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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Hearing
July 7, 2004
Jefferson City, Missouri
Volume 3

In the Matter of the Petition of)
Green Hills Telephone Corporation)
for Suspension of the Federal) Case No. TO-2004-0428
Communications Commission)
Requirement to Implement Number)
Portability)

In the Matter of the Petition of)
Rock Port Telephone Company for)
Suspension and Modification of the) Case No. TO-2004-0439
Federal Communications Commission)
Requirement to Implement Number)
Portability)

In the Matter of the Petition of)
Steelville Telephone Exchange, Inc.)
for Suspension and Modification of) Case No. TO-2004-0454
the Federal Communications)
Commission Requirement to Implement)
Number Portability)

In the Matter of the Petition of)
Grand River Mutual Telephone)
Corporation for Suspension and)
Modification of the Federal) Case No. TO-2004-0456
Communications Commission)
Requirement to Implement Number)
Portability)

In the Matter of the Petition of)
Lathrop Telephone Company for)
Suspension and Modification of the) Case No. TO-2004-0457
Federal Communications Commission)
Requirement to Implement Number)
Portability)

00211

1 In the Matter of the Petition of)
Mark Twain Rural Telephone Company)
2 for Suspension and Modification of) Case No. TO-2004-0458
The Federal Communications)
3 Commission Requirement to Implement)
Number portability)
4 In the Matter of the Petition of)
Iamo Telephone Company for)
5 Suspension and Modification of the) Case No. TO-2004-0459
Federal Communications Commission)
6 Requirement to Implement Number)
Portability)
7 In the Matter of the Petition of)
Ellington Telephone Company for)
8 Suspension and Modification of the) Case No. TO-2004-0480
Federal Communications Commission)
9 Requirement to Implement Number)
Portability)
10 In the Matter of the Petition of)
BPS Telephone Company for)
11 Suspension and Modification of the) Case No. TO-2004-0484
Federal Communications Commission)
12 Requirement to Implement Number)
Portability)
13
In the Matter of the Petition of)
14 Oregon Farmers Mutual Telephone)
Company for Suspension and) Case No. TO-2004-0526
15 Modification of the Federal)
Communications Commission)
16 Requirement to Implement Number)
Portability)

17
18 VICKY RUTH, Presiding,
SENIOR REGULATORY LAW JUDGE.
19 STEVE GAW, Chairman,
CONNIE MURRAY,
COMMISSIONERS.

20
21 REPORTED BY:
22 KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

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00212

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00213

P R O C E E D I N G S

(EXHIBIT NOS. 18 AND 30 THROUGH 89 WERE
MARKED FOR IDENTIFICATION BY THE REPORTER.)

JUDGE RUTH: Good afternoon. We are ready
to start the hearing in Case TO-2004-0428, 439, 454, 456,
457, 458, 459, 480, 484 and 526. My name is Vicky Ruth,
and I'm assigned to preside over these ten cases. Today's
date is July 7th, and it is a few minutes after one
o'clock.

I think we will begin with admitting the
exhibits, and also I have a kind of -- there was some
discussion at the end of this morning's hearing in seven
other local number portability cases, 370, et al, that it
might be a good idea for the Commission to take notice of
the transcript in that proceeding. I think that's a good
idea, but I want to go on the record and offer the parties
an opportunity to object to that. There was some
discussion that was in 370, et al, that might be helpful in
this afternoon's proceeding.

Staff, do you have any objection?

MR. MEYER: We do not.

JUDGE RUTH: Public Counsel?

MS. O'NEILL: No objection, your Honor.

JUDGE RUTH: And Petitioners?

MR. ENGLAND: No objection, your Honor.

00214

1 JUDGE RUTH: Then we also -- it's my
2 understanding Exhibit -- we're going to call it 18, as it
3 was 18 in this morning's proceeding. It's a summary of
4 local number portability suspension requests that was
5 offered by Petitioner this morning and, Petitioner, I
6 understand you want to offer it this afternoon?

7 MR. ENGLAND: Yes, ma'am.

8 JUDGE RUTH: Okay. Let's go ahead and take
9 care of that now, then. Are there any objections to
10 Exhibit 18 being received into the record? Staff?

11 MR. MEYER: No, your Honor.

12 JUDGE RUTH: Public Counsel?

13 MS. O'NEILL: No objection.

14 JUDGE RUTH: Okay. 18 is received.

15 (EXHIBIT NO. 18 WAS RECEIVED INTO EVIDENCE.)

16 JUDGE RUTH: Then Exhibit 30 is a Stip &
17 Agreement in Case 428. 31 is a revised page 9 of that Stip
18 & Agreement. 32, verified petition in 428. And 33 is the
19 proprietary cost info for 428. It's my understanding,
20 Petitioners, that you want to offer these into evidence?

21 MR. ENGLAND: That's correct.

22 JUDGE RUTH: Any objections to these four
23 exhibits being received?

24 MR. MEYER: No.

25 MS. O'NEILL: No objection.

00215

1 JUDGE RUTH: Then Exhibits 30, 31, 32 and 33
2 are received into the record.

3 (EXHIBIT NOS. 30, 31, 32, AND 33 WERE
4 RECEIVED INTO EVIDENCE.)

5 JUDGE RUTH: Exhibit 34 is the Stip &
6 Agreement in Case 439. Exhibit 35 is the revised page 9 of
7 that Stip & Agreement in Case 439. Exhibit 36 is the
8 verified petition in 439. And Exhibit 37 is the
9 proprietary cost information for 439.

10 And again, Petitioners, do you wish to offer
11 these into the record?

12 MR. ENGLAND: We would offer those into the
13 record at this time, your Honor. And if it might help you
14 with shortening things up, we would offer the remaining
15 exhibits through I believe 69, and also state for the
16 record that we have no objections to the Staff and OPC
17 testimony that's also been premarked.

18 JUDGE RUTH: Okay. Let me do first then
19 the -- I believe we're at 33 through 69, and I did pass out
20 a draft exhibit list that listed these. You'll see
21 Exhibit 66 has a typo; it should say case 525. I'll make
22 that change. Are there any objections to Exhibits 34
23 through 49 being received into the record, Staff?

24 MR. MEYER: No, your Honor.

25 JUDGE RUTH: Public Counsel?

00216

1 MS. O'NEILL: No objection.

2 JUDGE RUTH: Okay. We have Exhibits 18
3 through 69 received.

4 (EXHIBIT NOS. 18 THROUGH 69 WERE RECEIVED
5 INTO EVIDENCE.)

6 JUDGE RUTH: Exhibit 70 through 79 are
7 Staff's direct testimonies for the Cases 428, 439, 454,
8 456, 457, 458, 459, 480, 484 and 526. Petitioners have
9 indicated they have no objections to these being received.
10 Public Counsel, do you have any objections
11 to them, 70 through 79?

12 MS. O'NEILL: No objection, your Honor.

13 (EXHIBIT NOS. 70 THROUGH 79 WERE RECEIVED
14 INTO EVIDENCE.)

15 JUDGE RUTH: And the last set that I
16 premarked would be Exhibits 80 through 89, and this is the
17 direct testimony of Ms. Meisenheimer, correct?

18 MS. O'NEILL: That's correct, your Honor,
19 and we would make one typographical correction to Exhibit
20 84. Although in the top left-hand corner the case number
21 is correct, on the cover sheet where the title is, the case
22 number is incorrect. We would -- that's Case No.
23 TO-2004-0457. However, the face sheet reads in one
24 location TO-2004-0458, and we would move to correct that
25 and, as corrected, we would move for admission of 84.

00217

1 The others I believe are correct.

2 JUDGE RUTH: First let's look at the
3 correction on 457. Does any party object to the correction
4 being noted on the official copy?

5 MR. ENGLAND: No objection.

6 JUDGE RUTH: Staff?

7 MR. MEYER: No objection.

8 JUDGE RUTH: Then 457 is corrected. And
9 then Exhibits 80 through 89 are being offered into the
10 record. Any objection to them being received? Petitioner?

11 MR. ENGLAND: No objection.

12 JUDGE RUTH: Staff?

13 MR. MEYER: No.

14 JUDGE RUTH: Then we have Exhibits 80
15 through 89.

16 (EXHIBIT NOS. 80 THROUGH 89 WERE RECEIVED
17 INTO EVIDENCE.)

18 JUDGE RUTH: It's my understanding that more
19 exhibits may be offered later, but I think we're set for
20 the prefiled ones.

21 Okay. Go ahead and do entries of
22 appearance. Mr. England?

23 MR. ENGLAND: Thank you, your Honor. Let
24 the record reflect of appearance of W.R. England and
25 Brian T. McCartney on behalf of Petitioner. Our mailing

00218

1 address is Brydon, Swearngen & England, Post Office
2 Box 456, Jefferson City, Missouri 65102.

3 JUDGE RUTH: Thank you. Public Counsel?

4 MS. O'NEILL: Yes. Good afternoon. Ruth
5 O'Neill on behalf of the Office of the Public Counsel.
6 Co-counsel is Michael Dandino. Our mailing address is P.O.
7 Box 2230, Jefferson City, Missouri 65102.

8 JUDGE RUTH: And Staff?

9 MR. MEYER: Good afternoon. David Meyer for
10 the Staff of the Missouri Public Service Commission. Our
11 address is P.O. Box 360, Jefferson City, Missouri 65102.

12 JUDGE RUTH: Thank you. Just want to go
13 over the procedure a little bit and comment or clarify. We
14 did have an on-the-record presentation this morning in
15 seven of the local number portability cases, and as I
16 stated at the beginning, that transcript, the Commission
17 will take notice of it. The cases for this afternoon are
18 ten local number portability cases in which the parties
19 have filed stipulations and agreements. The length of the
20 suspension is at issue.

21 We are going to start today with brief
22 opening statements, have the parties -- two of the parties
23 have prefiled testimony. We'll have the normal direct,
24 cross-examination, questions from the Bench, et cetera.
25 The parties will also have an opportunity for closing

00219

1 arguments at the end, and we will discuss at the conclusion
2 of the hearing whether or not we need Briefs. Are there
3 any questions regarding the procedure?

4 (No response.)

5 JUDGE RUTH: Okay. I don't see any
6 questions. Off the record.

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

8 JUDGE RUTH: We'll go ahead and start with
9 opening statements, and, petitioners, I believe you're down
10 to go first.

11 MR. ENGLAND: Thank you, your Honor. May it
12 please the Commission? My name is Trip England. I
13 represent the ten Petitioners in the cases before you this
14 afternoon.

15 As you know, the parties have entered in a
16 Stipulation & Agreement, at least as to facts in this case.
17 For example, there's no disagreement among the parties that
18 the Petitioners are rural carriers under the definition of
19 the Telecommunications Act. There's no disagreement with
20 respect to the cost estimates for implementing LNP, and
21 there's no disagreements among the parties as to the
22 modification of the rating and routing requirements, if you
23 will. And we had a lengthy discussion about that this
24 morning, so hopefully I don't need to repeat myself there.

25 As I understand, and the parties, of course,

00220

1 can speak for themselves, but I believe the only issue in
2 these particular cases is the suspension, the length of the
3 suspension that is being sought or alternatively
4 recommended. The Petitioners and Public Counsel have
5 sought a two-year suspension of their obligation to
6 implement wireline to wireless local number portability,
7 and Staff is of the opinion that the Petitioner should only
8 be given an extension or suspension of no more than six
9 months to implement LNP.

10 I believe the issue is fairly easily
11 couched, but I'm not sure that it's fairly easily decided,
12 but that's your-all's job. I think, in essence, what you
13 need and what we're asking you to weigh is whether the
14 costs of implementing LNP exceed or don't exceed the
15 benefit or the value that you perceive of implementing LNP.

16 In each of these cases, and you can see
17 that -- from Exhibit 18 that the cost estimates vary
18 considerably -- the individual Petitioners genuinely felt
19 that the cost of implementing LNP on a per subscriber per
20 month basis exceeded any benefits, if at all, that their
21 customers would receive from wireline to wireless
22 portability at this time. And so they have asked for a
23 two-year suspension.

24 But as I said, they are not the final
25 arbiters of that decision. That is your prerogative. We

00221

1 would hope that you would agree with us, but I think we are
2 prepared to accept whatever determination you believe is
3 appropriate in these cases. With that, I'll conclude and
4 thank you for the time.

5 JUDGE RUTH: Public Counsel?

6 MS. O'NEILL: Good afternoon, your Honor,
7 Commissioners. As you know, my name is Ruth O'Neill, and
8 I'm back this afternoon again representing the Office of
9 the Public Counsel in this proceeding.

10 The Office of the Public Counsel supports
11 the suspension of the local number porting requirement
12 issued by the FCC as it applies to these local rural
13 exchange carriers. Public Counsel supports the suspension
14 of at least two years so the FCC, the wireless industry and
15 the rural local telephone companies can thoughtfully and
16 thoroughly address a number of outstanding implementation
17 issues related to changing from LNP -- from wireline --
18 changing the LNP from wireline to wireless carriers.

19 As indicated in the testimony of Ms. Barbara
20 Meisenheimer, the FCC order essentially transferred
21 recommendations that it previously applied only to wireline
22 to wireline LNP and applied it to wireline to wireless LNP.

23 However, that applies to applications
24 is not possible due to differences in the interconnection
25 obligations between wireline and wireless carriers,

00222

1 including intercompany compensation, rights and duties
2 regarding terminating calls and the rights of an end user
3 customer to maintain its number after porting to a wireless
4 carrier.

5 Her testimony discusses how questions left
6 unresolved by the FCC may affect reliability of service and
7 affordability of local telephone service for rural areas.
8 Ms. Meisenheimer provides evidence as to why the Commission
9 should act now to preserve status quo until these
10 unresolved issues can be addressed.

11 Suspension is justified because the LNP
12 requirement would impose an economic burden on these rural
13 local exchange companies and would impose an economic
14 burden on the local wireline customers who remain with the
15 LEC rather than porting their numbers and primary local
16 telephone service to a wireless carrier. The LECs are
17 able, under the FCC porting order, to recover the cost of
18 the LNP by creating a surcharge that's then applied as a
19 monthly fee on the LEC's local customers.

20 In short, the LEC customers who retain
21 wireline local service will pay for their neighbors to
22 switch their primary local service to wireless carriers.
23 The wireless carriers and the new wireless customers will
24 receive virtually all the benefits of this LNP without
25 cost, while wireline customers who remain with the

00223

1 incumbent will face a surcharge, possibly up to 40 percent,
2 but receive no actual tangible benefits.

3 Public Counsel suggests that this cost
4 shifting is unfair and unjust and inconsistent with the
5 protection of local ratepayers set out in Section 392.158
6 of the Revised Statutes of Missouri. Once again, with
7 competition the local telephone customers ought to be
8 better off than they were before competition. However, as
9 a result of immediately applying the FCC's order to these
10 rural LECs, wireless competition with wireline service may
11 burden, rather than benefit, local wireline customers.

12 As the Commission will see from the
13 evidence, most of the proposed surcharges are considerable
14 additions to the monthly bill of local exchange wireline
15 customers. It does not make sense to charge local
16 customers these surcharges without a demonstrated and
17 significant demand for wireline to wireless LNP. In
18 effect, the wireline customers will be paying for their
19 neighbors to abandon wireline service, leaving them to bear
20 not only the burden of LNP, but also the cost of a local
21 telephone system with a reduced subscribership.

22 Wireless technology will benefit at the
23 expense of wireline. Under the Missouri definitions of
24 telecommunications service in Section 86.020,
25 non-telecommunication services, the wireless companies,

00224

1 will benefit to the detriment of the Missouri
2 telecommunications customers.

3 Public Counsel generally opposes end user
4 paid surcharges as a means to recover the cost of doing
5 business. Surcharges weigh heavy on residential customers
6 and on small business operations that have little ability,
7 if any, to avoid or pass on the surcharge through higher
8 prices to their customers. With a flat rate surcharge,
9 customers with little calling volume pay a disproportionate
10 amount of the cost to recover it, and customers most likely
11 to remain with the incumbent may be those with the least
12 ability to pay for these changes.

13 Public Counsel urges the Commission to
14 consider and balance the immediate need and demand for LNP
15 against the impact that implementation of wireline to
16 wireless LNP at this time will have on these rural
17 telephone companies and the rural local telephone
18 customers. The evidence will demonstrate that a delay
19 through a suspension for two years will prevent an undue
20 economic burden on the LECs and on their customers and
21 would be consistent with the public interest. Thank you.

22 JUDGE RUTH: Staff?

23 MR. MEYER: Good afternoon. Staff has
24 sought to try to strike a balance between the positions
25 that have just been expounded before you between parties

00225

1 that are seeking suspension of the local number portability
2 requirement for certainty and parties that want suspension
3 for cost, in many cases the same party. Ms. Dietrich of
4 the Commission Staff telecommunications department has
5 filed testimony stating that the answer from Staff's
6 perspective is no because in large part the Federal
7 Telecommunications Commission has strongly supported
8 implementation.

9 The Staff's positions in this case have
10 attempted to accommodate the concerns for certainty by
11 supporting the rating and routing modification that has
12 been stipulated to in these cases, and Staff has attempted
13 to accommodate cost concerns by considering how much is too
14 much for the implementation increases, and those
15 accommodations have brought us to the perspective that we
16 have now taken in this and the other related cases that, in
17 fact, there are three groups of companies.

18 The first group of companies that the
19 telecommunications department supports a two-year
20 suspension for have costs associated with implementation
21 that are sufficient to warrant suspension as the increase
22 is high enough the impact will be too great for consumers
23 to bear. The second group are those companies that wish to
24 consider upgrading their switches. Ultimately the intent
25 is that this will allow for a more efficient use of

00226

1 resources and we all anticipate will reduce implementation
2 costs to a reasonable level.

3 Staff's determination in those cases was
4 that the research was appropriate and the company should be
5 allowed time to do their research. It was not a
6 cost-driven decision. And so for now Staff has recommended
7 that the Commission monitor the progress of those
8 companies' searches for upgrades and require status reports
9 at least until the path they intend to follow becomes
10 clear.

11 The third group of companies, and those are
12 the ones that we're talking about now, seek suspension and
13 modification of the FCC requirements to implement local
14 number portability, because it's unclear what they're
15 supposed to do with the routing of calls out of their
16 certificated areas if they have to route calls to providers
17 who don't have direct connections with the small ILECs that
18 have brought these petitions.

19 This third group does actually have only
20 minor implementation costs. They range from 1.68 down, and
21 I just would like to make the point in our statement of
22 positions, a potential discrepancy did creep in. I think
23 in that we had said they were all below 1.68. In fact, we
24 should have said it was 1.68 and below, and certainly
25 Exhibit 18 reflects a clear range that we are dealing with

00227

1 for each company and the specific numbers.

2 The increase is minor in relative terms, as
3 well as in absolute dollars. The percentage increases from
4 the current rate to the post-implementation rate from our
5 perspective are not burdensome.

6 Natelle Dietrich is available to answer any
7 questions you may have about Staff's position and how it
8 was developed, and why the telecommunications department
9 determined to take the middle ground here. As part of her
10 job, of course, she monitors and participates in FCC
11 proceedings, and so she'll be able to perhaps provide some
12 additional insights into why the FCC has done what it's
13 done.

14 And as an example of that, I actually would
15 also ask that the Commission take notice of a recent FCC
16 proceeding, which I think all the parties are aware of, and
17 I can provide copies of the FCC's order in that, where the
18 FCC, in fact, denied a request that was made to it rather
19 than to a state commission for suspension of LNP
20 requirements. I'd be happy to pass that out at the
21 appropriate time.

22 So we are available for your questions and
23 we'll be happy to expand upon our statements at the
24 appropriate time. Thank you. And I can pass that out.

25 JUDGE RUTH: Why don't you go ahead and pass

00228

1 that out now and for the record state what -- give the
2 citation for the case or the date it came out.

3 MR. MEYER: Certainly. If it helps, I could
4 ask that it be marked as an exhibit for reference.

5 JUDGE RUTH: I don't think it needs to be an
6 exhibit. We can take notice of it. If you want it marked
7 for identification purposes, I'll do so.

8 MR. MEYER: I don't think it's necessary. I
9 would just note that it's a FCC docket, cc Docket No.
10 95-116, which is actually the same docket as the main LNP
11 cases. And perhaps Ms. Dietrich could explain a little bit
12 more about that distinction, but it also seems to have the
13 designation DA 04-1455.

14 It's an Order that was adopted May 21 and
15 released May 24 of 2004. It's a group of different
16 companies, including the Yorkville Telephone Cooperative,
17 TMP Corp, TMP Jacksonville, Choice Wireless LC, seeking
18 modification and suspension, I think it was actually just a
19 suspension waiver, in fact, of the local number portability
20 rules of the Federal Communications Commission.

21 JUDGE RUTH: Thank you.

22 MR. MEYER: That's all I have. Thank you.

23 JUDGE RUTH: It's my understanding that the
24 Petitioner did not prefile any testimony, does not have
25 witnesses for this case, so we will move on to Staff. And

00229

1 I understand you have one witness?

2 MR. MEYER: That's correct. We would call
3 Natelle Dietrich, please.

4 JUDGE RUTH: Ms. Dietrich, would you raise
5 your right hand, please?

6 (Witness sworn.)

7 JUDGE RUTH: Thank you. You may proceed,
8 Staff.

9 NATELLE DIETRICH testified as follows:

10 MR. MEYER: Do I understand correctly that
11 the testimony has already been admitted into evidence?

12 JUDGE RUTH: Yes, it has been admitted, and
13 the numbers are 70 through 79. So you have no corrections?

14 MR. MEYER: That is correct.

15 JUDGE RUTH: Then we will move on to
16 cross-examination, and Petitioners.

17 MR. ENGLAND: Thank you, your Honor. I have
18 a few questions.

19 CROSS-EXAMINATION BY MR. ENGLAND:

20 Q. Ms. Dietrich, I'm going to be referencing, I
21 think, to some degree your testimony that's been marked for
22 purposes of identification as Exhibit 70 through 79 in the
23 various cases. I think it's identical, isn't it, among
24 cases?

25 A. Yes, it is.

00230

1 Q. Well, first of all, before I get to the
2 testimony, do you know what the experience has been with
3 the large carriers, such as Southwestern Bell Telephone
4 Company, Sprint, CenturyTel, here in Missouri with
5 implementing intermodal LNP in the St. Louis and Kansas
6 City MSAs, which as I understand are part of the top 100
7 MSAs in the nation?

8 A. That's correct. No. I do not know
9 specifically with those carriers here in Missouri. I have
10 seen some information about nationwide the experience.

11 Q. Would you have any -- and what was that?

12 A. Nationwide it started out there were a lot
13 of problems, rough going at first, and most recent
14 indications from the FCC that things are getting smoother
15 and the porting is running as they thought it should, so to
16 speak.

17 Q. What about the number of requests for
18 wireline to wireless ports as a percentage of total
19 subscribers, have you seen any information on that?

20 A. Yes, I have, if you'll give me a second.

21 Q. Certainly.

22 A. According to an article from May, the FCC
23 said that in April there were 49,000 customers that took
24 their landline numbers to a wireless phone.

25 Q. And as a percent of the universe, do you

00231

1 know what that was?

2 A. No, I sure don't.

3 Q. Okay.

4 A. And I guess if you want me to go back to
5 your first question about the impact, this article also
6 says that complaints about problems in wireless number
7 portability have dropped from a high of 2,400 in November
8 and December of 2003 to 404 in March and April, and that
9 also was a quote from the FCC.

10 Q. Has the Missouri Public Service Commission,
11 to your knowledge, received any complaints regarding local
12 number portability, at least between wireline to wireless?

13 A. Not to my knowledge.

14 Q. Do you know if you've received any
15 complaints from customers in rural telephone -- rural
16 company exchanges about their inability to port numbers
17 since May 24th?

18 A. Not to my knowledge.

19 Q. Just based on your general understanding,
20 would you agree with me that, relatively speaking, the
21 percent of subscribers that would take advantage of
22 wireline to wireless LNP would probably be greater for
23 Southwestern Bell, Sprint, CenturyTel than the small rural
24 areas?

25 A. I think that's a fair statement.

00232

1 Q. And I believe at page -- excuse me. Page 10
2 of your testimony, you have a chart?

3 A. Yes.

4 Q. Which shows the range of residential rates
5 for SBC, Sprint and CenturyTel, do you see that?

6 A. Yes, I do.

7 Q. And those are residential, are they not?

8 A. Correct.

9 Q. And aren't they trying to come up with a
10 comparable rate band that would be applicable to their
11 small rural exchanges?

12 A. That is correct, for the companies that are
13 at issue in this particular proceeding.

14 Q. So roughly trying to come up with R-1 rates
15 that are comparable to the rates and the calling scopes of
16 small rural companies that are petitioners in this case?

17 A. That is correct. And this is just the R-1
18 rate with no surcharges or anything added.

19 Q. No subscriber line charge or anything like
20 that?

21 A. Correct.

22 Q. So these rates would be roughly comparable
23 to those that we have in Exhibit 18, as far as existing R-1
24 rates are concerned?

25 A. Right, as far as existing.

00233

1 Q. Okay. And I believe earlier in your
2 testimony, maybe it's the page before, but you indicate
3 that these three carriers have implemented LNP surcharges
4 ranging from a low of 50 cents per subscriber per month to
5 a high of 80 cents --

6 A. Correct.

7 Q. -- per subscriber per month?

8 A. Correct.

9 Q. Would you agree with me that if we took the
10 lowest LNP surcharge of 50 cents and expressed that as a
11 percentage of the highest rate, which I believe is the
12 13.57 there with Sprint, that would give us on a percentage
13 basis, the lowest value or the lowest percentage of an LNP
14 surcharge in the state at approximately 3.7 percent?

15 A. I'm not sure about the percent, but I would
16 agree with your methodology.

17 Q. Okay. Fair enough. And conversely, if we
18 wanted to see on a percent basis how high an LNP surcharge
19 might be relative to the existing R-1 rate, we take the 80
20 cent surcharge and divide that by the lowest rate
21 available, which is the 7.49, 7.49 for Southwestern Bell?

22 A. Right. Since these are just averages or
23 comparison, that would be fair.

24 Q. Okay. And are you prepared to say that that
25 would be approximately 10.7 percent?

00234

1 A. That looks about right.

2 Q. Okay. So at least with respect to the large
3 companies, if we just want to ballpark what an LNP
4 surcharge is relative to R-1 rates, it's in the
5 neighborhood of 3 to 4 percent on the low end or 10 to 11
6 percent on the high end?

7 A. That sounds about right.

8 MR. ENGLAND: Thank you very much. No other
9 questions.

10 JUDGE RUTH: Public Counsel?

11 MS. O'NEILL: No questions, your Honor.

12 JUDGE RUTH: Commissioner Murray, do you
13 have any questions for the witness at this time?

14 QUESTIONS BY COMMISSIONER MURRAY:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. The FCC order that your counsel asked us to
18 take notice of, do you have a copy of that?

19 A. Yes, I do.

20 Q. I was trying to read through it a moment
21 ago, and it appears that the FCC denied petitions for
22 waiver, as well as for an extension of the porting
23 deadline. Is that your understanding?

24 A. Yes, uh-huh.

25 Q. And the petitions for waiver, I'm trying to

00235

1 see how they -- what was actually being petitioned there.

2 A. Well, I think what -- I mean, it may be in
3 the way they're wording it. It says, for instance, in
4 paragraph 1, the second sentence, the FCC says, we deny the
5 waiver request based on a finding that the petitioners had
6 failed to demonstrate that special circumstances exist to
7 warrant an extension. So I think it's probably one and the
8 same thing; it's not two different issues.

9 Q. It sounds as if they're using that
10 interchangeably to me, as I read it also.

11 A. Uh-huh.

12 Q. So we're not looking at an issue here where
13 the FCC dealt with the rating and routing requirement?

14 A. Right. Everything I've seen from the FCC
15 indicates that they plan to do it at a different time.

16 Q. On the third paragraph there, under pet --
17 background and then it's petitions, I was wondering if you
18 could shed some light on what Yorkville was requesting
19 where it says Yorkville also requested a three-month
20 extension of time to support nationwide roaming of ported
21 numbers and to participate in passes of number field. Do
22 you know what they're referring to with nationwide roaming
23 of ported numbers?

24 A. No, I do not. With several of the petitions
25 that were filed before the FCC and then also with other

00236

1 states, all that we have seen are things like this where
2 it's the ultimate order or press release. We haven't seen
3 the full petitions where it outlines their issues.

4 Q. Do you know anything about nationwide
5 roaming of ported numbers?

6 A. No. I'm just familiar with roaming just in
7 the general sense.

8 Q. And is that -- is roaming a technique that
9 could be used to solve the routing and -- the rating and
10 routing issues?

11 A. I don't think so, because typically with
12 roaming, unless, say, for instance, two wireless carriers,
13 which is the environment that we've been working in, unless
14 they had some kind of special arrangements where it may
15 appear a customer's roaming but they don't take all the
16 charges, typically the customer pays significantly more for
17 what is known as a roaming call. They pay perhaps a per
18 day fee for being in that area and plus a lot of times a
19 substantial per minute fee also.

20 Q. Now, the extension that was denied here was
21 just a request for three months extensions, is that --
22 well, actually, that was only for the --

23 A. That was just for the one piece.

24 Q. Okay. Then they were requesting an
25 extension until September 24th of some parts and November

00237

1 24th of other implementation?

2 A. I think what that's doing is stating
3 different parties' positions in the background section.

4 Q. Oh.

5 A. Different carriers. What we've seen is that
6 a lot of times in a particular area different carriers,
7 just like what we're seeing here, they would ask for
8 different times, depending on what their needs were.

9 Q. Okay. Under discussion on page 3 of the
10 order, it states, we find that petitioners have failed to
11 demonstrate that the technical readiness issues they cite
12 as the basis for their waiver request could not have been
13 prevented had petitioners made a timely effort to prepare
14 for porting.

15 Do you have an opinion in this case with the
16 various carriers whether they made timely efforts to
17 prepare for porting?

18 A. I think in the group of companies that we're
19 talking about right now, they consider the cost
20 substantial, and so they looked at their costs and made the
21 determination that it was not appropriate to implement LNP.
22 So as far as making timely decisions, their decision that
23 way was timely.

24 As far as if they had done anything prior to
25 that, I think, you know, speaking -- not wanting to speak

00238

1 on their behalf, but my perception would be that they
2 didn't feel that they should go that far without having a
3 determination as to whether they would have to actually
4 implement LNP or not.

5 Q. So is it your understanding that they think
6 they may never have to implement LNP or that they think the
7 cost of doing it will go down, or what? What is the
8 purpose of the delay?

9 A. From my discussions for the group that we're
10 talking about right now, they think that if they get their
11 suspension for two years, that in that time there would be
12 technological differences that perhaps would make it more
13 attractive to implement, whether the rates would go down,
14 the prices would go down at that time, or there would be
15 new technology that would provide a larger benefit to the
16 consumers that would be paying for the implementation
17 charges, those types of things. And so the two years would
18 buy more time for changes.

19 Q. So you would not expect the carriers to come
20 back at the end of two years and ask for another extension,
21 or would you?

22 A. I would hope that they would not. I don't
23 know that I would say I wouldn't expect them to.

24 Q. The paragraph 10 on this order, this FCC
25 order on page 4 under the public interest?

00239

1 A. Uh-huh.

2 Q. Would you mind reading that entire paragraph
3 out loud?

4 A. Okay. This is the paragraph from the FCC's
5 order, and I don't have the exhibit number that it was
6 entered under, paragraph 10, public interest. We conclude
7 also that petitioners have failed to show that granting
8 their request for waiver would serve the public interest.
9 The Commission's number portability requirements are an
10 important tool for promoting competition and bringing more
11 choices to consumers.

12 These benefits are particularly important in
13 smaller markets across the country where competition may be
14 less robust. Accordingly, it is in the public interest
15 that carriers implement porting as quickly as possible.
16 Granting petitioners waiver requests would slow the LNP
17 process and limit the choices available to consumers in the
18 markets petitioner is selling. In addition, allowing
19 petitioners each to establish different implementation
20 schedules could cause confusion among consumers considering
21 porting their numbers.

22 Q. Do you have an opinion as to the whether the
23 public interest would be served by implementing LNP?

24 A. I think especially for the group of
25 companies that we're talking about today, the public

00240

1 interest would be served by implementing LNP. During our
2 cost review, we determined that cost would not be so
3 substantial such as to burden the customer, and it would
4 provide the benefits of choice in those areas, promote the
5 competition as the FCC is looking for here, and then also
6 allow these areas potentially to participate in thousand
7 block pooling.

8 Q. And these are smaller -- these would qualify
9 as the smaller markets across the country where competition
10 may be less robust than in most areas, are they not?

11 A. These meaning the companies in Missouri?

12 Q. That are here before us in this case.

13 A. They're some of the larger of the small
14 companies that are before the Commission.

15 Q. Are they -- is competition in their areas
16 less robust than in more urban areas?

17 A. Yes, it is.

18 Q. And Staff was recommending a six-month
19 suspension even though the costs are insignificant,
20 according to Staff's analysis. Why is Staff recommending
21 any suspension at all?

22 A. The FCC's original order was issued in
23 November, and it allowed the carriers until May to
24 implement LNP, which was the six months. And so, given
25 that, if the Commission takes the Staff recommendation and

00241

1 requires these companies to be LNP capable, we felt they
2 would probably need the same six months to upgrade their
3 software and any hardware updates that might be needed,
4 those type of things. So it was strictly to allow the time
5 that the FCC had originally allowed between its order and
6 implementation date.

7 Q. But these carriers had the same six months
8 that the FCC allowed, did they not?

9 A. That's correct, but they didn't have the
10 Commission's order directing them to implement LNP.

11 Q. So in Missouri, how many carriers became LNP
12 ready without a Commission order, a state commission order
13 ordering them to do so?

14 A. That I'm aware of, it would be SBC,
15 CenturyTel, Sprint, and ALLTEL, and perhaps one other small
16 company. And then, of course, there were the companies
17 that we had the on-the-record proceeding last week or the
18 week before, whenever that was, of the companies that were
19 strictly seeking modification, that their switches were LNP
20 capable but they were looking for modification for the
21 rating and routing issues.

22 Q. And the carriers that are not LNP ready --
23 and did not those that did not use that six months that the
24 FCC had given to become LNP ready, is it your opinion that
25 they filed petitions with this Commission asking for

00242

1 suspensions and that the filing of those petitions relieved
2 them of the duty to become LNP ready, just the fact that
3 they had them pending?

4 A. Let me see if I understand what you're
5 asking. The fact that the petitions were pending relieved
6 them of their obligation?

7 Q. To be ready at the time the FCC had ordered
8 them to do so?

9 A. In my opinion, I don't know if I would
10 characterize it relieved them, but at least it postponed
11 it, because they were waiting for a decision from the state
12 commission as to whether they could receive the suspensions
13 or not under the terms of the Act.

14 Q. Do you think the -- what if this Commission
15 were to deny any further suspension, do you think it's
16 possible that these carriers could become LNP ready?

17 A. I think it's possible they could become LNP
18 ready. I don't think they could do it by -- I think August
19 7th is the current suspension date. They would have to
20 contact vendors and make the upgrades to their hardware and
21 software, that type of thing.

22 I was noticing in the FCC's order that we
23 were talking about earlier, it looks like they allowed 60
24 days, and so it seems like even the FCC recognized that it
25 couldn't be simultaneous.

00243

1 Q. I noticed that also. The FCC denied the
2 suspension, but said they would not enforce it for 60 days.

3 A. Right.

4 Q. Is it your opinion that these carriers could
5 be LNP ready in 60 days from the date of order that we
6 issue?

7 A. I really don't know. I mean, it depends on
8 the vendor largely. I know from some of the things I've
9 been reading, the vendors are backed up, because this is a
10 nationwide event. There are carriers across the nation
11 that are asking for the suspensions and either receiving
12 them or being denied. The ones that have been denied have
13 to go to the vendors at that point and there's only a
14 limited number of vendors.

15 Q. Do you know how many states have been
16 denying the suspensions?

17 A. I don't have an exact number. I do have a
18 spreadsheet that talks about the various states, and a lot
19 of them, it's not easy to say they said yes or no
20 completely, because they did like what we have here, where
21 different carriers are asking for different things or have
22 different circumstances. And so they might have granted
23 for some carriers, denied it for other carriers.

24 Some of the states have done similar to this
25 Commission where they've given a limited suspension to

00244

1 allow time for further proceedings, and then there's other
2 commissions that have granted the request. And some of
3 them are just for a few months. Others are for a couple
4 years. So it's pretty much all over the board.

5 Q. And some states have denied them altogether;
6 is that correct?

7 A. That's correct.

8 Q. Do you know how many that is?

9 A. Just one second. Michigan denied.

10 Q. And let me ask you, was that denial generic
11 enough that the petitions for suspension did not continue?
12 In other words, was that denial clear that they were not
13 going to grant suspensions, or do you know?

14 A. It just says denied request for extension
15 until 12/8/03, 2/12/04 and 2/20/04. It doesn't give any
16 more details. These apparently were in the top 100 MSAs by
17 the dates, I'm guessing, since they were before the May
18 date.

19 New York denied several companies. It says,
20 carrier petition seeks six-month extension beyond the date
21 the FCC clarifies wireless to wireline porting rules, and
22 they -- it was denied on April 19th, and they had to
23 implement by May 24th. But it doesn't give details as to
24 what the issues were there.

25 Q. And do you know in either of those dates

00245

1 whether there was a request for modification?

2 A. Not that I'm aware of. Looks like
3 Washington denied a couple, and it doesn't give any
4 details. Again, it looks like it was probably carriers in
5 the top 100 MSAs, in that area. And then the FCC, at least
6 as the most recent -- as of the most recent report I have,
7 had some petitions that it denied.

8 Q. What was that, the last one?

9 A. FCC.

10 Q. So between, let's say, two months and six
11 months, why did Staff settle upon six months as a
12 suspension period to recommend?

13 A. Well, at the time we weren't aware that
14 anybody was granting any extensions even for the two
15 months, and we felt that the six-months was consistent with
16 what the FCC allowed from the time it issued its order to
17 the time it required it for these carriers.

18 Q. And in terms of the cost -- perhaps I'll let
19 the Judge ask this question regarding -- because it's from
20 a summary that she prepared for us about the costs, and I
21 believe -- so Ms. Dietrich, is it Staff's position that
22 granting an extension or a suspension for six additional
23 months is in the public interest?

24 A. Yes, just to allow time for them to do what
25 they need to make number portability available.

00246

1 Q. And do you see any reason at all that we
2 should consider a longer period of time than six months?

3 A. Not for the group that we're talking about
4 this afternoon.

5 COMMISSIONER MURRAY: Thank you.

6 JUDGE RUTH: Ms. Dietrich, the other
7 Commissioners are not present. It's possible I may need to
8 recall you, but we're going to move on to recross, and then
9 we may bring you back later for some more questions from
10 the Bench, if that makes sense. Okay. For recross,
11 Petitioners?

12 MR. ENGLAND: Thank you.

13 JUDGE RUTH: I just want to go ahead. There
14 may not be any additional questions from the Bench, but if
15 there are, we'll do this part again.

16 MR. ENGLAND: Okay. Thank you.

17 RECROSS-EXAMINATION BY MR. ENGLAND:

18 Q. Ms. Dietrich, I've got sort of a string of
19 questions that follow up on some questions you were asked
20 by Commissioner Murray in no particular order, just the way
21 I've written them down.

22 A. Okay.

23 JUDGE RUTH: Can I interrupt you? I'm
24 sorry. I'm going to have you sit down. I was going to ask
25 the question Commissioner Murray was talking about later,

00247

1 but I think I'll do it now. Some of the Commissioners had
2 a question.

3 MR. ENGLAND: I thought maybe for purpose of
4 broadcast you wanted me to do the questioning from the
5 Bench.

6 JUDGE RUTH: No, I'm sorry. My question's
7 not going to be proprietary, but it's possible that the
8 answer will be proprietary information for your client, and
9 if so, you're going to have to interrupt me. But -- and
10 you may need to grab a document to follow along with this
11 question.

12 QUESTIONS BY JUDGE RUTH:

13 Q. But the question applies to several cases,
14 but right now I'm looking at TO-2004-0439, Rock Port, and I
15 don't actually have that in front of me, but I have some
16 notes that indicate, I believe it's on page 7 and 9,
17 perhaps where there's some information regarding costs,
18 some numbers. I don't want to say those aloud yet.

19 A. Are we talking about Stip & Agreement; is
20 that the document?

21 Q. Yes.

22 A. Okay. These were filed in the documents so
23 they're probably not HC, but how you got to them may be.
24 I'm not sure.

25 439 Stip & Agreement on page 7, paragraph

00248

1 16, and then page 9, paragraph 23. Could you just explain
2 the difference between those two calculations, what's going
3 on there? Do you see where I'm talking about?

4 A. I don't appear to have a copy of that
5 Stipulation & Agreement.

6 MR. MEYER: May I approach?

7 JUDGE RUTH: Are you going to hand her 439
8 Stip & Agreement?

9 MR. MEYER: That's what I'd like to do.

10 JUDGE RUTH: You might just briefly show it
11 to the other counsel so they see you have the correct
12 document.

13 BY JUDGE RUTH:

14 Q. And on page 7, it's paragraph 16 --

15 A. Yes.

16 Q. -- talks about the LNP charge necessary to
17 recover implementation and referring cost, and then on page
18 9, paragraph 23, the LNP monthly customer charge?

19 A. Right.

20 Q. Just could you clarify those?

21 A. Yes. Paragraph 16 in each one of the
22 petitions, I think it's the same paragraph, is the actual
23 cost as reflected on Exhibit 18. The paragraph 23 number
24 apparently was left in there from the first Stipulation &
25 Agreement that was completed, and then when we were

00249

1 reviewing them, we missed the second reference to a number.
2 So in both paragraphs they either should have the same
3 number, or I think Mr. England provided an exhibit this
4 morning or during the break, whenever it was, that actually
5 changed page 9 of each.

6 Q. Okay.

7 A. So paragraph 16 is the correct number.

8 Q. Thank you. That's the clarification. And
9 we did have all those exhibits offered this morning or this
10 afternoon and received, but obviously I haven't been able
11 to compare all the pages.

12 A. Right.

13 Q. So that page 9 for each one will take care
14 of that question?

15 A. Correct.

16 JUDGE RUTH: Commissioner Murray, does that
17 answer it?

18 COMMISSIONER MURRAY: Except, I believe,
19 rather than page 9 for each one taking care of the
20 question, wouldn't it be that we'd refer to page 7 for each
21 one?

22 JUDGE RUTH: They filed a new page 9 and
23 it's in that huge file that I gave you. Now that I think
24 about it, I think it takes out some sentences.

25 MR. ENGLAND: Commissioner Murray,

00250

1 Ms. Dietrich was absolutely correct. When we did the first
2 stipulation, which was sort of our template, the numbers in
3 paragraph 16 and 23 were identical, but when we did the
4 subsequent stipulations, we changed the number in 16 to be
5 accurate for each company because they are different. We
6 neglected to change the number in paragraph 23. So to
7 correct that, what we did was for a revised page 9 was just
8 drop that sentence and that number, so there was no
9 inconsistency in those.

10 COMMISSIONER MURRAY: Thank you. I
11 understand now.

12 MR. ENGLAND: I'm sorry for the error and
13 the confusion it caused.

14 JUDGE RUTH: Some of us read everything
15 ahead of time. Okay. And I'm sorry I had to interrupt
16 you, Mr. England. Come back up now that we've taken care
17 of that question and you may proceed.

18 MR. ENGLAND:
19 RECROSS-EXAMINATION BY MR. ENGLAND:

20 Q. Ms. Dietrich, you were asked some questions
21 about the two-year suspension and the fact that that might
22 give the company opportunities to pursue other technologies
23 that might be less expensive or provide more features for
24 the same price, I believe?

25 A. Right.

00251

1 Q. It would also give perhaps some time to see
2 what happens with the appeals that have been taken by the
3 various rural telephone organizations of the FCC's
4 intermodal porting order as well, would it not?

5 A. I think from your perspective it would allow
6 that time. I think we would disagree. It definitely
7 allows that time, but we think the Commission's order --
8 the FCC's order requires the porting at this time.

9 Q. Right. But if an appeals court determines
10 that the FCC made an error, whether it's on a lawful or
11 factual basis and reverses it, it would be a shame for
12 these companies to have implemented LNP only to find out
13 that on appeal or on remand from the appeal that they don't
14 have that obligation, wouldn't it?

15 A. It would definitely cause some confusion.

16 Q. And cost some unnecessarily spent monies?

17 A. Correct. Well, perhaps not unnecessarily,
18 but monies that would not have had to have been spent in
19 the beginning.

20 Q. Also with respect to the suspension, I think
21 you had a question or something along the lines of why not
22 two months versus six months, and I think you -- one of
23 your answers, if it wasn't in relation to that, it was
24 nevertheless, I think, relevant to that. You pointed out
25 that some of these vendors supply switches on a nationwide

00252

1 basis?

2 A. Correct.

3 Q. And they are getting requests on a
4 nationwide basis from a number of companies to get in there
5 and do the necessary software and hardware changes to get
6 them up to LNP standards, right?

7 A. Right.

8 Q. And have you heard some anecdotal evidence
9 that they can't necessarily get in in 60 days if we were to
10 call them today, that it might take some time because of
11 that nationwide demand?

12 A. Not specifically 60 days, but they are
13 getting backed up, and it would take some time.

14 Q. Okay. With respect to the May 24th FCC
15 order that your counsel asked notice be taken of, do you
16 have that?

17 A. Yes.

18 Q. First of all, I note that this decision was
19 issued by a John Muletta, chief of the wireless
20 telecommunications bureau. Do you see that?

21 A. Yes, I do.

22 Q. So it doesn't appear that any of the
23 Commissioners specifically signed off on this, does it?

24 A. I don't see any reference to their names,
25 no.

00253

1 Q. And also I believe that this order was
2 issued before Chairman Powell issued his recent
3 correspondence to NERUC regarding small company requests
4 for suspension and modification and his concern for their
5 cost impacts. Would that be a fair statement?

6 A. It looks like it, yes.

7 Q. And, in fact, and I've only looked at this
8 very briefly, there doesn't appear to be any cost
9 information regarding these carriers?

10 A. And that's what I was attempting to explain
11 to Commissioner Murray, is that all we have seen is what
12 very limited information is either put in orders or press
13 releases, and not having the privilege of seeing the
14 petition or any other evidence.

15 Q. Finally, the question regarding roaming, it
16 appears that one of the Petitioners here was actually a
17 wireless company, was it not?

18 A. Choice Wireless, yes.

19 Q. And could not that roaming request have to
20 do with requirements that are specific to the wireless
21 carriers, and in that regard the wireless carrier was
22 seeking an extension or suspension of its obligation under
23 FCC rules as they apply to wireless carriers to do certain
24 things including roaming and number resource conservation?

25 A. I think it's reasonable to assume that the

00254

1 roaming was related to the wireless carrier.

2 Q. You also had some questions about companies
3 that had implemented LNP, and I think you indicated that
4 SBC, Sprint, CenturyTel, ALLTEL, to the best of your
5 knowledge, have implemented intermodal wireline to wireless
6 LNP?

7 A. That's correct.

8 Q. Would you agree with me that they probably
9 represent 90 percent of the access lines in the state?

10 A. Yes.

11 Q. And then we in the two proceedings that
12 we've had today, we've had 19 -- roughly 19 small companies
13 that are seeking suspension and modification to some degree
14 or another?

15 A. Correct.

16 Q. But prior to that, we've had approximately,
17 I think there are a total of 37 small companies in the
18 state, so we've had approximately if I -- if I deduct the
19 19 from the 37, 18 that have gone ahead and implemented
20 LNP?

21 A. Right, and I attempted to follow up with
22 making note of that, that there were some.

23 Q. And you did. I'm just trying to put it in
24 perspective that these 19 carriers probably serve access
25 lines that represent maybe less than 5 percent now of the

00255

1 access lines in the state that aren't LNP capable, right?

2 A. I don't remember the access lines of the
3 ones that were in the previous case, but I would say it's
4 somewhere around that.

5 Q. I mean, fairly large companies, Fidelity who
6 has 15 to 20,000 access lines. Seneca, Goodman, Ozark
7 collectively has 8,000, Cass County probably has 8. I
8 mean, those -- I think we're talking about a fairly small
9 percentage of access lines that are not currently LNP
10 capable. Would you agree with me?

11 A. Yes.

12 Q. Thank you. And I think you indicated to
13 Commissioner Murray that Missouri's not the only state
14 that's grappling with these requests for suspension and
15 modification?

16 A. That's correct.

17 Q. And when you look at those, and I think you
18 accurately noted, they really are sort of company specific,
19 depending on their circumstances. What they need to do to
20 be number capable -- or number portability capable and
21 costs, there's a variety of issue that makes it difficult
22 to make an apples to apples comparison between those
23 decisions and necessarily what's going on in this state,
24 though, correct?

25 A. Or at least to be able to make a blanket

00256

1 statement that states have denied them for similar
2 requests.

3 Q. Or granted them, too?

4 A. Oh, right. Correct.

5 MR. ENGLAND: Okay. Thank you. That's all
6 the questions I have.

7 JUDGE RUTH: Public Counsel?

8 MS. O'NEILL: No further -- no questions,
9 your Honor.

10 JUDGE RUTH: And redirect?

11 MR. MEYER: Thank you.

12 REDIRECT EXAMINATION BY MR. MEYER:

13 Q. Very briefly. Ms. Dietrich, as part of your
14 job, do you actually receive information relating to
15 proceedings in other states and elsewhere that involve
16 local number portability?

17 A. I don't necessarily receive information, but
18 I see news articles, press releases, participate on
19 conference calls, attend meetings, things like that, where
20 I interact with other states and get their positions and
21 their perspectives.

22 Q. You referenced a spreadsheet that you had
23 derived some information from?

24 A. Yes.

25 Q. Could you explain a little bit more about

00257

1 what that is?

2 A. This particular spreadsheet that I was
3 referencing earlier was a spreadsheet that was put together
4 by the New Store, which is the number administrator, and
5 they gather the information from all the states, like for
6 instance in our state, we have a Staff person that's been
7 working with me to keep our information updated. I'm
8 assuming the other states have done the same thing. And
9 then it's distributed.

10 Q. Do you have any other sources of information
11 that you relied upon to monitor or become aware of what's
12 going on in other states?

13 A. Just like I said, there's conference calls,
14 press releases, list serves that I belong to. We exchange
15 quite a bit of information.

16 MR. MEYER: I believe that's all I have.
17 Thank you.

18 JUDGE RUTH: Ms. Dietrich, you may step
19 down, but it's possible that you'll be recalled later for
20 additional questions from the Bench.

21 THE WITNESS: Okay.

22 JUDGE RUTH: Public Counsel, would you like
23 to call your witness?

24 MS. O'NEILL: Yes. We'd call Barbara
25 Meisenheimer.

00258

1 (Witness sworn.)

2 JUDGE RUTH: Thank you. You may be seated,
3 and these -- Exhibits 80 through 89, right --

4 MS. O'NEILL: Yes.

5 JUDGE RUTH: -- have been received into the
6 record.

7 BARBARA MEISENHEIMER testified as follows:

8 DIRECT EXAMINATION BY MS. O'NEILL:

9 Q. Could you state your name for record,
10 please?

11 A. Barbara Meisenheimer.

12 Q. How are you employed?

13 A. I'm chief economist with the Missouri Office
14 of the Public Counsel.

15 Q. And you're the witness who prepared exhibits
16 that are in evidence, 80 through 89, in these case numbers
17 that were admitted here this afternoon; is that correct?

18 A. That's correct.

19 MS. O'NEILL: With those -- as those have
20 already been admitted into evidence, I would tender the
21 witness for cross-examination.

22 JUDGE RUTH: Thank you. Petitioners?

23 MR. ENGLAND: Thank you, your Honor.

24 Hopefully I can do this with one question. No promises.

25 CROSS-EXAMINATION BY MR. ENGLAND:

00259

1 Q. Ms. Meisenheimer, do you know if your office
2 has received any consumer complaints about the lack of
3 wireline to wireless LNP in small rural company exchanges?

4 A. Not to my knowledge.

5 MR. ENGLAND: Thank you. No other
6 questions.

7 JUDGE RUTH: Staff?

8 MR. MEYER: Thank you.

9 CROSS-EXAMINATION BY MR. MEYER:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. Ms. Meisenheimer, I'm going to refer to your
13 testimony probably in a more generic sense, because I think
14 the pagination is probably the same in all cases. On page
15 3 at the bottom and page 4 at the top of your testimony,
16 you have a reference to FCC proceedings involving
17 unresolved issues, kind of in a generic sense, and then go
18 on to state specific issues that you believe need to be
19 resolved. Are you where I am?

20 A. Yeah, I'm there.

21 Q. Do you have any knowledge or sense of a time
22 frame as far as resolution of those issues that you've
23 enumerated here at the FCC?

24 A. With respect to the issue of service
25 reliability, to the extent that one of the difficulties

00260

1 between -- or in porting from wireline to wireless is that
2 there is a different time period during which wireline
3 carriers and the time period during which wireless carriers
4 generally complete the updating of information and
5 databases, and since there's a discrepancy, if I remember
6 correctly, wireline carriers have I think it's four days.
7 It was actually described in one of the FCC discussions.
8 And wireless carriers do it in two and a half hours,
9 there's a period of time during which, if a call is placed
10 from, say, for example, a wireless phone it might be routed
11 to the incorrect place with respect to identifying the
12 location of the customer. So that is one. In terms of --

13 Q. Is there an FCC fix that's perhaps pending
14 on that?

15 A. There were alternatives or there are
16 alternatives that have been considered. To my knowledge,
17 none of them have been accepted. And these proceedings ran
18 in working groups at the NANC, North American Numbering
19 Council. Those working group investigations have gone on
20 for years about how to resolve some of these issues. Now,
21 the NANC works on a consensus basis, so certainly that may
22 be part of the difficulty, but nonetheless, the technical
23 issues still remain, with that as one example. Do you want
24 me to --

25 Q. Would you like to give another example?

00261

1 A. With respect to customer confusion, I'm
2 particularly concerned that I'm not aware of any process
3 that's been developed to ensure that, say, for example a
4 customer that ports their number from a wireline carrier to
5 a wireless carrier, who are they to go to? If -- or
6 another example might be if a customer gets slammed, that
7 is their provider is changed, if it's local to local,
8 landline, then both of those would be covered under the
9 certifications granted at the state commission.

10 Once you get into the world of wireless,
11 that's different, and so it's the FCC. To my knowledge,
12 I'm not aware of any processes that were put in place at
13 the FCC, except where that maybe a customer could randomly
14 call, and I'm not sure what direction they would be given
15 about how to resolve issues.

16 With respect to billing, I think there may
17 be cases where calls come in, hit a tandem, and then the
18 billing records could go on to the incumbent LEC that used
19 to serve the customer.

20 Meanwhile, the customer switched to a
21 wireless carrier. That issue I'm not -- I'm not familiar
22 with, with the particular time frame. The customer
23 confusion that I -- and the examples I described, to my
24 knowledge, I'm not aware of a proceeding to address all
25 those kind of customer confusion issues.

00262

1 Conflicts between local and federal
2 requirements, and intercarrier compensation issues, this
3 rating and routing process, I do realize that the FCC has
4 claimed that they intend to address this in another
5 proceeding. My experience as a NANC member, as a member of
6 the universal service joint board staff and as a member of
7 the SUCA who's filed comments in numerous proceedings at
8 the FCC or helped draft those, is that many times issues do
9 not get resolved quickly. It can literally be years until
10 issues are resolved.

11 Q. Do you feel as though these issues that
12 you've just been discussing are specific to wireless to
13 wireline local number portability, or do these issues get
14 raised simply in the wireless to wireless context and other
15 contexts beyond that?

16 A. The issues that arise from the difference in
17 time that it takes to update databases from wireline and
18 wire -- or between wireline and wireless carriers, I view
19 that as there are instances where that type of thing could
20 happen, but since the time intervals are aligned, it's not
21 going to happen, I don't think, as much. So I view this as
22 primarily an intermodal issue with respect to updating some
23 of that information and aligning the transition times for
24 the various carriers.

25 With respect to customer confusion,

00263

1 certainly there was customer confusion in a wireline-only
2 environment for porting. I think that this issue that we
3 are now going from an intrastate jurisdictional service,
4 that is local service in -- offered by local exchange
5 carriers versus a local service offered by a carrier that's
6 regulated in the interstate jurisdiction. I believe there
7 to be issues that are unique or exaggerated, if you will,
8 because of difference between intermodal porting from just
9 regular landline porting.

10 With respect to billing, I believe that to
11 be an issue that, in my mind, is primarily attributable to
12 this concept of porting outside of the local calling scope
13 area, and therefore, I would argue that there are aspects
14 of it that are associated with intermodal conflicts between
15 local and federal requirements on intercarrier
16 compensation. Once again, an example would be this
17 requirement that the calls need to be ported outside of the
18 local calling scope to be completed to a wireless carrier.
19 I view that as uniquely an intermodal -- that is in
20 comparison to wireline to wireline.

21 Now, there's a whole other realm that is
22 wireless to wireless, which is not as much an area that I'm
23 familiar with, so I will probably stop at the comparison
24 I've given you.

25 Q. Thank you. On page 5, line 17 of your

00264

1 testimony, that starts with the -- that's the beginning of
2 a sentence that addresses your views on why the FCC has
3 taken -- or I'm sorry -- on what actions the FCC has taken
4 relative to requirement. And you state that the FCC
5 believes interconnection agreements are not necessary to
6 prevent unjust or unreasonable charges or practices by
7 wireless carriers.

8 It appears that the order itself actually
9 just stopped at saying the agreements were not necessary.
10 Could you explain how you made that leap to that
11 interconnection agreements are not necessary to prevent
12 unjust or unreasonable charges or practices?

13 A. Can you direct me to the point in the order?

14 Q. I can give it a try. Do you have a copy of
15 the order? I guess I should start with that.

16 A. No, I don't.

17 Q. Okay.

18 A. I have -- I have little piece parts, but --
19 MR. MEYER: May I approach the witness?

20 JUDGE RUTH: Yes, you may.

21 BY MR. MEYER:

22 Q. I'm going to have to give you my copy. I
23 believe it's somewhere in the neighborhood of paragraph 34.

24 A. I'm sorry to be taking a few minutes.

25 Oftentimes you get additional information that's contained

00265

1 in an Order by looking, you know, at where they summarize
2 the arguments, the parties as well as the discussion.

3 Q. Okay.

4 A. And can you direct me again to the point in
5 my testimony?

6 Q. I'm sorry. Page 5, approximately line 17,
7 where you're summarizing the FCC statements.

8 A. Yes.

9 Q. The first part certainly tracks the
10 paragraph in the federal communications order?

11 A. Specifically are you talking about line 17
12 to line 19.

13 Q. Yes.

14 A. The sentence --

15 Q. Yes.

16 A. I would direct you to paragraph 35 in the
17 FCC's order. First we conclude that interconnection
18 agreements are not necessary to prevent unjust or
19 unreasonable charges or practices by wireless carriers with
20 respect to porting. That's the basis for why.

21 Q. Would you like to explain that, if you have
22 any opinion on that? Is that a valid assumption?

23 A. Did you want your order back?

24 Q. Sure.

25 MR. MEYER: May I approach the witness?

00266

1 JUDGE RUTH: Yes.

2 THE WITNESS: Yes, I do have an opinion on
3 it, and the opinion is that I believe that there was really
4 not a full consideration of the potential impact that this
5 obligation can pose in certain cases, and in particular,
6 one where someone or some company would be required to take
7 numbers outside a local calling scope and outside the
8 existing bounds of the interconnection agreement in terms
9 and conditions of exchanging traffic, I don't think that
10 that was fully considered.

11 I think the FCC has admitted that they
12 intend to deal with that elsewhere and have not yet. The
13 FCC has taken out specifically a requirement for
14 interconnection, and I think that was pretty much based on
15 an assumption that it was going to be just the same kind of
16 exchange of traffic, nothing new, nothing different.

17 Therefore, they believe that things were in
18 place in terms of the rates, there weren't going to be new
19 requirements, new obligations to secure facilities for the
20 transport of traffic. And so, you know, the -- they
21 didn't, I don't think, really view it in all cases to be as
22 complicated or requiring as much as it will require of
23 small companies in the state of Missouri.

24 Now, specifically the FCC then said -- and I
25 think it was in that context, that's my reading of that

00267

1 full section of the FCC order -- that, therefore, there
2 would be no interconnection agreement needed, and once you
3 take away the requirement for an interconnection agreement
4 for -- that would be contained under Section 251 of the Act
5 -- and I could give you the section if I had a copy of the
6 Act.

7 MR. MEYER: I could provide that. May I
8 approach?

9 JUDGE RUTH: Yes.

10 THE WITNESS: That would be real helpful.

11 JUDGE RUTH: Show the document again to
12 counsel so they'll see what you have.

13 THE WITNESS: Incumbent local exchange
14 companies under the Act have an obligation to provide
15 certain things. One of those things that they are required
16 to provide is interconnection; another is unbundled access.
17 In the case of these additional obligations, the Act sets
18 forth requirements with respect to determining how are the
19 details of that going to be worked out in terms of the
20 pricing?

21 Section 252 identifies the process by which
22 carriers which need to interconnect for the exchange of
23 traffic, which is described in 251, part C, part A of the
24 Act, carriers that negotiate interconnection agreements on
25 a voluntary basis and can come to agreement on terms and

00268

1 conditions, a state commission simply has the authority to
2 accept or reject those, and there is no mandatory
3 cost-based pricing standard. In other words, you don't
4 have to ensure that rates are based on cost or that those
5 rates are -- I'd better not go too far.

6 Let me find the section. Okay. It says
7 that if agreements are negotiated, they can be entered into
8 without reference to two other sections, one of them that
9 has to do with arbitration. The other has to do with the
10 standards for arbitration, which ultimately lead
11 potentially to a pricing standard that would be required
12 based on cost plus a reasonable profit.

13 So in other words, what the FCC did is it
14 said, you don't have to have interconnection agreements.
15 Therefore, what it said is that since interconnection
16 agreements aren't obligated, the state commission's normal
17 authority that would flow along with interconnection
18 agreements is no longer in place. So I am not convinced at
19 this point, and in addition, the FCC has required that
20 small companies have to deliver this traffic. I believe
21 that that was their intent, that traffic would be
22 delivered.

23 Now, certainly this Commission has the
24 authority to make modifications, but I mean, that is my
25 view of how the FCC order reads. And if that's true, then

00269

1 the small companies are put in the position of having to
2 complete traffic and to arrange for compensation, but
3 there's nothing to control what the cost of that
4 compensation is going to be. And I found very unpersuasive
5 the FCC's statement regarding this that dealt with there is
6 a lot of competition for wireless and, therefore, we're not
7 worried about it. I don't know what that meant.

8 BY MR. MEYER:

9 Q. I think this may lead into my next question,
10 which actually was about the next sentence that you have in
11 your testimony on the bottom of page 5, where you have a
12 reference to the FCC requiring the LEC having to deliver
13 the traffic, but then referenced that it's possible they
14 may not receive compensation for delivery of that traffic.
15 Could you explain how -- what you just stated and how you
16 formed that conclusion?

17 A. I could look in the FCC order again for the
18 place that I got that for. I'm sorry. I gave it back to
19 you.

20 MR. MEYER: May I reapproach?

21 JUDGE RUTH: Yes.

22 THE WITNESS: I'm sorry for the delay. If
23 you don't mind I'll keep looking. Otherwise, I would be
24 willing to say that that statement, I believe, is contained
25 within the context of this order. That's where I got that

00270

1 from.

2 Also, I would point to that carriers are
3 obligated to exchange traffic just simply under the Act,
4 and at least I can give you specifically in section -- or
5 in paragraph 36. I'm sorry. It's in 37. They say number
6 portability by itself does not create new obligations with
7 regard to exchange of traffic between the carriers involved
8 and the port.

9 Now, I don't necessarily fully agree with
10 that, but at least to the question you asked me, it does
11 indicate that carriers would be held under the same
12 obligation, I think you can inference that from that, and
13 the Act requires carriers to exchange traffic.

14 BY MR. MEYER:

15 Q. Perhaps as a result of that, perhaps from
16 another source, do you think it's possible that there's a
17 contradiction between the concept that the LEC has to
18 deliver the traffic potentially without compensation but it
19 can recover the cost from customers that didn't switch of
20 the local number portability implementation?

21 A. I would say that the intent is that they
22 have to deliver the traffic, that they are going to incur
23 cost to do it, that the FCC hasn't fully addressed the
24 issue, but if they're to deliver the traffic, it seems to
25 me that some kind of combination is going to be asked for

00271

1 at least the transport piece, and that ultimately -- and
2 the FCC has said, you may recover costs from customers
3 through a surcharge, so ultimately customers are going to
4 pay a cost that, sitting here today, I cannot say is going
5 to be just nor reasonable.

6 Q. Over the course of your testimony in these
7 ten cases, you've indicated that you believe that the
8 amount that will become the local number portability
9 implementation cost will be too much for customers to bear.
10 Are you actually saying that, for example, 11 cents is
11 actually too much for a customer to bear in these cases?

12 A. The --

13 Q. And I think 11 cents was the lowest number,
14 the Grand River number that we have in the stipulation in
15 TO-2004-0456.

16 A. What -- can you direct me to a spot in my
17 testimony?

18 Q. I think I might be able to, but I think it's
19 more just a global concept, that your view of that this is,
20 in fact, an undue burden on the customers to implement
21 these totally monthly nonrecurring charges?

22 A. I think that some of these charges are
23 outrageous. The concept of a 40 percent -- potentially up
24 to a 40 percent surcharge when there are huge and numerous
25 complaints at the federal level regarding universal service

00272

1 surcharge that, in some cases, went to the 9 to 12 percent
2 range, it's ridiculous that for a single modification to
3 the network, a single new element to service, we're going
4 to request up to 40 percent, I think the Staff is willing
5 to accept, on a customer's bill that they have to pay every
6 month for service.

7 We have had arguments over a 13 cent
8 surcharge in the state of Missouri with respect to the
9 equipment distribution task force, with respect to low
10 income programs. The FCC found giving an additional \$1.75
11 simply because the state would sign off that carriers would
12 use the money to offset low-income customers' bills would
13 be a benefit and make a bill more affordable.

14 So I would say that even \$1.68 impact could
15 potentially be unaffordable.

16 Q. Do you believe that the numbers going on the
17 range down to \$1.68, the \$1.03, the 37 cents and the 11
18 cents are equally unaffordable or is your perspective from
19 a different direction on those?

20 A. The FCC has determined that companies can
21 recover their costs through a surcharge. This is an issue
22 that consumer advocates have fought on numerous occasions
23 regarding numerous surcharges at the federal level. We
24 have been unsuccessful in many cases, so ultimately, you
25 know, envision that there will be some time of a surcharge

00273

1 to recover.

2 That -- from my perspective in terms of the
3 testimony that I filed, I focused primarily on issues
4 related to service quality and other concerns. Certainly
5 we are concerned about surcharges and who is it recovered
6 from. I mean, the concept of cost causation would say
7 those who cause the cost should pay for the cost. So in
8 that sense, I don't think necessarily even an 11 cent
9 surcharge on a landline customer when it will primarily
10 benefit those who leave the landline service is necessarily
11 a reasonable and acceptable charge.

12 MR. MEYER: Okay. Thank you. That's all I
13 have.

14 THE WITNESS: Thanks.

15 JUDGE RUTH: At this time there are not any
16 questions from the Bench, and I'm not sure if there will
17 be, so we will go ahead and move to the redirect. And if
18 necessary, we'll recall this witness, and then we're going
19 to take a short break. We've been going for quite some
20 time.

21 If there aren't any questions from the
22 Bench, that means when we come back, we'll be ready for
23 closing arguments.

24 MS. O'NEILL: So redirect at this point?

25 JUDGE RUTH: Yes.

00274

1 REDIRECT EXAMINATION BY MS. O'NEILL:

2 Q. Ms. Meisenheimer, you just had a discussion
3 with Mr. Meyer regarding surcharges and the amounts of
4 surcharges. The levels of surcharge -- recurring LNP
5 charges that are put -- are contained in the stipulations,
6 that resolve part of the issues in this case, are those
7 verified numbers or are those some kind of estimate?

8 A. My understanding is that those numbers are
9 estimates, that they could potentially change and, in fact,
10 I would expect them to change in the event that small
11 carriers in the state have to make arrangements with large
12 carriers to transport traffic from the local calling area
13 to wherever the wireless switch is located. And I think
14 that in another proceeding, Mr. Schoonmaker has filed
15 testimony that estimates those costs potentially to be as
16 high as \$100,000.

17 Q. Per company, or do you know?

18 A. I think that was -- I think that's a fair
19 characterization. I would have to verify that by looking
20 at his testimony, which I have with me.

21 Q. Okay. At any rate, it would be a
22 substantial cost, at least for some of these companies, is
23 that your understanding, as a potential cost?

24 A. Oh, this is just negotiating contracts,
25 20,000 to \$100,000 is the range.

00275

1 Q. So potentially there could be substantial
2 additional costs?

3 A. Yes.

4 Q. Which would make this 11 percent example
5 that you were discussing with Mr. Meyer probably a low -- a
6 number on the low side, even for the less expensive?

7 A. Yes, I would believe that that number is
8 low. Now, there -- yes, I would believe that number's low.

9 Q. And when you had -- you said something a
10 couple minutes ago about people who cause costs should be
11 the one who pay the costs. What concerns do you have
12 regarding this -- the LNP recurring charges and that cost
13 causer, cost payer? Is there anything you would like to
14 add regarding that?

15 A. When we talk about who causes cost in the
16 context of deploying a telecommunications network, the
17 traditional rate of return regulation concept is that we
18 set rates in the manner that will allow a company an
19 opportunity but not a guarantee to recover their costs.
20 Carriers, wireless carriers, certainly would like to be
21 able to compete for customers that are currently wireline
22 customers, and therefore, they make the decisions about
23 where do they offer service, how much do they spend on
24 advertising and things like that.

25 Landline carriers determine where are they

00276

1 going to put in what new facilities based on their
2 projected ability to offer various services on an ongoing
3 basis. Local number portability, while it certainly helps
4 -- I mean, while certainly it provides a benefit to certain
5 customers, I don't think there has been evidence that this
6 is truly driven on an intermodal basis by customer demand.

7 Now, local number portability between local
8 carriers in the same -- landline carriers in the same area,
9 I feel pretty strongly that that can be a great benefit to
10 customers. With respect to landline and wireless phones,
11 my experience has been that customers have both often, and
12 so they're more complimentary goods than they are
13 substitutes.

14 Now, certainly I have heard various numbers
15 talking about how many people have switched their landline
16 to wireless and now were just wireless. Still those
17 numbers are relatively low. So who's causing these costs?
18 My opinion is, it's the industry. It's not the local
19 landline customer that's causing this cost. And,
20 therefore, I'm not sure why whatever those costs work out
21 to be whenever someone decides what those costs are should
22 be recovered on a mandatory flat rate basis from customers
23 through a surcharge. I think they should be treated as any
24 other cost of business, certainly.

25 The FCC also has allowed but not mandated

00277

1 that carriers recover these costs through surcharges.
2 That, in my opinion, serves the interest of a regulatory
3 body that oversees things at a national level but not at a
4 state level. They can say, well, we're going to let the
5 carriers recover them this way, but we didn't make them.
6 The problem is that ultimately customers are asked to pay
7 their telephone bill. So whatever's the mandatory charge,
8 ultimately they're asked to pay.

9 Q. Ms. Meisenheimer, if the Commission orders
10 these two-year suspensions, do you think it is -- that one
11 of the issues that could be resolved in that intervening
12 time period would be how to better match the payment of
13 these costs with the people or entities that are causing
14 the costs? Is that one of the issues that could be
15 addressed in that intervening time?

16 A. It could be. I've spoken so far really with
17 respect to the cost that I think that the FCC has talked
18 about, switching upgrades and things like this. This
19 additional issue with respect to the costs that may be
20 incurred to transport calls out of local calling area to
21 wherever the wireless carrier's located, I'd say that it's
22 the wireless carrier that causes those costs.

23 And so to the extent that we have a couple
24 of years to allow the FCC to address that, for appeals to
25 occur or what other -- whatever other proceedings stem from

00278

1 the -- stem regarding this issue or whatever the North
2 American Numbering Council develops with respect to
3 recommendations, I think two years would help to ensure
4 that those issues are sufficiently worked out before this
5 obligation, which will ultimately result in costs passed on
6 to the local customer, is resolved.

7 Q. And given the fact that there's a very --
8 that you have not observed a great demand for this kind of
9 local number portability in these rural areas at this point
10 in time, do you think it's in the public interest to allow
11 these companies to wait for the suspension period in
12 anticipation that some of these unresolved issues could be
13 resolved?

14 A. Yes.

15 MS. O'NEILL: Thank you. No further
16 questions. Your Honor, was it your intention that
17 Ms. Meisenheimer come back after the break to see whether
18 or not there were questions from the Bench?

19 JUDGE RUTH: Yes, at this point I'm sorry
20 but neither witness has been excused. We're going to take
21 a break until 15 after by that clock in the back. When we
22 come back I'll know if there's any need to recall these two
23 witnesses, and we'll move to closing arguments also. We're
24 off the record. Thank you,

25 (A BREAK WAS TAKEN.)

00279

1 JUDGE RUTH: We are back on the record.
2 When we left for our short break, I indicated that I was
3 not certain whether we would need to recall the Staff
4 witness or OPC's witness, and the answer to that is no.
5 Those witnesses are excused, and we will move straight into
6 the closing arguments.
7 Petitioners, could I get you to move up to
8 the podium for your closing argument?
9 MR. ENGLAND: I beg your pardon?
10 JUDGE RUTH: Could I get you to move up here
11 for your closing argument, please?
12 MR. ENGLAND: Certainly.
13 JUDGE RUTH: Thank you.
14 MR. ENGLAND: Thank you. I'm not sure how
15 many times I can say this, but the Petitioners believe
16 that, at least at this point in time, the benefits of
17 implementing LNP are small, if not non-existent. As a
18 result, any costs that they incur far outweigh whatever
19 benefits they think is attributable to wireline to wireless
20 LNP at this point in time.
21 Now, having said that, we recognize, as I
22 said in our opening statement, we are not the final arbiter
23 of that. You all are, and I will quickly admit that this
24 is a judgment call. It's not black and white, and it's not
25 precise science. It's an art, I guess, if you will, to

00280

1 determine at what price point or at what cost the benefit
2 of LNP is sufficient enough to warrant the attendant costs.
3 Staff has chosen to draw that line at \$1.68 per access
4 line, and in their defense, they've done a more thorough
5 job than just picking a number out of the air, and
6 Ms. Dietrich explains that in her testimony.

7 We obviously respectfully disagree. We
8 think that any costs at this point in time, at least as far
9 as these petitions are concerned, is too much, given what
10 little, if any, benefits would result from LNP. But if you
11 decide in your judgment that it is appropriate for some or
12 all of these Petitioners in this group to implement LNP, we
13 would at the very least ask that you follow Staff's
14 recommendation that you give us six months to make that
15 conversion or implementation, if you will. Thank you very
16 much.

17 COMMISSIONER MURRAY: Judge, may I ask one
18 question of Mr. England?

19 JUDGE RUTH: Yes.

20 COMMISSIONER MURRAY: Mr. England, I just
21 have a question. I'm not sure if you can answer this for
22 me. Is universal service funding available for use for
23 upgrading the networks to make them LNP capable?

24 MR. ENGLAND: I don't believe, but I can be
25 corrected. I believe that the incremental cost

00281

1 specifically attributable to LNP have been determined to be
2 recoverable through this surcharge that we've been talking
3 about, and I think once you do that, I don't believe you
4 can get additional recovery from those same charges through
5 Universal Service Fund.

6 COMMISSIONER MURRAY: And you don't know if
7 it's an either/or, that you either use Universal Service
8 Funding or you can have a surcharge?

9 MR. ENGLAND: No, I don't, and the fellow
10 that I would really like to defer to is Bob Schoonmaker,
11 and if you can remember to hang on to that question, he'll
12 be here for the hearings later this month. And I think --
13 as a matter of fact, I'll make him aware of that question
14 and he ought to be in a position to answer that for you.

15 COMMISSIONER MURRAY: Thank you.

16 MR. ENGLAND: You bet. Thank you.

17 JUDGE RUTH: Public Counsel?

18 MS. O'NEILL: Thank you. Good afternoon. I
19 think that we've had a lot of information into the record
20 today about the concerns that Public Counsel has regarding
21 implementing local number porting requirements at this time
22 for the small rural telephone companies.

23 We believe that these requirements at this
24 time pose an adverse economic impact on the customers and
25 on the companies in a way that is not justified by the

00282

1 demand and because there's several unresolved questions
2 that the FCC ordered us not completely address, including
3 how -- how and -- how some of these transactions and
4 transitions of number portability will take place, how we
5 can ensure that those transitions from a wireline to a
6 wireless line -- to a wireless account can be seamless, can
7 protect the consumers.

8 We believe that a two-year suspension would
9 be appropriate to allow all the parties time to resolve the
10 issues that are still open. We believe that the demand for
11 LNP in rural company service areas served by these
12 companies is very small right now, probably unlikely to
13 become significant in the next two years, and the time
14 delay that the suspension will cause will not adversely
15 affect the interest of the customers.

16 We're very concerned about the fact that the
17 costs of implementing these changes will probably be borne
18 by those customers who actually do not take advantage of
19 this new opportunity to transfer from a wireline to a
20 wireless carrier. Therefore, the people who are obtaining
21 the benefits under the way things are currently are not the
22 people who are going to pay for the costs that are incurred
23 to give them that benefits.

24 We would ask the Commission to grant the
25 two-year suspension that's requested by the Petitioners in

00283

1 this case. Certainly if you grant suspension of at least a
2 reasonable length of time to allow some of these problems
3 to be resolved. And I would refer you to my opening
4 statement and to the testimony of Ms. Meisenheimer, both
5 her written testimony and her testimony here today in
6 support of our position. Thank you.

7 JUDGE RUTH: Staff?

8 MR. MEYER: Good afternoon. At the risk of
9 being repetitive, again, I will also restate that from our
10 perspective, from Staff's perspective, the cases before the
11 Commission here have not reached the level of fulfilling
12 the statutory standard that we should be continuing to
13 examine here, and again, I'll just go back to the statute,
14 that the Commission may grant waivers here but only if the
15 waiver is a necessary waiver exemption, suspension, permits
16 an avoidance of significant adverse economic impact on the
17 customer, or avoids imposing a requirement unduly economic
18 burdensome on the companies.

19 We believe, at least in these cases, that
20 those burdens have not been met, that the amount of cost
21 associated with the implementation does not reach the
22 standards, and that the FCC's directives that should be
23 carried out to enforce local number portability standards.
24 Also, I'll cite to that statute; I think it was actually
25 mentioned some time ago, but I think it is relevant.

00284

1 The Commission, having suspended the
2 effective date, which of course was back in May, according
3 to Section 252 -- and I'll just read it -- says, pending
4 such action -- in other words this time period that we're
5 dealing with now -- the state commission may suspend
6 enforcement of the requirement or requirements for which
7 the petition applies with respect to the petitioning
8 carrier or carriers.

9 I think this would then take us from the
10 suspension on August 7th and Staff's old recommendation of
11 six months beyond the effective date of Commission's order
12 here is, in fact, supported by statute because, in fact,
13 during the period of these petitions' pending time, in
14 fact, that suspension is statutorily warranted. And then
15 this additional six months certainly is needed as given
16 according to the statute again.

17 So we believe that the initial
18 recommendation should, in fact, still stand in all of these
19 cases that suspension should be granted for six months to
20 allow implementation from the date of the Commission's
21 order, but at that point the LNP should go forward. Thank
22 you.

23 JUDGE RUTH: Okay. Before we adjourn the
24 hearing, I'll note that Exhibits 1 through 89 have been
25 received into the record. The transcript has been

00285

1 expedited. It will be submitted by the court reporter
2 within one business day, and the Briefs are due July 13th.
3 That was changed by an Order last week, I believe, changing
4 the briefing schedule.

5 Now, it's my understanding that the
6 Petitioners are going to be getting some additional
7 information on switch for the first set of cases, and I
8 assume they will also be doing so for the second set of
9 cases this afternoon. And I know that the Petitioners are
10 wanting until next Friday to have that done, but the sooner
11 the better. And let me explain the Commission's calendar.

12 Today is the 7th. Transcript due this week,
13 Briefs due the 13th, next Tuesday. I need this to be on
14 agenda Thursday for discussion at least, and I think the
15 Commissioners will want that information. If we don't have
16 the information and have to postpone discussion to the
17 following week, it's going to be very difficult. Not
18 impossible, but I'd like have this on for agenda discussion
19 the 15th, and then have the Report and Orders go out the
20 following week. So the sooner you can get that
21 information, the better.

22 Are there any other matters that need to be
23 taken up at this time?

24 MR. ENGLAND: Your Honor, and I appreciate
25 your time. I understand thoroughly. I'm a person that

00286

1 works and I think my clients are better with finite
2 deadlines, so would noon Wednesday of next week be
3 sufficient to get you that information?

4 JUDGE RUTH: Yes, noon, because that would
5 give me the afternoon to make any changes to whatever the
6 Commissioners are going to see on Thursday. If it comes in
7 early, you can send it in in pieces because procedurally, I
8 will be circulating something for the Commissioners to read
9 for Thursday agenda on Monday, Tuesday at the latest. So
10 of course, if your Briefs are in earlier, more of that will
11 be in my first draft, and I'll supplement as additional
12 information comes along, but --

13 MR. ENGLAND: Internally I'll probably ask
14 for it on noon Tuesday from my clients, but in my
15 experience, some folks don't quite make the deadline and
16 some require follow-up telephone calls and that sort of
17 stuff. We will have it to you no later than that. If we
18 can get it to you earlier, we certainly will.

19 JUDGE RUTH: That will be great. And again,
20 the case where it matters the most is the 370 case from
21 this morning, because its deadline is August 7th and it
22 cannot be postponed anymore. Some of the others can be
23 postponed one week if necessary.

24 Okay. Anything further?

25 MS. O'NEILL: No, your Honor.

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1 JUDGE RUTH: Okay. Then we are adjourned.

2 Hearing's over. Thank you very much.

3 WHEREUPON, the hearing of this case was

4 concluded

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I N D E X

00289

	EXHIBITS INDEX		
		MARKED	RECEIVED
1			
2			
3	EXHIBIT NO. 18		
4	LNP Suspension Requests	213	214
5	EXHIBIT NO. 30		
6	Stipulation and Agreement		
7	Case No. TO-2004-0428	213	215
8	EXHIBIT NO. 31		
9	Revised Page 9	213	215
10	EXHIBIT NO. 32		
11	Petition for Suspension and Modification		
12	of Local Number Portability Obligations		
13	and Motion for Expedited Treatment		
14	Case No. TO-2004-0428	213	215
15	EXHIBIT NO. 33P		
16	LNP Cost Information,		
17	Case No. TO-2004-0428	213	215
18	EXHIBIT NO. 34		
19	Stipulation and Agreement		
20	Case No. TO-2004-0439	213	216
21	EXHIBIT NO. 35		
22	Revised Page 9	213	216
23	EXHIBIT NO. 36		
24	Petition for Suspension and Modification		
25	of Local Number Portability Obligations		
	and Motion for Expedited Treatment		
	Case No. TO-2004-0439	213	216
	EXHIBIT NO. 37P		
	LNP Cost Information,		
	Case No. TO-2004-0439	213	216
	EXHIBIT NO. 38		
	Stipulation and Agreement		
	Case No. TO-2004-0454	213	216
	EXHIBIT NO. 39		
	Revised Page 9	213	216

00290

1	EXHIBIT NO. 40		
2	Petition for Suspension and Modification		
3	of Local Number Portability Obligations		
4	and Motion for Expedited Treatment		
5	Case No. TO-2004-0454	213	216
6	EXHIBIT NO. 41P		
7	LNP Cost Information,		
8	Case No. TO-2004-0454	213	216
9	EXHIBIT NO. 42		
10	Stipulation and Agreement		
11	Case No. TO-2004-0456	213	216
12	EXHIBIT NO. 43		
13	Revised Page 9	213	216
14	EXHIBIT NO. 44		
15	Petition for Suspension and Modification		
16	of Local Number Portability Obligations		
17	and Motion for Expedited Treatment		
18	Case No. TO-2004-0456	213	216
19	EXHIBIT NO. 45P		
20	LNP Cost Information,		
21	Case No. TO-2004-0456	213	216
22	EXHIBIT NO. 46		
23	Stipulation and Agreement		
24	Case No. TO-2004-0457	213	216
25	EXHIBIT NO. 47		
	Revised Page 9	213	216
	EXHIBIT NO. 48		
	Petition for Suspension and Modification		
	of Local Number Portability Obligations		
	and Motion for Expedited Treatment		
	Case No. TO-2004-0457	213	216
	EXHIBIT NO. 49P		
	LNP Cost Information,		
	Case No. TO-2004-0457	213	216
	EXHIBIT NO. 50		
	Stipulation and Agreement		
	Case No. TO-2004-0458	213	216

00291

1			
2	EXHIBIT NO. 51		
3	Revised Page 9	213	216
4	EXHIBIT NO. 52		
5	Petition for Suspension and Modification		
6	of Local Number Portability Obligations		
7	and Motion for Expedited Treatment		
8	Case No. TO-2004-0458	213	216
9	EXHIBIT NO. 53		
10	LNP Cost Information,		
11	Case No. TO-2004-0458	213	216
12	EXHIBIT NO. 54		
13	Stipulation and Agreement		
14	Case No. TO-2004-0459	213	216
15	EXHIBIT NO. 55		
16	Revised Page 9	213	216
17	EXHIBIT NO. 56		
18	Petition for Suspension and Modification		
19	of Local Number Portability Obligations		
20	and Motion for Expedited Treatment		
21	Case No. TO-2004-0459	213	216
22	EXHIBIT NO. 57P		
23	LNP Cost Information,		
24	Case No. TO-2004-0459	213	216
25	EXHIBIT NO. 58		
	Stipulation and agreement		
	Case No. TO-2004-0480	213	216
	EXHIBIT NO. 59		
	Revised Page 9	213	216
	EXHIBIT NO. 60		
	Petition for Suspension and Modification		
	of Local Number Portability Obligations		
	and Motion for Expedited Treatment		
	Case No. TO-2004-0480	213	216
	EXHIBIT NO. 61P		
	LNP Cost Information,		
	Case No. TO-2004-0480	213	216

00292

1	EXHIBIT NO. 62		
	Stipulation and agreement		
2	Case No. TO-2004-0484	213	216
3	EXHIBIT NO. 63		
	Revised Page 9	213	216
4			
	EXHIBIT NO. 64		
5	Petition for Suspension and Modification		
	of Local Number Portability Obligations		
6	and Motion for Expedited Treatment		
	Case No. TO-2004-0484	213	216
7			
	EXHIBIT NO. 65P		
8	LNP Cost Information,		
	Case No. TO-2004-0484	213	216
9			
	EXHIBIT NO. 66		
10	Stipulation and agreement		
	Case No. TO-2004-0526	213	216
11			
	EXHIBIT NO. 67		
12	Revised Page 9	213	216
13	EXHIBIT NO. 68		
	Petition for Suspension and Modification		
14	of Local Number Portability Obligations		
	and Motion for Expedited Treatment		
15	Case No. TO-2004-0526	213	216
16	EXHIBIT NO. 69P		
	LNP Cost Information,		
17	Case No. TO-2004-0526	213	216
18	EXHIBIT NO. 70		
	Testimony of Natelle Dietrich		
19	Case No. TO-2004-0428	213	216
20	EXHIBIT NO. 71		
	Testimony of Natelle Dietrich		
21	Case No. TO-2004-0439	213	216
22	EXHIBIT NO. 72		
	Testimony of Natelle Dietrich		
23	Case No. TO-2004-0454	213	216
24	EXHIBIT NO. 73		
	Testimony of Natelle Dietrich		
25	Case No. TO-2004-0456	213	216

00293

1	EXHIBIT NO. 74		
	Testimony of Natelle Dietrich		
2	Case No. TO-2004-0457	213	216
3	EXHIBIT NO. 75		
	Testimony of Natelle Dietrich		
4	Case No. TO-2004-0458	213	216
5	EXHIBIT NO. 76		
	Testimony of Natelle Dietrich		
6	Case No. TO-2004-0459	213	216
7	EXHIBIT NO. 77		
	Testimony of Natelle Dietrich		
8	Case No. TO-2004-0480	213	216
9	EXHIBIT NO. 78		
	Testimony of Natelle Dietrich		
10	Case No. TO-2004-0484	213	216
11	EXHIBIT NO. 79		
	Testimony of Natelle Dietrich		
12	Case No. TO-2004-0526	213	216
13	EXHIBIT NO. 80		
	Testimony of Barbara Meisenheimer		
14	Case No. TO-2004-0428	213	217
	EXHIBIT NO. 81		
15	Testimony of Barbara Meisenheimer		
	Case No. TO-2004-0439	213	217
16	EXHIBIT NO. 82		
	Testimony of Barbara Meisenheimer		
17	Case No. TO-2004-0454	213	217
	EXHIBIT NO. 83		
18	Testimony of Barbara Meisenheimer		
	Case No. TO-2004-0456	213	217
19	EXHIBIT NO. 84		
	Testimony of Barbara Meisenheimer		
20	Case No. TO-2004-0457	213	217
	EXHIBIT NO. 85		
21	Testimony of Barbara Meisenheimer		
	Case No. TO-2004-0458	213	217
22			
23			
24			
25			

00294

1	EXHIBIT NO. 86		
	Testimony of Barbara Meisenheimer		
2	Case No. TO-2004-0459	213	217
	EXHIBIT NO. 87		
3	Testimony of Barbara Meisenheimer		
	Case No. TO-2004-0480	213	217
4	EXHIBIT NO. 88		
	Testimony of Barbara Meisenheimer		
5	Case No. TO-2004-0484	213	217
	EXHIBIT NO. 89		
6	Testimony of Barbara Meisenheimer		
	Case No. TO-2004-0526	213	217

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8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
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