase, Andereck, Evans,

21 Milne, Peace & Johnson, 700 East Capitol, Post

22 Office Box 1438, Jefferson City, Missouri,

23 65102. We're entering an appearance today in

24 both cases for the Missouri Independent

25 Telephone Group companies. I think they're

1 separately listed in our pleadings that we filed
2 to date.

3 JUDGE RUTH: Your pleadings that you
4 filed today?

5 MR. JOHNSON: To date. I'm sorry.

6 JUDGE RUTH: Oh, to date. Okay.

7 MR. JOHNSON: I'm sorry.

8 JUDGE RUTH: I wondered if there was
9 something I'd missed this morning.

10 MR. JOHNSON: I wouldn't do that to
11 you, Judge.

12 JUDGE RUTH: It happens. small
13 Telephone Company Group?

14 MR. ENGLAND: Thank you, Judge. Let
15 the record reflect the appearance of W.R.
16 England and Brian McCartney on behalf of the
17 Small Telephone Company group whose members are
18 also individually listed I believe in the
19 application and intervened as well as in the
20 written entry of appearance. Our address is
21 Brydon, Swearingin & England, Post Office Box
22 456, Jefferson City, Missouri, 65102.

23 JUDGE RUTH: Thank you. Staff?

24 MR. HAAS: Good morning. William K.
25 Haas, appearing on behalf of the State of

1 Missouri Public Service Commission in both
2 cases. My address is Post Office Box 360,
3 Jefferson City, Missouri, 65102.

4 JUDGE RUTH: Thank you.

5 JUDGE JONES: That we are having
6 this prehearing conference presupposes that we
7 will have a hearing. However, it is the
8 Commission's intention to use this conference as
9 an opportunity to further explore the legal and
10 factual issues surrounding this matter and to
11 determine if a hearing will, in fact, be
12 necessary. Intervention has been granted,
13 bringing the intervenors to the table to
14 facilitate exploration and to create an
15 environment conducive to a resolution. If it
16 becomes necessary to have a hearing in this
17 matter, then we must determine what purpose the
18 hearing would serve, bearing in mind that the
19 Commission will either reject or approve the
20 interconnection agreements within the time frame
21 allowed by federal law. Judge Ruth and I will
22 -- will have questions for you, both factual and
23 legal, to move towards some type of resolution.

24 JUDGE RUTH: And my first question
25 actually deals with intervention. And the

1 Commissioners have requested that I get some
2 additional information from the intervenors,
3 specifically, clarifying whether each member of
4 your group has an interest in this matter that's
5 different from the public and the general public
6 interest and which could be harmed by the
7 outcome or if it is really just a few members
8 that have that interest, but yet collectively,
9 the group has an interest maybe in the general
10 principles at stake or what have you. And I'll
11 let MITG -- Mr. Johnson, could you address that
12 first, please?

13 MR. JOHNSON: Thank you, your Honor.
14 Let me try it this way. In talking about the
15 transit traffic which is the provision of the
16 interconnection agreement that we have applied
17 to oppose, the transit traffic is traffic that
18 comes from either Comm South or ICG through
19 Sprint and to any other company. First -- both
20 my clients, MO-KAN Dial of the MITG,
21 specifically subtends the Sprint Missouri,
22 Inc.'s Warrensburg tandem. So if traffic comes
23 directly from ICG or Comm South and is delivered
24 by those two CLECs to Sprint at its Warrensburg
25 tandem, the traffic that does go to Freeman,

1 which is the MO-KAN dial exchange would be
2 transit traffic. Clearly, MO-KAN dial is
3 directly impacted by the transit provisions in
4 these interconnection agreements.

5 With respect to my other clients, some of
6 them have their own access tandems. Some of
7 them subtend other larger ILEC access tandems.
8 But when you -- and in order to understand why
9 they have the same potential direct interest,
10 you have to understand that transit traffic can
11 also go between tandems. It can go from Bell to
12 Sprint to us, or it can go from ICG or Comm
13 South to Sprint and Sprint can take it to
14 Southwestern Bell and Southwestern Bell can
15 deliver it to my other clients. One of the
16 problems with the term transit traffic is in its
17 simplest form, it's just ICG to Sprint to
18 MO-KAN. But in a more complex form, it can be
19 inter-tandem transited between Century Tel,
20 Southwestern Bell, or Sprint before it comes to
21 our clients. So from that standpoint, they have
22 the same interests that MO-KAN dial would with
23 respect to inter tandem transitted traffic.

24 JUDGE RUTH: I hate to interrupt
25 you. And I know that there are some pleadings

1 that discuss the subtending and the tandems.

2 MR. JOHNSON: Yes, ma'am.

3 JUDGE RUTH: But could you back up

4 and clarify that a little bit?

5 MR. JOHNSON: Could I go in the next

6 room and perhaps get the MTI map?

7 JUDGE RUTH: That would be good.

8 MR. JOHNSON: Is that room is

9 unlocked?

10 JUDGE RUTH: I can get to it if it

11 is. We're going to go off the record for two

12 minutes while I --

13 (Break in proceedings.)

14 JUDGE RUTH: We were off the record

15 just briefly while we grabbed a map.

16 Mr. Johnson, do you want to try and answer my

17 question now?

18 MR. JOHNSON: Yes. First of all,

19 let me sort of tell you who my clients are and

20 where they -- they serve. MO-KAN Dial is the

21 company I first mentioned, and they serve the

22 Freeman exchange, which is right here.

23 JUDGE JONES: When you say here,

24 where are you pointing?

25 MR. JOHNSON: I'm pointing to south

1 of Kansas City about 30, 35 miles. They
2 directly connect to Sprint's tandem. And I'm
3 assuming you understand the difference between a
4 central office switch that serves as an exchange
5 as opposed to a tandem where interexchange
6 traffic can be accumulated and disbursed to all
7 of the end offices, the central offices or
8 exchanges that subtend that tandem.
9 Warrensburg is Sprint's tandem. And I don't
10 know where Warrensburg is. Let's see. Right
11 here. It's in purple below Higginsville.
12 That's where the tandem is located that MO-KAN
13 dial subtends. My other clients include
14 Chocktaw Telephone Company, which has a single
15 exchange down here at nearby Springfield. It's
16 Halltown. And they subtend Southwestern Bell's
17 tandem in Springfield, Missouri. Okay? Alma
18 Telephone Company is another small single
19 exchange company. They're right here north
20 of --

21 MR. MCCARTNEY: Concordia.

22 MR. JOHNSON: -- Concordia, a little
23 bit to the east of Higginsville in white. They
24 -- their central office is actively connected to
25 Citizens access tandem, and Citizens in turn

1 gets traffic destined to Alma from Southwestern
2 Bell through Southwestern Bell's McGee tandem in
3 Kansas City. My larger clients include Mid
4 Missouri Telephone Company, which has about 13
5 exchanges that are in orange. Some of them are
6 around High Point and Latham west of Jefferson
7 City. The rest of them are around between
8 Boonville and Sedalia and Marsahll, in that
9 area. Mid Missouri Telephone Company has its
10 own access tandem in Pilot Grove. But for
11 purposes of our discussion today, Southwestern
12 Bell has a trunk in its McGee tandem in Kansas
13 City that they still send traffic that's
14 destined to Mid Missouri Telephone Company's
15 access tandem at Pilot Grove.

16 Mid Missouri Telephone Company's access
17 tandem only serves Mid Missouri Telephone
18 Company exchanges. So it's not a situation
19 where you have Mid Missouri serving other
20 companies and offices as opposed to the Sprint
21 MO-KAN dial relationship or as opposed to the
22 Alma relationship or the Chocktaw/Southwestern
23 Bell relationship. Chariton Valley Telephone
24 Corporation has 16 exchanges. They're in green.
25 I would say they're between Brookfield,

1 Missouri, Macon, Missouri, down around Moberly.
2 Got a few exchanges over in the river bottoms
3 around Forest Green. They have their own access
4 tandem, I believe it's in Huntsville, which is
5 just to the east of -- or west of Moberly. And
6 they do get traffic sent to them from
7 Southwestern Bell's McGee tandem all the way
8 over here in Kansas City as well.
9 Northeast Missouri Rural is in yellow up here.
10 Actually, this -- well, they're in yellow up
11 here. They have their own access tandem in
12 Green City. And they also are connected by
13 trunks that Southwestern Bell has ordered from
14 them whereby Southwestern Bell delivers traffic
15 all the way from the McGee tandem of
16 Southwestern Bell in Kansas City.

17 So first of all, what I was -- getting
18 back to what I was saying, it's clear that
19 MO-KAN Dial has the most direct interest in the
20 simplest form of transit traffic because if ICG
21 or Comm South are going to connect with Sprint
22 and send traffic to Sprint, any traffic that
23 they send to Sprint that's destined for Freeman
24 is going to go through Sprint's Warrensburg
25 tandem. And under the industry's local exchange

1 routing guides, silly (ph.) codes and stuff, the
2 -- the world of carriers knows that if they want
3 to send traffic that's destined for Freeman,
4 Missouri's NPANXSSs, they have to route that so
5 it's going to get to the Warrensburg tandem.

6 Now, they can deliver that traffic to
7 Sprint directly through a connection in
8 Warrensburg, or they would perhaps deliver it up
9 here at Maryville where Sprint has other
10 tandems. It's also possible -- and here I'm
11 going to talk about the notion of inter-tandem
12 transport.

13 If -- and I'm not sure if Comm South or
14 ICG has any interconnection agreements with
15 Southwestern Bell. But they can deliver traffic
16 that's destined for MO-KAN Dial in Freeman to
17 Southwestern Bell at McGee. Southwestern Bell
18 will then route it from their McGee tandem to
19 the Sprint access tandem in Warrensburg, and
20 then it will in turn be routed back to Freeman,
21 the end office company. In that situation,
22 Southwestern Bell would charge transit fee. And
23 I think the testimony in priors cases has
24 established that because Sprint did not
25 previously have agreements with some of these

1 CLECS that would do this, they would charge
2 access on that traffic because they had no
3 interconnection agreements to charge a
4 reciprocal compensation rate with. And then the
5 traffic would end up coming to Freeman.

6 JUDGE RUTH: You said something I
7 want to pick up on a little bit. It was listed
8 as a question later -- for later. But you said
9 that they don't -- the parties don't have
10 interconnection agreements now so sometimes they
11 were routing -- a company might route through
12 whom? And then there would be access charges
13 paid by whom?

14 MS. CREIGHTON HENDRICKS: Your
15 Honor, if I can -- I think the allegation was
16 that Sprint charged access, and I was going to
17 try to clear the record. I'm unaware of a
18 situation where we charged access. I know there
19 was an issue relating to wireless traffic pre
20 Act, pre Federal Act. But there was access
21 charge in a part of this traffic -- for the
22 record, I would like it to reflect that I cannot
23 accept that Sprint charged access as a fact
24 because I do not believe it to be true.

25 JUDGE RUTH: Okay. We may pick back

1 up on that later, but I wasn't sure if I
2 understood what Mr. Johnson was saying.
3 Basically, I think I understood it. But you are
4 not sure you agree with it?

5 MS. CREIGHTON HENDRICKS: Correct.
6 Correct.

7 JUDGE RUTH: All right.
8 I'm sorry. Go ahead.

9 MR. JOHNSON: We're getting a little
10 bit offline. But to clarify what was
11 established last summer in some complaint
12 proceedings that did involve wireless traffic,
13 which have a different local calling scope,
14 otherwise it's still subject to local or
15 reciprocal compensation, Mr. Igel (ph.) from
16 Sprint testified if they did not have an
17 interconnection agreement with a wireless
18 carrier who delivered traffic to Bell that went
19 from Kansas City to Warrensburg to Freeman.
20 Sprint was getting records on that from Bell and
21 they were charging. But since the only tariff
22 they had in the absence of their own agreement
23 was the originating wireless carrier was the
24 access tariff. We were charging access on that.

25 MS. CREIGHTON HENDRICKS: If I can

1 clear the record on that, Mr. Igel's testimony
2 was we were not charging anything for that
3 traffic, not that we were charging access.

4 MR. JOHNSON: All right. I'd have
5 to go back and check to be sure. I thought it
6 was the other way.

7 JUDGE RUTH: Okay. I want to ask a
8 question about -- I think I understand. I
9 appreciate some of the explanation on the
10 tandems. And I see the relationship that MO-KAN
11 would have of this case. I'm still not as sure
12 of the relationship some of the other companies
13 would have their interest in this
14 interconnection agreement.

15 MR. JOHNSON: Okay. Let me see if I
16 can explain that. Let's say ICG or Comm South
17 that an interconnection agreement with
18 Southwestern Bell. They give -- or let's say
19 they have -- they give the traffic to Sprint
20 pursuant to the agreements we're talking about
21 today and they're destined to go to Mid Missouri
22 Telephone Company. Sprint's tandem would get
23 that and route it to McGee, and then it would
24 come from McGee on Southwestern Bell's trunks to
25 Mid Missouri Telephone Company.

1
2 JUDGE RUTH: Did you want to add
3 something?
4 MR. ENGLAND: We're similarly
5 situated. And -- and while access tandems and
6 end offices have some significance, for purposes
7 of the narrow question of what interests we
8 have, our clients, individuals have in it. I've
9 done a real rough and dirty diagram to show you
10 how every small company is impacted by the
11 transit provisions of these interconnection
12 agreements. These interconnection agreements
13 say that essentially Sprint will transit both
14 local and non-local traffic to third parties.
15 And they can do it several ways. ICG who
16 connects with the Sprint office or Sprint tandem
17 can send traffic through Sprint and connect with
18 a third party end office that connects to that
19 tandem. And that would be the -- let's say ICG
20 wants to compete in Warrensburg. They connect
21 in Warrensburg with Sprint. They send this
22 through the Warrensburg tandem and they can
23 deliver a call to a MO-KAN customer in MO-KAN
24 dial's exchange. But let's say that same
25 customer of ICG's in Warrensburg wants to call a

1 customer of Citizens Telephone Company, who I
2 represent, in Higginsville, Missouri. They can
3 -- they can dial that customer, and that call is
4 routed, again, through Sprint's Warrensburg
5 tandem. Then it goes to Southwestern Bell's
6 tandem. And then it goes to Higginsville.
7 Higginsville is not directly connected to
8 Warrensburg. Higginsville is direct connected
9 to the Southwestern Bell tandem in Kansas City.

10 When you read the interconnection
11 agreement, there are absolutely no restrictions
12 on ICG's ability to terminate traffic throughout
13 the LATA to any third party. So you don't have
14 to be directly connected to a Sprint tandem.

15 JUDGE RUTH: Okay. So if that were
16 to happen, your example of ICG and Warrensburg
17 calling one of your clients goes through Sprint,
18 goes through Southwestern Bell --

19 MR. ENGLAND: Right.

20 JUDGE RUTH: -- Down to the third
21 party, this interconnection agreement is between
22 ICG and Sprint, the first part.

23 MR. ENGLAND: Right.

24 JUDGE RUTH: Are there any other
25 agreements that cover between Sprint and

1 Southwestern Bell and then Southwestern Bell to
2 the third party?

3 MR. ENGLAND: Not -- well, I can
4 only speak on behalf of our clients. And one of
5 the reasons we've intervened in this case is
6 we're impacted by these transit provisions
7 whether it's with Sprint, Southwestern Bell,
8 Century Tel, any of the large ILECs. But
9 virtually all of the transit provisions have a
10 -- have a provision within them that says ICG,
11 the competing local exchange company, is not to
12 send traffic to these third parties without an
13 agreement to do so.

14 I am unaware of any third -- or excuse me
15 -- any CLEC such as ICG that today has an
16 agreement with any of my clients, whether
17 they're connected to Sprint, whether they're
18 connected to Southwestern Bell, whether they're
19 connected to Century Tel. Yet, they are sending
20 traffic to us.

21 JUDGE RUTH: And there's been no
22 payment of any kind?

23 MR. ENGLAND: Well, that's -- that's
24 correct.

25 JUDGE RUTH: For your --

1 MR. ENGLAND: In a lot of instances,
2 we don't -- particularly, the Sprint problem,
3 they're not even creating a record to tell us
4 that traffic's coming to us. So we're -- we see
5 the minutes, if you will, collectively at the
6 terminating end so many minutes being
7 terminated. When you add up all the records
8 that you're supposed to get from the various
9 carriers from sending you that traffic, the sum
10 doesn't equal the total. So we know that that's
11 -- that's a gap there. And in some instances,
12 when we do get a record, we bill these folks.
13 We bill an ICG, and they concoct all different
14 types of excuses not to pay the bill. They say,
15 Well, we dispute the accuracy of your record.
16 Let's say Sprint created -- although Sprint's
17 not creating records. Southwestern Bell creates
18 it. They dispute the accuracy of the bill.
19 They tell us, Well, we want to sign a toll
20 termination agreement with you. And until we
21 have that, we're not going to pay you. Well,
22 that's baloney. They're supposed to pay us in
23 accordance with our access tariffs. And as this
24 Commission has previously found, access applies
25 to all of this non-local traffic. They'll --

1 they just flat won't respond to us when we call.
2 They won't answer -- I mean, they won't return
3 phone calls.

4 So there are a few that are paying. I
5 don't want to leave the impression that there
6 are some that aren't -- that none are paying.
7 But it's a minority of CLECs that are paying for
8 this traffic. And, usually, you have to go
9 through a great deal of effort to track them
10 down, to -- to convince them that they are
11 sending traffic to you, to convince that them
12 that the amount of traffic that you identified
13 they are sending to you and then finally get
14 paid for it, all in violation of every
15 interconnection agreement I've ever seen that
16 that's says they're supposed to have an
17 agreement before they do all this stuff.

18 JUDGE RUTH: And it -- but you
19 indicated that sometimes these parties have said
20 -- when one of your companies has tried to bill
21 them has said, Well, we want to make what kind
22 of agreement with you?

23 MR. ENGLAND: A toll termination
24 agreement.

25 JUDGE RUTH: And your clients are

1 not willing to do that?

2 MR. ENGLAND: No. It's access. We
3 don't have to have an -- our access tariff
4 applies. The Commission has said that in some
5 of the early interconnection agreement
6 approvals.

7 JUDGE RUTH: I just didn't get what
8 kind it was.

9 MR. ENGLAND: In my opinion, it's a
10 subterfuge to continue not to pay. We've had
11 others that have said -- another excuse is,
12 Well, we can't be sending you traffic because
13 we're sending our traffic to an inter --
14 interexchange traffic to an interexchange
15 carrier, and, therefore, it can't be coming
16 through the Sprint tandem or it can't be coming
17 through the Southwestern Bell tandem. Yet
18 records that we get indicate that it is. There
19 is a variety of excuses that these CLECs are
20 using, in my opinion, to game the system and not
21 pay for the traffic they're terminating to us
22 all set up because of this transitting
23 arrangement.

24 Now, if I can go one step further, if you
25 didn't have the transitting arrangement and ICG

1 wants to send a call down here, they've got to
2 go up to this IXC. That's the only -- or
3 establish some sort of direct connection. But
4 essentially, they've got to go to IXC who sends
5 it back where a record is created. A record is
6 passed and we bill for it. No problem.

7 JUDGE RUTH: And that's what's
8 happening today? No?

9 MR. JOHNSON: No.

10 MR. ENGLAND: In lieu of
11 interconnection, yes. Today if ICG is in
12 Warrensburg but it doesn't have a connection
13 with Sprint and it wants to somehow get a call
14 down to the MO-KAN folks, it's got to go through
15 an IXC.

16 JUDGE JONES: Ms. Hendricks,
17 obviously there's something you need to say?

18 MS. CREIGHTON HENDRICKS: Thank you,
19 your Honor. First of all, if I can go back to
20 this explanation and to Judge Ruth's questions
21 about other agreements, I think one thing in
22 trying to tie every member of their
23 association's interest to this interconnection
24 agreement, one thing that was evident is in
25 order to do that, some of this traffic is going

1 to have to go over SBC's facilities. So there's
2 going to be to have to be an agreement with SBC,
3 not solely our agreement allows this traffic to
4 reach those members of the associations who are
5 not connected to us. So there's another party
6 here. And that demonstrates, I think, the
7 fallacy of trying to address this issue in the
8 context of this interconnection agreement
9 between these two parties because the remedy
10 cannot be achieved in the absence of other
11 players participating in this proceeding. And
12 that's why Sprint believes -- and I believe ICG
13 joins us that this issue should be addressed in
14 other forums. And we have cited the Commission
15 in our pleading to the rule proceeding that is
16 underway, and there has been some complaints in
17 the context of the wireless to address these
18 issues. Because this issue is not just limited
19 to ICG and Sprint and to this agreement. What
20 they are asking you to do impacts every provider
21 in the State of Missouri. But I'd like to also
22 address some specific allegations and make the
23 Commission -- or make you aware that some of
24 this traffic that they claim there are no
25 records for is MCA traffic. And the Commission

1 has ruled that that is bill and keep. So there
2 are no records that come with that.

3 And as a matter of fact, as we cited,
4 MO-KAN, themselves, has an indirect connection
5 to SBC through Sprint. So we transit traffic
6 without charge to MO-KAN that is non-local
7 because it goes across exchanges. We do the
8 same thing for the CLECs. And they achieve that
9 ability under the interconnection agreements.
10 To our knowledge, ICG is sending nothing that is
11 inter-exchange toll traffic through our
12 facilities. And ICG can speak to that.
13 Furthermore --

14 JUDGE RUTH: Do you have good
15 records on your part that would indicate that?
16 Or are you just relying on ICG's --

17 MS. CREIGHTON HENDRICKS: We are
18 relying on ICG's at this point in time. But we
19 were unable ourselves to identify a scenario, a
20 traffic transit scenario that would allow the
21 occurrence of what they claim happening, to
22 allow it to happen. And that is in large part
23 based on the fact that ICG is representing that
24 they're sending their interexchange traffic out
25 to an interexchange carrier. With that

1 condition in place, we do not see how they are
2 harmed.

3 And with respect to the allegation about
4 Sprint not producing records, to the extent that
5 a CLEC is directly connected to Sprint, we do
6 produce records. Now, there may be occasions
7 where something has happened, but it's been a
8 little blip on the system. The situation where
9 we can't produce records is when the CLEC is not
10 connected to us and comes through the SBC
11 tandem. That is well aware -- I mean, the
12 Commission's well aware of that. The rule that
13 is under consideration is addressing that
14 factor.

15 Furthermore, one thing I do want to
16 mention, even if a CLEC was to use the
17 transitting provisions and somehow send the toll
18 traffic, nothing about that would override the
19 application of an access tariff. And I don't
20 understand in that respect how it would. So I
21 don't see the harm that they're claiming to have
22 occurred that somehow we've deprived them of the
23 right of applying the access tariff. I do not
24 understand that claim because, legally, they
25 still have that right to do that.

1 JUDGE RUTH: So you would say -- you
2 know, the provision I think in this case, it was
3 an appendix, the sentence that said the ICG has
4 the obligation to make arrangements with the --
5 like the intervenors --

6 MS. CREIGHTON HENDRICKS: Correct.

7 JUDGE RUTH: The access tariffs that
8 are in place, you think that would -- that would
9 fulfill that requirement?

10 MS. CREIGHTON HENDRICKS: Well, I
11 think we even heard that from Mr. -- from
12 Mr. England when he said that we're not going to
13 enter into agreements with them. We have our
14 access tariffs. To the extent it's toll traffic
15 and that tariff applies, that would fulfill that
16 requirement.

17 JUDGE RUTH: And you feel that the
18 records that you provide to those intervenors
19 are accurate and they would be able to use those
20 records to bill for those calls?

21 MS. CREIGHTON HENDRICKS: The
22 records that we produce -- I'm unaware of any
23 systematic problem in our records that would
24 cause them to be inaccurate.

25 JUDGE JONES: Ms. Hendricks, it

1 seems that Sprint is just passing traffic
2 through and that the problem lies between both
3 ends.

4 MS. CREIGHTON HENDRICKS: We pass
5 traffic for both parts, for MO-KAN and for ICG.
6 That is correct. But we have a federal
7 obligation to do that, too.

8 JUDGE JONES: Well, it seems like
9 you'd be a passive player in all this, then.

10 MS. CREIGHTON HENDRICKS: Well,
11 Sprint also -- Sprint is a local exchange
12 carrier in the context of this case. But Sprint
13 -- because we have operations that go across the
14 board in the telecommunications field, we tend
15 to strike the balanced position and not just
16 solely focus on the ILEC interests here. We
17 have kind of a -- a balanced position on
18 transitting traffic. We realize the need the
19 CLEC has for it. We realize the need the
20 wireless carrier has for it.

21 JUDGE JONES: So you just -- you
22 supply the records to the end offices that give
23 them the information they need in order to bill
24 the originating CLECs?

25 MS. CREIGHTON HENDRICKS: Correct.

1 JUDGE JONES: Is that true, though?

2 MS. CREIGHTON HENDRICKS: To my

3 knowledge, that is true. Now, there may be

4 isolated cases where we've had problems. But I

5 think they've been remedied. We have never had

6 a compliant filed against us for failure to

7 produce records in the scenario where we are the

8 carrier with whom the CLEC is directly

9 connected. Now, the MCA traffic, I am not so

10 sure that we provide records on the MCA traffic.

11 JUDGE RUTH: But your argument would

12 be that those -- that traffic, there wouldn't be

13 -- that's bill and keep anyway?

14 MS. CREIGHTON HENDRICKS: Correct.

15 So there's no billing occurring in connection

16 with that traffic.

17 MR. ENGLAND: Now, may I?

18 JUDGE RUTH: You may respond.

19 MR. ENGLAND: We're not trying to

20 hold Sprint responsible for creating records

21 that come to them from a party that's not

22 directly connected to them. I -- I freely state

23 that. We are trying to hold them responsible

24 for what I'm basically saying is for the -- at

25 the time, at the present time, they are not

1 creating records for parties that are directly
2 connected to them and sending traffic to third
3 parties. That's why I brought Mr. Randy Boyd
4 with the Kingdom Telephone Company, who has two
5 end offices, MO-KAN and Tebbetts just outside of
6 the Jefferson City area, that subtend Sprint's
7 Jefferson City tandem. And for months now, he
8 has not been getting records of traffic. Of
9 --if there are any CLECs but there are wireless
10 carriers that connect in its Sprint's office
11 here in Jefferson City and terminate at MO-KAN
12 and Tebbetts. And he's been working with people
13 at Sprint to try to get those records. And to
14 date, they have been unable to produce them
15 despite the -- I mean, and I'm prepared and
16 that's why we may need a hearing because it may
17 be a factual issue you have to decide. But
18 despite Ms. Creighton Hendricks' references to
19 the contrary, they are not creating those
20 records today, and that's a big problem. Now,
21 if she wants me to file a complaint, I suppose
22 we can do that. We've always tried to work
23 through that without having to file a complaint.

24 JUDGE RUTH: Okay. But you just
25 said that your -- the person you brought with

1 you would -- would be able to testify that with
2 some wireless carriers they're not getting the
3 records.

4 MR. ENGLAND: Right.

5 JUDGE RUTH: Is that the same for
6 some -- for carriers that aren't wireless?

7 MR. ENGLAND: We don't know. We
8 don't know if there are any CLECs. We're not
9 getting any records. We don't know if there's a
10 CLEC that's connected in Jefferson City that's
11 sending traffic to MO-KAN and Tebbetts. We do
12 know that there are wireless carriers connected
13 in Jefferson City sending calls to MO-KAN and
14 Tebbetts. Because we can -- we can capture that
15 -- that caller based on sort of Caller I.D.
16 information that we get at MO-KAN and Tebbetts.
17 And we're not getting any records from Sprint
18 for that.

19 Now, let me -- let me -- let me go one
20 step further. And it's right here in black and
21 white in this interconnection agreement. If
22 this traffic goes the other way, Ms. Creighton
23 Hendricks says they have an obligation to
24 transit. If this goes the other way, this
25 agreement provides that Sprint will create a

1 record and pass it to the party, to ICG.
2 It -- it -- it says that they will create --
3 they will do -- exchange appropriate access
4 records, exchange access records. So ICG will
5 get a record of that call coming from the the
6 third party under the agreement. But if they
7 don't, if Sprint fails to do that, ICG gets to
8 default bill Sprint for all the traffic Sprint
9 can't identify the originating party. Do we
10 have that -- do we have that arrangement with
11 Sprint now? No. Is Sprint willing to do that
12 with us? No. Because there's another provision
13 under the transitting section that says they are
14 not responsible for paying us third parties for
15 ICG traffic. That's the discrimination. That's
16 the prejudice. That's the public interest that
17 you all need to address. Is that fair?

18 MS. CREIGHTON HENDRICKS: Well, your
19 Honor, I'd like to respond to that.

20 MR. ENGLAND: I sure as heck don't
21 think so.

22 MS. CREIGHTON HENDRICKS: To the
23 extent there are issues with Kingdom and Sprint,
24 I think he indicated that we were working on it.
25 Those are one of those isolated issues that I

1 identified. We have many multiple other
2 carriers that sit behind us which I am unaware
3 of any issues that we have. And if they would
4 like to bring a complaint, they can. We can
5 handle that. I just don't think this is the
6 forum -- if it's a records issue, then I think
7 there's a place to bring that issue and to
8 address it.

9 JUDGE RUTH: Okay. I want to ask
10 you a question. And we'll allow some overall
11 general comments also at the end from the
12 parties. But Ms. Creighton Hendricks, when --
13 according to the agreement, when ICG -- let's
14 say the call comes from the third party there at
15 the bottom, goes up through Sprint and then to
16 ICG. The agreement provides that Sprint must
17 provide the records to ICG and that if they
18 don't, then there was this default billing
19 provision with Sprint, I take it would have to
20 pay?

21 MS. CREIGHTON HENDRICKS: Well,
22 I'm --

23 JUDGE RUTH: Is that correct?

24 MS. CREIGHTON HENDRICKS: Mr.
25 England can cite me to the provision. I

1 generally believe that -- with --

2 MR. ENGLAND: Well, 79 -- Section

3 79.9 of the ICG agreement provides for the

4 creation and exchange of appropriate records to

5 bill exchange access charges. The transiting

6 provision is Section 66.

7 MS. CREIGHTON HENDRICKS: Well,

8 my --

9 MR. ENGLAND: And to be more

10 specific, 66.4.2 provides that the transiting

11 party in this case, Sprint, will provide to the

12 terminating party in this case, ICG, information

13 on traffic originated by a third party ILEC.

14 Section 66.3.1.2 says that if Sprint doesn't

15 give them the identity of the originating

16 carrier that third party, the terminating party,

17 again, ICG, can default bill Sprint for that

18 traffic.

19 JUDGE RUTH: Okay. My question to

20 you, Ms. Creighton Hendricks, is how would it

21 not be discrimination, then, if -- if this is

22 what the agreement says that it doesn't work the

23 other way, that if ICG transits the -- the call

24 through Sprint to the third party but Sprint --

25 let's just say Sprint doesn't provide the

1 adequate record, then they're not treating them
2 similarly as if the call went the other way.
3 And wouldn't that be discrimination as has been
4 alleged?

5 MS. CREIGHTON HENDRICKS: Well, one
6 thing important about discrimination is you have
7 to be treated differently than people similarly
8 situated to you. Mr. England's clients are
9 non-parties to this agreement. We have gotten
10 with ICG and made these arrangements.

11 JUDGE RUTH: But the law says that
12 discrimination against third parties not a party
13 to the agreement. So that --

14 MS. CREIGHTON HENDRICKS: And --
15 right. To the extent that the none parties are
16 similarly situated, we cannot discriminate among
17 them.

18 JUDGE RUTH: And you're saying that
19 ICG is not similarly situated?

20 MS. CREIGHTON HENDRICKS: Well, no.
21 ICG is the party with whom we have the
22 interconnection agreement, with whom we have
23 fulfilled our federal obligation. Who comes to
24 us and we have no choice to say no or bring --

25 JUDGE RUTH: I see what you're

1 saying. You're saying that's not where the
2 discrimination comes in but that it would be in
3 other third party; in other words, if they treat
4 the MITG people differently from the small
5 telephone company group people, then then that
6 would be discrimination against one of the other
7 parties?

8 MS. CREIGHTON HENDRICKS: Correct.
9 And I think if you look into that provision of
10 the Act which addresses discrimination and
11 allows the Commission to reject an agreement,
12 it's really intended to capture the anti-trust
13 or and anti-competitive discrimination that may
14 arise from these agreements.

15 JUDGE RUTH: Are you saying that
16 you, Sprint, treats all third parties the same
17 in this case? In other words, down there at the
18 box that's the third party end office, that
19 every single third party end office is treated
20 the same as what the others --

21 MS. CREIGHTON HENDRICKS: Of every
22 -- yes, your Honor. Every agreement states that
23 the parties acknowledge that it's the
24 originating party -- party's responsibility to
25 secure compensation arrangements for traffic

1 they send to third parties. That's a standard
2 provision that's been approved multiple times by
3 this Commission.

4 JUDGE RUTH: I understand that. But
5 are you treating all those end offices the same?
6 Or do you --

7 MS. CREIGHTON HENDRICKS: Correct.

8 JUDGE RUTH: Do you have some type
9 an agreement with some of them, therefore,
10 you're treating them differently, or it's just a
11 practice you're treating them differently?

12 MS. CREIGHTON HENDRICKS: Well, I'm
13 unaware of any agreement we would have with the
14 subtending companies. Now, since Mr. Johnson's
15 -- one of his clients, MO-KAN, is a subtending
16 company. You're free to ask him. He may know.
17 But to my knowledge, we do not have an agreement
18 and nor do we have an agreement in which we
19 transit traffic for MO-KAN.

20 MR. JOHNSON: That's correct, your
21 Honor. To my knowledge, there's no -- I don't
22 know what call this agreement between MO-KAN
23 Dial and Sprint that pertain to that Warrensburg
24 tandem to Freeman end office relationship. I
25 also will tell you that, to my knowledge, Sprint

1 if they are connected with other CLECs and they
2 send CLEC traffic to Freeman to MO-KAN dial,
3 they have never in five, six, seven years, have
4 ever reported a minute of such CLEC traffic.

5 MR. ENGLAND: I can -- I can -- I
6 can tell you that as far as I know, my clients,
7 to the extent we're third parties in this
8 arrangement have been -- have been treated
9 similarly. I think that was your question. Or
10 I would like to say we've been mistreated
11 similarly.

12 JUDGE RUTH: Can you respond to -- I
13 see what Sprint is arguing, that the
14 discrimination is not between how MITG and STCG
15 are treated versus ICG. It's how they're
16 treated versus each other and any other end
17 party; is that correct?

18 MS. CREIGHTON HENDRICKS: Correct.
19 Correct.

20 JUDGE RUTH: Because one of the
21 questions we want to hear some more from the
22 parties on is this issue of discrimination. I
23 think the public interest allegation is perhaps
24 a little easier for me to understand and for
25 some of the Commissioners. But there is still

1 some confusion as to how this is discrimination,
2 even if it is as you say. If what those
3 companies are saying is true, how is that
4 discrimination?

5 MR. ENGLAND: Okay. Carl has --

6 MR. LUMLEY: But before we go on to
7 the next question, could I speak to your first
8 question? We've kind of ranged around the
9 issues. But the question that was presented was
10 the -- the distinct interest of the members of
11 these associations as intervenors versus the
12 associations themselves. And from our
13 perspective, it doesn't matter whether you look
14 at it -- you know, in terms of MO-KAN's direct
15 connections with Sprint or the more indirect
16 connections that they've described that their
17 clients have. I mean, clearly, these
18 connections exist, you know, in the
19 telecommunications network in the state. And so
20 we're not in any way suggesting that it matters
21 whether these companies intervened, you know, on
22 an individual base or an association basis. But
23 what we're saying is that either way, they don't
24 have a direct interest in this because what
25 we're talking about is a bilateral contract.

1 The -- all the other pieces of the network are
2 either subject to the provisions of a tariff
3 that gets filed and approved here or they would
4 be subject to an agreement. And then in the
5 absence of either, the companies are free to not
6 have the connection. And they're free to set up
7 their network in a way to limit whatever
8 connections they do want to make such that those
9 connections only allow traffic that are covered
10 by tariff or agreements.

11 So this -- the section that Mr. England
12 points to 66.2 -- 66.2.2, by this bilateral
13 contract, these two companies cannot in any way
14 override a tariff that his clients have on file,
15 cannot in any way override a contract that these
16 companies have with Sprint or any other carrier.
17 This is strictly a bilateral contract. And
18 regardless of what we say as between our two
19 companies where we agree that it's going to be
20 the originator's responsibility to get an
21 agreement and to pay whatever has to be paid
22 with third parties, nonetheless, if they have a
23 tariff that says otherwise and makes Sprint
24 responsible when ICG originates this
25 hypothetical traffic, Sprint's going to have to

1 abide by the tariff and vice versa. So -- and
2 they've even gone so far as to acknowledge that
3 they don't even really want the agreement that
4 they've talked about in their pleadings, but
5 they want to rely on their tariffs.

6 And so our point is not that it matters
7 whether this is MO-KAN intervening individually
8 or as a member of an association. We certainly
9 recognize the value of associations in our
10 industry and the need for them to speak for
11 their members. But that either way, there is no
12 direct interest in this relationship because
13 they're free to protect themselves through
14 tariffs, through agreements, through network
15 structuring and through the legal process to
16 enforce those things such as filing complaints.

17 JUDGE RUTH: Okay. Let me ask you,
18 though, under your reasoning, would there ever
19 be a party that would have an interest besides
20 the two that are parties to the agreement?

21 MR. LUMLEY: Certainly. I think
22 there could be. You could have a provision, for
23 example, that purports to establish an exclusive
24 arrangement as an extreme example. Sprint says,
25 We will only interconnect with you. We will

1 never interconnect with another CLEC. Clearly,
2 that's discriminatory against other companies
3 and illegal and contrary to public interest as
4 well. So you can fashion provisions of a
5 contract where the parties agree in some binding
6 way not to deal with other parties. But there
7 is no such provision here. There's no provision
8 in here that says we're going to thumb our noses
9 at applicable tariffs, even if that could have
10 some effect. And there's no provision in here
11 that says, We will not deal with other parties.

12 JUDGE RUTH: Okay. Backing up just
13 a little bit. The inter -- or the -- the Teleco
14 Act says that the Commission shall approve the
15 interconnection agreement unless it, one,
16 discriminates against third parties not a party
17 to the agreement, or, two, is against the public
18 interest. How would the Commission determine
19 that in some cases without hearing from a third
20 party who claims that it discriminates against
21 them? If a third party claims it discriminates
22 against them such as we have here, how could the
23 Commission determine that without letting them
24 in and hearing them?

25 MR. LUMLEY: Well --

1 JUDGE RUTH: Because you seem to
2 have indicated you didn't think there -- well
3 and your pleading certainly indicated you did
4 not think these parties had standing to
5 intervene.

6 MR. LUMLEY: Not -- not because --
7 well, I'm sorry.

8 JUDGE RUTH: Well, they made an
9 allegation that it's discriminatory against
10 third parties and that it's against the public
11 interest. Which, if that's true, the Commission
12 has to reject it.

13 MR. JOHNSON: Or those portions of
14 the agreement that are.

15 MR. LUMLEY: But my point is not
16 that third parties generically don't have the
17 right to intervene in such a proceeding but that
18 you have to go beyond the fact that they're a
19 third party and they've cited the statute,
20 actually look at their factual allegations --
21 which I also want to emphasize, everything today
22 is strictly lawyer argument. We don't have
23 people who are under sworn testimony to any of
24 these purported facts. So it's basically akin
25 to some kind of opening statement. But --

1 JUDGE RUTH: But it's helpful to the
2 Commission to understand where we're at.

3 MR. LUMLEY: I'm not disrupting that.
4 I just want to highlight that. But you have you
5 to look at the factual allegations they've made
6 in their pleadings. What they've done is
7 they've specifically attacked these specific
8 provisions, I believe, on their face have failed
9 to show an issue that rises to the level of
10 these statutory requirements. I'm not saying
11 it's not theoretically possible for somebody to
12 present an agreement that violates the statute
13 and a third party to come forward and say, Look
14 at provision, you know, No. 7. You know, it's
15 bad and we have a right to attack it. I mean,
16 it's essentially an analysis. They've failed to
17 stake a claim upon which relief can be granted.
18 Because you look at their pleadings and the
19 issues they've raised on their face are not
20 discriminatory and not against the public
21 interest. They -- I mean, it's really akin to
22 saying -- the only way you could have transit
23 provisions in any contract is if the entire
24 industry was a signatory to the contract that
25 you're not allowed to do this on a piece part

1 basis. And we maintain that we are allowed to
2 get provisions in place, No. 1, importantly, to
3 allow for the -- the transit of MCA traffic,
4 which clearly needs to flow. But also to set
5 the stage for the possibility of other traffic,
6 which we don't even believe exists in our case.
7 And I'm not here to speak about every other CLEC
8 and every other wireless carrier. But as far as
9 I've been able to identify so far with ICG,
10 we're not aware of anything else today that
11 would go. But we still believe we're free to
12 establish this piece part of the arrangement and
13 then negotiate with the next carrier and the
14 next carrier to put all these pieces together.
15 We don't believe the Act sets up a process where
16 we have to get every singler carrier in the
17 State of Missouri in a room and say, Okay,
18 everybody sign here. That's just not how it
19 works.

20 JUDGE RUTH: Okay. I want to make
21 sure of something from your party's position.
22 If what the intervenors allege were true about
23 the traffic that is being transitted and that
24 there is no payment being made for them, when
25 they talk to Bell they get no money, and

1 sometimes they can't bill. If that were true,
2 would it be against the public interest for that
3 to be happening?

4 MR. LUMLEY: No. Not -- not in the
5 context of this agreement because this agreement
6 does not affect the -- their undisputed right to
7 be paid for that traffic, to enforce -- they say
8 their access tariffs apply to that traffic, so
9 they've already got an enforceable provision in
10 place. They don't have any intermediate steps
11 to pursue. Okay? We're not changing anything
12 by being the -- you know, 200th CLEC to have a
13 transiting provision in their interconnection
14 agreement in the state. If, in fact, this
15 traffic exists, they have the right to enforce
16 their tariff and collect the money.

17 JUDGE RUTH: But let's just say for
18 the sake of argument that the traffic's being
19 transitted. There's not payment made. And we
20 know that this proposed interconnection
21 agreement has a provision that allows for the
22 reversed billing. Is that what it was called?

23 MR. ENGLAND: Default billing.

24 JUDGE RUTH: Default billing.

25 Sorry. If Sprint were not able to provide the

1 records for the traffic going to ICG and if the
2 Commission were to find that traffic is going,
3 there is not the payment, we know of a way to
4 correct it for traffic going the other way,
5 wouldn't a provision in the interconnection
6 agreement that held -- that found that Sprint
7 has to pay these third parties if they're not
8 able to provide the records, that would
9 alleviate the public interest concern from that
10 point of view?

11 MR. LUMLEY: But -- but we're not
12 allowed to impose any provisions on third
13 parties by this contract because they're not
14 signing the contract.

15 JUDGE RUTH: But this would be be on
16 -- it would be on Sprint. If they don't provide
17 adequate records, then you'll have to pay third
18 parties.

19 MR. LUMLEY: But that's not the way
20 the parties have agreed to structure it. But
21 that doesn't change the --

22 JUDGE RUTH: I understand it's not
23 this agreement. And the Commission's not going
24 to order that something be put in there. I'm
25 just wondering if that would take care of this

1 problem.

2 MR. LUMLEY: I'm saying you don't

3 need it because the problem's already taken care

4 of.

5 JUDGE RUTH: By these access

6 tariffs?

7 MR. LUMLEY: They file a complaint

8 against the person that gives them the traffic.

9 If that person has a contractual right to

10 subrogate that claim to somebody else and say,

11 You agreed contractually to indemnify me against

12 any such claim, you agreed that you would be

13 responsible for this traffic, they're free to

14 bring that person into the complaint

15 proceedings. But they're not allowed to impose

16 on the third party any terms that they haven't

17 negotiated and signed a contract or established

18 by an approved tariff. It's the only other way

19 to impose terms in this state is to have the

20 Commission say, These will be the terms because

21 you don't have a contract.

22 JUDGE RUTH: So you're suggesting

23 that if the third party intervenors, third party

24 meaning on the diagram the end -- the end office

25 third party --

1 MR. LUMLEY: Right.

2 JUDGE RUTH: -- if they believe

3 they're receiving traffic that they're not

4 getting paid for, you think they should file --

5 and they think that traffic originates with ICG

6 or Comm South, they should file the complaint

7 against Sprint. And then if Sprint wants to

8 bring ICG into it, they should do that?

9 MR. LUMLEY: That's what I would do

10 if I was them. I would sue the person that

11 handed me the traffic and say, Where did it come

12 from?

13 JUDGE RUTH: Do you want to respond,

14 Mr. Johnson?

15 MR. JOHNSON: Well, your Honor,

16 between ICG and Sprint, they suggested this is

17 as a bilateral agreement, that this is an

18 appropriate issue here, that this should be

19 taken to some generic form. If this were truly

20 a bilateral agreement, it would not address

21 traffic as destined for parties that aren't a

22 party to the agreement. I disagree with Sprint

23 and ICG that says they've got the right or the

24 obligation to transit traffic to these other

25 carriers. And I can cite you FCC decisions and

1 Kansas Corporation decisions that would suggest
2 otherwise.

3 We have been experiencing this transit
4 traffic unreported uncompensated with the --
5 with the collection disabilities or problems
6 that Mr. England mentioned for over six years.
7 Let me just give you one hypothetical. Let's
8 suppose that the Commission approves both the
9 Comm South agreement and approves the ICG
10 agreement as they are today and both of those
11 carriers send traffic to Sprint that Sprint
12 sends to MO-KAN Dial. But MO-KAN Dial gets no
13 reports from Sprint. How does MO-KAN Dial know
14 who is sending it traffic that's not being
15 reported and it can't get -- be paid for?
16 How does MO-KAN Dial know who he's going to
17 present a claim against? Is Sprint going to be
18 responsible for the unidentified traffic? No.
19 No. They've refused that responsibility a
20 multitude of times and a multitude of dockets
21 that this Commission has already handled. Why
22 should MO-KAN Dial even have to try to find out
23 who is sending it traffic on unidentified basis?
24 Why should that be their obligation that's
25 created by an agreement that they're not even a

1 party to? That is discriminatory. And another
2 thing that I think is discriminatory is
3 comparing MO-KAN Dial to ICG for traffic that
4 Sprint transits to ICG and terminates to ICG.
5 They've worked out a record system and a default
6 billing system. But for traffic coming from ICG
7 to MO-KAN Dial, they have no such arrangements.
8 We are discriminated against by that virtue
9 alone.

10 JUDGE JONES: Are you and ICG
11 similarly --

12 MR. JOHNSON: We're both LECs that
13 hang off Sprint's tandem. We're connected to
14 Sprint. And according to this agreement,
15 Sprint's going to take the traffic both ways.

16 JUDGE RUTH: Ms. Creighton Hendricks
17 says the discrimination issue isn't to compare
18 you to ICG. And we all, I think, seem to see
19 the difference there.

20 MR. JOHNSON: Why isn't -- why can't
21 we compare -- make that comparison?

22 JUDGE RUTH: Well, I wanted you to
23 counter her argument that -- that you shouldn't
24 -- you know, she says that -- that the
25 comparison is not with ICG. Why do you think it

1 is? I mean, how do you --

2 MR. JOHNSON: Because the standard

3 of the Federal Act is it discriminates against a

4 carrier that's not part of the agreement. Under

5 this agreement, ICG gets a better relationship

6 for traffic that's terminating to it than does

7 MO-KAN Dial who is not a party to the agreement.

8 MR. LUMLEY: But the agreement does

9 not say that they won't make the same

10 arrangement with them in a bilateral

11 negotiation. It doesn't in any way --

12 MR. JOHNSON: Why weren't we brought

13 into these negotiations so we could be a party

14 to this contract? It shouldn't address

15 contracts that are destined to a non-party to

16 the agreement.

17 MS. CREIGHTON HENDRICKS: Your

18 Honor, if I could say one thing and bring you us

19 back to what we're dealing with. This is an

20 interconnection agreement between two parties.

21 A party some to me, Sprint, I have a federal

22 obligation to respond, and I have a federal

23 obligation to allow them access to my network.

24 And my federal obligation is not dependent on

25 upon these groups coming to the table and

1 agreeing to the provisions of my contract. It
2 is affirmative and I must do it. And I must do
3 it as the terms exist between Sprint and ICG.
4 And we -- that is something that we cannot
5 effect. I have that obligation. And if this is
6 -- what I think it's boiling down to be is a
7 records issue. If there is a records issue with
8 Sprint, then come to me. We will address that.
9 We can do it informally as we currently are or
10 we can do it in a complaint. But this is not
11 the -- the case in which we resolve that issue.

12 MR. JOHNSON: If MO-KAN Dial
13 measures traffic coming down it's trunk that
14 exceeds the billing records they get, is Sprint
15 going to be responsible for the entire
16 difference?

17 MS. CREIGHTON HENDRICKS: No. That
18 could be MCA traffic. Until we sit down and we
19 look at it, which either we can do in the
20 informal setting or if you want to bring a
21 complaint, you may. but this is not the forum
22 for it. Or this is not the case for it.

23 JUDGE RUTH: I understand that's
24 your position that it's not the case for it.
25 But at this time, the Commission hasn't decided

1 if that's the case. And I want to ask you, the
2 records that you would provide to the third
3 party, would they distinguish between its MCA
4 traffic, which then would fall under the bill
5 and keep provisions or whether it's another type
6 of traffic, which -- such as the ICG to the
7 third party in which case there might be payment
8 that needs to be made?

9 MS. CREIGHTON HENDRICKS: Well, your
10 Honor, I cannot sit here and tell you that level
11 of detail in our billing. I can represent to
12 you that I can get a summary in to the Court to
13 indicate what our records reflect based on what
14 type of traffic is passed to us. And I think it
15 exists in the 593 case. We have developed some
16 of those matrixes, so I should be able to
17 transport it over here.

18 JUDGE RUTH: It --

19 MR. JOHNSON: You will provide an
20 actual record of an actual CLEC that you've
21 actually reported?

22 MS. CREIGHTON HENDRICKS: To the
23 extent we've a none MCA CLEC traffic transit or
24 network.

25 JUDGE JONES: I see a problem

1 brewing between Sprint and the terminating
2 companies, but the -- interconnection agreement
3 has a clause that makes it ICG's responsibility
4 to make arrangements with the end companies for
5 payment. Have those arrangements been made?
6 Have the -- has ICG made arrangements with
7 MO-KAN Dial for compensation?

8 MR. LUMLEY: To my knowledge, there
9 is no such traffic yet. And so there is no such
10 agreement yet. But the -- the point remains --
11 I mean, if you flip -- if you flip it around --
12 if -- if we negotiated first with MO-KAN Dial
13 and -- and had the agreement for what happens on
14 this piece of the network but we don't have an
15 agreement with Sprint to get it there, we're
16 still left in the same situation of having to do
17 it one step at a time.

18 JUDGE RUTH: Okay.

19 MR. LUMLEY: So our position is
20 we're -- you know, the contract -- we're
21 contractually acknowledging the obligation to do
22 it. And I understand that they've got
23 complaints that parties aren't doing that. But
24 you also have to take with a grain of salt that
25 it's been six years and they've done nothing

1 about it. So I have some questions about it.
2 Now -- and I'm overstating when I say done
3 nothing about it. What I mean to say is that
4 they've not filed and pursued to completion a
5 complaint. They have done plenty about it, and
6 I've misstated that. I understand that.

7 JUDGE JONES: Mr. Edding, it seems
8 as though before traffic is routed to the end
9 companies, arrangements for compensation would
10 be made.

11 MR. LUMLEY: Correct.

12 JUDGE RUTH: But you said at this
13 point you have not been transitting any traffic
14 this way, ICG, Sprint to third party; is that
15 correct?

16 MR. LUMLEY: Other than potentially
17 MCA traffic.

18 JUDGE RUTH: Okay. So you've been
19 going like ICG, Sprint, IXC?

20 MR. LUMLEY: That's my
21 understanding.

22 JUDGE RUTH: Okay.

23 MR. LUMLEY: And that -- and, again,
24 I'm not speaking on behalf of the entire CLEC
25 and wireless industries. I'm talking about my

1 understanding of what ICG's evidence would be if
2 we had to put on evidence. And just for the
3 record, I understand the confusion, but my last
4 name is Lumley, and my firm name is Edding. I
5 just don't want the transcript to reflect that
6 my partner was here or something. But -- but I
7 maintain we're free to negotiate each of those
8 pieces. I'm not suggesting in any way that ICG
9 has the right to deliver traffic to these
10 companies and not pay for it. And the contract
11 specifically says to the contrary.

12 JUDGE RUTH: So it's your
13 understanding that ICG intends -- it hopes to
14 make this interconnection agreement between ICG
15 and Sprint, but then before the company transits
16 any traffic, you know, through Sprint on down to
17 the third party, ICG intends to make
18 arrangements with the third party to pay for
19 those?

20 MR. LUMLEY: If there's to be any
21 such traffic other than MCA, which is already
22 covered by Commission order and no further
23 agreements is required.

24 JUDGE JONES: Well, you have until
25 -- I believe in your case, September 2nd before

1 this interconnection agreement needs to either
2 be approved or rejected.

3 MR. LUMLEY: Right.

4 JUDGE JONES: Do you intend to make
5 arrangements for compensation before that day?

6 MR. LUMLEY: Well, again, today,
7 we're not aware of any such traffic that we
8 intend deliver.

9 MR. JOHNSON: Then why does the
10 contract cover it?

11 MR. LUMLEY: Because it -- first of
12 all, because every other CLEC in the state
13 already has this provision. And Sprint proposed
14 the language to us, and we took it. But,
15 secondly, because the occasion may result where
16 we do need this provision and we come to you and
17 negotiate with you and now we've got both
18 pieces. There's no reason for us to have to
19 come back to Sprint some day to get contract
20 language that every other CLEC in the state
21 already has.

22 MR. ENGLAND: May I -- may I speak?

23 JUDGE JONES: Yes.

24 MR. ENGLAND: We're getting to a
25 really important issue and that is do we -- the

1 remedy is not appropriate records. That's
2 secondary. The remedy is eliminating transit
3 provisions from the interconnection agreement.
4 And if we have to start with this one and work
5 our way through every other one that gets filed,
6 that's what we intend to do. If they don't need
7 the transit provision, then don't include it in
8 the agreement.

9 Secondly, I don't believe there's a
10 federal obligation to transit toll traffic. I
11 would -- I even dispute the argument that they
12 have an obligation to transit local but not toll
13 traffic, and that's essentially -- this MCA is a
14 very small part of what we're talking about.
15 Essentially, we're talking about toll traffic to
16 all of these third parties. And Mr. Lumley has
17 now told you that they don't need this
18 interconnection to get us toll traffic because
19 they can go to an IXC. And that's -- that's
20 exactly the way it happens today before this
21 interconnection happens. That's the way we want
22 it to stay. Because when it goes through an
23 IXC, we get a record from Sprint under the
24 exchange access billing arrangements. And we're
25 able to bill the interexchange carrier for that

1 traffic. And it works slick, and we don't
2 really have any problems there. What this --
3 another level of discrimination, what this
4 agreement does is take traditional toll traffic
5 off the traditional IXC network, route it
6 through Sprint down to the third party bypassing
7 the interexchange network, bypassing the
8 established record creation and passing
9 processes that have been in place for years.
10 And that's where the problem is. Mr. Lumley on
11 the one hand says we've got our exchange access
12 tariffs to apply. That's -- he's right. We
13 want to apply them. But by bypassing the
14 interexchange network through this
15 interconnection, they have prohibited us from
16 applying our access tariff,
17 Or at the very least, made it very, very
18 difficult, if not impossible.

19 JUDGE RUTH: And it's only difficult
20 because of the records issue?

21 MR. ENGLAND: Yes. Now, let me give
22 you a very simple -- very simple analogy. Judge
23 Ruth, Judge Jones, you are customers of mine and
24 I have a grocery store. And you come in
25 separately on occasion and you buy your

1 groceries. And as you check out, we -- we
2 identify what you've bought and you pay for
3 exactly what you -- what you've taken out of the
4 store. Now, the two of you get together and
5 say, for whatever reason, Judge Jones doesn't
6 want to drive to the grocery store. And says
7 Judge Ruth, if you don't mind, would you pick up
8 my groceries for me since you're going? And you
9 for -- have no problem with doing that. In
10 fact, you may get compensated by Judge Jones for
11 doing that. Now you leave the grocery store and
12 you have a quantity of groceries that are not
13 only yours but also Judge Jones. And as you
14 leave, you said, Now, these are mine, Trip, and
15 I'll pay you for them. But these are Judge
16 Jones', and he's going to pay you for them.
17 Now, it's -- it gets worse than that because
18 sometimes I don't even know which is which until
19 later. And sometimes nobody ever even tells me
20 -- for example, Judge Jones doesn't tell me and
21 you don't tell me which groceries are his.
22 That's the business relationship, if you will,
23 that's now being created. That's the bypass of
24 the old arrangement that I had with you, Judge
25 Ruth, that I had with you, Judge Jones. By your

1 bilateral agreement, you've bypassed that and
2 put me at a disadvantage.

3 Discrimination? Absolutely. Prejudice?
4 You bet. Against the public interest? I
5 certainly submit that it is. That's what's
6 going on here. We're taking IXC traffic off the
7 IXC network, routing it differently, not getting
8 any records for it. Even when we get the
9 records, we're getting a bunch of bogus
10 disputes. And it's just not working. And I
11 agree it's -- I don't want to be picking on
12 Sprint. And I don't want to be picking on ICG
13 because it's -- it's state wide. But darn it,
14 it -- at some point -- and despite -- well, I
15 think Mr. Lumley did acknowledge, we've been
16 fighting this in a variety of forums for over
17 six years. And I think it's an appropriate
18 issue to raise with respect to the -- to the
19 limited jurisdiction you have over
20 interconnection agreements.

21 JUDGE RUTH: Just just a moment.
22 Just a moment. You'll get your turn. But
23 backing up even before the analogy, right now,
24 traffic goes from ICG to Sprint to the IXC down
25 to the third party. And it's my understanding

1 that in that case, the third party, the two
2 intervenor groups, get good records.

3 MR. ENGLAND: That's correct.

4 JUDGE RUTH: Is there any reason why
5 when you skip the IXC, Sprint, why you couldn't
6 give them the same good records? If it just
7 goes ICG, Sprint to the third party? You laugh.
8 Is -- my --

9 MS. CREIGHTON HENDRICKS: I'm not
10 laughing. I'm not laughing.

11 MS. JOHNSON: You're talking about
12 an issue that's been pending for years.

13 JUDGE RUTH: I just wondered is
14 there something different when it comes through
15 the IXC that makes it easier for Sprint to give
16 the good records? Or is there really no
17 difference and you should be able to give the
18 exact same records?

19 MS. CREIGHTON HENDRICKS: First of
20 all, let me clear the air here. With respect --
21 I guess first let me answer your question. My
22 understanding -- and I can check -- I can have
23 this checked and we can submit something to the
24 Commission after this hearing --- is that we
25 provide something that's similar to the modified

1 1101 record when we would pass this traffic.
2 Now, as I stand here, I don't even know if
3 there's been an instance that we have passed
4 CLEC traffic over a transitting network,
5 transitting traffic -- or providing that
6 function. So I believe that the records are
7 similar when it goes through this network. Now,
8 I will have to have that checked. And like I --
9 I indicated, I can submit something.

10 JUDGE RUTH: And I-- I'd like you
11 to check that. But I'm a little concerned about
12 the word similar. If you decide they're
13 similar, I would like you to clarify how they're
14 different.

15 MS. CREIGHTON HENDRICKS: Well,
16 correct. As I understand they have an 1101
17 record that comes in the context of the IXC
18 passing the traffic, and we issue a modified
19 1101 in the context of the transitting traffic.
20 So I just have to see --

21 JUDGE RUTH: They would be otherwise
22 identical except --

23 MS. CREIGHTON HENDRICKS: Well, if
24 it's a modified 1101, there must be something
25 different. And that is something I would have

1 to check on.

2 JUDGE RUTH: And look at.

3 MS. CREIGHTON HENDRICKS: And,

4 furthermore, I would want to indicate that even

5 though Mr. Johnson has indicated this is

6 something that has gone on for years, with

7 respect to CLECs that are directly connected to

8 Sprint, I'm unaware of this going on for years.

9 There is an issue that has been pursued

10 repeatedly by both MITCG and the Small Telephone

11 Group relating to traffic that comes from

12 Southwestern Bell's network and transits our --

13 our tandem-- or transits our tandem as the

14 second tandem provider where we don't have the

15 CLEC passing traffic directly to us. That's a

16 whole separate issue.

17 JUDGE RUTH: Okay. But there you're

18 talking about traffic that would start at

19 Southwestern Bell, go to Sprint and then go to

20 the third party?

21 MS. CREIGHTON HENDRICKS: Correct.

22 JUDGE RUTH: And you're saying

23 there's been an issue about the records being --

24 and payment being provided in that case?

25 MS. CREIGHTON HENDRICKS: Well, I

1 think that both the CLEC complaint, the one that
2 was filed by MITCG as well as the wireless
3 complaint, related solely to that -- that type
4 of traffic. It did not relate to traffic that
5 came from a CLEC that was connected to Sprint's
6 network. So I want to make sure that this issue
7 -- is defined.

8 JUDGE RUTH: And I don't want to get
9 too far away. But in that situation, one of the
10 allegations was the records weren't adequate?
11 Is that --

12 MS. CREIGHTON HENDRICKS: I believe
13 that there were --

14 JUDGE RUTH: The records from Sprint
15 to the third party weren't accurate?

16 MS. CREIGHTON HENDRICKS: I believe
17 there is a record called a CTUSR in the wireless
18 case, in the wireless traffic that SBC sends to
19 the small companies. And that is not something
20 that Sprint generates. And I believe their --

21 JUDGE RUTH: Okay. More basic. Was
22 an issue in that situation that the records
23 weren't adequate that the third parties were
24 getting from Sprint?

25 MS. CREIGHTON HENDRICKS: I --

1 Sprint was not providing -- because Sprint is a
2 second tandem provider, it does not provide
3 records.

4 JUDGE RUTH: Okay.

5 MS. CREIGHTON HENDRICKS: It's SBC
6 that provides records. And they're -- there's
7 been disputes and I -- I believe it's not so
8 much to the records, but whether or not the
9 records tell the type of traffic going over.

10 JUDGE RUTH: Okay. I was just
11 trying to see how similar that was to the
12 situation or not.

13 MS. CREIGHTON HENDRICKS: Correct.
14 And I'm indicating as far as how Sprint is
15 situated, it is different from this situation.

16 JUDGE RUTH: And you're saying
17 you're not aware of any traffic that has gone
18 from ICG or a similar company through Sprint to
19 these third parties without records being
20 provided?

21 MS. CREIGHTON HENDRICKS: As far as
22 a CLEC provider, I'm unaware of a situation.
23 But I must admit, I must check. I am -- there
24 has never been a complaint that has been brought
25 to my attention regarding --

1 JUDGE RUTH: Let me ask the
2 intervenors just that question. Are you aware
3 of the traffic that's gone from ICG or a CLEC
4 through Sprint to the third party intervenors
5 where the billing was not -- the records weren't
6 provided and the bill wasn't paid?

7 MR. JOHNSON: Well --

8 JUDGE RUTH: In other words, is this
9 prospective only? You see that there could be a
10 problem or that you know for a fact that in very
11 similar cases there has been?

12 MR. JOHNSON: Let me ask you -- cut
13 it in two halves. First of all, are we aware of
14 any ICG traffic that went to the Sprint tandem
15 and transited that we were aware of a records
16 issue? No. We've never received any records so
17 we would have no ability to be aware that that's
18 the case. I will tell you that my clients a
19 year, year and a half ago, brought a complaint
20 against Southwestern Bell, against Sprint and
21 against a -- five or ten or 15 CLECs including I
22 believe, ICG. Because Southwestern Bell in
23 contrast to Sprint, had reported CLEC traffic
24 terminating to us. We filed that complaint
25 because we were getting records and nobody would

1 pay. It wasn't on our access tariffs. Bell
2 said it's not our responsibility to pay. And
3 ICG said it's not our responsibility to pay. So
4 we sued them. And in the first -- the case was
5 on file for about six months. And the first
6 part of it was devoted to trying to get an
7 agreement between the parties as to what
8 agreement -- what interconnection agreement this
9 traffic was being handed off to Bell pursuant
10 to. Then trying to identify how it got to our
11 clients. Who is responsible to pay and who we
12 should bill with the record. Well, right off
13 the bat, the IT -- ICGs and the AT&T said, No,
14 this traffic should have been popped out. The
15 traffic should never -- this traffic should have
16 gone from here to here to here, back down so
17 that you would have gotten your record and you
18 would have billed the IXC. You wouldn't have
19 billed us. And Bell said, No, because of the
20 nature of our agreement, we're supposed to be
21 sending that to you or sending it to Sprint who
22 in turn sends it to MO-KAN Dial. Therefore, you
23 should be billing them. Well, since we couldn't
24 get that very first part of the case
25 straightened out, we ended up dismissing it

1 without prejudice because we couldn't prove --
2 due to the inadequacies of the interconnection
3 agreement in addressing and identifying and
4 reporting transit traffic, we couldn't prove the
5 case. And we decided to wait and oppose the
6 next interconnection agreement that had transit
7 provisions in it. And I can --

8 JUDGE RUTH: Wait. Wait a minute.
9 Okay. So --

10 MR. JOHNSON: And I can provide you
11 a cite --

12 JUDGE RUTH: Would it be in the
13 public interest, then, to have interconnection
14 agreements that have the reciprocal type of
15 agreements that say, where Sprint agrees we'll
16 provide ICG with great records from calls that
17 come from the third parties up through Sprint to
18 ICG mand we'll do vice versa, for calls that ICG
19 sends through Sprint to MO-KAN, we'll provide
20 these great records? In other words, then you
21 would -- then all parties would know what
22 traffic is being transitted?

23 MR. JOHNSON: We need to get a
24 record to know the traffic's been terminated.
25 We need the record to identify the responsible

1 carrier who is going to pay the bill.

2 JUDGE RUTH: Correct.

3 MR. ENGLAND: And I would like the
4 same deal ICG has that if they fail in making
5 that adequate record that Sprint has to basically
6 pay for that -- that call.

7 MR. JOHNSON: See, one of the
8 differences is, Judge Ruth, for that call that
9 comes from ICG to Sprint tandem up to the IXC
10 and goes up to IXC and comes down in the IXC
11 network, Sprint tandem creates an 1101 from
12 MO-KAN Dial, the third party office, and that
13 thing says you bill the interexchange carrier,
14 you bill the IXC. When the call comes through
15 the Sprint tandem and then doesn't go up to the
16 IXC, we don't get an 1101 and the 1101 is
17 trying to identify ICG. But that hasn't been
18 completed yet. There's no -- there's no 1101
19 record available yet.

20 JUDGE RUTH: I'm trying to look at
21 this maybe a little bit differently from the
22 remedy you -- your parties are seeking. If the
23 Commission had a different agreement between ICG
24 and Sprint on the table and it looked just like
25 the one that we have now, but it had similar

1 language for this default billing to -- that
2 went the other way that said -- you know, right
3 now it says if the third party, MO-KAN, transits
4 through Sprint to ICG and Sprint's not able to
5 give good records to ICG, then Sprint will pay.
6 Is that correct? On a very basic level, that's
7 what it says?

8 MR. ENGLAND: Correct.

9 JUDGE RUTH: What if the agreement
10 and interconnection agreement had the same
11 language for the calls that go the other way?
12 ICG to Sprint to third party that said, ICG has
13 arrangement -- or has the obligation to make
14 arrangement with other parties like the third
15 MO-KAN, et cetera, for the transit of traffic.
16 And to facilitate this, Sprint will provide the
17 same type records to the third party as are
18 going to ICG when the call goes the other way?

19 MR. ENGLAND: If you believe --

20 JUDGE RUTH: Wouldn't that be in the
21 public interest and take care of most of the
22 public interest argument?

23 MR. ENGLAND: Excuse me. If you --
24 if you believe the transit -- transit traffic --
25 or the transiting of toll traffic is even

1 necessary or appropriate for these local
2 interconnection agreements. Now, if you think
3 that they have to do it or you think it's
4 appropriate for them to be able to take this
5 traffic off the interexchange network, route it
6 through Sprint's tandem and directly to these
7 third party end offices, then, yes, what you've
8 proposed, I can't disagree. At least now I'm
9 being treated similarly as ICG.

10 JUDGE RUTH: It would be similarly
11 and it would be in the public interest in that
12 there's no third party getting harmed by not
13 getting paid. Wait. Wait. Wait. Is that
14 true, Mr. Swearngen (sic)? I mean, it would be
15 in the public -- we wouldn't have the against
16 the public interest argument and we wouldn't
17 have the discrimination argument if -- if it
18 worked the same both ways.

19 MR. ENGLAND: Right.

20 MR. JOHNSON: And all the the
21 parties agreed to the type of record.

22 JUDGE RUTH: Well --

23 MR. JOHNSON: What you -- if you're
24 talking about now making an amended agreement to
25 get the same --

1 JUDGE RUTH: No. I'm talking -- I'm
2 pretending we're looking at a different
3 agreement.

4 MR. JOHNSON: Different agreement.

5 JUDGE RUTH: I am not proposing that
6 the Commission order the parties to alter this
7 one. You say this one's bad. For me to
8 understand what's bad about it, I am trying to
9 understand what would be a good one, what would
10 work, how this one falls short.

11 MR. JOHNSON: What I was trying to
12 suggest is the symmetry you suggest, yes, that
13 would remove the prejudice and remove the
14 discrimination arguments. The only thing I was
15 trying to tell you was ICG got to negotiate
16 that. We didn't get to. And I was suggesting
17 that if you tried to unilaterally impose what
18 they've negotiated on us, we still might have
19 some quibbling with it because we didn't get a
20 chance to talk about the records, record format
21 and set up the billing arrangements and all that
22 stuff that they've already undertaken.

23 JUDGE RUTH: I understand it might
24 not still be the agreement you want. But from
25 the Commission's point of view, it would

1 probably -- or it might at least remove the
2 public interest concern.

3 MR. ENGLAND: I think I see what
4 you're saying. As long as Sprint treats us the
5 same way that it treats ICG under the terms of
6 the agreement, then that -- the alleged
7 discrimination or the disparity in treatment
8 goes away.

9 JUDGE RUTH: It totally goes away.
10 Some of the public interest concerns would go
11 away in that one of the -- the concerns I saw
12 with the public interest is perhaps really the
13 fairness of having a third party not getting
14 paid for traffic. And that would largely go
15 away. At least the records would be there and
16 it would make a better opportunity for those
17 third parties, MO-KAN, et cetera, to -- to bill
18 and get paid. But you said that -- my argument
19 assumes that Sprint has to transit this toll
20 traffic. So part of your party's argument is
21 that the interconnection agreement should not
22 require the transit of toll traffic?

23 MR. ENGLAND: Well --

24 JUDGE RUTH: You want that toll
25 traffic to just always go ICG, Sprint, IXC,

1 Sprint, back down?

2 MR. ENGLAND: Right.

3 JUDGE RUTH: And why?

4 MR. ENGLAND: And that's the other

5 level of what I call discrimination because what

6 we have, as Mr. Lumley indicated to you today,

7 if ICG wants to send a call to us, they have to

8 send it through the IXC. We get the records.

9 We bill the IXC. Everything works fine today.

10 Under this new arrangement, they're going to

11 send it through Sprint directly to a third

12 party. We've got the problem with records.

13 We've got the problem with billing that we

14 talked about.

15 JUDGE RUTH: But what if it weren't

16 this agreement, it was an agreement the same --

17 with this reversed billing on both ends?

18 MR. ENGLAND: Well, okay. The

19 second layer of discrimination that I think

20 still exists even with your equalizing the

21 rights and benefits of these two parties is that

22 you've now -- you've taken that call off the IXC

23 network. And you've routed it -- you've

24 bypassed the IXC network and there's still going

25 to be some problems as Craig said that the types

1 of records you get, the payment. It's going to
2 be different. And I -- and I --

3 JUDGE RUTH: I don't see how it's
4 the problem, though. That's what I was hoping
5 you would explain. Because as I see it, you
6 don't want any toll traffic, then, to go through
7 this interconnection agreement even if it had
8 the reverse billing provisions, I talked about?

9 MR. ENGLAND: Yes. My first
10 preference is they don't transit toll traffic.
11 My second preference would be what you have
12 recommended and that is if you believe it's
13 appropriate in the public interest, whatever, to
14 transit toll traffic to take it over this IXC
15 network, then at the very least we need the same
16 safeguards that Sprint has given ICG.

17 JUDGE RUTH: Just for clarification,
18 I wasn't recommending that that be the
19 interconnection agreement. It was just a
20 hypothetical.

21 MR. ENGLAND: I understand.

22 JUDGE RUTH: But why do you think
23 that Sprint does not have an obligation to
24 transit this toll traffic under the Act when
25 they seem to believe they do have the

1 obligation?

2 MR. ENGLAND: I think the Act deals
3 more with the exchange of local traffic, first
4 of all. And the inter -- interconnection -- and
5 there are specific provisions in the Act that --
6 that maintain the access or toll regime as it
7 existed prior to the Act. So I think when we're
8 talking interconnection, we're talking local
9 interconnection. And when we're talking
10 reciprocal compensation, we're talking
11 reciprocal compensation for local traffic.

12 JUDGE RUTH: So you're saying the
13 Commission has looked at these interconnection
14 agreements from the wrong perspective as long as
15 we've been approving interconnection agreements?

16 MR. JOHNSON: I don't think they've
17 ever focused on this, your Honor. Until someone
18 has been burned by it, somebody is going to come
19 up and say, This prejudices us, which is what
20 we're doing now in this case.

21 JUDGE RUTH: So both the two
22 intervenor groups believe that toll traffic is
23 not required to be transitted?

24 MR. ENGLAND: Correct.

25 JUDGE ENGLAND: Okay. And, Sprint,

1 you believe it is?

2 MS. CREIGHTON HENDRICKS: Well,
3 first of all, my clarification, I understand the
4 intervenors to believe that in traffic should be
5 transitted, including toll, that that is the
6 position of the intervenors.

7 JUDGE RUTH: So local?

8 MR. ENGLAND: We -- I think we've
9 got a legal argument as to whether or not
10 they're obligated to transit local traffic. But
11 I agree -- I'd like to hear the answer to your
12 question is does Sprint believe they have an
13 obligation to transit toll traffic? We can work
14 our way back to local.

15 MS. CREIGHTON HENDRICKS: Well, I
16 put them both together because they were --

17 JUDGE RUTH: Well, I'd like it
18 separated for my benefit. Does Sprint, in your
19 opinion, have an obligation to transit --
20 transit the toll traffic? Must you?

21 MS. CREIGHTON HENDRICKS: Well, the
22 obligation that we believe we have arises under
23 the Federal Act, and it's 251, the base of it,
24 which says we have to interconnect directly or
25 indirectly. And that one of the points of

1 interconnection, which they are entitled to
2 request, is our tandem. Therefore, they have
3 the ability to send traffic to people who
4 subtend our tandem. That is arising out of the
5 Federal Act and the interconnection
6 requirements.

7 JUDGE RUTH: So your answer would be
8 yes?

9 MS. CREIGHTON HENDRICKS: Well, I'm
10 not in a position now and we could subsequently
11 address it with respect solely to the toll
12 traffic. I'd have to look at it closer to see
13 how they impact toll versus local since the
14 argument, as I understood it to date, was across
15 the board, I have addressed it with respect to
16 both local and toll together. So I'd have to do
17 a little more research to specifically respond
18 to the toll.

19 JUDGE RUTH: I think that is going
20 to be an issue, then, though, assuming that the
21 case proceeds in that the intervenors are
22 alleging that you do not have an obligation to
23 transit the toll.

24 MS. CREIGHTON HENDRICKS: Correct.

25 JUDGE RUTH: Put it into pieces.

1 MS. CREIGHTON HENDRICKS: I was
2 unaware that we were going to have this
3 extensive discussion today at the prehearing, so
4 I did not come forward specifically having
5 researched that issue. I can. But I do know
6 that our arguments with respect to the indirect
7 connections arise out of the Federal Act and
8 specifically 251.

9 JUDGE JONES: Mr. Lumley?

10 MR. LUMLEY: Several points to make
11 on this subject. First of all, we believe that
12 they are required to transit our traffic, not
13 only under the direct provisions of the Act
14 where if you assume that we were the very first
15 CLEC to ever come to them, but more importantly,
16 today, because they have afforded this to every
17 other CLEC that's come to them, that clearly
18 requires them to offer it to us as well. They
19 are not allowed to deny us interconnection
20 methods that they are affording to others. More
21 over, I strongly suspect and not -- not aware of
22 it because it's never come up. And we can check
23 very quickly. I strongly suspect that there's
24 already an interconnection agreement between ICG
25 and Sprint and that this is a replacement

1 agreement and that the original agreement
2 already has -- if not the same, you know, very
3 similar provisions in it. But even -- even if
4 it's not in place with us, it's clear in place
5 with numerous other CLECs.

6 JUDGE RUTH: But I -- I thought I
7 asked how the traffic's going today. Does --

8 MR. LUMLEY: But we're not making
9 use of it in the way that they're describing.
10 I'm just saying that the contractual language, I
11 believe, is probably there. But we have the
12 right to it because others have gotten it. But
13 the whole fallacy to their argument that there's
14 this nefarious plan to -- to bypass the network,
15 the contract on its face says that we won't do
16 that. The contract on its face says we
17 acknowledge we have a responsible to make an
18 agreement with them before we do it.

19 I also would point out in this
20 transitting issue that it's a lot more difficult
21 to analyze than the parties are suggesting so
22 far. Because how do you distinguish traffic
23 that's local from traffic that's toll? I can
24 make that very complicated if ICG some day
25 expands its territory to include MO-KAN Dial's

1 exchange and has approved a single exchange that
2 covers the entire foot print. The statutes say
3 that our areas can't be smaller. But it's
4 possible to get relief that would allow that to
5 be local traffic from our perspective from how
6 we bill our customers. That doesn't mean that
7 they don't have the right to insist on access
8 being paid. And that has to be worked out
9 either through tariff or agreement. But it's
10 not -- you can't just -- once you have multiple
11 carriers with different regimes in place, trying
12 to figure out what's local and toll becomes very
13 complicated, and it's complicated further by the
14 fact that MCA is characterized as hybrid of
15 both. Where all that breaks down is the point
16 that Mr. Johnson made. Even if you were to
17 require us to change our contract, it doesn't
18 prevent them from wanting something different
19 because they're not a party to the contract.
20 And the conflict it creates to us is if Sprint
21 and ICG contract with each other to do it one
22 way and then MO-KAN Dial requires a tariff or an
23 agreement that does it another way, now we're in
24 breach of our contract to comply with their
25 tariff or their contract. And that's why we

1 maintain we negotiate our interconnection in
2 this document and when and if we need the other
3 piece, we negotiate with them. If they refuse
4 as they say they probably will to negotiate with
5 us, they have a tariff and we have to abide by
6 the tariff. If the tariff's insufficient today,
7 then they should propose changes to that tariff
8 that allow them to protect the rights that
9 they're worried about. But you can't -- you
10 can't solve it in this document because whatever
11 you do, the end result is you're -- you're not
12 issuing an order that says the parties will do
13 things in a certain way. You're issuing an
14 order that says this contract is approved and
15 the contract then governs and it only governs
16 the two of us.

17 JUDGE RUTH: And you're saying this
18 is not the appropriate venue to address --

19 MR. LUMLEY: Correct.

20 JUDGE RUTH: -- their concern? So
21 would the appropriate venue be a complaint case?

22 MR. LUMLEY: You have the right to
23 file a complaint. You have the right to file
24 new tariffs if you need to. You have the right
25 to seek to negotiate a contract if you choose

1 to. And, finally, the staff is being in the
2 process of proposing a rule that will be an
3 industry-wide solution which you can't craft in
4 this case. Even if you could somehow come up
5 with provisions that resolve for these
6 companies, we've still got Century Tel and
7 Southwestern Bell and every single CLEC and
8 every single wireless provider that's not a
9 party to this case and won't be affected by the
10 result.

11 JUDGE RUTH: This is a short answer
12 question. If -- I think the intervenors have
13 indicated that in an inter -- or a wireless
14 case, they tried to do a complaint case, but the
15 records were inadequate.

16 MR. JOHNSON: That is a CLEC case,
17 your Honor.

18 JUDGE RUTH: That was a CLEC?

19 MR. JOHNSON: Yes.

20 JUDGE RUTH: Okay. Do you think you
21 would have adequate records to bring a complaint
22 case in this type of situation if -- or do you
23 -- you don't have adequate records because you
24 wouldn't even be able to tell if traffic is
25 terminated?

1 MR. JOHNSON: MO-KAN Dial would
2 never be in a position to know it was missing
3 records to even have the first idea that they've
4 got an uncompensated traffic problem, and they
5 wouldn't have the first step to know to try to
6 find out who to -- to go collect from.

7 JUDGE RUTH: Okay.

8 MR. LUMLEY: Could I ask for a
9 clarification there? Because they've
10 represented that the reason they're upset is
11 that the minutes don't match up. And,
12 therefore, they do at least have some
13 information that tells them there's a problem.
14 Now, here's -- I'm hearing something different
15 and I don't think he means to contradict, but I
16 think we need to be clear. My understanding
17 is --

18 JUDGE RUTH: I thought he was
19 saying, you know, minutes are coming through but
20 you don't know exactly who they're coming from
21 so you can't bill and you can't prove who the
22 complaint goes against.

23 MR. JOHNSON: Yes, that's correct.
24 And the MO-KAN Dial situation, it's a little bit
25 more complicated for me to be as aggressive in

1 my statement because everybody knows the MCA
2 bill and keep traffic is coming down that same
3 network and nobody's creating records for it.

4 JUDGE RUTH: So you don't know --

5 MR. JOHNSON: MO-KAN Dial is always
6 going to know that even if it was measuring the
7 total minutes and comparing that to the minutes
8 they got records for, they should never be a
9 hundred percent because they're not supposed to
10 get records for MCA traffic. The problem I was
11 identifying and speaking to with respect to the
12 other members of my client group that did bring
13 this complaint case, they don't have MCA traffic
14 and they should never have a situation where the
15 records don't equal the total. But they do.
16 They sued. And they couldn't get anywhere
17 because of the inability to pierce these
18 interconnection agreements and have the parties
19 to that interconnection agreement tell them
20 enough about the traffic so that we could figure
21 out even who to sue. They couldn't do it.

22 MR. ENGLAND: If I may give you a
23 few war stories from my complaint case, if you
24 will, against the wireless --

25 JUDGE RUTH: Only briefly.

1 MR. ENGLAND: -- against the
2 wireless carriers that has now been on file for
3 well over a year now. We were able to stipulate
4 to facts, brief the case, but the Commission
5 felt it was important to reopen the record
6 recently to determine the jurisdiction of the
7 traffic.

8 JUDGE RUTH: That was Judge
9 Thompson's?

10 MR. ENGLAND: Correct. Local versus
11 toll. I understand their desire to get it right
12 as to which tariff to apply. But the fact of
13 the matter is the records we're getting don't
14 jurisdictionalize the traffic so now we're in
15 this process of trying to negotiate a factor, if
16 you will, as to what's local, what's toll so the
17 Commission can eventually render a decision that
18 says, yes, your toll tariff applies or your
19 access tariff applies to this traffic and your
20 wireless termination tariff applies to this
21 traffic. Once you're done telling me that,
22 hopefully you're giving me the right answer I
23 want. And the -- this wireless carrier, these
24 wireless carriers continue to refuse to pay.
25 I've got to go to Circuit Court and sue all over

1 again. The -- the Why don't we file a complaint
2 defense. When you consider the realities and
3 the economics of doing so, it's just not readily
4 or easily available. And this is -- and so you
5 have to understand the practicalities, too, of
6 this whole situation. If we can prohibit this
7 stuff from coming to us now, we avoid all of
8 these problems down the road.

9 JUDGE RUTH: But you're wanting to
10 avoid any calls ever coming to you through an
11 interconnection agreement between these parties?
12 My records idea or reciprocal type of billing
13 and records, that's not good enough. Your --
14 the only remedy you really want is to reject the
15 interconnection agreement and never have an
16 interconnection agreement between those two
17 parties. You want traffic to keep going ICG,
18 Sprint, ICG, back down?

19 MR. JOHNSON: I don't have any
20 problem with Sprint and ICG having their
21 interconnection agreement as long as it only
22 addresses traffic that both of them originate
23 and terminate to each other. When they start
24 having that agreement that's terminating my
25 clients without having me -- inviting me to

1 negotiation so I can have input into all this,
2 then I have a problem.

3 JUDGE RUTH: And it's my
4 understanding that most, if not all the
5 interconnection agreements that have been
6 approved by the Commission so far have similar
7 language. So in your opinion, all of those
8 agreements violate the public interest or are
9 against the public interest or somehow
10 discriminate against third parties?

11 MR. ENGLAND: Correct.

12 MR. JOHNSON: Yes.

13 JUDGE RUTH: All of them.

14 MS. CREIGHTON HENDRICKS: Your
15 Honor, if I could briefly make some comments?

16 JUDGE RUTH: Yes. And I'm going to
17 allow parties to make a few more comments. And
18 depending on how many questions Judge Jones has,
19 we may -- we may need to take a break and come
20 back.

21 MS. CREIGHTON HENDRICKS: One thing
22 and I kind of indicated when I first made
23 comments is this is an interconnection agreement
24 between Sprint and ICG. And to the extent that
25 the remedy that they are requesting, you desire

1 to respond to it, in the context of this case, I
2 don't think that that would be possible. And
3 we, as I mentioned, have a federal obligation to
4 respond to CLECs that come to us. That federal
5 obligation also allows CLECs to go into opt
6 agreements. We can't say yes or no. And for
7 that matter, I'm not so sure the Commission can
8 say yes or no. We have many agreements out
9 there that have these similar provisions in
10 them. CLECs are free to adopt them. This puts
11 ICG in a position where, unlike every other
12 CLEC, they don't get the advantage of this
13 provision. But the problem is there's -- every
14 -- any CLEC can come to us and adopt an
15 agreement that's already out there and it's
16 going to this very provision. So their issues
17 are not addressed nor can they be in the context
18 of this case.

19 JUDGE RUTH: Okay. I understand
20 what you're saying. But if I were arguing
21 intervenors' position, they would say that the
22 Commission's made a mistake all along and they
23 shouldn't compound their mistake by approving
24 another faulty agreement.

25 MS. CREIGHTON HENDRICKS: Well,

1 given the fact that ICG could just go adopt the
2 Sprint Sprint agreement that was recently
3 approved and has similar provisions, this is not
4 the case in which that issue is addressed. If
5 they have a bigger issue --

6 JUDGE RUTH: Okay. But if the
7 Commission were to agree with the intervenors
8 that this is either an agreement against the
9 public interest or that it discriminates against
10 third parties, the Commission would have an
11 obligation to reject it even if it doesn't give
12 the remedy those parties want because the
13 Commission can -- it's not to approve an
14 agreement if it does one of those two
15 problematic things.

16 MS. CREIGHTON HENDRICKS: And what
17 I'm talking about is the impact of rejecting the
18 agreement. So the Commission rejects the
19 agreement. Tomorrow, ICG would go adopt the
20 Sprint Sprint agreement. They've got it.

21 JUDGE RUTH: I understand that. But
22 are you saying that if the Commission would
23 decide that this violates public interest or
24 discriminates against third parties the
25 Commission should go ahead and approve it

1 because even if we don't, ICG is going to adopt
2 the same agreement and the same thing is going
3 to happen?

4 MS. CREIGHTON HENDRICKS: That's a
5 very good question. And I think one thing I
6 have failed to communicate is in the context of
7 the ICG Sprint agreement, as we have maintained,
8 we do not believe it discriminates nor is it
9 against the public interest.

10 JUDGE RUTH: I understand that. But
11 if the Commission were to find that it does
12 discriminate or does violate the public
13 interest, the Commission is supposed to -- or,
14 you know -- the Commission is supposed to
15 reject.

16 MS. CREIGHTON HENDRICKS: Correct.
17 Correct.

18 JUDGE RUTH: And it doesn't matter
19 to the Commission's decision that ICG might just
20 go adopt another agreement that discriminates
21 that the Commission might have accidentally
22 approved.

23 MS. CREIGHTON HENDRICKS: Well,
24 there are a multitude of agreements. And
25 similar provisions in SBC. I maintain there's

1 probably several hundred out there.

2 JUDGE RUTH: And it's my
3 understanding this is probably the first time in
4 Missouri that this issue has been raised that
5 these -- in an interconnection agreement case.
6 No?

7 MS. CREIGHTON HENDRICKS: No. I
8 believe that is incorrect. I think it was
9 raised in connection with some CLEC or some
10 wireless carriers.

11 JUDGE RUTH: Wireless?

12 MS. CREIGHTON HENDRICKS: With SBC
13 and the wireless agreements were still approved.

14 JUDGE RUTH: I thought that they
15 ended up settling those and the intervenors
16 withdrew their objections. No?

17 MS. CREIGHTON HENDRICKS: I am --
18 I'm sure that the intervenors could speak more
19 to it. But I do believe there was an issue
20 after SBC put up a wireless termination tariff
21 and got into interconnection agreements that the
22 intervenors intervene at that time making
23 similar argument.

24 JUDGE RUTH: But I though those
25 parties settled that case. No?

1 MS. CREIGHTON HENDRICKS: No.

2 MR. ENGLAND: No. If I may, the --

3 if you're talking about Southwestern Bell's

4 wireless interconnection tariff, I believe

5 that's what Mrs. Creighton Hendricks is

6 addressing, I think she is correct.

7 Southwestern Bell came and attempted through

8 their tariff to offer a transit service of

9 wireless traffic. Our group intervened and

10 opposed that. The Commission ultimately

11 approved Southwestern Bell's tariff. And as far

12 as wireless traffic is concerned, Bell is a

13 transit carrier under that interconnection

14 tariff that they have. Significantly, however,

15 was an -- in approving that tariff, the

16 Commission imposed upon Southwestern Bell the

17 obligation to create and pass records of that

18 transit traffic to all of the end office

19 companies that receive that traffic. So at

20 least the Commission recognized in that case the

21 need -- or, one, Southwestern Bell's better

22 situated to -- to record that traffic and

23 obligation therefore to do so and pass that

24 information on to the parties that actually

25 terminate.

1 JUDGE RUTH: What case number was
2 that?
3 MR. ENGLAND: Oh, boy.
4 JUDGE JONES: It sounds like the
5 technical aspects of the case is different with
6 wireless than with in case.
7 MR. ENGLAND: Found -- to some
8 degree, they're very similar. But what makes it
9 more difficult in the wireless environment is
10 the FCC has said their local calling scope is an
11 MTA, Major Trading Area, which in the state of
12 Missouri, there are roughly two, one on the
13 eastern half of the state and the other on the
14 western half of the state. So they've expanded
15 local calling far beyond what we've
16 traditionally known in the landline business and
17 what is local for purposes of CLEC, ILEC, ICG,
18 Sprint interconnections.
19 THE COURT REPORTER: Excuse me. I
20 need to change paper real quick.
21 JUDGE RUTH: Okay.
22 (Break in proceedings.)
23 JUDGE RUTH: We'll go back on the
24 record. And before we took a break, I had asked
25 the question specifically as to whether or not

1 someone could give me the case number for the
2 example that was used. I think the answer was
3 no one knew the case number off the top of their
4 head, but perhaps someone can supply it after
5 the hearing? I really didn't intend to get into
6 a debate of that case on how it applies. I just
7 wondered if somebody could give me the case
8 number. I'll go look at it myself.

9 MR. ENGLAND: I was referring to
10 what I call the Southwestern Bell
11 interconnection tariff case. If that's the one
12 you're thinking of, we can certainly provide
13 that.

14 MR. HAAS: You might check
15 TO-99-254.

16 JUDGE RUTH: I'll look at that one.
17 And if you find that's not the -- the case you
18 were referring to, you'll file something to
19 correct that.

20 MS. CREIGHTON HENDRICKS: Your
21 Honor?

22 JUDGE RUTH: Yes.

23 MS. CREIGHTON HENDRICKS: There is
24 one other -- I'm sorry -- case that I wanted to
25 bring to your attention that was similar.

1 JUDGE RUTH: Okay.

2 MS. CREIGHTON HENDRICKS: That --

3 the similar issue as far as the business

4 relationship between Sprint and the members of

5 MITCG and Small Telephone Group is 99-593, I

6 believe it's T O. And in that case, they did

7 request for the business relationship to be

8 changed in manner they're requesting now and the

9 commission rejected that request.

10 MR. ENGLAND: And to be clear, we're

11 not asking the business relationship be changed.

12 In fact, we're asking that the existing business

13 relationship be maintained.

14 JUDGE RUTH: Okay. And I have a

15 question on that. You want the calls to keep

16 going the way they are?

17 MR. ENGLAND: Correct.

18 JUDGE RUTH: I'm just curious why?

19 Is it financially better for your clients to

20 have the calls go through the IXC and down to

21 them than it would be for any type of access

22 tariff or other payment that you would get if

23 the interconnection agreement went through?

24 MR. ENGLAND: I think I understand

25 your question. Let me make sure. Would we get

1 paid more per minute if it went through the IXC
2 versus whether it came through Sprint? No.

3 JUDGE RUTH: Well, they both kind of
4 come through Sprint. They use Sprint's tandem,
5 right?

6 MR. ENGLAND: Right. I meant they
7 come directly through Sprint rather than going
8 through IXC. We don't get any more per minute.
9 It's just financially it's better because we get
10 better records and we get better payment history
11 when we deal with IXC as opposed to CLEC.

12 JUDGE RUTH: But at the Commission,
13 they have a rule that they've started on record
14 and if this were actually an interconnection
15 agreement that had the kind of reciprocal
16 reverse billing issue that -- then it might not
17 matter so much to your clients which way it
18 went. In other words, the Commission is -- has
19 started a rule that would require better records
20 in many situations and I think in situations
21 like the interconnection agreement type and it
22 -- once the rule's in place and if this were an
23 interconnection agreement that provided the
24 third party to get the same kind of records from
25 Sprint as, you know, going the other way and

1 perhaps have that -- the reverse billing so that
2 Sprint would pay if they're unable to get the
3 bills or the records, then financially, it would
4 be -- would it be a wash?

5 MR. ENGLAND: Right. I mean, like I
6 said, the price per minute for the service we
7 render is going to be the same.

8 JUDGE RUTH: Okay.

9 MR. ENGLAND: And -- and if I could
10 be a little more prejudicial, we might have not
11 have this problem if all of the CLECs to date,
12 and I'll exclude ICG and Comm South who are
13 sending traffic to us, had played by the same
14 rules that the IXCs have and the PTCs have for
15 years. But they are not living up to the
16 obligations that they actually commit themselves
17 to in these interconnection agreements. They
18 don't establish agreements with us before they
19 send traffic to us. They don't send records to
20 us of the traffic they send to us. And then
21 they dispute the bills on what I believe to be
22 are trumped up excuses.

23 JUDGE JONES: Mr. Lumley? Is that
24 true?

25 MR. LUMLEY: It's never been proven.

1 They've been making these allegations for years
2 that the CLECs are the source of this traffic
3 that's -- that it's not MCA, you know, bill and
4 keep traffic. They make the allegations. I've
5 never seen evidence that it's accurate. I'm not
6 saying that they're wrong. But, you know, at
7 some point, you have to stop talking about it
8 and -- and bring your case. And if the fact of
9 the matter is that they can't prove their case
10 because of the way -- of the current records
11 system that is in place between them and SBC and
12 Sprint and Century Tel, then they should either
13 block the traffic or they should change the
14 requirements in their tariffs to get records
15 they need from these companies. But, you know,
16 I understand their concerns. But there's been
17 examples where it turned out that huge volumes
18 of traffic were because Southwestern Bell
19 misprogrammed its switches and was sending local
20 plus traffic without reporting it. I mean, all
21 of this traffic could turn out to be the
22 responsibility of -- of the major, you know,
23 incumbent LECs and none of it be CLEC traffic.
24 I understand their concerns that the numbers
25 don't match up. And I understand that in

1 certain instances Southwestern Bell in
2 particular has pointed fingers at CLECs. But
3 we've never as an industry got to the bottom of
4 this situation. And so I can't accept their
5 allegations as true.

6 JUDGE JONES: Well, there will be
7 traffic going from ICG to MO-KAN through Sprint?

8 MR. LUMLEY: There should be MCA
9 traffic going from ICG through Sprint to MO-KAN
10 because MO-KAN participates in the MCA.

11 JUDGE JONES: In light of this
12 current interconnection agreement, if it were
13 approved there will be traffic going from ICG to
14 MO-KAN through Sprint?

15 MR. LUMLEY: My understanding is
16 that it would only be MCA traffic unless and
17 until we came up with some other arrangement
18 with them. And that all other traffic -- right
19 now, there's -- other than MCA traffic, I'm not
20 aware of any traffic that would be considered
21 local traffic that would go from ICG on that
22 route to MO-KAN Dial. And it's my understanding
23 that any toll traffic would continue to go from
24 ICG through an IXC to MO-KAN Dial.

25 JUDGE JONES: Is that what you all

1 understand, Mr. England? Mr. --

2 MR. JOHNSON: I understand that's

3 the way Mr. Lumley is representing the ICG

4 traffic goes today. But he's also saying they

5 have negotiated the right to take that toll

6 traffic off the IXC network and put it on the

7 Sprint network.

8 MR. LUMLEY: But it's a right

9 subject to also having a companion agreement

10 with these companies. It's not a right that

11 says question do whatever we want. It says you

12 will carry our transit traffic, but if we need

13 an agreement with somebody else, we're going to

14 get it.

15 JUDGE RUTH: But you've already said

16 that the access tariff that is already in place

17 would be adequate. So, actually, under that

18 argument, couldn't you -- as soon as the

19 interconnection agreements's in place say, Oh,

20 there's an access tariff, that's adequate, and

21 start putting the traffic through?

22 MR. LUMLEY: Not if that tariff

23 requires the information they're saying they're

24 entitled to and I'm not giving it to them. Then

25 I'm not complying with that tariff. I also

1 think it's important for you to understand that
2 these transitting provisions apply to a lot of
3 other things that don't involve these companies
4 at all. I mean, there's multiple CLECs
5 operating in Sprint's area, and the only way
6 that traffic gets from one CLEC cusmoter to
7 another CLEC's customer is through Sprint. And
8 that's transit and traffic. All of the wireless
9 carriers that operate on the western side of the
10 state, the only way their customers would be
11 able to call ICG is through Sprint, and that's
12 transiting traffic. So, you know, I acknowledge
13 that it mentions their -- that companies as a
14 potential sort of traffic subject to agreements
15 being made with them, but that's not the sole
16 feature of this transitting provision.

17 There's tons of traffic that flows that I
18 don't believe they have any basis to complain
19 about whatsoever. And so there has to be some
20 kind of transiting function. Or CLEC A would
21 never be able to call CLEC B, and the wireless
22 carriers wouldn't be able to reach the CLECs and
23 the CLECs wouldn't be able to reach the wireless
24 carriers. I mean, there's huge volumes of
25 traffic. So it's not the like the transiting

1 function has been put in here for some nefarious
2 reason of some surreptitious relationship to get
3 to these third parties. It's standard language
4 to cover huge volumes of traffic. And it
5 preserves the opportunity for a different route
6 to MO-KAN Dial, but it expressly acknowledges
7 that we're not supposed to do it without an
8 agreement with them. And if my clients violate
9 that, I don't see how they have a defense. I
10 mean, no lawyer will tell you that their clients
11 won't do something stupid because clients do it
12 every day. But if the agreement says we can't
13 do it without permission, then I -- you know,
14 I'll be coming in front of you saying, Well, I
15 don't know how to explain this. I -- I don't
16 have a defense. They agreed not to do it.

17 JUDGE JONES: Mr. Johnson?

18 MR. JOHNSON: I was just going to
19 make a few simple points. For over six years,
20 these agreements have been submitted containing
21 language that says we'll create agreements with
22 these third party carriers before we deliver
23 traffic to the transitting carriers. For six
24 years we have gotten that traffic. For six
25 years, we don't have any of those agreements.

1 Of those six years, we haven't gotten paid.
2 We've tried everything Mr. Lumley suggests. We
3 brought complaints. They have been
4 unsuccessful. We tried to block the traffic.
5 We've been prohibited from blocking the traffic.
6 We're unpaid. It's uncompensated. We have been
7 prejudiced. He says it's time for them to prove
8 what they're saying. This is the case. We're
9 going to prove it in this case. This is the one
10 that needs to go forward so we can demonstrate
11 that that needs to be -- transit provisions need
12 to be gotten out of these interconnection
13 agreements.

14 JUDGE RUTH: You say agreements have
15 never been made for payment, but Mr. Lumley, I
16 think, has said that your access tariffs are a
17 form of agreement. And you have access tariffs,
18 right? So there have been those. You just
19 haven't been paid under them.

20 MR. JOHNSON: Judge Ruth, that's
21 correct. And what has to happen, it's a tariff
22 that's been approved by the Commission. It's
23 got the force and effect of the law. What has
24 to happen is when somebody goes to the tandem
25 company that serves our end office and they say,

1 We want to order access from you and when they
2 order being access and they bring a trunk to
3 Sprint tandem, they are automatically required
4 to set up a business relationship with every end
5 office that that's served by that tandem. So
6 they come to MO-KAN Dial, they send an access
7 order request. We set up a business
8 relationship with them. All these things that
9 constitute the business relationships are
10 determined. We get paid. We know they're going
11 to be delivering traffic to Sprint at the
12 tandem. We know Sprint's going to send us a
13 record and we know we're going to get paid.
14 None of that happens when it gets snuck through
15 an interconnection agreement that we haven't
16 agreed to. And when we try to bill under our
17 access tariffs, which the Commission has said
18 we're entitled do for this traffic, they refuse
19 to pay because they haven't done that, they
20 haven't set up a business relationship with us.
21 And Sprint and Southwestern Bell and Century Tel
22 haven't tried to protect us from that happening.
23 They just let the traffic come. They don't even
24 police their own agreement to make sure they get
25 an agreement with us before they send the

1 traffic to them. So I think the prejudice and
2 discrimination is demonstrable. We just need an
3 opportunity to prove it.

4 JUDGE JONES: Mr. Haas?

5 MR. HAAS: Yes. Thank you. I'd
6 like to address a couple of points. It's the
7 staff's position that generic records issues are
8 not appropriate in this case. Those issues are
9 being addressed in the signalling protocols case
10 and in a rule making case. Second, earlier, I
11 believe the question was posed how can the
12 Commission or can the Commission decide this
13 case without a hearing. It's the staff's
14 position that the answer is yes, they could.
15 The agreement provides that is the -- it is the
16 originating party's responsibility to enter into
17 arrangements with the third party where the
18 traffic's been terminated. Speculation as to
19 whether MO -- Comm South and ICG will meet that
20 obligation is not sufficient grounds to reject
21 the document. Thank you.

22 JUDGE RUTH: But if the third party
23 is never going to get adequate records so they
24 could ever say for sure whether or not they're
25 getting traffic for which they should get paid,

1 if they don't have those, we know they don't
2 have those records or suspect that they don't
3 have those records, how could they ever get
4 compensated? It's -- I don't want -- I mean,
5 the Commission can't say the interconnection
6 agreement looks fine. We know these third
7 parties may get traffic for which they should
8 get paid and we know that there are no records
9 that would show them what they should get paid
10 so they won't get paid, but oh, well. You're
11 not -- I'm not sure I follow you.

12 MR. HAAS: You're leading -- there's
13 speculation that these two companies won't enter
14 into those agreements and won't get the
15 necessary records to the terminating companies.

16 JUDGE RUTH: Would access tariffs be
17 adequate, the access tariffs they already have
18 -- do they have to make an additional agreement
19 or are the access tariffs that they have in
20 place adequate to meet that requirement? In
21 other words, it -- it says that the parties, ICG
22 will enter into agreements. The fact that the
23 access tariffs exist, does that meet that
24 requirement?

25 MR. HAAS: May I defer to Mr. Voight

1 on that?

2 JUDGE RUTH: Yes. I will swear you

3 in. However, this is not an evidentiary

4 hearing. I just want your answer to this

5 question. And if this comes up again at

6 hearing, you would have to testify again to the

7 same thing. Do you understand?

8 MR. VOIGHT: Yes.

9 JUDGE RUTH: Okay.

10 WILLIAM VOIGHT,

11 being first duly sworn to testify the truth, the whole

12 truth, and nothing but the truth, testified as follows:

13 JUDGE RUTH: Mr Voight, do you

14 understand the question?

15 MR. VOIGHT: The question, as I

16 understand it, Judge, is would the access

17 tariffs be sufficient for the traffic in

18 discussion?

19 JUDGE RUTH: Would it be sufficient

20 to meet the requirements of the interconnection

21 agreement, which say the parties shall have an

22 agreement in place? We already know that there

23 are these tariffs. Does that meet the

24 requirement to have an agreement in place?

25 MR. VOIGHT: There's been a lot of

1 discussion about the need for the originating
2 carrier and the terminating carrier to have
3 agreements in place. And I believe on page 94
4 of this interconnection agreement, what that is
5 referring to is what is defined in the agreement
6 as local traffic. Okay? The need -- the need
7 for an interconnection agreement for the
8 exchange of switched access traffic, in my view,
9 is not contemplated in this agreement. We have
10 access tariffs that cover that. The only need
11 for an agreement between the originating carrier
12 and the terminating carrier is where the
13 exchange of what is defined in the agreement as
14 to local traffic. And this has been pointed
15 out. That is governed by the Commission's
16 decisions in the MCA plan, where they are
17 allowed full participation by the CLECs. And it
18 is bill and keep. Therefore, I'm not aware that
19 any interconnection agreement would be necessary
20 for Mr. Johnson's client here, which is, I
21 believe, MO-KAN Dial. In other words, it's
22 either local governed by the MCA or it's
23 intra-LATA toll governed by the access tariffs.
24 I mean, this notion of signing agreements to the
25 exchange of long distance traffic, I don't

1 understand that concept at 11. It -- that never
2 occurred.

3 JUDGE RUTH: But is that something
4 that Sprint was implying is affected by the
5 interconnection agreement?

6 MS. CREIGHTON HENDRICKS: No, your
7 Honor. Sprint has not taken the position that
8 the access tariffs would be impacted by the
9 interconnection agreement.

10 JUDGE RUTH: Okay.

11 MS. CREIGHTON HENDRICKS: And we
12 would agree with Mr. Voight.

13 MR. ENGLAND: And I'll make it easy.
14 I agree whole-heartedly with what Mr. Voight's
15 saying. The application of the tariffs versus
16 the need for an interconnection agreement for
17 local exchange of local traffic only. What
18 we're saying is that by the terms of this
19 interconnection agreement between Sprint and ICG
20 and Sprint and Comm South, they are prohibiting,
21 if you will, or at the very least making it much
22 more difficult for us to apply our access
23 tariffs to this traffic.

24 MR. VOIGHT: Judge, I have one more
25 point that I -- in my answer. As far as these

1 two specific agreements, Missouri Comm South, I
2 believe, is a prepaid reseller who has never
3 provided a long distance call in its entire
4 existence in the state of Missouri, which spans
5 several years. So to -- to this notion that
6 there's something existing going on, the passage
7 of long distance traffic over the interexchange
8 network by Missouri Comm South and that somehow
9 or another these agreements would change that,
10 I'm not aware that that has even occurred, that
11 Comm South is even a long distance provider.
12 And for the other carrier, ICG, staff just
13 checked on break and their -- their most recent
14 annual report, which they didn't even file,
15 we're not aware that they even have any
16 customers as of yet. So we're not aware --
17 there's certainly nothing been established in
18 this record that either one of these companies
19 even have any customers currently.

20 JUDGE RUTH: You're saying that ICG
21 did not file the 2002 report that was due April
22 15th?

23 MR. VOIGHT: That's correct. Which,
24 to us, would indicate they may not even be
25 currently in business. We --

1 JUDGE RUTH: If they have no
2 customers but they're certificated, are they
3 still required to file an annual report?
4 MR. VOIGHT: I believe they're only
5 required to file an annual report if they had
6 revenue.
7 JUDGE RUTH: Okay.
8 MR. LUMLEY: And the staff alerted
9 us in this situation in their recommendation,
10 and the client is looking into what's happened.
11 We weren't aware of it until we got the staff
12 recommendation.
13 MR. VOIGHT: So all I'm saying,
14 Judge, is that having listened to this, these
15 technical facts being presented to you, it is
16 not a factual matter established in this record
17 that either one of these two companies have ever
18 sent any intra-LATA -- or local traffic, or MCA
19 traffic to either the Small Telephone Company
20 Group or MITG. But yet that has been
21 represented to you today that somehow or
22 another, these agreements change the current
23 situation.
24 JUDGE RUTH: So, Mr. Voight, are you
25 saying if the Commission were to approve the

1 interconnection agreement that toll traffic from
2 ICG would still have to go to Sprint to IXC back
3 to Sprint and down to the third party?

4 MR. VOIGHT: No, Judge, I'm not
5 saying that.

6 JUDGE RUTH: Okay.

7 MR. VOIGHT: To the extent that
8 these two -- Comm South and ICG -- what they're
9 getting in these agreements is something called
10 unique P that they currently don't have? Okay?
11 So they're already authorized to do business,
12 but I think what the -- these agreements do,
13 they offer them to do business in a new --
14 through the use of unbundled network elements.
15 In any regard, the -- if you will, resellers of
16 Sprint's service, those companies would
17 maintain, I'm convinced, that they have the same
18 rights to transport traffic in exactly the same
19 manner as Sprint, the underlying carrier, which
20 is through the LEC to LEC network and not
21 through the IXC network.

22 JUDGE RUTH: So it would be IXC,
23 Sprint to end office of their party?

24 MR. VOIGHT: It would be originating
25 carrier, ICG to the Sprint tandem to the end

1 office and not through the IXC.

2 JUDGE RUTH: Okay. And so under the
3 interconnection agreement, they would perhaps do
4 that, but you're saying that the payment would
5 be in the access tariffs which hasn't been
6 changed by the interconnection agreements?

7 MR. VOIGHT: That's correct. And
8 not only that, but it -- I -- it is a -- I
9 believe it has been established in other cases
10 in working dockets and so forth, that Sprint --
11 I acknowledge that there's a problem going to
12 MO-KAN from Jefferson City that counsel
13 referenced, but other than that, I believe that
14 Sprint creates these category 11 records and
15 gives them to the terminating carrier, to
16 Mr. Johnson and Mr. England's clients so that
17 they can bill the originating carrier, which is
18 the exact same relationship as occurs in the IXC
19 network that they -- that they advocate.

20 JUDGE RUTH: Okay. I believe one of
21 the intervenors stated just a few minutes ago,
22 though, that if the interconnection agreement
23 were approved, it would make it more difficult
24 for their clients to apply their access tariffs.
25 And I assume that was because the records

1 wouldn't be as good as the records that they're
2 getting when the call goes through the IXC
3 company; is that correct?

4 MR. ENGLAND: Correct.

5 JUDGE RUTH: Do you agree with that
6 statement?

7 MR. VOIGHT: No, Judge, I -- I
8 cannot accept that statement. As a matter of
9 what I believe to be the facts are, it is the
10 exact same record with the exception of it
11 contains what is called an OCN number, which is
12 an originating carrier number and not a CIC
13 number, which is a Carrier Identification
14 number. Other than that fact, which is about
15 four bits out of the entire record, those
16 records are identical. In other words, the CIC
17 identifies the IXC carrier, be it AT&T or MCI.
18 The OCN identifies the CLEC, which in this case
19 would be ICG or Comm South. And that is the
20 only difference in the records.

21 JUDGE RUTH: So they would not be in
22 any different position than if the call had gone
23 through the IXC?

24 MR. VOIGHT: That is my testimony.
25 And it is my further testimony to the extent

1 that there are new players in this industry who
2 are not always paying their bills when they get
3 them, there's nothing different about that
4 situation than what has occurred in the IXC
5 network for years.

6 JUDGE RUTH: Okay. Do you have a
7 question for Mr. Voight?

8 JUDGE JONES: I don't. I have a
9 question for Mr. Haas.

10 JUDGE RUTH: Okay. Let me say, Mr.
11 Voight, then, you're down from the stand. And I
12 want to clarify. I allowed him to testify not
13 to decide the truth of that matter but so that I
14 can try and understand what the issue or the
15 allegation was there. Do you understand the
16 difference, parties?

17 MR. LUMLEY: Yes.

18 MS. CREIGHTON HENDRICKS: (Witness
19 nods head.)

20 JUDGE RUTH: Most of you do.

21 JUDGE JONES: With regard to the
22 issue of discrimination, Mr. Haas, earlier it
23 was said that between the ICG and the
24 terminating companies, there is discrimination
25 because they are -- they aren't on -- they don't

1 have equal bargaining power, I suppose, with
2 Sprint. Is that a correct restatement of your
3 argument?

4 MR. ENGLAND: I'd say we don't have
5 the benefit of the default billing arrangement
6 where if we don't get records, Sprint's liable
7 for it.

8 JUDGE JONES: Mr. Haas, what's
9 staff's position on that issue of discrimination
10 or looking at discrimination from that aspect?

11 MR. HAAS: We would agree with Mr.
12 Lumley's statement on that.

13 JUDGE RUTH: Which was?

14 MR. HAAS: I believe he had said
15 that this bilateral agreement cannot affect the
16 intervenors' tariffs and agreements so that they
17 are not being discriminated against.

18 JUDGE JONES: Okay. I don't have
19 any other questions. I do want to point out,
20 though, that we've talked about a lot of
21 technical things that in a larger sense I
22 believe are relevant, but specific to our cases,
23 the Commission just simply needs to decide
24 whether or not the agreement is discriminatory
25 or against public interest. Earlier,

1 Mr. Johnson, you said that the Commission can
2 reject certain aspects of the agreement. I
3 don't know that that's true.

4 MR. JOHNSON: I don't have the
5 statute in front of me, your Honor, but I -- it
6 was my recollection of 47 USC 252 E something
7 said discrimination claim could be -- the
8 agreement or portions thereof discriminate
9 against carriers not party to the agreement.
10 And I don't think there's any case law on this
11 that I'm aware of, but it was just my
12 interpretation that the Commission is not
13 limited to rejecting the entire agreement, but
14 the Commission is empowered to reject those
15 portions of agreement, in this case, the transit
16 provisions of the agreement that they do believe
17 discriminate against carriers that aren't
18 parties to the agreement.

19 JUDGE JONES: Okay. Would you agree
20 then that if the agreement or portions of the
21 agreement is discriminatory, then the Commission
22 can reject the agreement, but not portions of
23 it? It's just because portions are
24 discriminatory, the Commission can then reject
25 the whole agreement but not just a part of it?

1 How do we do -- what effect would the agreement
2 have if we reject a portion of it?

3 MR. JOHNSON: Then it --

4 JUDGE RUTH: In other words, is that
5 feasible to reject certain pieces and not the
6 whole thing?

7 MR. JOHNSON: In my opinion, it is
8 because then the agreement's only limited to
9 reciprocal traffic that they exchange between
10 the two of us them, which is my understanding of
11 what the Telecom Act of 1996 was intended to do.
12 Open up local competition and creates a new
13 animal in the interconnection agreements that's
14 designed to be between two local competitors
15 that are going to compete and the incumbent has
16 got an obligation to connect with that local
17 competitor and they're going to negotiate a
18 reciprocal compensation agreement for traffic
19 they originate, transport and terminate to each
20 other. It's the extension of that concept to
21 transit traffic that's not going to those two
22 companies that's creating this entire problem.
23 And, in my opinion, if you just reject the
24 transit provisions of this agreement, and by
25 virtue of doing that you eliminate just the

1 traffic that the two of them exchange, no
2 problem.

3 JUDGE JONES: I agree that that
4 would be the practical effect of it. The
5 problem, though, is now the Commission is into
6 shaping those contracts. I don't believe we can
7 do that. I think we can only accept the
8 contract or reject it.

9 MR. JOHNSON: I have not done
10 research or really much thought. I just assumed
11 from the language in the Act that said or
12 portions thereof that that somehow gave the
13 Commission the authority just to reject the
14 portions thereof that discriminate against a
15 carrier that's not a party to that. I have no
16 authority for that. You might be right, your
17 Honor.

18 MS. CREIGHTON HENDRICKS: Judge
19 Jones, can I respond to that or --

20 JUDGE JONES: Go right ahead.

21 MS. CREIGHTON HENDRICKS: I think
22 the language of the agreement is set up so the
23 action on the agreement is to either reject it
24 or approve it. When it goes to the grounds upon
25 when you can reject or approve, that's when it

1 references or portions thereof, if you found
2 portions thereof discriminatory. So the only
3 action the Commission can make is either to
4 reject or approve it. I did spend some time
5 researching it, and I have cited one case in my
6 pleading, though I must admit that was stated --
7 it was not the holding of the case. And it was
8 stated in the dissenting portion of the Supreme
9 Court case, I think it was, but it was just kind
10 of written not the holding of the case, just the
11 Judge happened to write -- say based on the
12 language, that's all the Court can do.

13 MR. LUMLEY: If I may follow-up on
14 that as well? The -- I guess first I'd point
15 you to the -- the proposed rule that I believe
16 has been formally filed with the Commission by
17 the staff. But I don't know that the Commission
18 has taken the next step of ordering publication.
19 I don't -- I don't think that's occurred yet in
20 terms of interconnection agreements. But it has
21 been filed, I believe. And that contemplates
22 the Commission rejecting the entire agreement
23 but stating this is what we had a problem with
24 and if you did X, Y and Z, we wouldn't have a
25 problem anymore. So that -- I know the

1 Commission hasn't endorsed that, but that's one
2 position that's been put forward. I would agree
3 with Mr. Johnson that the statute talks about
4 rejection of an agreement or portions thereof.
5 But I would also agree that the contract itself
6 and the rights of the parties, it -- to the
7 extent the Commission strikes out a sentence, I
8 think the parties have to have the right to try
9 and sort out between themselves whether that has
10 other ramifications on the four corners of the
11 agreement.

12 JUDGE RUTH: So if it did, you could
13 choose not to have that interconnection
14 agreement between you two?

15 MR. LUMLEY: Or there might be other
16 provisions that we need to voluntarily, mutually
17 revise to take into account that something's
18 been stricken. And so I think from an
19 implementation point of view, there has to be
20 some opportunity to say, Here's the areas that
21 are a problem. And if -- and we're not going to
22 approve the agreement, but if you fix those and
23 then the parties have the right to not only fix
24 those but check for collateral impacts. I mean,
25 I know the contract does have a severability

1 clause that says once it's in effect if some
2 provision is held invalid, the rest of the
3 contract stays in place. I haven't found the
4 section yet that talks about Commission's
5 approval process which I believe Ms.
6 Creighton Hendricks was referring to. But there
7 would be a contract provision that says this has
8 to be approved, you know, all or nothing. And
9 that -- if the parties agree to that, that would
10 supplement the statute. But we can point that
11 out if -- if we need to. And -- and in that
12 vein, in terms of portions of the agreement, it
13 causes me great concern to -- and I -- I this
14 Mr. Johnson is unintentionally overstating what
15 his objections are. Because when he suggests
16 that the agreement be solely limited to traffic
17 exchanged between those two companies, that's
18 just not the way the industry works. There are
19 all the other CLECs that have traffic that have
20 to be exchanged. There's all the other wireless
21 carriers. I believe what he means to say is
22 that he doesn't want to see provisions about
23 traffic being transitted to third party ILECs
24 that operate outside of the Sprint territory.
25 So I'm very concerned about his statements being

1 potentially misconstrued in terms of the relief
2 they're seeking. I oppose their request for
3 relief. But, I mean, it would be devastateing
4 for this company not to be able to exchange
5 traffic with all the other CLEC that's are in
6 business and the wireless carriers that are in
7 business. What they're specifically objectig to
8 is traffic that we don't even believe is going
9 to occur unless and until there is some new plan
10 and we reach an agreement with them or comply
11 with their access tariffs. Not assert that
12 their access tariffs there are there, but comply
13 with their access tariffs. And compliance means
14 telling them the traffic's there. I mean, he --
15 and as Mr. Voight's indicated, you know,
16 establishing the relationships.

17 JUDGE JONES: Well, without
18 rehashing everything that we've talked about
19 today, and I know that's probably difficult for
20 some attorneys, we would like to hear from each
21 of you. I would especially like to hear your
22 arguments concerning discrimination and public
23 interest. And I -- with changing provisions in
24 the agreement or IXC's and tandems and Sprint
25 and ICG going back and forth, just how this

1 agreement is discriminatory or against public
2 interest. Just those two issues. Mr. England?
3 MR. ENGLAND: Thank you, your Honor.
4 And I will try to be brief, although I'm
5 probably not that good at it. As I said, I
6 think the -- there's discrimination on several
7 levels. The first is the fact that by taking
8 what I consider to be traditional toll traffic
9 over the IXC network, via the transit of toll
10 traffic, that is discriminatory. That delivers
11 traffic to us or facilitates the delivery of
12 toll traffic to us in a manner that's not the
13 same as all of the other interexchange carriers
14 do today. And so I think that's discriminatory.
15 It sets up a special arrangement for ICG if and
16 when it takes advantage of it to send toll
17 traffic down to this third party LEC. And while
18 they say they'd be subject to the exchange
19 access tariff of this third party LEC makes it
20 very difficult, if not impossible to actually
21 apply that in practice. The second level of
22 discrimination is if you believe it's
23 appropriate for these agreements to take toll
24 traffic, to address toll traffic of the transit
25 of toll traffic, take it off the IXC network and

1 send it to the third parties, then at the very
2 least, these third parties should have the same
3 rights and benefits that ICG has when Sprint
4 transits that toll traffic back to ICG. We
5 should get the same records and we have should
6 have the default billing arrangement that ICG
7 has. And the disparity in the treatment of ICG
8 and the third party in my opinion, is a second
9 level of discrimination.

10 JUDGE JONES: Thank you,
11 Mr. England. Mr. Johnson?

12 MR. JOHNSON: Your Honor, he -- the
13 only thing I can think to add to that that would
14 require me to explain the difference that in my
15 clients between somebody has only owns its own
16 end office and somebody that has its on access
17 tandem and I really don't think we would need to
18 go there today because it would just open us up
19 to some more wailing and knashing of teeth.

20 JUDGE JONES: That's fine. Ms.
21 Hendricks?

22 MS. CREIGHTON HENDRICKS: Thank you.
23 You have saved me from wailing and knashing my
24 teeth.

25 MR. JOHNSON: Maybe it's not

1 working.

2 MS. CREIGHTON HENDRICKS: With
3 regard to discrimination, as we had maintained
4 in our pleading, the MTI -- or MITCG and STG are
5 similarly situated to the CLECs and to the
6 wireless carriers that are directed to our
7 network and they are treated in the same manner.
8 With respect to all those carriers, there is an
9 acknowledgment in our agreement that it is the
10 responsibility responsibility of the party
11 originating the traffic to ensure that
12 agreements or arrangement are made with those
13 third parties who receive their traffic.
14 Therefore, there is no discrimination.

15 Furthermore, to the extent I understand
16 the majority of the argument being made by the
17 intervenors for discrimination, it is truly a
18 records issue. It's an issue of whether or not
19 they get sufficient records to bill the traffic.
20 Because they have admitted that with the same
21 record, they're similarly situated. They get
22 the same record and they're entitled to bill the
23 party that originated the call. So I do not
24 believe that it is a discrimination issue that
25 needs to be addressed in the context of

1 approving or rejecting this interconnection
2 agreement. And with respect to the broader
3 public interest issue, which is really the
4 transitting traffic, should these
5 interconnection agreements have provisions that
6 transit traffic? The answer is yes. And the --
7 it -- it does not violate the public interest.
8 As a matter of fact, it promotes the public
9 interest. First of all, there's a federal
10 obligation to indirectly connect and to offer
11 that and to offer it at the tandem, through
12 which traffic can be transitted.

13 Second of all, as Mr. Lumley has brought
14 up a couple of times, it is the manner in which
15 the public network works. A CLEC customer who
16 wants to call a customer of another CLEC has to
17 have the ability to transit that traffic. A
18 wireless customer who wants to call a customer
19 of ICG has to have the ability to transit
20 traffic because it is not feasible nor I think
21 demonstrates a lack of the feasibility has it
22 been suggested here that a company should have
23 to have direct connections with each one of
24 Craig and Tripp's clients. Transiting traffic
25 is the method through which the public network

1 operates. And that is why it's a part of the
2 interconnection agreement. So I would request
3 that it remain in the agreement and the
4 agreement be approved as is.

5 JUDGE JONES: Thank you.

6 Mr. Lumley?

7 MR. LUMLEY: I support the comments
8 that Ms. Creighton Hendricks just made, and I
9 would just, again, point out that the analysis
10 of the the two questions that you've raised,
11 which is the statutory standards and the
12 question of whether a hearing is required can
13 both be answered by the fact that you can't
14 achieve the relief that these companies want
15 in this proceeding. Whatever comes in our
16 contract is not going to affect their rights
17 Because there's nothing in here where we agree
18 not to do something with them. We don't agree
19 to prohibit each other from negotiating deals
20 with them. Instead, we affirmatively recognize
21 an obligation to make arrangements with them.
22 Because we are not affecting their rights, they
23 can't be discriminated against and there is not
24 a public interest question raised by this
25 agreement. Now, there are public interest

1 questions that surround the generalized concern
2 that these companies have that are being
3 addressed in other proceedings on an industry
4 wide base, I -- which is the only way that
5 effective relief can be granted. I would point
6 out that it's discriminatory against ICG to be
7 denied the same agreement that's been allowed
8 for numerous other carriers against which it
9 must compete.

10 I was able to find -- Section 3.1 of the
11 contract talks about regulatory approvals and
12 does acknowledge that if there's a problem with
13 the specific section, the parties will negotiate
14 in good faith such substitute provisions are
15 needed to achieve approval. And I think that's
16 consistent with what I was saying, that if
17 there's a -- a limited portion of this language
18 that causes concern, rather than striking the
19 whole agreement, the Commission should alert us
20 to that and let the parties sort that out in a
21 brief period of time.

22 And I also wanted to -- to correct one
23 thing that's stated in the pleadings, and I
24 forget which of the intervenors stated it. But
25 just to be clear, the federal statute does not

1 require a hearing before this Commission on
2 these issues. And, in fact, whatever decision
3 the Commission makes on these issues will not be
4 reviewed by anyone. Instead, the federal court
5 will review the ultimate agreement, holds its on
6 evidentiary proceedings in accordance with the
7 rules of federal court and make a determination
8 as to whether there's a problem. So the
9 Commission is not -- and I'm not saying you're
10 prohibited from holding a hearing. I think
11 that's probably within your discretion. But the
12 statute does not mandate it, nor will any facts
13 that you take be considered, you know, a record
14 on review, such as we're used to in the
15 traditional sense of a Commission decision that
16 goes to our state courts. Instead the statute's
17 very clear that it's the agreement itself that
18 will be reviewed by a federal court.

19 And so with that on top of the fact that
20 they've not asked for any relief that can be
21 granted here, that's why we maintain that no
22 hearing is required and the Commission should
23 proceed with approval of the agreement.

24 JUDGE JONES: Thank you. Mr. Haas?

25 MR. HAAS: Yes, your Honor. This

1 agreement does not purport to -- to limit the
2 arrangements between the third party terminating
3 company and the originating parties, so it --
4 they are still free to negotiate between
5 themselves to work out the arrangements so the
6 third party, terminating party, does not
7 discriminate against.

8 JUDGE RUTH: I just want to comment
9 that there have been a few questions that were
10 raised and unanswered. And the one I'm thinking
11 off the top of my head had to do with something
12 that Sprint --

13 MS. CREIGHTON HENDRICKS: The
14 records, was it?

15 JUDGE RUTH: I believe so. You
16 indicated you didn't have the information.

17 MS. CREIGHTON HENDRICKS: Correct.
18 I, currently, as I sit here, do not possess the
19 ability to tell you the details of our records.
20 I could provide summaries -- as I understand it,
21 you want the records that would be generated in
22 connection with a CLEC transitted call and
23 compare it to the records that are generated in
24 connection with the IXC delivered call? Is
25 that --

1 JUDGE RUTH: Yes. A lot of issues
2 -- other issues have also been raised here. So
3 I want to ask the parties if you feel the need
4 to brief any of this to further explain? I'm
5 not ordering it. I'm asking.

6 MR. ENGLAND: I think before I can
7 answer that, I need to know what type of
8 procedure we are going to follow for the
9 remainder of the period within which you have as
10 to fish or cut bait on this interconnection
11 agreement. If you're going to agree with
12 Mr. Lumley, I believe, who suggested you don't
13 have to hold a hearing, then at the very least,
14 yes, I'd like it brief this for you.

15 JUDGE RUTH: Well, let me tell you
16 that I still have a question as to whether or
17 not a hearing is necessary. And I've read
18 what's been provided and I don't think it
19 answers that question. And I have a -- you
20 know, particularly, for staff, I -- I don't
21 think it's been explained to my satisfaction,
22 once the issue of discrimination has been raised
23 or that an agreement is against the public
24 interest, how can that be decided without having
25 a hearing, particularly, when we have parties

1 here that have some factual issues that affect
2 that question? And I would to some extent like
3 to hear from staff on that question and any
4 other party. But, actually, I wasn't going to
5 force you to get into that. But that's the
6 first question the Commission has to make. And
7 they've not made that decision. If you wanted
8 to weigh in on that, you would need to tell me
9 and you could include any other information
10 that's been raised. But we would have to do
11 this fairly quickly because previously I'd
12 asked, you know, just before the hearing,
13 prehearing conference started the court reporter
14 asked if she could expedite this transcript.
15 And we had talked about perhaps Tuesday or
16 Wednesday. I realize this has probably gone
17 longer than she anticipated, and it may be
18 Wednesday, and I would assume you might want the
19 transcript before you file your brief. On the
20 other hand, the Commission can't wait too long
21 if we're going to get briefs. It would have to
22 be, I would think, by next Friday.

23 MR. LUMLEY: My observation would be
24 that since nothing that's been said today that
25 constitutes factual evidence, including because

1 of the way you described how you were taking
2 Mr. Voight's testimony that we shouldn't need
3 the transcript because it's not facts to rely
4 on. We're strictly going to be making legal
5 arguments to you. You know, we should be
6 generally aware of what we said today.

7 JUDGE RUTH: That's true. It would
8 be helpful.

9 MR. LUMLEY: I don't personally view
10 that as a limitation on being able to get a
11 brief to you. I would be comfortable briefing
12 without the transcript.

13 JUDGE RUTH: Keeping in mind that I
14 think several questions were raised that not
15 every party perhaps felt they got an adequate
16 time to respond, that's why I thought it would
17 be helpful is -- but if you're willing to brief
18 it without --

19 MR. LUMLEY: Well, I was talking
20 about the question of whether a hearing is
21 required or necessary.

22 JUDGE RUTH: You're right on where a
23 hearing is necessary. If you wanted to
24 follow-up on anything else, though, I would
25 think the transcript would be helpful.

1 MR. LUMLEY: I don't personally have
2 a desire to do that unless the bench indicates
3 that they need more information on a specific
4 point.

5 JUDGE RUTH: I was hoping to get a
6 little bit much information but not argument
7 from Sprint as to the record.

8 MR. LUMLEY: Right.

9 JUDGE RUTH: There was -- there were
10 a couple of cases mentioned. I think we know
11 the case numbers. If it's any different, I was
12 expecting someone to tell me in a pleading that
13 the case numbers were not the ones we mentioned.
14 But I don't have to have any brief on the other
15 points. Did you want to add --

16 MR. JOHNSON: I was just going to
17 suggest that it seems to me the Commission has
18 got an initial decision they need to make fairly
19 quickly about whether or not they're going to
20 conduct a hearing before they make a decision in
21 this case. If that is the option they select,
22 maybe we would be advised to pick a procedural
23 schedule today. I'm a little nervous with just
24 saying let's brief all these issues including
25 the issue of whether we want a hearing. If the

1 Commission has to act by September 3rd, we
2 barely have a month and a half. And if they do
3 decide we want a hearing, then there's not a
4 whole lot of time to schedule that hearing. And
5 it would just seem to me -- and I'm just sitting
6 here without having the benefit of reviewing the
7 precedent. But I know that the review of this
8 decision the Commission makes in this case is
9 going to go to the federal courts. But I have a
10 difficult time believing the federal court is
11 going to do a de novo trial to create a record
12 upon which it's going to make a decision. I
13 think if this Commission is going to enter an
14 order, this Commission has has to base that
15 order on a record of some sort in order to that
16 to be reviewed by the federal court. We're
17 making some new law here. And the statute's --
18 the federal statute's not clear in that regard.
19 But the suggestion that we're going to go make a
20 record for the first time in front of the
21 federal court I think is -- is -- I'm not sure
22 I'm convinced that that's the way the federal
23 court's going to handle it.

24 JUDGE RUTH: For the parties that
25 are interested in giving more input on the

1 question of whether a hearing is necessary,
2 would you be able to provide briefs on that
3 topic by Tuesday or Wednesday?

4 MS. CREIGHTON HENDRICKS: Your
5 Honor, I have a hearing that is scheduled to go
6 all next week. I'm hoping it will be done by
7 Wednesday. So I would not be able to brief that
8 issue by Tuesday. I could roll the dice and
9 hope it would be done by Wednesday.

10 JUDGE RUTH: Judge Jones is kind.
11 He thinks that Friday would be adequate. I will
12 say that earlier in the day on Friday would be
13 better than later.

14 JUDGE JONES: I think Friday would
15 be adequate because it -- if the question of the
16 hearing was addressed and a proposed procedural
17 schedule is also filed, then at least that will
18 -- I mean, that assumes, of course, that we have
19 a hearing. But in the event that we do, it
20 would be nice to be able to go from there.

21 MR. JOHNSON: Are there any hearing
22 dates available in August?

23 JUDGE JONES: Well, Judge Ruth has
24 just pointed out to me that in our order, we
25 ordered that the proposed procedural schedules

1 be filed by July 16th.

2 JUDGE RUTH: But based on what we've
3 talked about today, I would suggest that that
4 requirement be suspended. Briefs be filed by
5 next Friday, which is the 18th.

6 MS. CREIGHTON HENDRICKS: The 11th,
7 isn't that next Friday? Today's the 11th.
8 Yeah. Yeah. 18th. Yeah.

9 JUDGE RUTH: That briefs be filed by
10 the 18th only on the issue of whether a hearing
11 is necessary. And that would allow the
12 commissioners to discuss this topic on the
13 following Tuesday. If they want a hearing, they
14 would probably order that a hearing be filed or
15 a proposed procedural schedule be filed that
16 week. So the parties might want to among
17 yourselves be talking about that eventuality.
18 But we would suspend the -- the actual
19 requirement that a procedural schedule be filed
20 at this time. And that would limit briefing to
21 only the question of a hearing. And if the
22 Commission decides that a hearing is necessary,
23 if any party felt like they wanted to follow-up
24 from -- with briefs on today's prehearing
25 conference, you could raise that issue.

1 Or you could just wait until -- and hash it out
2 through the hearing process. Is that
3 acceptable?

4 MR. LUMLEY: (Mr. Lumley nods head.)

5 MS. CREIGHTON HENDRICKS: (Ms.
6 Creighton Hendricks nods head.)

7 MR. JOHNSON: (Mr. Johnson nods
8 head.)

9 JUDGE RUTH: I see no one's
10 disagreeing, so that's what we'll do. Both
11 cases suspend the proposed procedural
12 scheduling. Briefs are suggested but not
13 required on the question of whether a hearing is
14 necessary. I'm expecting just a little bit of
15 information from Sprint on records, not
16 argument, just how similar are the documents.

17 MR. JOHNSON: We're talking about
18 looking at existing records as opposed to
19 hypothetical records.

20 JUDGE RUTH: To some extent they'll
21 have to be hypothetical if such traffic has
22 never been transitted. And if --

23 MR. JOHNSON: Can you -- can you
24 order those to be served upon all parties in
25 case there needs to be a response? I know that

1 it's possible we're not being served because --
2 we have been granted intervention now.

3 JUDGE RUTH: You were only granted
4 intervention Thursday -- Tuesday, just recently,
5 and you should be being served since then.

6 MS. CREIGHTON HENDRICKS: I was
7 going to serve you with those documents.

8 JUDGE RUTH: And once you're a
9 party, you are supposed to get a copy of
10 everything. Now, once Sprint gets back to it,
11 you may find that the records don't exist to
12 answer my question, in which case, file
13 something so that I won't be waiting. Okay?

14 MS. CREIGHTON HENDRICKS: Yes,
15 ma'am.

16 JUDGE RUTH: Does anyone have
17 anything else you need to follow up with?

18 MR. ENGLAND: Mr. McCartney has
19 reminded me depending on where we go from here,
20 depending on what type of information Sprint has
21 to provide you, do we need a protective order?
22 And if so, would it be wise to go ahead and
23 issue one at this point?

24 JUDGE RUTH: I would actually need
25 the motion filed, I think, before we would grant

1 the protective order.

2 MS. CREIGHTON HENDRICKS: Your

3 Honor --

4 JUDGE RUTH: I mean, I don't think

5 that you would need a protective order for the

6 brief on whether a hearing is necessary.

7 MR. ENGLAND: No. No. I'm --

8 JUDGE RUTH: If you're wanting to

9 start doing something else in preparation for

10 perhaps having a hearing --

11 MR. ENGLAND: I'm not sure what

12 Sprint's going to provide in response to your

13 immediate request, whether that needs to be --

14 MS. CREIGHTON HENDRICKS: I do not

15 anticipate it will. I imagine that I'm going to

16 describe what's probably contained in a typical

17 1101 that you receive from an IXC and compare

18 that to what we would generate. And after

19 hearing Mr. Voight, I anticipate it -- it would

20 not be a -- a document that would contain

21 proprietary information.

22 JUDGE RUTH: That's what I'm

23 expecting.

24 MS. CREIGHTON HENDRICKS: Right.

25 JUDGE RUTH: Mr. Voight has

1 suggested the type of records would be
2 identical, except one has an I.D. number of an
3 IXC and the other has an I.D. number of an ICG
4 or whomever. I wouldn't want -- I would like
5 for Sprint to either confirm or further explain
6 if they think there's something else that should
7 be added, something else that's different
8 besides what staff has indicated. And -- Mr.
9 Lumley?

10 MR. LUMLEY: For purposes of our
11 discussion about a potential schedule, how far
12 in advance of September 3rd does the matter have
13 to be heard and submitted?

14 JUDGE RUTH: Very early August.

15 MR. LUMLEY: What does that mean?
16 Before the 22nd, he says hopefully?

17 JUDGE RUTH: Before the 22nd of
18 August?

19 MR. LUMLEY: Is that early August?

20 JUDGE RUTH: Way before the 22nd.

21 JUDGE JONES: Within the first
22 couple weeks.

23 JUDGE RUTH: I think the second week
24 would be adequate, but the third week would be
25 really pushing it.

1 MR. LUMLEY: The problem I face is
2 that I'll be in the Michigan from the 7th
3 through the 17th, so that would limit me to the
4 4th through the 6th, and I don't know if those
5 are available dates on the Commission's
6 calendar.

7 JUDGE RUTH: When we conclude the on
8 the record portions, you're welcome to come up
9 with any -- anyone who wants to and look at the
10 calendar and get some ideas. If you as parties
11 agree on some tentative dates if this should go
12 to hearing you can tell Judge Jones or myself
13 and we can actually reserve those, any of them,
14 just in case because they may disappear in the
15 next week.

16 MS. CREIGHTON HENDRICKS: May we
17 consolidate the cases for the purpose of the
18 hearing?

19 JUDGE RUTH: You can request that.

20 MS. CREIGHTON HENDRICKS: Okay.

21 JUDGE RUTH: I would prefer that you
22 do it in writing and explain your reasons why.
23 I don't know for sure that it's going to be
24 granted. We also have the issue that Comm South
25 didn't appear today and I'm not sure whether

1 anything will be done about that. But it's
2 something I think we'll discuss.

3 MR. ENGLAND: Would it be
4 appropriate, then, to take a default judgment on
5 that one at this time?

6 JUDGE RUTH: Somebody might want to
7 raise a default judgment issue. That would be
8 interesting, wouldn't it? But I would require
9 that to be in writing.

10 MR. ENGLAND: One other item. Would
11 you like to have this made an exhibit for
12 purposes of the oral discussion we've had today
13 in case if someone wants to follow it?

14 JUDGE RUTH: I think that would be
15 helpful If you want to offer it.

16 MR. ENGLAND: I'll do so.

17 JUDGE RUTH: Okay. We would mark
18 this diagram as Exhibit 1 for the prehearing
19 conference. I understand it's only being
20 offered so that someone following the testimony
21 would have a document then to refer to to
22 understand the discussion. I didn't mean to say
23 testimony. The discussion. Are there any
24 objections to this document being admitted into
25 the record? Okay. Seeing none, it is admitted

1 as Exhibit 1. Since we only have the one copy,
2 I will see about getting -- they're going to
3 have to, you know, somehow, shrink that and put
4 it into EFIS.

5 MR. ENGLAND: We can take it out to
6 Kinko's, I believe, and make copies. Would you
7 prefer 8 and a half by 11 size?

8 JUDGE JONES: Yes.

9 JUDGE RUTH: Yes. I think so.

10 MR. LUMLEY: Given the nature of the
11 document, I personally wouldn't have an
12 objection to someone recreating it.

13 JUDGE RUTH: Typing and recreating
14 it?

15 MR. LUMLEY: As opposed to going to
16 the expense of recreating -- I mean, it's not
17 complicated for somebody to recreate it.

18 JUDGE RUTH: Why don't -- are you
19 willing to do that?

20 MR. ENGLAND: Wait a minute I spent
21 a long time on that.

22 MR. JOHNSON: England's Museum of
23 Fine Art.

24 JUDGE RUTH: I think it would
25 probably reproduce better and show up on the

1 electronic filing system and all the copies
2 perhaps perhaps if you just typed it and
3 submitted that.

4 MR. ENGLAND: Okay. We can do that.

5 JUDGE RUTH: By next Tuesday,
6 perhaps.

7 MR. ENGLAND: No problem.

8 JUDGE RUTH: Okay. Anything
9 further? Then the prehearing conference is
10 adjourned. You can stay in this room as long as
11 you like so long as you tell Joann when you're
12 finished. If anyone wants to go upstairs, we'll
13 look at the calendar and see if there are dates
14 you want to reserve just in case.

15 (The proceedings were concluded at 12:45
16 p.m. on July 11, 2003.)

17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

STATE OF MISSOURI)
) ss.
COUNTY OF OSAGE)

I, Monnie S. VanZant, Certified Shorthand
Reporter, Certified Court Reporter #0538, and
Registered Professional Reporter, and Notary Public,
within and for the State of Missouri, do hereby certify
that I was personally present at the proceedings as set
forth in the caption sheet hereof; that I then and
there took down in stenotype the proceedings had at
said time and was thereafter transcribed by me, and is
fully and accurately set forth in the preceding pages.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal on July 14, 2003.

Monnie S. VanZant, CSR, CCR #0539
Registered Professional Reporter