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In the Matter of the Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with T-Mobile USA, Inc.	))))	Case No. TO-2006-0147
In the Matter of the Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with Cingular Wireless	))))	Case No. TO-2006-0151

KENNARD L. JONES, Presiding,
REGULATORY LAW JUDGE.

REPORTED BY:

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P R O C E E D I N G S

JUDGE JONES: This is the arbitration hearing for Case No. TO-2006-0147, in the matter of petition for arbitration of unresolved issues in a Section 251(b)(5) agreement with T-Mobile USA, Incorporated. I may add that this case has been consolidated with four other cases, which were TO-2006-0148, 0149, 0150 and 0151. I'm sorry. This wasn't on, was it?

The Respondents were at the beginning of this proceeding U.S. Cellular, Sprint PCS, T-Mobile, Cingular and NexTel Wireless. T-Mobile and Cingular are the only two of the five that remain.

My name is Kennard Jones. I am the Regulatory Law Judge that will be conducting these proceedings. Sitting on my right is Marc Poston, on my far left is Bill Voight, and to my immediate left is Natelle Dietrich. These persons are my advisory staff and may also ask questions of the witnesses during these proceedings.

Also, I understand that there was a request for an expedited transcript. That's the norm in these proceedings. I suppose it might be best for us to decide how fast we need it after the hearing is completed. That way we'll know how much time is needed for Briefs and

whatnot.

At this time I will take entries of appearances, beginning with Petitioner.

MR. ENGLAND: Thank you, your Honor. Let the record reflect the appearance of W.R. England, Brian T. McCartney and Melissa Manda on behalf of the Petitioners in both arbitration cases against T-Mobile and Cingular. The Petitioners are a little bit different in each of the cases. The majority of the Petitioners, though, are the same, and they are specifically identified in our written entry of appearance. Our post office is Box 456, Jefferson City, Missouri 65102. Thank you.

JUDGE JONES: Thank you, Mr. England. And for T-Mobile?

MR. JOHNSON: May it please the Arbitrator? Appearing on behalf of T-Mobile USA in Case No. TO-2006-0147 are Mark Johnson and Roger Steiner of the law firm Sonnenschein, Nath & Rosenthal. Our mailing address is 4520 Main Street, Suite 1100, Kansas City, Missouri 64111.

JUDGE JONES: Thank you, Mr. Johnson. And for Cingular Wireless?

MR. WALTERS: Your Honor, my name is Paul Walters, Junior, representing Cingular Wireless. My mailing address is 15 East First Street, Edmond,

E-d-m-o-n-d, Oklahoma 73034.

JUDGE JONES: Thank you, Mr. Walters. Also, before we get started, I note that Fidelity filed a notice of voluntary dismissal. Is that all the Fidelity companies or one of them?

MR. ENGLAND: The notice of dismissal was filed by Fidelity Telephone Company, the incumbent local exchange carrier. It's our understanding that with respect to the arbitration with T-Mobile, the Fidelity competitive local exchange carriers, or CLECs, have already been dismissed at the motion of T-Mobile.

And while I'm not sure that you've ruled directly on Cingular's motion, we anticipate the same result in the Cingular arbitration.

JUDGE JONES: Well, now that you bring that --

MR. ENGLAND: I'm sorry. I misspoke. In the Cingular arbitration, neither Fidelity the incumbent LEC or Fidelity the competitive LEC is a petitioner. They have agreements with Cingular.

JUDGE JONES: Okay. Now, I realize that Cingular filed a motion to dismiss the CLECs. However, their motion specifically went to the claims that the CLECs filed and that the motion was therefore denied. How we'll proceed with that I guess depends on Cingular.

I also understand that you-all want to do opening statements.

MR. ENGLAND: That is correct, your Honor.

JUDGE JONES: Between the several of you, have you agreed to time frames for those opening statements?

MR. ENGLAND: My understanding is that Petitioners would have approximately one-half hour or no more than one-half hour to provide an opening, and that Respondents would split a half an hour.

MR. JOHNSON: And that's our understanding as well, your Honor.

JUDGE JONES: Thank you. Is there anything else we need to discuss before opening statements?

(No response.)

JUDGE JONES: Hearing nothing, we'll proceed with opening statements from Petitioners.

MR. ENGLAND: Thank you, your Honor. Judge, members of the arbitration panel, may it please the Commission? My name is Trip England. I represent the Petitioners in these two arbitration cases that have been consolidated before the Commission.

In the first arbitration case, at least first chronologically, approximately 23 small rural local exchange companies have sought arbitration of a traffic

termination agreement with T-Mobile, and in the second arbitration case, approximately 25 small rural ILECs have sought arbitration with Cingular. As I mentioned to you in my appearance, not all of the Petitioners are the same in both arbitrations, but there is a commonality among a majority of the Petitioners.

As you noted in your preliminary remarks, Judge, petitions were also filed by various groups of small rural ILECs against U.S. Cellular, Sprint and NexTel. We have reached agreement with U.S. Cellular, and most if not all of those agreements have been reduced to writing and filed with the Commission for its approval, and, in fact, I believe the Commission has begun issuing orders approving a number of those agreements with U.S. Cellular.

Sprint and NexTel agreements have been reached in principle, but the final agreement has not been reduced to writing, but we anticipate doing that in the next several weeks and begin submitting that to the Commission for approval. So for purposes of arbitration, we believe the only two wireless carriers left are T-Mobile and Cingular.

We've also continued to negotiate with T-Mobile and Cingular throughout this process since the filing of the petitions for arbitration, and several of

the issues have been resolved, although a number of issues remain unresolved, and they have been set forth in the Joint Issues Matrix that was filed with the Commission, I believe, last week.

The Joint Issues Matrix lists approximately 31 issues, and that's rather -- a rather large number of issues. However, you need to consider that or keep in mind that approximately the first 13 relate to the appropriate rate for transport and termination of intraMTA wireless traffic, and then the next issues, at least 14 through 17, are common issues between Petitioners and T-Mobile and Cingular.

Issues 18 to 24 are Petitioners (sic) that are unique between Petitioners and Cingular, and finally Issues 25 through 26 are unique to Petitioners and T-Mobile. And in some instances you will see, I believe there may not really be much if any difference between the parties on that, and hopefully all of this will shake out and become clear as we submit Briefs in this matter.

For purposes of my opening statement, I'm not sure that I can do justice to all of the remaining contested issues, but I do want to address what I consider to be the more significant, if you will, issues. My failure to address some doesn't mean we don't believe strongly in our position. I just didn't think I had

enough time to deal with that this morning in my opening statement.

The first issue, as I mentioned, in -- the first 13 issues, if you will, in the Joint Issues Matrix relate to the appropriate rate for transport and termination of intraMTA traffic. Petitioners have proposed a uniform rate of 3.5 cents per minute for this traffic. That would be reciprocal to the extent Petitioners send traffic to Respondents T-Mobile and Cingular and for which they are responsible for sending that traffic, they would pay a similar amount of 3.5 cents.

The 3.5 cents is supported by forward-looking cost studies which Petitioners have prepared and were filed at the outset of this petition. Those forward-looking costs are based on a forward-looking cost model known as the HAI model. It's Model No. 5.0A, and as I indicated, those -- those studies, the model documentation, et cetera, have been filed with the Commission.

Those models were run for each of the Petitioners in each of these cases. However, Petitioners have viewed them as a whole, if you will, and looked at the average cost per minute for the Petitioners in each of the cases, and it approximates about 8 cents a minute.

But as I indicated, Petitioners are proposing for purposes of arbitration that the rate be set at 3.5 cents a minute.

And, of course, the first question you ask yourselves is, if your costs are legitimately at 8 cents a minute, why would you be willing to accept 3.5 cents a minute? The answer is very simple. Under the Telecommunications Act, we are required to offer the wireless carriers the same rates, terms and conditions that we have in negotiated or arbitrated agreements with other wireless carriers to requesting wireless carriers.

Petitioners have over -- I'm not sure of the exact number. It's well over 50 or 60 approved agreements that have been filed with this Commission, approved by this Commission, establishing a rate of 3.5 cents a minute for this traffic. Even if we'd like to ask for and receive 8 cents a minute for this traffic, T-Mobile and Cingular could simply opt into the existing agreements at 3.5 cents a minute under the most favored nations clauses of the Telecommunications Act.

Respondents have also put cost information into the record. Essentially they've taken the HAI model documentation that Petitioners have used and input their own assumptions and/or variables, and in eight or nine key respects they have produced costs, forward-looking costs that they believe are appropriate for Petitioners in the

range of one-quarter of 1 percent to approximately 1.47 cents per minute.

Respondents first argue that the HAI model used by Petitioners is inappropriate, but the Commission needs to understand that this HAI model has been around for a long period of time, since the late '90s, certainly since the advent of the Telecommunications Act and the requirement to base rates for the exchange of local traffic on forward-looking economic costs.

The HAI Model 5.0A is widely known, it's widely used. It's been offered and discussed and debated and examined in a number of proceedings before the state public service commissions, as well as before the FCC. It is a publicly available model, and it has been used by Petitioners before. If you will recall, Petitioners sought and obtained approval from this Commission in approximately February of 2001 for wireless termination tariffs.

In the context of the contested hearings that led up to that approval, Petitioners submitted HAI cost studies for each of them to support, among other things, the tariff rate that they were proposing in that case. This HAI model was also used by the Alma group in its arbitration with T-Mobile that the Commission heard in approximately the summer of 2005, and I believe issued a

decision in late September of 2005.

It's also important to consider that the HAI model was initially commissioned by AT&T, and it was later supported by both AT&T and MCI throughout the country as the appropriate model to determine the forward-looking economic costs for the regional Bell operating companies. If anything, the HAI model is biased against incumbent local exchange companies.

Respondents next argue that Petitioners cannot propose a uniform, or what they refer to as a blanket rate, but must support their rate with individual cost studies. As I've indicated, we have submitted individual cost studies, but they vary widely from Petitioner to Petitioner, and most of these Petitioners are small rural exchanges -- excuse me -- small rural companies serving a limited number of exchanges.

And in order to, we believe, obtain a better barometer of the costs of providing service in these rural communities, we have averaged the cost studies, as I indicated previously, and determined an average rate or cost of approximately 8 cents a minute. We believe as long as Petitioner is proposing rates that are at or below this average cost, we are well within the guidelines and appropriateness of forward-looking economic costs as required by the Telecommunications Act and the

FCC.

What are some of Respondents' specific criticisms with respect to the model? Well, they challenge the cost of switching that Petitioners have input into the model. The Petitioners have used an input value for switch costs that is approximately 28 percent less than their actual embedded investment.

Since most of Petitioners' current digital switches were placed in service in the last five to ten years, we believe that current embedded costs are a reasonable approximation of the current cost of digital switching. Nevertheless, to reflect some economies and efficiencies that have occurred over time, Petitioners have decreased that value, if you will, by 28 percent.

Respondents on the other hand have input a different value for switch costs. They've looked at the FCC decision in a universal service docket in 1999 and obtained costs for both host and switching equipment, and then reduced that by 12 percent or deflated that by 12 percent.

The problem with Respondents' position is that the FCC costs that they use to -- benchmark costs for switches for small telephone companies is actually a cost for rural and non-rural companies. In other words, the FCC costs are not small company or rural company specific,

but contain a number of variables and costs -- excuse me -- that are incurred by large regional Bell operating companies.

The Petitioners -- excuse me. The Respondents' use of a 12 percent deflater is also misleading, and you only have to look at the Cass County example that is in their testimony to realize this. In Respondents' testimony, they acknowledge that Cass County currently has an original investment in its switching equipment of $6.1 million.

As you know, Cass County Telephone Company did not come into being until 1996. So all of its switches were placed in service in the 1996 to 1999 time frame. The Petitioners' input value for Cass County, their own value is approximately 3 million or nearly 50 percent less than the original of Cass County switches.

Respondents' value, however, is $1.8 million, or nearly 70 percent reduction in the original cost of switching equipment for Cass County Telephone Company. So as I said, their 12 percent deflater is a bit misleading.

There's also an issue with respect to how much of the switching costs are traffic sensitive versus non-traffic sensitive. And this is an important issue because, generally speaking, switch costs that are traffic

sensitive are recovered on a usage basis and recovered from carriers such as Respondents. Costs that are classified as non-traffic-sensitive costs are not recovered on a usage basis and generally, at least in the case of Petitioners, are recovered from their end user customers.

In this case, Petitioners have used the HAI default input value for allocation of costs between traffic-sensitive and non-traffic-sensitive, and that input value is 70 percent. In other words, 70 percent of the switch costs have been allocated to traffic-sensitive and 30 percent to non-traffic-sensitive.

Respondents on the other hand have used their own input value, and essentially it approximates 10 percent. In other words, they would allocate only 10 percent of the switch costs to traffic-sensitive costs and allocate 90 percent to non-traffic-sensitive costs or essentially to Petitioners' end user customers.

Now, Respondents base their position in this particular issue on the assumption or on their belief that there has been a change in the pricing of switches by vendors over the last several years and a change in the technology of the switches. We do not believe there's been a change in the technology. The switches that we were buying five years ago are essentially the same

switches we are buying today.

And the evidence will show that the prices we are paying for those switches are constructed or offered in the same manner to small companies as they had been five or more years ago. In other words, if there has been a change in pricing for the switches, it has occurred with the large RBOCs and is still -- has not worked its way down to the small telephone companies.

The next big difference between the Petitioners and the Respondents in the overall cost is the cost of transport. Again, Petitioners have used the HAI default assumptions and values in this case, and do so because the FCC mandates that you must model a forward-looking efficient network design.

Some people have referred to it as a scorched earth or scorched node approach, where the existing architecture is really largely irrelevant, with the exception of where your wire centers are. And the question you have to ask yourself is, how would I construct that network if I had to start all over again and what would be the most efficient way to do that?

In this case, the HAI model assumes that Petitioners will have to, and independent companies like Petitioners will have to build and construct facilities to connect with the Bell operating company network at Bell

operating company wire centers or exchanges. In other words, the HAI model does not assume that regional Bell operating companies like SBC will in the future continue to build and maintain facilities beyond their exchange boundaries and out into the areas served by the independent telephone companies.

We believe this is an appropriate assumption, and we have encountered that very fact most recently with Ellington Telephone Company, and that is discussed in Mr. Schoonmaker's testimony.

The Petitioners on the other hand, while they claim they want to use forward-looking costs, have based their transport costs largely on the existing network architecture, not a forward-looking architecture, but what's there today. And they have assumed, then, that Southwestern Bell or SBC will continue to own, operate and maintain the facilities that are in Petitioners' areas and Petitioners' exchanges.

Another issue with respect to transport costs is that Respondents hypothecate a significantly increased number of minutes of use, which further drives down their proposed transport rates, particularly on a per minute of use basis, in some instances driving it down -- or excuse me -- hypothecating minutes that are anywhere from seven to ten times as many minutes as Petitioners are

actually experiencing.

The end result of Petitioners' cost study undermines the credibility of that study. They have produced costs of less than one minute, in the case of Granby Telephone Company, one-quarter of one cent per minute, but Respondents have produced costs of less than one cent a minute for 16 of the 20 Petitioners.

The Commission needs to keep in mind that the approved interconnection agreements on file with this Commission between T-Mobile and SBC and Cingular and SBC call for a termination rate of a penny a minute. The Petitioners cost -- excuse me. I'm getting Petitioners and Respondents confused.

The Respondents' cost studies suffer from the same criticism that was levelled against their cost study in the recent Alma arbitration case, and this Commission found it is counterintuitive to conclude the forward-looking costs of Alma, Chariton Valley, Mid-Missouri and Northeast would be less than those of SBC. And then I skip a couple of lines, and they concluded, the Petitioners' costs to serve those exchanges would be at least as high as the costs that a regional Bell operating company such as SBC would have to serve -- would have, rather, to serve its exchanges.

We would submit the same logic in the Alma

case would apply here.

Let me move on to a couple of the other issues, what I'll call non-cost issues. We have issues with respect to both Respondents regarding what we have termed pre-tariff traffic. This is traffic that was terminated by T-Mobile, by Cingular to Petitioners' exchanges during the period of time roughly February of 1998 to February of 2001.

This period, as I said, has been referred to as a pre-tariff period. Our wireless tariffs became effective in February of 2001, and in February of 1998 the Commission relieved Southwestern Bell of any obligation to pay us for wireless traffic that they terminated to us. So we had a three-year period where Petitioners were not being paid for this traffic, despite the fact that when the Commissioner -- the Commission relieved SBC of their obligation to pay Petitioners for this traffic, they expressly instructed the wireless carriers not to send that traffic to third-party exchanges such as Petitioners without having an agreement beforehand to do so.

This issue has always been an issue in any of our negotiations with the wireless carriers, and that is true with T-Mobile and Cingular. We have always maintained that this period of time and payment for traffic that was delivered during this period of time has

to be resolved as part of the negotiations.

We are mindful of the recent Supreme Court decision that says access tariffs -- I guess affirmed, excuse me, the Commission decision that says access tariffs would not apply to this traffic for this period of time.

In this case, we are simply asking that whatever the Commission determines is the appropriate rates, terms, conditions for wireless traffic between Petitioners and Respondents on a go-forward basis be applied to this three-year period of time.

Another issue that Petitioners have, this time only with T-Mobile, relates to the period of the payment for traffic that has been delivered by T-Mobile and for which it has refused to pay, roughly the period of time February 2001 when our tariffs became effective, our wireless tariffs became effective, and April 29th, 2005 when the FCC told us that their wireless tariffs were no longer appropriate. We've referred to this, perhaps inappropriately, but nevertheless referred to it as post-tariff traffic.

And the issue here is, is T-Mobile allowed to take advantage of an interconnection agreement through these arbitrations and obtain favorable, if you will, rates, terms and conditions for terminating traffic on a

go-forward basis and at the same time able to essentially ignore this Commission's directives regarding payment for traffic during the period of time wireless tariffs were in effect, ignore the Missouri Court of Appeals' decision affirming this Commission's decision approving those tariffs, and ignore the FCC decision issued in February of 2005 that said these tariffs were appropriate, at least up until April 29th of 2005.

We believe this is a proper issue for arbitration. We believe the Commission has the ability to condition implementation of any agreement they arbitrate in this case upon payment of that traffic or for that traffic. Stated another way, until T-Mobile lives up to their obligations and pays for the traffic pursuant to the Commission's lawfully approved tariffs, they should not be allowed to terminate traffic over the Bell transit facilities and find alternative ways by using interexchange carriers for terminating that traffic.

And by the way, they can do that. In approximately December of 2004, the Petitioners or some of the Petitioners implemented blocking procedures on T-Mobile's traffic. There was no disruption of traffic. It continued to flow to Petitioners' exchanges. It just came over different trunk groups. It no longer came over SBC's transit facilities, but came over IXC facilities.

Another issue that we have is what we've referred to as the interexchange carrier traffic issue or IXC traffic issue. And essentially this involves a question of what are Petitioners' obligations to pay reciprocal compensation on traffic that goes from their exchanges to the wireless carriers and is within the MTA or major trading area?

Those calls typically today are carried by interexchange carriers. Because they are carried by interexchange carriers, they are not Petitioners' traffic. Petitioner does not have a customer relationship with their end user at that point. The IXC has a customer relationship with that end user. The IXC bills that end user for that toll call to call the wireless customer. The IXC is responsible for terminating that call to the wireless carrier, and it is responsible for paying the wireless carrier for that termination service.

We do not dispute that we have a reciprocal compensation obligation for traffic that we originate and terminate under our responsibility, in other words, pursuant to our tariffs. For example, several of the Petitioners are located in the Commission's mandated metropolitan calling areas, and to the extent their customers use their MCA service to place calls to wireless customers, we recognize an obligation to pay reciprocal

compensation on those calls.

However, the Commission in the establishment of the MCA has determined that that compensation is bill and keep, but nevertheless we recognize that we do have a responsibility for that. To the extent we have EAS arrangements with a Bell exchange or a Sprint exchange and wireless carriers have established a point of presence in those EAS communities or communities with which we have EAS, we recognize an obligation to pay for the transport and termination of those calls.

But we do not believe it is appropriate for us to pay compensation for calls we simply don't carry and we don't have authority to carry. Now, I know we're swimming upstream on this because the Commission has issued a decision in the recent Alma arbitration case finding against us on this particular issue, and I would respectfully submit that the Commission made an error in that case.

That decision was inconsistent with prior Commission decisions, one of which was the wireless termination case where the Commission recognized the obligation of interexchange carriers to pay for traffic they carry and terminate.

I think it's also inconsistent with the

Commission's recently enacted enhanced record exchange rule that recognizes the originating carrier is the one responsible for compensating all the carriers on the route of the call, and that would include the terminating carriers such as wireless carriers.

Finally I would point out and the record will reflect that SBC handles traffic in that regard. In other words, SBC does not believe it has a reciprocal compensation obligation on traffic it hands off, or rather its customers hand off, if you will, to interexchange carriers for completion to wireless carrier customers.

A related issue to the IXC issue is the appropriate traffic ratio or traffic factor. Neither Respondents nor Petitioners are able to measure the traffic they exchange on a regular basis. Accordingly, they agree to traffic factors to reflect mobile-to-land/ land-to-mobile traffic. Those factors are initially established in the interconnection agreement, and typically there are provisions in the agreement to update those factors if one or both parties believe that they have become inappropriate or inaccurate over time.

And by the way, we have no objection -- if we're going to establish a traffic factor, we have no objection to including language in the interconnection agreement that would allow for the adjustment of those

factors in the future by either party.

We don't think that the traffic ratio is as big of an issue for us, if you believe our position with respect to IXC-carried traffic. If you believe that most of the traffic, if not all of the traffic, from our exchanges to interexchange carriers is carried -- excuse me -- to wireless carriers is carried by interexchange and they have the responsibility for paying terminating compensation, then in most instances, the MCA case being the notable exception, Petitioners would have a traffic factor of 100 to zero. In other words, all of the traffic is coming from wireless carriers to them, but there is no traffic going from them for which they are responsible to wireless carriers.

If, however, you disagree with us and if, however, you believe or the Commission believes that we are responsible for this IXC-carried traffic that goes from our customers to wireless carriers, several of our Petitioners have performed special studies to determine what those traffic ratios ought to be, and they are contained in the charts attached to the testimony of Mr. Schoonmaker.

On average, however, what we have found is that, for T-Mobile, the traffic factor is 84/16. In other words, 84 percent of total traffic is coming from T-Mobile

to Petitioners, and 16 percent is going from Petitioners to T-Mobile.

In the case of Cingular, the average is 83/17. 83 percent of the total traffic is coming from Cingular, and 17 percent of the total traffic is coming from Petitioners. And again, that is if you examine all intraMTA traffic coming over both Bell's facilities and interexchange carriers' facilities. Cingular has provided their own cost studies. Their average is 79 percent and 21 percent, not too much different than what Petitioners have calculated.

T-Mobile's study, by their own admission, is not reliable. They readily admit that they are not able to capture all of the traffic. Nevertheless, their study shows a 75/25 factor or ratio, if you will, 75 percent coming from T-Mobile, 25 percent coming from Petitioners. However, that's not their position for purposes of this case. They want you to accept, arbitrarily in my opinion, a 65/35 because that is some sort of industry standard and because they can't capture all of the traffic.

The impact or the import of a traffic factor is, if you haven't already figured out, the closer the traffic factor gets to 50/50, the less of an obligation wireless carriers have to pay for this traffic

in a net arrangement or a netting arrangement. So if we're going to set traffic factors in this case, we believe our traffic studies are the most appropriate for doing that. We believe they're consistent with other traffic studies that have been submitted in the Alma arbitration case and the BPS complaint case which this Commission has adopted in the past.

We have another issue, switching gears entirely, with Cingular only, and that is what I call the virtual NXX issue. And in order to explain this issue, I'm going to have to use a copy of the MTIA exchange boundary map for Missouri.

And essentially the issue with us and Cingular on this is that Cingular wants us to provide local dialing from our customers to their customers where they obtain a locally rated NPA/NXX in our exchange. The problem is Cingular will not have an interconnection or point of presence in our exchange. So they want our customers to be able to dial them locally, but we have no means of getting that call to them unless we purchase or otherwise lease or construct facilities to connect with them in a remote location.

Using the map as an example, let's take New Florence Telephone Company, approximately 100 miles west of St. Louis. Cingular says to the LERG adminis--

not LERG -- the number administrator, we want a number local rated in New Florence, Missouri, and they get that number, an NPA/NXX that's locally rated in New Florence. Cingular's interconnection point, however, is in St. Louis.

They want the New Florence Telephone Company to allow their customers to dial that number locally, and then they want New Florence Telephone Company to take that call and somehow get it to Cingular so it can terminate it to its customer at Cingular's point of presence or interconnection point in St. Louis.

Well, New Florence doesn't have the facilities, doesn't have the business arrangement or anything else to get that call there and will incur substantial costs in order to comply with that request.

As I said, this issue has been known throughout the industry. It's not a Missouri-specific problem. It is a nationwide problem or issue. It's been called the virtual NXX issue. It is the subject of a Petition for Declaratory Ruling that has been pending before the FCC for over two years, brought by Sprint PCS, and still has not been resolved. Yet Cingular wants you to, despite no resolution at a nationwide level, wants you to do so here in this arbitration.

Two things you need to keep in mind with

respect to this issue. When a similar issue was raised in an arbitration between Mid-Missouri Cellular and Southwestern Bell several years ago, the Commission specifically got to the question of how do you characterize or what calls will be local from Bell's customers to Mid-Missouri Cellular's, and they imposed a two-prong test.

The first is that you have to have -- the wireless carrier, excuse me, has to have a locally rated NPA/NXX. That's not an issue here. Bell agrees to that. Excuse me. Cingular agrees to that.

The other thing you have to have is local direct interconnection. When you have those two things, in other words, you've got a number rated in New Florence's exchange and the wireless carrier has local intersection directly in the New Florence exchange, then you can have local dialing. We agree with that result. We think it's appropriate here as well.

Another case you need to keep in mind is the recent suspension and modification that this Commission has awarded, if you will, to Petitioners regarding local number portability. The same issue has come up in that regard where New florence's customer, for example, terminates service with a landline company, with New Florence Telephone Company, ports that number to

Cingular, but Cingular doesn't have any facilities in New Florence to pick that call up. So in order to port that call, New Florence is required to carry it to St. Louis and interconnect with Cingular or deliver it to Cingular at that point.

This Commission has exempted Petitioners from that type of requirement in a local number portability situation, recognizing the extreme burden, cost, if you will, associated with transporting these calls throughout the LATA to remote locations. I would submit to you that that reasoning and that result ought to govern here.

We also have an issue with Cingular on direct versus indirect interconnection. Cingular proposes in four rather short, brief paragraphs to put provisions in this agreement that would deal with direct interconnection.

That is, even though Cingular has not requested direct interconnection, there is no direct interconnection today between Cingular and Petitioners, and I believe with traffic volumes to and from Petitioners today it would not justify direct interconnection, but in essence they want sort of a placemark in our agreements that if at some point in the future they want to direct interconnect, they have to be able to do so through these

interconnection agreements.

The problem with that is that the Petitioners have an exemption from direct interconnection. Direct interconnection is governed by 251(c)(2) of the Telecommunications Act. And under 251(f), rural telephone companies like Petitioners have an automatic exemption from direct interconnection until, unless and until the requesting carrier, in this case it could be Cingular, has made that -- made a bona fide request for direct interconnection, has made that request with the State Commission, and the State Commission has found that that direct interconnection is not unduly economically burdensome and it is technically feasible.

Cingular has not issued that bona fide request. As I mentioned to you, they have not made any requests, have none today, have no plans in the immediate future. But nevertheless they want to circumvent, if you will, Petitioners' rural exemption and include provisions in this contract for direct interconnection when and if that may occur.

Several of the Petitioners do have direct interconnection agreements with wireless carriers. We have found those interconnection agreements to be highly company specific, depending on the way in which the wireless carrier wants to directly interconnect, where it

wants to interconnect and things of that nature. We are not adverse to negotiating direct interconnections. We just don't believe it is appropriate to circumvent the requirements of the Act or to deal with direct connection in four general or generic paragraphs that do not reflect the specific circumstances of what that direct connect may be.

The Petitioners, as I said, have several issues with the wireless carriers that I have not addressed, but in recognition of the time and the fact that this is going to be a fairly long process and we, as I understand, are going to be filing Briefs, we'll reserve our positions with respect to the testimony and the Briefs on those issues, sir. Thank you very much.

JUDGE JONES: Thank you, Mr. England. Now we'll hear from T-Mobile or Cingular. I don't know if you-all have decided between the two of you who will go first.

MR. WALTERS: Cingular will go first.

JUDGE JONES: All right.

MR. WALTERS: Your Honor, ladies and gentlemen of the Staff, my name is Paul Walters, Junior. I'm from Edmond, Oklahoma, but I'm a member of the Missouri, Oklahoma and Texas Bar Associations and practice in all three states. I'm representing Cingular Wireless

today in this proceeding. Mr. Mark Johnson is representing T-Mobile, and we have decided to divide up the issues.

I will be speaking only on the rate and the cost issue. Mr. Johnson will be speaking on the non-rate and non-cost issues. And again, we will not discuss every issue on the matrix in the interest of time. As Mr. England said, that does not mean we don't think the issues are important. We will simply brief them fully when the briefing schedule comes.

The primary thing we will be doing in this hearing is setting an appropriate rate by which the wireless carriers will compensate the small independent rural LECs in Missouri. And what all of us want to do, myself, Mr. England, Mr. Johnson, everyone here, is do the right thing, in other words, get the rate right. That's what we all want to do, and the way to do that is to follow what the FCC regulations require. The law tells us how to get the rate right, and that's what we all want to do.

Now, the Petitioners, as Mr. England said, are proposing a flat rate or what we're calling a blanket rate of 3.5 cents per minute for traffic. We believe, and by we I mean Cingular and T-Mobile, believe that when you properly apply federal law, the rate, the correct rate

should be much lower, ranging from a rate of 2.5 cents per minute for Granby to a high of 1.47 cents per minute for Le-Ru Telephone Company.

Now, in a nutshell, Petitioners' case, as you heard Mr. England say, is that our cost studies and our proposed rates are counterintuitive because we pay SBC a terminating rate of a penny a minute. And the argument is, how in the world can a rate for a small rural telephone company be less than the rate that we pay SBC? It makes no sense. Mr. Schoonmaker says that on page 5 of his rebuttal testimony.

What I want to point out to you, and if I only make one point in this whole hearing, I want to make this point, is that's wrong. We don't pay SBC a penny a minute to terminate traffic. The rate we pay SBC is .0007 dollars per minute. In cents, that comes out to .07 cents per minute or 7/100 of a penny per minute.

I would refer you to page 10 of Mr. Eric Pue's direct testimony where that figure is set out. We also have here the appropriate amendments to the contracts for both T-Mobile and Cingular that we will introduce into evidence at the appropriate time, showing what that rate is. Again, I want to emphasize the rate that we pay SBC today is 7/100 of a penny per minute.

Now, if I could, your Honor, I don't have a

chart, but I've got a couple of small handouts I'd like to use as visual aids, if I could. I don't intend them to be exhibits, but I'd just like to hand them out, if that's appropriate.

JUDGE JONES: I assume you have enough for all the parties?

MR. WALTERS: Yes, sir. I've got copies for everybody.

JUDGE JONES: That will be fine.

MR. WALTERS: I did these charts, and I'm not good with Word, so any problems with them are my fault, not my client's fault. But this chart shows the rates that we're talking about. The left-hand column is based on a tenth of a penny, and it goes all the way up to 3.5 cents per minute. That's the top rate at the top. The tallest column is the proposed rate by the rural independents, 3.5 cents a minute.

The middle column is the supposed rate that T-Mobile and Cingular are paying to SBC, and that's a penny a minute, to give you some idea. You can see that the proposed Petitioners' rate is 3.5 times higher than the penny a minute. The actual SBC rate is the little bitty short column on the right, which, as I said, is 7/100 of a penny a minute. On the chart it's expressed in dollars as .0007 dollars per MOU. All of the rates are

expressed in dollars.

What this does, though, is give you an idea visually of what we're talking about in this case. The proposed rate of 3.5 cents a minute coincidentally or not is exactly 50 times higher than the rate we pay SBC.

I have a second chart I'd like to hand out, if I could.

JUDGE JONES: That's fine.

MR. WALTERS: Your Honor, this chart again is based on record evidence. Not proposing it as an exhibit. It helps to actually look at this. This chart starts off with the current SBC rate, and the legend on the left-hand side again is in dollars.

The tallest number, 1.4 cents a minute, or .014 dollars per minute. The column on the left-hand side is the current SBC rate that Cingular and T-Mobile pay, which is .0007 per minute of use. The middle column is our proposed rate for BPS, which is .0039 dollars per minute of use. And the right-hand column is the highest rate that we are proposing, which is for Le-Ru which is .147 or 1.47 centers per minute of use.

I put this chart together only to show you -- there is one rate lower than the BPS rate, and I realized that this morning. As I go through this trial, I'll make mistakes, so I ask you to bear with me. This is

my first. There is one rate lower than the BPS rate, and that's the rate which is proposed for Granby, and that is .0025. So if you mark Granby on there, it will be slightly above the .002 line. That is the lowest rate that we are proposing.

The point I wanted this graph, this chart to emphasize is that all of the rates that we are proposing are above the rate that we currently pay SBC. There has been testimony that that's not the case, and I just wanted to set that straight.

All of the rates we're proposing are substantially above the SBC rate. In fact, the rate for Le-Ru is exactly 21 times higher than the rate that we pay SBC. The rate for Granby coincidentally is 3.5 times higher than the rate we pay SBC, which is exactly what the proposed Petitioners' rate of 3.5 cents is higher than the original rate they thought we paid SBC of a penny, if that makes any sense.

The rates that we are proposing are higher and in some cases significantly higher than the rates we pay SBC today.

There are a few other points I'd like to make, your Honor. First, this case is governed by federal, not state law. We're looking at federal law. I think we all understand that.

Secondly, the factual determinations that the Commission has made in other arbitrations are not relevant to this arbitration. Certainly not on the rate issue. This case has to be decided by the evidence put on by the Petitioners and the Respondents, and a rate for each Petitioner has to be set based on that Petitioner's own costs.

Under governing federal law, it's the Petitioners who have a burden of establishing what their rate should be, and the FCC regs require them to demonstrate that their proposed rate does not exceed their TELRIC rate. To the extent they have failed to do that, if there's missing data, that is not the Respondents' problem. That is the Petitioners' problem. In other words, the benefit of the doubt under federal law cannot go to the Petitioners if they haven't established an element of their case.

Under FCC regulations, agreed-to rates are not relevant for setting the rate in this case. A state commission is not allowed to base an arbitrated rate on what parties may have agreed to in the past. Under FCC regulations, there are only three ways a state commission can set a rate. The first way is bill and keep, and we're not asking for bill and keep, except for seven of the Petitioners who haven't provided sufficient data. But for

the bulk of the Petitioners, we're not seeking bill and keep.

The second way under FCC regulations that a rate can be set is by applying the TELRIC standards, and that's what we'll be talking about during this hearing.

The third way that a rate can be set under FCC regs is to apply the FCC's default proxy rates, and I think as we all know, those were invalidated by the Eighth Circuit on the grounds that it is the state commission's duty to set the rate, not the federal commission's duty.

So there are really only two ways a state commission can set a rate. One is bill and keep, and the other is to apply appropriate TELRIC standards. Those are the only two ways. It's not proper for the state commission to say, we set a rate of X because these parties -- this party agreed to a rate of X with someone else in a negotiated agreement. That's simply not an allowable method.

And as we all know, negotiated rates do not have to comply with the TELRIC standard. Parties often agree to a higher rate than the TELRIC standard would produce because they're getting other -- it's a quid pro quo in the negotiating session.

Also, rates that have been set in other state proceedings and arbitrated proceedings are not

applicable here. For example, I represented Cingular about two and a half years ago in an arbitration proceeding in Oklahoma. We'll cite this in our Brief. The Oklahoma commission adopted bill and keep as the appropriate compensation mechanism for Cingular Wireless in 29 rural independent companies in Oklahoma. I'd love to be able to get that result here. I know I won't. I'm not asking for it. That ruling is not relevant to your decision.

In the last year I represented Cingular in a similar arbitration in Tennessee. The Tennessee Regulatory Authority has just recently established an interim rate for the RLECs in Tennessee of less than 3/10 of a cent a minute. That's not relevant in this case.

In the Alma arbitration of last year, the Missouri Commission set a rate of 3.5 cents a minute. That's not relevant either in this case. What's relevant is the facts that these Petitioners have brought to this case and placed in the record.

Now, that being said, your Honor, I know that your Honor and the Commission realize and are concerned with policy considerations. I'd like to point out to you that a rate of 3.5 cents a minute is generally outside the zone of reasonableness. We've put testimony

into the record about that. But I have never been involved in a proceeding in which a rate of 3.5 cents has been established in an arbitration.

Typically a rate, a transport and termination rate of over a penny a minute is extremely high. The rate we've proposed for Le-Ru, 1.47 cents a minutes is a very high rate, but that's a very small company with relatively high costs. But I urge you when you're reading the testimony and reading the Briefs to get a feel for what the zone of reasonableness is in these matters and understand that 3.5 cents is outside the zone.

I also want to emphasize to you that we are not attacking the HAI model. We're not here to say the HAI model should not have been used. We're not saying it's not appropriate. Petitioners used it, and we are dealing with the model as it was used.

I would point out that the model was developed in 1998. Its switching prices are based on a 1995 study, and it contains many assumptions, hundreds of assumptions, user inputs. What we will be arguing about in this hearing is whether some of the assumptions in the model are appropriate to be applied in 2006 to these Petitioners.

For example, the model establishes a default switching value, in other words, assumes what a

new switch would cost for Petitioners. That default value is based on data that's ten years old from 1995. When I took Mr. Schoonmaker's deposition, he indicated himself that switching costs have gone down to 10 to 20 percent in the last ten years.

Yet the Petitioners in their cost studies raised the default switching value by 25 percent. We think that's inappropriate. We're not arguing about Hatfield. We're arguing about the values of the model. We think it's inappropriate to raise the switching value 25 percent when the evidence will show that switching prices have gone over the last ten years. That's the kind of arguments we'll be having.

Most of the testimony in this hearing will involve whether or not the HAI assumptions from 1995 and 1998 are valid in today's world.

Finally, the last point I'd like to make before I get into the heart of the cost issues is simply that there is testimony in the case that FCC rules and regulations are burdensome, and there's been -- there's an implied assertion, it's never stated directly, that smaller companies should be relieved of the burden of following FCC regulations.

I'd simply like to point out that's not true. One of the Petitioners in this case, Peace Valley

Telephone Company, has one switch and three miles of interoffice cable. Doing just a transport and termination study for a company like that is not a major undertaking. Remember, we're not developing loop costs. We're not looking at collocation cost. We're just looking at transportation, the cost of a switch and the cost of a cable. Doing that kind of study for a company with one switch and three miles is not burdensome.

If I could, your Honor, I've got one more chart I'd like to hand out briefly.

JUDGE JONES: You may.

MR. WALTERS: Also, while we're handing it out, I'd like to ask the Court's indulgence. As I get older, my mouth gets dryer and dryer. So I'll be swigging water throughout my statement if you don't mind. Otherwise you're going to hear me doing that (indicating).

In this case we have -- we have used Cass County Telephone as sort of the model. It's a lot easier to look at one company rather than looking at all 27 companies. And also, Mr. Schoonmaker and his firm are actually managing this company, so they have a little more knowledge about this company than the others. So we've used Cass County.

This chart simply shows the difference between the claimed cost for Cass County as computed by

the Petitioners' Hatfield model run and what we believe are their actual costs. You can see the difference is Cass County is claiming a rate 3.58 cents per minute, and we believe their actual costs are .73 cents per minute. On the chart they're expressed in dollars rather than pennies.

The Petitioners claim that their rate is made up of four elements, and they're listed. One is they believe they're entitled to recover for dedicated transport. As we will demonstrate in this hearing, that's not appropriate in transport and termination rates. They propose a common transport rate, as you can see, of 1.6 cents per minute. ISUP or signaling, that's for the SS7 signaling, they propose a rate of .0011, and then end office switching they propose a rate of slightly less than a penny a minute 9.1 cents (sic) a minute.

The numbers on the right-hand side are the numbers that we believe are their actual TELRIC costs for transport and termination.

I'd like to start with switching, to explain to you why we believe their switching value is inflated. You heard Mr. England discuss two of the main issues. I'd like to discuss them also but from a slightly different point of view.

The first big issue is, the FCC rules

require the Commission to determine what is the cost of a new digital switch today and then figure that cost on a per-line base. The Hatfield model that Petitioners used has a default rate for small independent companies of $414. That's substantially lower than the default rate for large companies, which is a little over $200.

Petitioners have not used this default rate of $414. Instead, they have increased this amount by approximately 25 percent to over $500. They've done that even though the testimony will show that switching prices in the last ten years have dropped 10 to 20 percent, and they've done that without use of any publicly verifiable data, any cost indices that are available to the industry.

Mr. Schoonmaker in his deposition told me that he did that based on his own best judgment. That's what he thought switching costs had been, and he thought that the $414 value was too low.

Your Honor, ladies and gentlemen, we don't think that's appropriate. We think switching costs have to be made on publicly available data. The easiest way to do that is to get a quote from a switch vendor, which Mr. Schoonmaker will tell you he did not do.

The second big issue on switching, as Mr. England said, is the amount of traffic-sensitive portion of the switch. The Petitioners have used the

70 percent default factor contained in the HAI model. The FCC and several state commissions have now ruled that all the switching is non-traffic-sensitive and that no switching costs should be recovered through transport and termination rates. They have to be recovered through charges on the end users.

We'll cite those in our Brief, but we're not taking that position. We're not saying that 100 percent of local switching costs are non-traffic-sensitive. The factor we're proposing is 10 percent, and that's a recognition that certain of the trunk ports on switches are, in fact, usage sensitive.

Now, on the transport side, there are several major issues that I'd like to talk about very briefly. The first one, as Mr. England talked about, is the length of the cable, and in computing transport and termination rates for each company, you have to figure out how much cable they've got in the ground. And what the HAI model does is it assumes that every Petitioner's wire center builds two 24-fiber cables all the way to the nearest RBOC wire center.

The assumption is that when a petitioner from one petitioner wire center calls the same petitioner's customer in another wire center, rather than that call being transferred from switch to switch, it goes

all the way up to the nearest RBOC wire center, they pay a transiting charge to SBC, then it comes all the way back down. That's the way all of these Petitioners' cable links have been modeled, and what it does is it produces some incredibly out of balance transport rates.

For example, I mentioned Peace Valley before. Peace Valley, according to the data responses to the Data Requests that we served on them, has three miles of interoffice cabling. The Hatfield model, as our testimony shows, assumes that Peace Valley has almost 170 miles of interoffice cable. So that leads to an enormous transfer cost for Peace Valley which is totally unjustified.

Our position on this is simply that in determining cabling lengths, reasonable estimates have to be used and reasonable distances have to be used. Mr. Conwell in his testimony has done that and come up with what we feel are reasonable estimates of cabling lengths.

But the method that the Hatfield model uses in the case of small rural LECs produces an absolutely astounding transfer cost. All you have to do is look at the exhibit attached to Mr. Schoonmaker's testimony, the original Hatfield, and some of the transport costs are 8 and 10 cents a minute. That's just -- when we talk about

the zone of reasonableness, that's way outside the zone. I just want everybody to be aware of that.

Two similar issues -- and I'm almost through, I promise -- is that the Hatfield model assumes that every interoffice cable for every Petitioner has 24 fibers in it, and that is even though the transport system needs only two fibers or at most, if you want a redundant network, four.

Now, we understand that there are other fibers in use and they need to be considered in calculating the appropriate rate, but our position is it's inappropriate to assume every cable has 24 fibers because, as we discovered in the responses to our Data Requests, they don't.

So again, our position is there needs to be a reasonable approximation of the reasonable number of fibers that are currently in use, plus the necessary fibers for future use. We're not denying that we need to build in a factor for additional capacity in the future. But assuming 24-fiber cables for every cable for every company is simply inappropriate.

The other point on cabling I'd like to mention briefly is the HAI model does not assume sharing. It loads all the costs of cables and the fibers in the cables onto the common transport piece. It does not load

any costs onto other uses. For example, leased fibers or fibers for a loop concentrator for the carriers that have IDLC systems. It doesn't load any of the cost of the transport system there. It loads it all onto the common transport, and again, that increases the transport rate.

These are the basic issues or the basic problems with the cost studies. I've not hit on every issue, but again, for the sake of time I've tried to hit on only the major ones. We will cover all of the issues in our Briefs fully.

I would like to make a brief mention in closing of a policy issue. I stood up here for almost half an hour and told you, follow the law, follow the law, follow the law. I would like to mention one policy issue, though, that I think's worth mentioning.

I'm speaking now for Cingular Wireless, my client. My client's testimony shows, and my client will be on the stand, will take questions on it, if Cingular Wireless is forced to exchange traffic at 3.5 cents a minute, it will lose money. That's just a fact.

Now, there are two ways you can look at this, but I would ask you this question. What incentive does any company have to extend facilities into an area where it's going to lose money? Although this case should be decided on the law, I would ask you this simple

question: Is it in the best interests of the state of Missouri to establish a transport and termination rate that will discourage wireless investment in rural areas?

I ask you please to consider that question as we go through this hearing. I think it's extremely important to your decision. I'm sorry that I wasn't as brief as I hoped to be. I thank you for your patience. And now Mr. Johnson will speak on the non-rate issues.

JUDGE JONES: Thank you, Mr. Walters. Mr. Johnson?

MR. JOHNSON: Mr. Arbitrator, members of the Advisory Staff, I'm Mark Johnson. I'm appearing today on behalf of T-Mobile USA.

T-Mobile and its predecessors have been providing wireless service in Missouri for a number of years now. It used to be known as Voicestream. It changed its name to T-Mobile a few years ago.

In his opening remarks Mr. Walters has addressed the cost issues involved in this case. He told you about the shortcomings of the cost studies which the Petitioners have presented in their prefiled testimony. I'm going to address just a few, I promise you, a few of the issues that don't relate to costs. And as Mr. England shared with you in his opening remarks, we can only address in our opening statements a few of the issues that

you'll have to decide in this arbitration.

The first of the issues I want to touch on is reciprocal compensation, which involves the obligation of the petitioning local exchange carriers to pay reciprocal compensation to wireless carriers for completing local calls from their landline customers to our wireless customers. The Petitioners ask the wireless carriers to pay for mobile-to-land local calls, but under the controlling federal rules, in effect what's sauce for the goose is sauce for the gander.

This issue was presented to Commission in the Alma arbitration in which my client T-Mobile was involved, and the Commission did, in fact, rule in T-Mobile's favor, and correctly so. There is absolutely no difference between the reciprocal compensation issue presented to the Commission in the Alma arbitration and the reciprocal compensation issue presented to you in this arbitration.

This applies to traffic sent through an interexchange carrier, just as it would apply to traffic sent via direct interconnection between the local exchange carrier and the wireless carrier. If the wireless carriers are expected to compensate the Petitioners for completing calls made to the Petitioners' customers, the other side of that coin is that the Petitioners have to be

prepared to compensate the wireless carriers for completing calls from their customers. It's only fair, and on top of that, it's required by federal law.

The second issue I want to touch on is the past compensation issue. And here I use the term -- I use that term past compensation to include both the pre-tariff and post-tariff compensation issues which Mr. England touched on. Of course, that's -- and this is for compensation for traffic exchanged between 1998 and 2005, last year when the FCC said that the wireless termination tariffs could no longer be used.

This issue is entirely retrospective in nature. It has nothing to do with the prospective nature of interconnection agreements which will result from this arbitration. As such, it is not a proper issue to be resolved by the Commission in this case. The Alma arbitrator refused to entertain such claims in that arbitration, and the claims were presented in that arbitration and the arbitrator said they should not be.

T-Mobile and Cingular continue to believe that the issue is not appropriate. The Petitioners have already brought proceedings before the Commission in which these compensation issues have been properly presented, not in this arbitration.

The final issue I want to touch on is

the -- is the issue of blocking, and this is part and parcel of the settlement of past compensation. This is an issue of great importance to T-Mobile because, as Mr. England alluded to, there is a substantial dispute between my client and his clients concerning the obligation to pay compensation to his clients.

The Petitioners insist in their proposed language in their interconnection agreement that the past compensation issue be settled before T-Mobile can reply on the interconnection agreement that results from this case. In effect, the Petitioners want to use this arbitration, which is only supposed to involve the future relationship between the parties, to resolve a compensation dispute that is entirely historical in nature.

The Petitioners are asking the Arbitrator and the Commission to adopt a position which is simply not allowed by the federal law or federal regulations. The past compensation issue is already a matter of litigation between T-Mobile and the Petitioners and substantially hotly contested litigation.

If the Commission adopts the Petitioners' proposal contained in Section 5.4 of their proposed interconnection agreement, which states that the parties are settling the past compensation claim at the same time as they entered into the interconnection agreement, the

Commission will deny T-Mobile its right to federal court review on this issue.

If the parties don't enter into that settlement, what do you think will happen? Either the Petitioners will refuse to negotiate an interconnection agreement adopting -- pardon me -- incorporating the rulings which you make in this case or they will simply choose not to abide by the interconnection agreement which the Commission approves.

In either case, T-Mobile loses. More importantly than that, T-Mobile's customers lose. The calls which they want to place to any of the customers of the petitioning local exchange carriers will be blocked.

Finally, the Respondents believe that the evidence will convince you that the Petitioners who, as Mr. Walters pointed out, bear the burden of proof that their claimed costs, proposed rate and non-rate-related proposals are reasonable, have failed to discharge that burden.

The proposal sponsored by T-Mobile's witnesses from whom you will hear, Craig Conwell and Bill Pruitt, allow the Petitioners to charge a rate which fully compensates them for their appropriate costs and will allow the parties to develop a fair agreement which will govern their relationship on a going-forward basis.

Thank you very much.

JUDGE JONES: Thank you. I think this is probably a good time to take perhaps a ten-minute break. After that we'll come back with Petitioners and their I suspect only witness.

MR. ENGLAND: Correct.

JUDGE JONES: With that, we'll go off the record.

(A BREAK WAS TAKEN.)

(EXHIBIT NOS. 1, 1P, 2, 2P, 2HC, 3 AND 4 WERE MARKED FOR IDENTIFICATION BY THE REPORTER.)

JUDGE JONES: We're back on record with Case No. TO-2006-0147. Before we move on to the cross-examination of Mr. -- is it Schoonmaker or Schoonmaker?

THE WITNESS: Schoonmaker.

JUDGE JONES: Schoonmaker. I note in the Joint Issues Matrix there are 36 separate issues. Have you-all resolved any of those 36 issues between the time this was filed and today?

MR. ENGLAND: The short answer to your question is no. The fact of the matter is, I think based on some of the answers that we've given and perhaps T-Mobile and Cingular has given, I think we're in a position -- we'll not be able to do that probably until

after the hearing -- to eliminate some of these.

JUDGE JONES: Very well.

MR. ENGLAND: And my understanding is that the parties can even continue to negotiate on hotly contested issues, if you will, and resolve them before it's submitted for final arbitration.

MR. JOHNSON: Mr. Arbitrator, could I suggest that perhaps during the hearing, that Mr. England and Mr. Walters and I could confer and come up with a list of issues that we believe have been resolved, and so we know, for example, that we don't have to brief those issues?

MR. ENGLAND: That's fair enough.

JUDGE JONES: That's fine. Okay. And, Mr. England, you can tender your first witness.

MR. ENGLAND: Thank you, your Honor. I'm assuming this is on now.

JUDGE JONES: It sounds like it is.

MR. ENGLAND: Has the witness been sworn?

(Witness sworn.)

JUDGE JONES: Thank you. You may be seated, Mr. Schoonmaker. You may proceed, Mr. England.

MR. ENGLAND: Thank you, Judge.

ROBERT C. SCHOONMAKER testified as follows:

DIRECT EXAMINATION BY MR. ENGLAND:

Q. Would you please state your full name for the record.

A. My name is Robert C. Schoonmaker.

Q. And by whom are you employed and in what capacity?

A. I am employed by GVNW Consulting, Inc., and I am president and CEO of that company.

Q. And what's your business address, Mr. Schoonmaker?

A. My business address is 2270 La Montana Way, Colorado Springs, Colorado 80918.

Q. Mr. Schoonmaker, on whose behalf are you testifying in this proceeding?

A. I'm testifying on behalf of the Petitioners in each of the cases, and the names of the individual Petitioners in each of the two cases are included on Schedules RCS-1 and -- Schedule RCS-1 of my testimony.

Q. And following up on that, in that regard, have you caused to be prepared and filed with the Commission prepared direct testimony with certain schedules attached?

A. Yes, I have.

Q. And has that been marked for purposes of identification as Exhibit 1 with, I believe, a proprietary exhibit or Schedule RCS-6 marked as Exhibit 1P?

A. Yes, I have.

Q. And do you have that -- or those exhibits in front of you?

A. I do.

Q. Are there any changes or corrections that you need to make to that testimony at this time?

A. I have two, I believe. On page 58, on line 23 at the bottom of the page, there's a reference to Section 251 of the Act, and I would like to change that to be Section 251(f)(1).

And on the top of page 59, on line 2, there's a similar reference to Section 251(f), and I would like that changed to Section 251(f)(1).

And let me check just a minute because I think there's one more. That's on page 66, on line 10, again the reference Section 251(f) should be changed to Section 251(f)(1).

Q. With those changes, Mr. Schoonmaker, is the testimony contained in Exhibit 1 and the information contained in the schedules attached thereto, including Exhibit 1P, true and correct to the best of your knowledge, information and belief?

A. Yes.

Q. If I were to ask you the same questions that appear in that testimony, would your answers be

substantially the same with the corrections noted as appear in that direct testimony?

A. Yes.

Q. Let me turn your attention now to what I believe has been marked for purposes of identification as Exhibit 2, and that is the rebuttal testimony of Robert C. Schoonmaker. Did you cause that to be prepared and filed in this proceeding?

A. I did.

Q. And I understand that there is at least one schedule that has been marked highly confidential and has therefore been identified as Exhibit 2HC. Is that RCS-10?

A. Yes, it is.

Q. With respect to the testimony that comprises Exhibit 2 and the schedule that comprises Exhibit 2HC, are there any changes or corrections that you need to make at this time?

A. Yes, I do. I have some. On page 42, I would strike lines 18 through 21. On page 43, on line 4, I would strike the sentence that begins, the data that T-Mobile, and strike that whole sentence through line 6.

And as a result of that schedule that I initially provided, which was Schedule RCS-9(P) is not being offered and would not be part of my filed testimony. I discovered subsequent to the filing of that that I had

extracted some numbers from the wrong column on Mr. Pruitt's exhibit and the schedule was not correct, and so we're removing that.

Q. Okay. Are there any other changes or corrections that need to be made to that rebuttal testimony or any of the surviving schedules?

A. Yes. There's one other. On page 43 on line 7, the third word transit should be changed to traffic, and capitalized.

JUDGE JONES: Did you say page 43?

THE WITNESS: Line 17.

JUDGE JONES: Oh, 17. And could you repeat that correction?

THE WITNESS: Yes. The third word is transit, and that should be changed to traffic, with a capitalized traffic. The traffic ratio.

BY MR. ENGLAND:

Q. Any other changes or corrections, Mr. Schoonmaker?

A. No.

Q. Is the information -- is the testimony contained in Exhibit 2 and the information contained in Schedule RCS-10, which is Exhibit 2HC, with those corrections noted, true and correct to the best of your knowledge, information and belief?

A. Yes.

Q. If I were to ask you the questions appearing in that rebuttal testimony, would your answers here today under oath be substantially the same?

A. Yes.

MR. ENGLAND: Your Honor, I have no further questions of Mr. Schoonmaker. Oh, I'm sorry. Let me back up.

BY MR. ENGLAND:

Q. Mr. Schoonmaker, we have also asked to be marked for purpose of identification Exhibits 3 and 4, which are the Verified Petitions that have been filed by Petitioners in these cases. Are you familiar with those?

A. Yes.

Q. As a matter of fact, you represented Cass County Telephone Company as one of the Petitioners in both of those cases; is that right?

A. Yes.

Q. And those are the Petitions that were filed with the Commission to start these cases?

A. Yes.

MR. ENGLAND: Your Honor, I have no further questions of Mr. Schoonmaker and would offer Exhibits 1, 1P, 2, 2HC, 3 and 4.

JUDGE JONES: Any objections?

MR. WALTERS: None, your Honor, from Cingular.

MR. JOHNSON: No objection.

JUDGE JONES: Exhibits 1, 1P, 2, 2HC, 3 and 4 are then admitted into the record.

(EXHIBIT NOS. 1, 1P, 2, 2HC, 3 AND 4 WERE RECEIVED INTO EVIDENCE.)

MR. ENGLAND: And I tender the witness for cross-examination.

JUDGE JONES: Thank you. Who will be cross-examining Mr. Schoonmaker?

MR. WALTERS: It will be me, your Honor.

JUDGE JONES: Mr. Walters, you may approach and examine. It's my understanding that this cross-examination will contain highly confidential information. With that in mind, we will go in-camera.

(Reporters's note: At this point an in-camera session was held, which is contained in Volume 3, pages 135 through 285 of the transcript.)

I N D E X

EXHIBITS INDEX