

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5 Arbitration Hearing
6 January 26, 2006
7 Jefferson City, Missouri
8
9 Volume 5

10 In the Matter of the Petition for)
11 Arbitration of Unresolved Issues)
12 in a Section 251(b) (5) Agreement) Case No. TO-2006-0147
13 with T-Mobile USA, Inc.)
14
15 In the Matter of the Petition for)
16 Arbitration of Unresolved Issues)
17 in a Section 251(b) (5) Agreement) Case No. TO-2006-0151
18 with Cingular Wireless)
19
20 KENNARD L. JONES, Presiding,
21 REGULATORY LAW JUDGE.

22
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1 P R O C E E D I N G S

2 (EXHIBIT NOS. 15, 15P AND 16 WERE MARKED
3 FOR IDENTIFICATION BY THE REPORTER.)

4 MR. JOHNSON: Your Honor, on behalf of
5 T-Mobile, we call Mr. Billy Pruitt to the stand.

6 JUDGE JONES: Mr. Pruitt, will you please
7 raise your right hand.

8 (Witness sworn.)

9 JUDGE JONES: You may be seated.

10 THE WITNESS: Thank you.

11 BILLY PRUITT testified as follows:

12 DIRECT EXAMINATION BY MR. JOHNSON:

13 Q. Could you state your name, please.

14 A. Yes. It's Billy Pruitt. Billy Pruitt.

15 Q. Thank you. Sir, did you cause to be
16 prepared direct testimony and rebuttal testimony, which
17 have been marked for purposes of identification as
18 Exhibits 15, 15P for proprietary for your direct
19 testimony, and 16 for your rebuttal testimony?

20 A. I did.

21 Q. Sir, do you have any changes to any of the
22 testimony?

23 A. I just have one minor change to my direct
24 testimony, page 12, line 24, I would rather call -- be
25 called T-Mobile than M-Mobile. So if we could replace the

1 M with a T.

2 Q. So that's page 12, line 24?

3 A. Right.

4 Q. With that change, Mr. Pruitt, if I were to
5 ask you the questions which appear in Exhibits 15, 15P and
6 16 today, would your answers be the same?

7 A. Yes.

8 MR. JOHNSON: Thank you, Mr. Pruitt. I
9 offer Exhibits 15, 15P and 16 into evidence.

10 JUDGE JONES: Any objection?

11 MR. ENGLAND: No objection.

12 JUDGE JONES: Exhibits 15, 15P and 16 are
13 admitted into the record.

14 (EXHIBIT NOS. 15, 15P AND 16 WERE RECEIVED
15 INTO EVIDENCE.)

16 MR. JOHNSON: Thank you, your Honor. And I
17 tender Mr. Pruitt for cross-examination.

18 JUDGE JONES: Thank you. Petitioners may
19 cross-examine.

20 MR. ENGLAND: I take it Mr. Walters has no
21 questions. Just teasing, sir.

22 MR. WALTERS: I don't.

23 CROSS-EXAMINATION BY MR. ENGLAND:

24 Q. Good morning, Mr. Pruitt.

25 A. Good morning, Mr. England.

1 Q. A few preliminary questions. Hopefully I'm
2 going to get the same answer from you that I think I got
3 from Mr. Conwell. You are not a lawyer, are you,
4 Mr. Pruitt?

5 A. I am not.

6 Q. And to the extent you quote from FCC rules
7 or state or federal commission or court decisions in your
8 testimony and then draw conclusion or a summary from that,
9 you do so only as a layperson, not as a legal expert,
10 correct?

11 A. I do it as a layperson who has spent a lot
12 of time in the industry.

13 Q. Now, as I understand it, you are not a
14 full-time employee of Respondent T-Mobile; is that right?

15 A. That is correct.

16 Q. You are a consultant hired by T-Mobile?

17 A. Yes.

18 Q. And I assume you are also being paid for
19 your testimony and time in this case?

20 A. Yes, I am.

21 Q. Is that on an hourly basis or --

22 A. Yes, it is.

23 Q. And what is your hourly rate?

24 A. I obviously need to raise my rate, but it's
25 \$175 an hour.

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1 Q. You and me both.

2 How long have you been doing consulting
3 work for T-Mobile, Mr. Pruitt?

4 A. I signed a contract with them in the latter
5 part of last year.

6 Q. And obviously that covers your work here in
7 Missouri?

8 A. It covers work anywhere.

9 Q. Okay. That was going to be my next
10 question. Where -- without getting real specific, what
11 states, if you will, and what engagements are you
12 consulting with T-Mobile?

13 A. I have consulted for T-Mobile, as you know,
14 in the Alma case. I'm also working on a proceeding in
15 Florida that is a joint sponsorship, where I'll be
16 representing both T-Mobile and Sprint.

17 Q. Did you also do some work for T-Mobile in
18 Tennessee recently?

19 A. In Tennessee, I represented Sprint.

20 Q. Okay. Is it fair to say that your
21 consulting work is on behalf of the wireless industry, if
22 you will?

23 A. Primarily.

24 Q. I'm going to switch gears a little bit on
25 you. Do you have any familiarity with any of the traffic

1 studies that have been performed by T-Mobile and
2 summarized, I believe, in your Attachment 1 to your direct
3 testimony?

4 A. Yes, I've -- I've seen them.

5 Q. I want to ask you some questions about your
6 involvement in them. Did you personally supervise or
7 conduct those studies?

8 A. No, I did not.

9 Q. Who in T-Mobile conducted those studies, if
10 you know?

11 A. They were requested by Greg Tudesco
12 (phonetic spelling), who got them from different billing
13 people at T-Mobile.

14 Q. Do you know the actual people that
15 performed the study, Mr. Pruitt?

16 A. No.

17 Q. Did you review the results of those studies
18 with anyone at T-Mobile?

19 A. We discussed the studies, yes.

20 Q. And who would we besides you be?

21 A. Primarily myself and counsel.

22 Q. Mr. Pruitt, would you agree with me that
23 you have not been involved in any of the negotiations
24 between T-Mobile and Petitioners that led up to the filing
25 of this arbitration?

1 A. Yes.

2 Q. Have you been involved in negotiating
3 interconnection agreements for T-Mobile in Missouri
4 generally?

5 A. No.

6 Q. How about in any other states?

7 A. No.

8 Q. Are you primarily hired to come in and
9 testify for them if they are not able to reach negotiated
10 agreements and have to go to arbitration?

11 A. Primarily, yes.

12 Q. Have you ever been involved in any
13 negotiations that T-Mobile may have had with interexchange
14 carriers or IXC's for purposes of negotiating wholesale
15 agreements for the termination of T-Mobile's traffic?

16 A. No, I have not.

17 Q. To the extent you testify on matters that
18 have been discussed or raised in negotiations between
19 T-Mobile and Petitioners, and I'm not sure you have, but
20 to the extent you do, is it fair to say you have no
21 personal knowledge of those discussions, not having been
22 involved?

23 A. Other than having general policy
24 discussions about the approaches that should be taken.

25 Q. But at least as far as direct negotiations

1 with Petitioners, you're not aware personally?

2 A. I have not talked to any of the
3 Petitioners.

4 Q. I want -- I've got several areas of
5 questions, as you can imagine, because you address several
6 issues. The first is related to the issue at least that I
7 call the IXC-carried traffic issue.

8 A. Okay.

9 Q. You know what I'm talking about, I think,
10 don't you?

11 A. Yeah.

12 Q. And I believe it involves the extent of
13 Petitioners' obligation to pay reciprocal compensation on
14 calls which Petitioners' end user customers make to
15 T-Mobile customers but which are carried by an
16 interexchange carrier, correct?

17 A. Yes.

18 Q. And you understand, as I said, that we've
19 referred to this in either pleadings or throughout the
20 hearing as IXC-carried traffic, and I may resort to that
21 short form description as we go through this.

22 A. Yes.

23 MR. ENGLAND: May I use a visual aid as I
24 go through this process? You Honor, I've got a map of the
25 state of Missouri -- well, actually two, one with the

1 exchange boundaries that the MTIA publishes, and another
2 with the black and white version of that map with MTA
3 boundaries.

4 JUDGE JONES: Do Respondents any problems
5 with that use?

6 MR. JOHNSON: No objection.

7 JUDGE JONES: Yes, you may.

8 MR. ENGLAND: The black and white version,
9 by the way, with the MTA boundaries is really a blowup of
10 the schedule attached to Mr. Schoonmaker's testimony. I
11 believe that's right. I'm trying to find a place where
12 everybody can see this, including the witness. He could
13 always assume what I'm saying is true and correct.

14 Thank you for not responding, Mr. Pruitt.

15 THE WITNESS: Well, Trip, I thought it.

16 MR. ENGLAND: The thought crossed your
17 mind, right?

18 THE WITNESS: Yes.

19 MR. ENGLAND: I understand. I'm afraid I'm
20 still going to block your view of this.

21 MR. WALTERS: That's all right. I can
22 move.

23 BY MR. ENGLAND:

24 Q. The reason that Petitioners' customers have
25 to call T-Mobile customers and use a long distance carrier

1 to do that, as I understand, is because, generally
2 speaking, T-Mobile does not have a local presence, have
3 local numbers in the exchanges served by Petitioners. Is
4 that your understanding, Mr. Pruitt?

5 A. It's true that T-Mobile does not have
6 connections to any of the Petitioners, yes.

7 Q. Okay. Fair enough. And I want for
8 purposes of the discussion, at least for the next few
9 questions, let's focus on the specific example. And what
10 I think I used in my opening statement was the New
11 Florence Telephone Company that I believe you're familiar
12 with, or at least passed on your way --

13 A. Many times.

14 Q. -- coming to Jefferson City.

15 A. Many times.

16 Q. So you have a general understanding of
17 where New Florence Telephone Company is, if not the
18 specific town, correct?

19 A. That's correct.

20 Q. And so we're going to be talking about a
21 customer in the New Florence exchange, and one that places
22 a call to a T-Mobile customer who is located in St. Louis,
23 Missouri, and has a telephone number that is -- or an
24 NPA/NXX that is rated to the St. Louis exchange, if you
25 will, or St. Louis metropolitan exchange. Are you

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1 following me so far?

2 A. Yeah. I believe you said new -- a customer
3 in New Florence originates a call to a T-Mobile customer,
4 so it's a land-to-mobile call.

5 Q. Correct. And because the T-Mobile customer
6 is in St. Louis with a St. Louis NPA/NXX or telephone
7 number, that New Florence telephone customer makes a long
8 distance call or a 1+ dialed call, correct?

9 A. That's how it occurs today.

10 Q. Would you agree with me that when that New
11 Florence customer makes a 1+ dialed call, that call is
12 routed by New Florence Telephone Company to that
13 customer's presubscribed IXC of choice?

14 A. Yes. That's how the call would be routed
15 today.

16 Q. And the fact that that is a long distance
17 call for the New Florence customer is, as I understand,
18 permissible under the FCC's decision in the TSR case that
19 you quote from in your rebuttal testimony, I believe, at
20 page 16, right?

21 A. Yes, it's permissible pursuant to that
22 order. You know, there is a question about whether that's
23 discriminatory or not, but pursuant to the FCC order, it's
24 certainly permissible.

25 Q. Okay. Well, if that New Florence customer

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1 were to call a landline SBC customer in St. Louis with a
2 St. Louis number, that would clearly be a 1+ telephone
3 call, right?

4 A. Yes.

5 Q. And so to the extent he has to dial 1
6 before dialing the T-Mobile customer, that's no different
7 than the 1+ call to the landline customer in St. Louis,
8 right?

9 A. Yes, using the legacy access architecture,
10 that's true.

11 Q. And you understand that the New Florence
12 customer has a choice among interexchange carriers as to
13 which one will carry his long distance traffic, whether
14 it's to St. Louis or it's across the world?

15 A. Yes.

16 Q. To the extent there is no billing and
17 collection agreement between New Florence and the New
18 Florence customer's chosen IXC, then the New Florence
19 customer will be billed separately for any long distance
20 calls he makes through his chosen IXC, right?

21 A. That's standard industry practice, yes.

22 Q. In other words, New Florence won't have any
23 billing relationship with the customer for that call?

24 A. Yeah. And I don't know if that's
25 specifically the case for New Florence, but --

1 Q. But if New Florence doesn't have a billing
2 and collection agreement with the interexchange carrier,
3 they're going to have to find a way to bill that customer
4 directly?

5 A. That's correct.

6 Q. And if that New Florence customer has a
7 complaint with respect to the quality of that long
8 distance call to the T-Mobile customer, or with respect to
9 the amount he has to pay for that call, that New Florence
10 customer takes that complaint up with his presubscribed
11 interexchange carrier, right?

12 A. Yes. Because that end user is in that
13 retail relationship with that entity, yes.

14 Q. It's not a complaint he can take up or at
15 least get resolved with New Florence Telephone Company,
16 correct?

17 A. Well, in any industry, it often occurs that
18 the incorrect company receives the complaint and tries to
19 resolve the issue, but generally, I think that would be
20 true.

21 Q. At page 7 of your direct testimony --

22 A. Okay.

23 Q. -- lines 1 through 3 --

24 A. Okay.

25 Q. -- you state that Congress has been very

1 clear that a LEC's reciprocal compensation obligation
2 applies to traffic that originates on its, quote, network
3 facilities, end quote, regardless of whether the LEC has a
4 business relationship with the calling party; is that
5 correct?

6 A. Yes.

7 Q. And if I understand your testimony, what
8 you're saying is that regardless of the business
9 relationship between the LEC, in this case New Florence,
10 and the New Florence customer's IXC, it is nevertheless
11 the LEC's responsibility or New Florence's responsibility
12 to pay reciprocal compensation on that intraMTA call to
13 the wireless carrier, right?

14 A. Yes.

15 Q. Now, when we reverse the call direction and
16 it is a call from a wireless carrier to a LEC customer, or
17 in this case from a T-Mobile customer in St. Louis to a
18 New Florence landline customer in New Florence, and for
19 whatever reason that call happens to be transited or
20 transported by an IXC, in other words, T-Mobile gives it
21 to an IXC for delivery to the end user customer, is it
22 your position that the business relationship that the
23 wireless carrier has with the IXC is irrelevant to its
24 reciprocal compensation obligation?

25 A. I don't know that the relationship between

1 the wireless carrier and the IXC would fall under the same
2 rules, unless I misunderstood your question.

3 Q. So in other words, when we reverse the call
4 direction and a wireless carrier such as T-Mobile uses or
5 contracts with an IXC to deliver the call, that business
6 relationship becomes relevant to a determination of
7 whether or not it has a reciprocal compensation obligation
8 to pay for an intraMTA call?

9 A. The existing business relationship between
10 wireless carriers and IXCs is that the IXCs bill back
11 access charges that are billed by the terminating LEC to
12 the wireless carriers. So the wireless carrier is already
13 paying for the termination of that traffic, and that's
14 generally at a higher rate than any reciprocal
15 compensation rate.

16 Q. I understand what goes on, but my question
17 was, when we reverse the call direction and a wireless
18 carrier uses an IXC to deliver the call, that the business
19 relationship that the wireless carrier has with the IXC is
20 now relevant to a determination of whether the wireless
21 carrier has a reciprocal compensation obligation to the
22 terminating LEC?

23 A. I believe that all carriers have a
24 reciprocal compensation obligation, pursuant to the rules
25 in the Act.

1 Q. So on the call we've been discussing,
2 wireless to wireline carried by an IXC, the wireless
3 carrier has an obligation to pay reciprocal compensation
4 to the terminating LEC?

5 A. There's an inherent obligation, but the
6 wireless carriers are already paying.

7 Q. Isn't it more correct to say that the
8 wireless carriers have contracted with the IXC to satisfy
9 their obligation to pay for termination of traffic to the
10 LEC?

11 A. I think that's another way of saying what I
12 said, meaning that the wireless carriers have built into
13 their contracts with IXCs the pass-through of those
14 dollars that are billed by the terminating LEC. In the
15 opposite direction, the originating LEC is billing
16 originating access.

17 Q. Okay. In the opposite direction, landline
18 to mobile, the New Florence end user is paying the IXC a
19 toll rate that presumably covers its cost of transport and
20 termination of that traffic to the ultimate end user,
21 correct?

22 A. Right, but that deals with the relationship
23 between the end user and the IXC. It doesn't deal with
24 the relationship between the LEC and the fact that the
25 call originated in that LEC's network and that that call

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1 ends up terminating at T-Mobile.

2 Q. So what you're saying is New Florence
3 cannot rely on the fact that its end user customer is
4 compensating -- or excuse me -- has made arrangements with
5 its long distance carrier to compensate the terminating
6 carrier, in this case the wireless carrier, to extinguish
7 its reciprocal compensation obligation?

8 A. Again, the originating LEC when that call
9 originates on that LEC's network has the responsibility to
10 terminate the terminating wireless carrier.

11 Q. I'm sorry. Would you say that again,
12 please?

13 A. Yes. The originating LEC when the call
14 originates on its network facilities has the
15 responsibility to pay the terminating wireless carrier the
16 terminating reciprocal compensation, pursuant to the FCC
17 rules and the Act.

18 Q. Okay. I understand that's your position.
19 My question is that they cannot extinguish that obligation
20 by the fact their customer, the New Florence end user
21 customer, is paying the IXC a toll rate that is supposed
22 to cover that terminating compensation to the wireless
23 carrier, whether it's access or reciprocal compensation?

24 A. Again, the rate that the IXC charges its
25 end user customer deals with the relationship between that

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1 IXC and the end user customer. It's the retail
2 relationship that --

3 Q. I understand there's a business
4 relationship between the end user landline customer and
5 its chosen IXC. My question is that New Florence
6 Telephone Company cannot rely on that business
7 relationship to satisfy its obligation to pay reciprocal
8 compensation to terminating wireless carriers, even though
9 that's what is implied in the agreement its customer has
10 with its presubscribed IXC?

11 A. I don't know that I -- that I agree that
12 that's what the end user believes the agreement is.

13 Q. Let me try this a different way,
14 Mr. Pruitt. Can you cite me to any provision in the Act
15 or the FCC rules where it says that the business
16 relationship between a LEC and an IXC is irrelevant to the
17 reciprocal compensation obligation?

18 A. I can take you to 51701(b)(2), which is the
19 intraMTA rule which defines traffic exchange between the
20 LECs and wireless carriers, and there is no exception in
21 that rule about intraMTA traffic, except for traffic
22 handed off to an IXC. It basically says all intraMTA
23 traffic.

24 Q. And that would work both ways, wouldn't it,
25 sir?

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1 A. Yes.

2 Q. And when I say both ways, land to mobile
3 and mobile to land?

4 A. Yes, but acknowledging that we're already
5 paying for the terminating end.

6 Q. In your contract with an IXC, correct?

7 A. Yes.

8 Q. And a contract that the terminating LEC is
9 not a party to or has no knowledge of, correct?

10 A. I would assume they have knowledge that
11 that traffic originated from us and that they're receiving
12 compensation from the IXC.

13 Q. Let me be a little more specific. The
14 terminating LEC is not a party to that contract that the
15 wireless carrier has to the IXC, correct?

16 A. I would assume that in most cases, but I
17 couldn't say that's an across-the-board concept.

18 Q. If I can, sir, I'm sorry to be redundant on
19 this, but I'm not sure I've got a precise answer to this
20 question. With an intraMTA call, there is an obligation
21 on the originating carrier's part to pay the terminating
22 carrier, one of which is a wireless carrier, reciprocal
23 compensation?

24 A. Yes.

25 Q. Okay. And that obligation exists

1 regardless of whether that call was carried by an
2 intermediate third party like an IXC?

3 A. Yes.

4 Q. Okay. But what you're saying to me is that
5 wireless carriers don't have to make that payment directly
6 to the LEC because of its business relationship with the
7 IXC?

8 A. I'm not saying that they don't have to.
9 I'm -- what I'm suggesting is that, because of the legacy
10 architectures and legacy processes, that the way it occurs
11 is that that traffic is handed off to the IXC who then
12 terminates it, and nothing in the industry has changed any
13 of those legacy processes. So what happens is that the
14 IXCs simply passes those terminating access charges on to
15 the wireless carriers.

16 Q. And I think what you're saying is that the
17 wireless carrier then relies on the IXC to extinguish, if
18 you will, or satisfy its obligation to pay reciprocal
19 compensation to the terminating LEC?

20 A. In today's processes, that's what happens,
21 yes.

22 Q. Okay. But when I reverse the call
23 direction and the end user customer has made the call or
24 placed the call through its chosen IXC and has paid a toll
25 rate presumably to cover transport and termination of that

1 call, the LEC can't rely on that business relationship, if
2 you will, to satisfy its obligation to pay reciprocal
3 compensation?

4 A. That relationship between the end user and
5 the IXC in that scenario is a retail relationship. It has
6 nothing to do with the intercarrier compensation
7 responsibilities of the LEC and the wireless carrier.

8 Q. Well, it's implied in that contract, isn't
9 it? It's implied that the IXC that they've chosen will
10 not only carry the call, but they will see that it is
11 terminated to the called party?

12 A. I guess you're asking me to assume that an
13 end user knows how all of these calls are routed and how
14 that process would work, and I don't know that I can say
15 that that's implied.

16 Q. Wasn't it your testimony in the Alma
17 arbitration case where you testified on behalf of T-Mobile
18 that SBC does not pay reciprocal compensation on
19 IXC-carried calls?

20 A. I don't specifically recall that.

21 MR. ENGLAND: Your Honor, if I may approach
22 the witness. I'd like to show him a copy of the
23 transcript from the Alma arbitration case. I believe
24 that's IO-2005-0468, and ask -- well, first of all, make
25 sure it's an accurate copy of the transcript, but then

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1 have -- refer him to page 263.

2 JUDGE JONES: You may approach.

3 THE WITNESS: Yes, I've read it.

4 BY MR. ENGLAND:

5 Q. First of all, that appears to be an
6 accurate transcript of the hearing in that case?

7 A. Yes.

8 Q. And secondly, your testimony in that case?

9 A. Yes, it appears to be so.

10 Q. And did I highlight the passage that I'm
11 interested in?

12 A. Yes.

13 Q. Not having the transcript in front of me
14 any longer?

15 A. Yes.

16 Q. And would you -- having read that and
17 hopefully refreshing your memory, would you agree with me
18 that your testimony in the Alma arbitration case indicates
19 that SBC does not pay reciprocal compensation to wireless
20 carriers on IXC-carried traffic?

21 A. Yes.

22 Q. Thank you. So you agree with me that at
23 least the position Petitioners have taken in this case is
24 no different than the position taken by SBC, correct?

25 A. I don't know that I can respond generally

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1 to what positions are taken by SBC.

2 Q. Thank you, sir.

3 At page 11 of your testimony, direct --
4 excuse me -- beginning with line 9, are you there?

5 A. Yes, I'm there.

6 Q. Okay. Thanks. You indicate that the
7 Petitioners have mischaracterized your prior testimony in
8 the Mark Twain wireless termination tariff case, I believe
9 No. TT-2001-139; is that correct?

10 A. Yes.

11 Q. And I think as you indicate in that Mark
12 Twain wireless tariff case, you testified on behalf of
13 Sprint PCS in opposition to those wireless tariffs,
14 correct?

15 A. That is correct.

16 Q. And those wireless tariffs were proposed by
17 the Petitioners in this case?

18 A. Yes. Generally, I think all of them were
19 involved.

20 Q. In your testimony in this case, same page,
21 I'm on page 9, lines -- excuse me a second. I misplaced
22 myself.

23 I am confused. I've got you on the right
24 page, but I don't have myself on the right page. It's
25 page 11, correct?

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1 A. Okay. I will go back.

2 Q. It was where we started at page 11,
3 lines 13 and 14.

4 A. Okay.

5 Q. You indicate here that you testified that
6 Sprint PCS at that time was receiving compensation from
7 some IXCs, but not all IXCs. Do you see that?

8 A. Yes.

9 Q. Isn't it a more correct characterization of
10 your testimony in that wireless termination tariff case
11 that, with the notable exception of AT&T, Sprint is
12 currently being compensated by IXCs for traffic that is
13 terminated to it from landline customers?

14 A. Could you repeat that? I'm not sure I
15 followed that, Trip.

16 Q. Certainly. Isn't it a more correct
17 characterization of your testimony in the wireless tariff
18 case that, quote, if you will, with the exception --
19 notable exception of AT&T, Sprint is currently being
20 compensated by IXCs for traffic that is terminated to it
21 from landline customers?

22 MR. JOHNSON: Your Honor, the question is
23 confusing when it used the word currently. Is he talking
24 about 2001 or currently today?

25 MR. ENGLAND: It's his testimony from that

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1 case, so it would be current as of the time of that case.

2 THE WITNESS: So back in 2001 is the time
3 frame that we're talking about. At that time, there were
4 also other carriers that did not pay access charges, if
5 that's your question.

6 BY MR. ENGLAND:

7 Q. That is my question. My understanding from
8 your testimony in that case was that AT&T was, if not the
9 only, the only major IXC that wasn't paying Sprint for
10 terminating calls. Sprint PCS that is. Excuse me.

11 A. I'm walking a fine line here between
12 talking about a previous employer who entered into many
13 settlement agreements on this issue, but I think at a
14 pretty high level I can say AT&T was certainly the largest
15 IXC that did not pay any access charges. However, there
16 were other IXCs that also did not pay access charges even
17 in that time frame.

18 Q. Okay. You do acknowledge that the term
19 notable exception were your words in that wireless tariff
20 case, correct?

21 And I can show you the transcript if you'd
22 like.

23 A. With -- oh, with AT&T being the notable
24 exception?

25 Q. Yes.

1 A. I agree that that's probably what I said.

2 Q. Okay. Further down the page on your direct
3 testimony in this case, page 11, you quote from the FCC
4 decision involving, if you will, a complaint between
5 Sprint PCS and AT&T over the payment of these access
6 charges, correct?

7 A. Correct.

8 Q. Okay. And if I understand your quote, if I
9 read the quote correctly, the FCC found that wireless
10 carriers could be paid terminating compensation for these
11 IXC calls, but those wireless carriers had to have a
12 contractual obligation to do so. Is that your
13 understanding of the FCC decision?

14 A. Yes.

15 Q. In other words, there's no prohibition
16 against a wireless carrier receiving compensation from the
17 IXC for intraMTA land-to-mobile calls, but the wireless
18 carrier has to have a contractual basis to do so?

19 A. Generally, I would agree with that, even
20 though in this particular docket I don't recall getting
21 into specifics of intra versus inter. It was kind of a
22 general access charge ruling.

23 Q. You made no distinction between -- I say
24 you. Excuse me. Sprint PCS made no distinction between
25 inter or intraMTA calls that were being terminated to it

1 by AT&T. Sprint wanted to be paid for all of that
2 traffic, correct?

3 A. Yes. That is correct.

4 Q. And as I recall, wanted to be paid at the
5 NECA access -- or terminating access rate, correct?

6 A. Sprint PCS made the decision to use the
7 NECA rates as a surrogate.

8 Q. Okay. And then would have applied that
9 access rate even to terminating intraMTA calls carried by
10 AT&T?

11 A. Yes, at that time Sprint PCS would have.

12 Q. At page 12, continuing with this saga
13 involving Sprint PCS and AT&T, at the top you indicate
14 that many of the IXCs that had paid access charges to
15 Sprint in the past began disputing those charges after the
16 FCC came out with its decision; is that right?

17 A. That's correct.

18 Q. Does that mean that all IXCs stopped paying
19 at the time?

20 A. Without getting into some specifics, some
21 continued to pay.

22 Q. Okay. Fair enough. After the FCC's
23 decision, and if you know, did Sprint PCS go back and
24 attempt to negotiate with AT&T and other IXCs in order to
25 obtain terminating compensation for traffic they delivered

00406

1 to Sprint PCS?

2 A. Yes.

3 Q. And what was the result of those
4 negotiations?

5 A. They were not successful.

6 Q. Were you personally privy to those
7 negotiations?

8 A. I was involved in some of them.

9 Q. Okay. But I think we established early on,
10 you have not been involved in any negotiations that
11 T-Mobile might have with IXCs --

12 A. That is correct.

13 Q. -- to terminate traffic?

14 A. That is correct.

15 Q. Okay. We talked about the fact that
16 wireless carriers often enter into wholesale arrangements
17 with IXCs to terminate their traffic to the landline
18 network, right?

19 A. Yes.

20 Q. And as part of that agreement I believe
21 you've testified that they -- excuse me -- the wireless
22 carriers agreed to pay a rate or compensation that will
23 cover both the transport of that call as well as the
24 termination of that call to the end user customer or end
25 user exchange?

1 A. That's common in those agreements.

2 Q. Okay. Is it possible, sir, that in the
3 negotiation that a wireless carrier has with an IXC to
4 terminate the wireless carrier's calls, for the wireless
5 carrier to also negotiate a terminating rate with that
6 same IXC when it terminates calls to the wireless carrier?
7 Is it possible, sir?

8 A. Anything's possible in a contract
9 negotiation, because if both parties benefit, they could
10 agree to it.

11 Q. Okay. If the IXC is unwilling to pay
12 terminating compensation to the wireless carrier for the
13 traffic the IXC terminates to the wireless carrier, is it
14 nevertheless possible for the wireless carrier to
15 negotiate a lower transport and termination rate with the
16 IXC for the wireless carrier's traffic, in recognition of
17 the fact that that interexchange carrier is not paying the
18 wireless carrier for calls that the IXC delivers to that
19 wireless carrier?

20 A. Again, I don't know that I agree that an
21 IXC would agree to it. If you're talking about a
22 negotiation, I guess it's possible.

23 Q. Let me give you an example. If an
24 interexchange carrier would normally terminate traffic for
25 a wireless carrier or for that matter any other carrier

00408

1 that wants to send traffic to that IXC at 5 cents a
2 minute, is it not possible that the IXC may be willing to
3 terminate traffic for a wireless carrier at say 3 cents a
4 minute because that IXC has no obligation and, therefore,
5 no cost, if you will, to the wireless carrier when it
6 terminates traffic to that wireless carrier?

7 A. Could you repeat that? I'm not sure I
8 followed the call flow.

9 Q. Sure. Okay. These would be negotiations
10 between a wireless carrier and IXC to terminate the
11 wireless carrier's traffic.

12 A. So are we talking mobile-to-land traffic?

13 Q. Correct. So what I'm saying is, is it
14 possible in those negotiations for the interexchange
15 carrier to reduce a rate it would normally charge a
16 wireless carrier of say 5 cents a minute to terminate that
17 call to say 3 cents a minute, in recognition of the fact
18 that when this IXC delivers traffic to the wireless
19 carrier, it does not have any obligation to pay it for
20 terminating traffic?

21 A. I think that's pretty speculative. The
22 IXC's going to make business decisions about what rate's
23 in their wholesale contract and, you know, what the
24 underlying costs are. So I guess in theory it's possible,
25 but that's a business decision based on the dynamics of

00409

1 that scenario for that IXC.

2 Q. Okay. When you personally were involved in
3 negotiating these wholesale agreements with IXCs and they
4 initially indicated that they weren't going to pay Sprint
5 PCS for terminating traffic, did you not raise this as a
6 potential cost savings for them and seek some sort of
7 recognition, albeit in the rate you pay them to terminate
8 traffic?

9 A. We had many discussions about many
10 different aspects of call flow, but the -- as you can
11 imagine, the IXCs weren't very open to listening to any
12 arguments.

13 Q. I'm not sure I got an answer to my
14 question. Did you raise my point that we've been talking
15 about?

16 A. I don't know that I specifically raised
17 that point, but obviously we talked about the various call
18 paths and traffic flows and what rates would be involved
19 with that transport and termination to the terminating
20 carrier.

21 Q. I guess carrying on the possibility, if you
22 will, of receiving a reduced rate, wireless carrier
23 receiving a reduced rate that it would otherwise pay to
24 terminate traffic, that would be a form of indirect
25 compensation, would it not, from the interexchange carrier

00410

1 for those terminating calls it directly refuses to pay?

2 A. I don't know that I would characterize that
3 as a form of indirect compensation. That's simply a
4 negotiated rate that both parties can live with and meet
5 their business criteria.

6 Q. To the extent that you have not been or
7 reflecting the fact that you have not been involved in any
8 of these negotiations with T-Mobile interexchange
9 carriers, is it fair to say that you cannot state
10 unequivocally that T-Mobile is not receiving some
11 compensation, whether it -- albeit indirect -- excuse
12 me -- from IXCs for this traffic that IXCs terminate to
13 T-Mobile?

14 A. My -- in my conversations with T-Mobile
15 personnel, I certainly am confident that in the state of
16 Missouri that none of these -- none of the traffic
17 originated by the Petitioners is -- T-Mobile is not being
18 compensated anything for that traffic.

19 Q. But as I understand, you have no personal
20 knowledge to support that confidence, because you haven't
21 been directly involved in the negotiations with the IXCs,
22 correct?

23 A. Yes. I rely on T-Mobile personnel.

24 Q. By the way, when an interexchange carrier
25 delivers an inter, clearly an interMTA call to a wireless

00411

1 carrier, does the IXC pay any access or other terminating
2 compensation to the wireless carrier on that call?

3 A. It -- I think that's a network-specific
4 situation. In some cases wireless carriers have direct
5 connections to IXCs for calls coming in over the network.
6 In some cases IXCs will deliver traffic to an access
7 tandem for termination to a wireless carrier. In that
8 situation, it's subject to the jointly provisioned --
9 jointly provided access guidelines, and the LEC will bill
10 its portions of the terminating switch to access.

11 And Sprint PCS's argument was that they
12 ought to be able to bill their portion of that generally
13 provided switched access, which was the major issue in
14 that FCC case, and, in fact, and that's an area wireless
15 carriers are not paid.

16 Q. So there -- even in the situation where
17 it's -- well, let me back up.

18 I think one of the things you and I can
19 agree on, I hope, is that when the call is between MTAs or
20 interMTA, the access rules and charges should apply?

21 A. Yes.

22 Q. Okay. But even in the situation where it's
23 clearly an interMTA call, and let's assume it's a
24 New Florence customer placing a call to a T-Mobile
25 customer in Chicago, Illinois, you would agree that's

00412

1 clearly interMTA, correct?

2 A. Yes.

3 Q. The wireless carrier's getting no
4 compensation from the IXC for that call?

5 A. That is correct, meaning that the wireless
6 carrier is simply using that IXC to provide the long
7 distance transport for its customer.

8 Q. You would agree with me, I hope, that
9 certainly New Florence Telephone Company is not
10 responsible for paying any kind of terminating
11 compensation, whether that's reciprocal compensation or
12 access charges, on that call by its customer via an IXC to
13 your customer in Chicago, Illinois, right?

14 A. That is correct. That would be pursuant to
15 the FCC's access rules.

16 Q. I'm going to switch gears on you, if I can.

17 A. Okay.

18 Q. And talk about the interMTA traffic since
19 we're talking MTAs.

20 A. Okay.

21 Q. I'm going to try to get another visual aid
22 up here. What I've got on the board is a black and white
23 version of the MTIA exchange boundary map for Missouri,
24 but what we've attempted to do -- and this also, I
25 believe, was attached to Mr. Schoonmaker's testimony --

00413

1 was draw the MTA boundaries that exist in the state of
2 Missouri. Can you see that, first of all, from where you
3 are?

4 A. Yes. And I acknowledge that the Memphis
5 MTA comes into the corner that I can't see, but you're
6 fine.

7 Q. And we've got a Des Moines MTA up here in
8 the northeast part of the state?

9 A. (Witness nodded.)

10 Q. But those boundaries roughly equate with
11 the way you understand MTA boundaries to exist, at least
12 in Missouri?

13 A. It certainly looks close enough to MTA maps
14 that I've seen.

15 Q. Would you agree with me, although this map
16 doesn't go into other states, what I will call the Kansas
17 City MTA extends into portions of eastern Kansas --

18 A. Yes.

19 Q. -- correct?

20 And the St. Louis MTA extends into portions
21 of western Illinois?

22 A. Yes.

23 Q. Would you agree with me that for purposes
24 of those MTA boundaries, though, the vast majority of the
25 people existing within the Kansas City -- Kansas City MTA

00414

1 would be in the Missouri side of that MTA?

2 A. I'm not sure I understand the question.

3 And I will say that when I worked for Sprint, I lived in
4 Johnson County, Kansas. Maybe I'm not understanding the
5 question.

6 Q. Well, what I'm saying is, that from a
7 population perspective, more people tend to live on the
8 Kansas City -- excuse me -- the Missouri side of the
9 Kansas City MTA than on the Kansas side of the MTA?

10 A. I honestly don't know if that's true.
11 Kansas City is a very large metropolitan area that covers
12 both sides of the state line.

13 Q. But the MTA also covers the St. Joseph area
14 and the Joplin area and --

15 A. That's correct.

16 Q. Okay. How about on the St. Louis side?
17 Would you agree with me that most of the population in the
18 St. Louis MTA resides in the St. Louis -- excuse me --
19 Missouri side of the MTA, as opposed to the Illinois?

20 A. Again, I have no factual basis, but I
21 believe that to be true.

22 Q. With respect to interMTA factors, I believe
23 they are agreed to between T-Mobile and the Petitioners?

24 A. That is correct.

25 Q. And if I'm correct, there's only three we

00415

1 really need to concern ourselves with: That's Mark Twain,
2 which is 70 percent, BPS which is 52 percent, and
3 Craw-Kan, which is 7 percent?

4 A. I believe that's correct.

5 Q. And you understand that, generally
6 speaking, the Mark Twain exchanges are up here in the
7 northeast part of the state of Missouri?

8 A. I do.

9 Q. And the BPS are down here in the very
10 southeast part of the state?

11 A. I do.

12 Q. And the Craw-Kan exchanges are along the
13 Kansas-Missouri border on the western side of the state?

14 A. I've never been there, but I assume with
15 the name Craw-Kan, that one's true.

16 Q. Now, the M -- excuse me. The interMTA
17 percentages have significance in these agreements because
18 when -- let's use Mark Twain as an example. It's fairly
19 simple. It's a 70 percent factor. When it receives
20 information from Southwestern Bell or SBC via what we call
21 CTUSR records, Cellular Transiting Usage Summary Reports,
22 those reports summarize the traffic that, for example,
23 T-Mobile has sent to or delivered to or terminated to Mark
24 Twain for a period, usually a month. Mark Twain will
25 apply that interMTA percent to allocate those minutes

00416

1 between minutes that get billed at access and minutes that
2 get billed at reciprocal compensation rates, right?

3 A. That's how the interMTA factor works, yes.

4 Q. Okay. Now, once you -- and for purposes of
5 my question, I'm going to assume 1,000 minutes were
6 terminated by T-Mobile to Mark Twain in any particular
7 billing period. The interMTA factor is 70 percent, so if
8 I'm doing this right, Mark Twain is going to bill T-Mobile
9 roughly 700 minutes, which is 70 percent of 1,000, at
10 access rates, and 300 minutes at reciprocal compensation
11 rates?

12 A. That is correct.

13 Q. Okay. Now, the issue that we have between
14 Petitioners and T-Mobile is, what access rates do you use
15 for purpose of billing those 700 minutes; would you agree
16 with me?

17 A. Yes.

18 Q. Okay. And if I understand T-Mobile's
19 position, they are assuming that 20 percent of those
20 interMTA minutes are intrastate and 80 percent are
21 interstate, correct?

22 A. Yes. That was the proposal made by
23 T-Mobile in my direct testimony.

24 Q. Okay. And that is significant because
25 intrastate access rates tend to be much higher than

00417

1 interstate access rates, correct?

2 A. That's generally true.

3 Q. Okay. Petitioners have proposed

4 essentially the opposite, that 80 percent of interMTA

5 traffic ought to be billed at intrastate access rates and

6 20 percent at interstate rates, correct?

7 A. Yes.

8 Q. Now, again, with respect to the Mark Twain

9 exchanges, would you agree with me that with the exception

10 of these up in the very northwest part of the state, most

11 of their exchanges are in the St. Louis MTA?

12 A. I believe that to be true.

13 Q. But yet most of their exchanges are in the

14 Kansas City LATA, that LATA boundary kind of working its

15 way up to the northeast corner of the state?

16 A. Yes.

17 Q. And that's one of the reasons we -- why

18 Mark Twain is unique and has such a high interMTA factor,

19 right, the way it -- its exchanges lie, if you will, in

20 relation to MTA boundaries and LATA boundaries?

21 A. Yes.

22 Q. To a certain extent we've got the same

23 problem with BPS down in the corner, southeast corner?

24 A. Yes. As I understand, there's one exchange

25 with BPS that's in the Memphis LATA, or is it two? I

00418

1 forget the --

2 Q. One. But it's also -- the BPS exchanges
3 are actually in the St. Louis LATA, and that's -- that's
4 significant because when T-Mobile delivers traffic to
5 Southwestern Bell for transiting purposes, transiting to
6 third-party LECs such as BPS and Mark Twain, Southwestern
7 Bell could only take it to the LATA boundary, it can't
8 take it across the LATA boundary, right?

9 A. That's -- that's been the historical
10 legacy. I'm not an attorney. I don't know with the
11 changes whether they can do it now, but that certainly was
12 the original.

13 Q. Fair enough. But up to this point in time,
14 that's the way we've always understood it, right?

15 A. Yes, that's correct.

16 Q. Now, getting back to my Mark Twain example,
17 so most of the traffic that -- well, yeah, most if not all
18 of the traffic that T-Mobile delivers to Southwestern Bell
19 for transiting to Mark Twain's exchanges would likely be
20 delivered through the interconnection T-Mobile has with
21 Southwestern Bell in Kansas City, right?

22 A. I'm assuming T-Mobile would route it
23 according to the LERG, and I believe the LERG defines that
24 routing point as Kansas City.

25 Q. And that traffic would then be transited

1 from Kansas City off to Mark Twain up here in the
2 northeast part of the state, the northeast part, if you
3 will, of the Kansas City LATA. So for purposes of this
4 interstate/intrastate interMTA traffic issue, what we're
5 trying to figure out is whether the majority of the
6 customers that make calls to Mark Twain that are handed
7 off to Southwestern Bell in Kansas City for termination to
8 Mark Twain are coming from the Missouri state side, which
9 would make it intrastate, or the Kansas side, which would
10 make it interstate, right?

11 A. Yes.

12 Q. Okay. And again, it's T-Mobile's position
13 that 80 percent of these interMTA calls are going to be
14 interstate, which means that 80 percent of these calls are
15 likely coming from Kansas City -- or excuse me -- Kansas?

16 A. I don't know that I would state that that's
17 necessarily T-Mobile's position. I think the position I
18 took in my testimony was that there was no information
19 related to interstate versus intrastate that had been
20 provided, and rather simply saying it ought to default to
21 100 percent intrastate, we said, we know there's some
22 amount of traffic that is going to be intrastate, so we
23 took that down to 80/20.

24 Q. Okay. Well, maybe I can short-circuit
25 this. Since we're not asking for 100 percent intrastate

00420

1 interMTA, would you be willing to access 80 percent, as
2 proposed in our testimony?

3 A. I would have to go back to the business
4 person to make that decision.

5 Q. Well, that means we've got a few more
6 questions to ask.

7 A. That's okay.

8 Q. For purposes -- and I believe you were
9 involved in the negotiations of traffic termination
10 agreements between Sprint PCS and a number of the
11 Petitioners in this case, right?

12 A. I was peripherally involved, yes.

13 Q. And for example, BPS has an agreement with
14 Sprint PCS, correct?

15 A. I don't know that that's relevant to this
16 proceeding, but yes, there is an agreement.

17 Q. I'll get there.

18 A. Okay.

19 Q. And BPS has an interMTA FOC factor with
20 Sprint PCS in that agreement, right?

21 A. I believe that to be the case, yes.

22 Q. And BPS bills that interMTA traffic at
23 100 percent intrastate access charge rates, right?

24 A. I don't know what the factor is.

25 Q. You know we've agreed with Cingular, the

00421

1 other Respondent in this case, on an 80/20 split, as
2 proposed by us, correct?

3 A. Yes, I did read that.

4 Q. Were you involved -- well, I think -- I'm
5 sorry. This is redundant. You were not involved in the
6 preparation of the responses that T-Mobile gave us to our
7 Data Requests regarding traffic flows, right?

8 A. Right. I wasn't necessarily involved. I
9 have seen them.

10 Q. Okay. And these would be the call detail
11 records that support the summary information that you have
12 attached to your testimony as Attachment 1?

13 A. Yes.

14 Q. Specifically, I believe they were provided
15 to us in response to our Data Request 2.3. Does that ring
16 any bells?

17 A. Yes, I think that's correct.

18 Q. And have you reviewed T-Mobile's response
19 to our Data Request 2.3, the detailed calling studies?

20 A. I did -- I did look at the Data Request
21 responses. I don't have them in front of me.

22 Q. Okay. Well, my next question is, have you
23 reviewed the excerpt of those responses that are attached
24 to -- or the excerpt that is attached to Mr. Schoonmaker's
25 rebuttal testimony I believe as Schedule RCS-10, highly

1 confidential?

2 A. Yes.

3 Q. Do you have any reason to doubt that that
4 isn't a true and accurate excerpt of the information that
5 was provided to Petitioners by T-Mobile?

6 A. I believe it's a true and accurate -- I'm
7 sorry -- I can't say that word, but I just would like to
8 state that those minutes were pulled in response to
9 support the intraMTA minutes, and I don't know that they
10 would accurately reflect anything to do with interMTA.

11 Q. But, in fact, at least looking at the
12 information in that response, calling party number, the
13 originating caller's telephone number, the node ID would
14 tell you a lot about or at least lead you to make some
15 reasonable assumptions about where those calls are coming
16 from, would it not?

17 A. Yes, for the limited number of calls on
18 that spreadsheet, that would be true.

19 Q. Now, that traffic study -- and we'll get
20 into this a little later, but that traffic study, although
21 it was attempting to capture intraMTA is -- for Mark Twain
22 and attached to Mr. Schoonmaker's rebuttal testimony, is
23 heavily -- I don't know if weighted is the right word, but
24 includes a large percentage of what appear to be interMTA
25 calls, does it not?

1 A. I don't believe that that's what I saw when
2 I looked at it. There are some interMTA calls that I
3 thought were highlighted by Mr. Schoonmaker.

4 Q. Just a clarification, Mr. Pruitt. The ones
5 that were highlighted on Mr. Schoonmaker's rebuttal
6 exhibit or schedule were interstate interMTA calls, were
7 they not?

8 A. Yes.

9 Q. The remainder of the calls is what I'm
10 looking at. And my question, again, is, although it
11 purports to be an intraMTA traffic study, the vast
12 majority of these calls appear to be interMTA?

13 A. The way that this information was produced
14 was to ask for all traffic, including IXC traffic on the
15 switch, and that's what -- that's what these numbers
16 represent. If I were to go back and ask my billing
17 subject matter expert to give me only interMTA traffic,
18 I'm not sure the result would be the same.

19 Q. Well, the point of the matter is -- and I'm
20 not sure I got an answer to my question -- at least based
21 on the information that T-Mobile has given us regarding
22 traffic that it sends to Mark Twain, the vast majority of
23 these calls appear to be interMTA because they have 816 or
24 660 originating calling numbers or a node ID indicating
25 that they're originated in the Kansas City metropolitan

00424

1 area, correct?

2 A. I agree that there are a number of
3 originating numbers on here that are 816 and 660, yes.

4 Q. Okay. Which would tend to lead you to
5 believe that they are interMTA, in fact, I mean, because
6 that would be on the left-hand side of the MTA boundary
7 terminating to the right-hand side of the MTA boundary and
8 crossing that boundary?

9 A. Yes, 816 and 660 are in the Kansas City
10 MTA.

11 Q. Okay. Now, examining those interMTA calls,
12 whether you meant to give us this information or not, do
13 you have any dispute with Mr. Schoonmaker's summary that
14 indicates 97 percent of them are intra-- or appear to be
15 intrastate?

16 A. I honestly did not go back and look at
17 every record.

18 Q. But it sure looks that way, doesn't it?

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

20 Q. But you're willing to let the -- I mean,
21 you're willing to admit that the information you've given
22 us is accurate, to the best of your knowledge?

23 A. I'm willing to admit there does appear to
24 be interMTA calls in the information we provided.

25 Q. And are you willing to admit that the vast

1 majority of them appear to be intrastate, as opposed to
2 interstate?

3 A. Again, I didn't check every line of the
4 data.

5 Q. I know, but you looked at it in total,
6 Mr. Pruitt, and can't you admit that the vast majority of
7 it appears to be intrastate, as opposed to interstate?

8 A. Yes. The originating and terminating state
9 on these sheets are primarily Missouri.

10 Q. Thank you, sir. Same issue -- I'm going to
11 switch gears a little bit. On your rebuttal testimony,
12 page 12, lines 12 through 17, I'm going to paraphrase
13 here, you indicate or state that Petitioners did not
14 identify the need to resolve the inter/intrastate
15 jurisdictional split of interMTA traffic and that T-Mobile
16 could only assume that this split must be most favorable
17 to T-Mobile; that is, 100 percent interstate and zero
18 percent intrastate. Is that an accurate paraphrasing of
19 your testimony?

20 A. Yes.

21 Q. Mr. Pruitt, why would you assume that
22 Petitioners would propose something that is most favorable
23 to T-Mobile and least favorable to themselves?

24 A. I just believe that since it wasn't brought
25 up by the Petitioners, that it would be obvious that

00426

1 T-Mobile would want 100 percent.

2 Q. By the way, what was the
3 interstate/intrastate split that T-Mobile either agreed to
4 or was arbitrated in the Alma case with the Alma
5 companies?

6 A. I'm not 100 percent sure that I recall
7 that.

8 Q. You haven't seen the final agreements?

9 A. No, I haven't.

10 Q. Would you be surprised to know that it was
11 80 percent intrastate and 20 percent interstate?

12 A. No.

13 Q. Mr. Pruitt, following your logic that we've
14 just discussed here that we would propose something that's
15 most favorable to you, following that logic to its logical
16 end, wouldn't you assume that we wouldn't even be in this
17 arbitration?

18 A. I'm not sure I follow that. Again, that
19 was just a sentence that said, we don't know what else to
20 assume, so we're going to assume 100 percent, but we know
21 there is some intrastate, so we'll make it 80/20. I mean,
22 it was basically that simple.

23 Q. Let's talk about the traffic factors, which
24 I understand are only applicable to intraMTA traffic,
25 right?

00427

1 A. Yes.

2 Q. I want to talk about the traffic studies
3 that T-Mobile has performed.

4 A. Okay.

5 Q. Do you know how that traffic was captured
6 or recorded by T-Mobile?

7 A. I'm not sure what you mean by how.
8 Recorded on their switch.

9 Q. Well, for example -- maybe this might help.
10 Maybe it won't. What records were examined to capture all
11 intraMTA mobile-to-land calling?

12 A. The records off of T-Mobile's switch.

13 Q. Would that capture calls that are
14 terminated -- I'm sorry. Let's stick with Mark Twain.
15 Would that -- would those minutes capture calls terminated
16 to Mark Twain via SBC's transit facilities?

17 A. Yes, I assume that to be the case.

18 Q. Okay. Would it also capture calls made --
19 or excuse me -- handed off to IXCs and terminated to Mark
20 Twain?

21 A. Yes, I believe that to be the case.

22 Q. So --

23 A. Not that I'm sure that would happen both
24 ways, but the answer is yes.

25 Q. If -- to whatever extent if traffic was

00428

1 handed off to an IXC for delivery to Mark Twain, you
2 understand that the study attempted to capture that call?

3 A. Yes.

4 Q. Okay. And did the study do that by
5 examining NPA/NXXs associated with Mark Twain's exchanges?

6 A. Yes.

7 Q. Where did you get that information?

8 A. I'm not 100 percent sure, Trip. But I
9 would assume it was bouncing the NPA/NXX against a global
10 lookup.

11 Q. This information that you captured on the
12 mobile-to-land traffic, is it routinely captured by
13 T-Mobile or was this more of a special extraction process,
14 if you will?

15 A. My guess is it was a special extraction
16 process, because normally an originating carrier has no
17 reason to maintain records for that originating traffic
18 because they're not going to use it for billing and those
19 kind of things. It's more likely a special extraction.

20 Q. What steps were taken to make sure that
21 only intraMTA traffic was captured and not interMTA?

22 A. I don't know.

23 Q. And in the case of Mark Twain, we've seen
24 what appears to be a heavy preponderance of interMTA
25 traffic in that traffic study, correct?

00429

1 A. Well, there is some interMTA traffic, yes.

2 Q. I think I got you to grudgingly admit that
3 a vast majority of it was interMTA, did I not?

4 A. Well, I didn't do the detailed analysis of
5 the numbers, but there is some.

6 Q. Let's examine the land-to-mobile traffic
7 flow, if you will. Where was that information obtained
8 from? Pardon my putting my preposition at the end.

9 A. From switch records that looked at calls
10 terminating on the T-Mobile network.

11 Q. Same switch, if you will, that captured the
12 mobile-to-land traffic?

13 A. Yes. I mean, T-Mobile's
14 mobile-to-land/land-to-mobile and it could be any switch
15 in the state. But yes, it was in the same switch, but --

16 Q. You don't rely, then, on -- or excuse me --
17 T-Mobile doesn't rely, then, on transit records that SBC
18 might create of traffic coming from Mark Twain via SBC
19 facilities to T-Mobile or from IXC records based -- which
20 would summarize or identify traffic from Mark Twain
21 customers via IXC and then terminated to T-Mobile?

22 A. I don't know that T-Mobile has a reason to
23 rely on those numbers for this purpose.

24 Q. You indicate in your direct testimony at
25 page 18, lines 4 through 5, that not all land-to-mobile

00430

1 intraMTA traffic could be reliably captured. Do you see
2 that?

3 A. What page?

4 Q. Page 18, direct, lines 4 and 5.

5 A. I'm sorry. I'm still in the -- okay. I'm
6 there.

7 Q. And I guess my question is that you
8 basically testify that on the land-to-mobile traffic that
9 not all intraMTA land-to-mobile traffic could be reliably
10 captured. Do you see that?

11 A. Yes.

12 Q. Okay. You go on to say that T-Mobile does
13 not have a workable mechanism to reliably capture all
14 intraMTA land-to-mobile traffic that LECs send to
15 interexchange carriers. Do you see that?

16 A. Yes.

17 Q. If T-Mobile is obtaining this information
18 from its switch, what difference does it make whether it
19 comes from via IXC or an SBC trunk?

20 A. The information that's captured at the
21 switch has to be complete. Some traffic that comes into
22 T-Mobile's switches is missing critical information. It
23 may be missing, you know, a calling number, calling number
24 OCN, whatever information is important. T-Mobile has
25 10 percent of the traffic that terminates on their switch

00431

1 that's unidentifiable because of missing data.

2 Q. That's not a problem that's unique to
3 T-Mobile, is it, sir? That exists in the landline
4 industry as well?

5 A. I'm not a billing person, but I've
6 certainly heard those conversations before.

7 Q. So to the extent Mark Twain polls its
8 switch to determine the universe of calls from T-Mobile to
9 it, it's likely to encounter the same problems to the
10 extent that traffic was terminated over an IXC trunk?

11 MR. JOHNSON: Objection, calls for
12 speculation.

13 MR. ENGLAND: I think it's well within this
14 witness's expertise, and certainly the basis on which he's
15 claiming unreliable records from land to mobile.

16 JUDGE JONES: The objection is overruled.
17 If you don't know the answer, say I don't know. If you
18 do, then answer.

19 THE WITNESS: I don't know specifically
20 from a landline carrier perspective what their
21 capabilities are.

22 BY MR. ENGLAND:

23 Q. You don't know from your work with Sprint,
24 who also had a local exchange company, that there were
25 problems with respect to what has been called in the

00432

1 industry phantom traffic?

2 A. I'm aware of the term phantom traffic and
3 its use in the industry, but I luckily never got involved
4 with billing issues at Sprint.

5 Q. So you don't know if the Sprint local
6 exchange division was experiencing problems of
7 unidentified traffic or phantom traffic?

8 A. I do not.

9 Q. Getting back to your statement that
10 T-Mobile doesn't have a workable mechanism to reliably
11 capture all intraMTA land-to-mobile traffic that LECs send
12 to interexchange carriers, would that also be true for
13 intraMTA traffic that SBC customers may send to T-Mobile
14 via an IXC?

15 A. Could you repeat the question?

16 Q. Sure. Would that also be true for intraMTA
17 traffic that SBC customers may send to T-Mobile via an
18 IXC?

19 A. I guess it's possible.

20 Q. As I understand, the problem is with the
21 records and the information that the IXC delivers along
22 with the call to T-Mobile, right?

23 A. Yes.

24 Q. And it's sort of end user neutral. Whether
25 that IXC is carrying a call from a Mark Twain customer or

00433

1 an SBC customer or any other company's customer isn't
2 really relevant to the problem. It's what information you
3 get from that IXC that's the problem, or lack of
4 information, right?

5 A. Right. The lack of information from IXCs
6 and other telecommunications carriers that may be sending
7 us traffic. I'm not sure it's all IXC.

8 Q. Okay. I guess my point is, to the extent
9 that you have a problem, that exists whether it's a Bell
10 customer making the call or a Mark Twain customer making
11 the call?

12 A. I would assume so.

13 Q. Do you know if any of the traffic shown on
14 the T-Mobile call detail studies that is T-Mobile to
15 Petitioners is carried by IXCs?

16 A. I do not.

17 Q. Do you assume that some of it is?

18 A. That's a tough question because of many
19 different call routing scenarios with capacity issues and
20 those kind of things. I guess there's potential for at
21 least some.

22 Q. Is it likely that there probably is some?

23 A. Yeah. It may be de minimis, but there may
24 be some.

25 Q. Now, if I understand your testimony

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1 correctly, even though T-Mobile's own study shows a
2 mobile-to-land/land-to-mobile factor of roughly 75/25, you
3 nevertheless believe that the appropriate traffic factor
4 for intraMTA traffic ought to be 65/35, correct?

5 A. Yes.

6 Q. But you have no traffic studies to justify
7 that number, do you, sir?

8 A. No, I do not.

9 Q. Okay. And you've proposed that number
10 because you cannot reliably capture all of the traffic
11 that comes to T-Mobile from Petitioners' exchanges, right?

12 A. Yes. I just assumed that some percentage
13 of that traffic that was unidentifiable would be allocated
14 here, and we just add that percentage on to account for
15 that unidentifiable traffic. This is just some small
16 percentage of that total universe.

17 Q. Now, to the extent we flip the traffic flow
18 and we look at Mark Twain's traffic study, don't they have
19 the same problems? They're not sure that they're reliably
20 capturing all the traffic T-Mobile sends to them because
21 of the same problems T-Mobile has with capturing Mark
22 Twain traffic, right?

23 A. I don't know if they have the same issue or
24 not, Trip.

25 Q. Let's assume they do. They haven't

00435

1 arbitrarily increased their factors from 84/16 to 94/6,
2 have they?

3 A. No, they have not, but they're probably
4 going to be using information provided by the tandem LEC.

5 Q. Do you know that, sir?

6 A. No.

7 Q. Do you know the tandem LEC does not provide
8 calling party information?

9 A. They provide 1101 records.

10 Q. You would assume that to include
11 originating calling number?

12 A. I don't know. It's been a while since I
13 looked at those fields.

14 Q. Mr. Pruitt, since you're the only witness I
15 have for T-Mobile on this matter, I want to turn your
16 attention to the interconnection agreement that T-Mobile
17 currently had -- well, not currently. I guess they
18 originally had with SBC, which we understand has been
19 amended by a 2004 amendment. Are you familiar with that
20 agreement?

21 A. If you're talking about the ISP amendment,
22 yes.

23 Q. Are you familiar with the underlying
24 agreement that it amends?

25 A. I have not looked at that agreement.

1 MR. ENGLAND: Your Honor, now may be a good
2 time to break, if you're thinking about a lunch break.
3 I've got more questioning of this witness, and I need to
4 get an exhibit marked and distributed.

5 JUDGE JONES: We can do that. We'll
6 adjourn for lunch and return here at 1:30.

7 (A BREAK WAS TAKEN.)

8 (EXHIBIT NO. 17 WAS MARKED FOR
9 IDENTIFICATION BY THE REPORTER.)

10 JUDGE JONES: Okay. We can go back on the
11 record. Mr. England, you were cross-examining Mr. Pruitt.
12 You may continue.

13 MR. ENGLAND: Yes, sir. Thank you, Judge.
14 And I believe before the break I had an exhibit marked as
15 Exhibit No. 17, which at least on the cover page indicates
16 it's a Commission order approving interconnection
17 agreement, in the matters of the application of
18 Voicestream Wireless Corporation for approval of
19 interconnection agreement with Southwestern Bell Telephone
20 Company, Commission Case TO-2001-489.

21 The bulk of the exhibit is a copy of the
22 approved agreement, and I would ask that the Commission
23 take official notice of it or offer it into evidence as an
24 exhibit, whatever your preference is.

25 MR. JOHNSON: No objection.

1 JUDGE JONES: Exhibit 17 is admitted into
2 the record.

3 (EXHIBIT NO. 17 WAS RECEIVED INTO
4 EVIDENCE.)

5 BY MR. ENGLAND:

6 Q. Mr. Pruitt, you have a copy of that, don't
7 you?

8 A. Yes, I do.

9 Q. Turning your attention to Exhibit 17, I
10 believe this is the original agreement between T-Mobile --
11 or when it was known as Voicestream and Southwestern Bell
12 Telephone Company here in Missouri. Is that your
13 understanding?

14 A. It appears to be so.

15 Q. Okay. And it also appears to be the
16 agreement that the 2004 amendment, which I believe was
17 Exhibit 6 and offered and received yesterday, amends to
18 some degree, right?

19 A. I would assume so.

20 Q. Okay. And I just want to -- you have some
21 experience in negotiating interconnection agreements, do
22 you not, sir?

23 A. Yes, I do.

24 Q. I wanted to ask some questions based on
25 that expertise and based on the plain language of this

1 agreement. Would you please turn to the page, not the
2 page number in the agreement, but the page number that's
3 stamped by the Commission at the bottom, I believe
4 right-hand corner, 43. It's Missouri appendix pricing.

5 A. Okay. I'm there.

6 Q. And the first series of questions I want to
7 ask you is with respect to Section 1.0, mobile-to-land
8 interconnection rates per minute of use. Do you see that?

9 A. Yes, I do.

10 Q. And across the top are three -- well, there
11 are four, but I'm going to talk about the first three,
12 which is Type 2A, Type 1, Type 2B. Do you see that?

13 A. Yes, I do.

14 Q. As I understand, those are types of
15 interconnection that a wireless carrier can have with a
16 landline network; is that right?

17 A. Yes.

18 Q. Okay. And the Type 2A and Type 1 appears
19 to have a rate of 1 cent per minute. Do you see that?

20 A. Yes.

21 Q. Okay. And it's my understanding that
22 that's the rate that's been amended by the 2004 amendment.
23 Is that your understanding, general understanding?

24 A. It was my general understanding that the
25 ISP rate replaced both 2A and 2B rates.

1 Q. Okay. How about transiting, what's that
2 rate reflect in your general understanding of these
3 agreements?

4 A. Do you mean from a rate perspective? I
5 guess I don't understand your question.

6 Q. Let's talk about the service first and then
7 the rate. What in essence is SBC providing in the way of
8 a transit function in these agreements?

9 A. It's been a while since I've actually
10 looked at SBC, but generally what's in a transit rate is
11 tandem switching and some transport.

12 Q. Okay. But maybe I didn't mean to get too
13 detailed. My understanding of transiting basically is
14 that portion of the carrying the call, if you will, from
15 the wireless carrier to the third party -- or the meet
16 point, if you will, with the third party who actually
17 terminates the call. Using our example with Mark Twain,
18 it would be the charge that Bell makes to T-Mobile for
19 carrying that call to Mark Twain before Mark Twain takes
20 it on its network and delivers it to the end user
21 customer?

22 A. That's generally correct.

23 Q. Okay. And if I understand correctly, the
24 transiting rate here in this agreement is 4/10 of 1 cent,
25 right?

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1 A. That's what it says.

2 Q. Okay. And at least in looking at the
3 amendment in 2004 that's Exhibit 6, I believe, in this
4 proceeding, that transiting rate was not affected by that
5 amendment, right?

6 A. Not to my knowledge.

7 Q. Okay. So if I'm understanding this
8 correctly, when Southwestern Bell transits traffics to one
9 of the Petitioners for T-Mobile, it gets 4/10 of a cent a
10 minute, right?

11 A. Could you repeat the question, please?

12 Q. Sure. When SBC or Southwestern Bell
13 transits traffic to one of the Petitioners for T-Mobile,
14 it gets -- that is SBC gets 4/10 of a cent a minute for
15 that service or function?

16 A. Yes. SBC would bill T-Mobile whatever the
17 applicable transit rate is.

18 Q. And it would appear to be 4/10 of a cent,
19 right?

20 A. Yes.

21 Q. So when SBC uses lease facilities to
22 transit a call because it's not using any of its own
23 facilities to terminate that call, it gets roughly six
24 times what it gets under the amended agreement for
25 transport and termination of a call to its own customers,

00441

1 right?

2 A. I'm not sure I followed the question.

3 Q. Okay. I think you'd agree with me that
4 SBC, in performing a transit function, does not perform a
5 termination function, correct?

6 A. That's correct.

7 Q. But when it terminates a call to its own
8 customers, it performs both, it transits the call and it
9 terminates the call?

10 A. Yes.

11 Q. Okay. And you would agree with me that in
12 the second scenario or latter scenario, they're going to
13 be using more of their facilities and incurring more costs
14 to transit and terminate a call, as opposed to just
15 transiting a call, right?

16 A. Well, theoretically, kind of depending on
17 distance and those kind of things, could get more
18 transport and local switching.

19 Q. Okay. So if I understand the terms of the
20 agreement and the terms of the amendment, they're going to
21 get more money for simply transiting a call, 4/10 of a
22 cent, than they are for transiting and terminating a call,
23 7/100 of a cent a minute?

24 A. Yes, but the reciprocal compensation
25 obligations in 251(b)(5) are separate and distinct from

00442

1 what obligations they may have as a transit carrier. I
2 don't know that the pricing rules are the same.

3 Q. Let's look at the shared facility factor,
4 which I believe is Section 4 on that same page.

5 A. Okay.

6 Q. Do you see that?

7 A. Yes.

8 Q. And I believe there are two factors here.
9 I don't know if the word reciprocal is right, but the
10 shared facility factor under Section 4.1 for T-Mobile
11 appears to be .80, or what I believe to be 80 percent,
12 right?

13 A. Yes.

14 Q. And the shared facility factor for SWBT is
15 .20, or 20 percent?

16 A. Yes. That's what it says.

17 Q. Would you agree with me that this factor is
18 designed to reflect the balance of traffic exchanged
19 between T-Mobile and SBC pursuant to this agreement?

20 A. That's a general definition of a shared
21 facility factor.

22 Q. So we can take it from these two figures
23 that the balance -- or excuse me -- the traffic factor at
24 least at the time this agreement was negotiated between
25 T-Mobile and SBC was 80/20 mobile to land, land to mobile?

00443

1 A. I don't know if that's exactly what the
2 relationship was, but the balance of traffic factor could
3 have simply been negotiated.

4 Q. But the shared facility factor is an
5 attempt to acknowledge the amount of traffic that is being
6 exchanged by both parties and their respective shares over
7 that interconnection point, is it not?

8 A. Yes, again generally.

9 Q. And it apportions the cost of that
10 interconnection facility accordingly. If it's 80 percent
11 mobile to land, T-Mobile is obligated to pay 80 percent of
12 those interconnection costs, right?

13 A. That's correct.

14 Q. Okay. And I understand this factor is
15 subject to negotiation in the future and adjustment in the
16 future, correct?

17 A. Yes.

18 Q. But it doesn't appear that it has been, at
19 least not in the 2004 amendment that we saw in Exhibit 6?

20 A. Not to my knowledge.

21 Q. Okay. Mr. Pruitt, let's talk about net
22 billing, if we can. As I understand it, net billing comes
23 into play when you have a traffic ratio that is more than
24 100 to 0. Does that sound right to you?

25 I'm sorry. I don't mean it to be a trick

00444

1 question. I guess what I'm saying, if it's 100 to 0,
2 there wouldn't be any -- the net would be the same as the
3 gross?

4 A. Right. Then that would be zero, I mean.

5 Q. Okay.

6 A. But many agreements have traffic balance
7 percentages to reflect the fact that -- that for the
8 land-to-mobile piece it's hard to calculate, so you
9 develop the ratio, and the ratio's generally developed off
10 the mobile-to-land minutes that are terminated at the LEC.

11 Q. Okay. Maybe I can take an example and we
12 can work through it. If the mobile-to-land/land-to-mobile
13 traffic factor is 65/35, like you propose, and the parties
14 have agreed to a net billing arrangement, as I understand
15 it, the Petitioners would perform a net billing
16 calculation which looks at the amount of traffic T-Mobile
17 would terminate to Petitioners and compare that against
18 the amount of traffic Petitioners send to T-Mobile to
19 issue a -- one bill, if you will, to T-Mobile for the
20 difference or the net of the two?

21 A. I think that's right. But just for
22 clarification, the mobile-to-land number is used to
23 actually calculate the land-to-mobile minutes, and then
24 that's how the netting occurs, once you apply those
25 minutes to appropriate reciprocal comp rate, get the

00445

1 total.

2 Q. And I'm going to take you through hopefully
3 a simple example here in a minute. I want to back up
4 though and make sure. The traffic factor only applies to
5 intraMTA traffic, right?

6 A. Yes.

7 Q. When you use a traffic factor.

8 Okay. So before you perform your net
9 billing calculation, you must first -- or the Petitioner
10 in this case must first deduct the amount of interMTA
11 traffic from the total amount of traffic reported over
12 that connection, right?

13 A. I've seen agreements that do it both ways.
14 It depends on what -- you know, if it's a negotiated
15 agreement, you could agree to do it either way.

16 Q. Well, isn't it intuitive that if you're
17 only applying a traffic factor to intraMTA traffic, you've
18 got to perform an interMTA allocation first to get to that
19 intraMTA traffic?

20 A. Yes, if you have a -- and I'll just make up
21 some numbers. If you have 1,000 minutes, you know, and
22 10 percent of those are interMTA, you would use --
23 commonly could use the 90 percent number.

24 Q. Use the remaining 900 minutes --

25 A. Yes.

00446

1 Q. -- to perform your net billing part to use
2 for your net billing calculation, right?

3 A. I believe that's correct.

4 Q. I wish you'd have that conversation with
5 Mr. Braughton, but that's for another day.

6 So let's try to take your example. I'm not
7 going to confuse it any more with interMTA traffic. Let's
8 assume for purposes of my question that a Petitioner
9 receives 1,000 minutes of intraMTA traffic terminated by
10 T-Mobile.

11 A. Okay.

12 Q. If I understand the net billing calculation
13 correctly, Petitioner takes the 1,000 minutes of intraMTA
14 traffic terminated by T-Mobile and divides it by the
15 mobile-to-land factor. In my example that would be
16 65 percent -- are you with me so far?

17 A. Yes.

18 Q. -- in order to obtain the total amount of
19 traffic exchanged between T-Mobile and Petitioner?

20 A. Correct.

21 Q. And in that example -- and check me if you
22 will. I don't have my calculator.

23 A. I didn't bring mine up here either.

24 Q. But I believe the total would be
25 1,538 minutes, which is the product, if you will, of 1,000

00447

1 divided by .65. I'm just kind of looking around the room
2 to see if anybody's going to scream. Having not seen
3 anyone, I'm assuming my calculation is correct.

4 A. Yes, it appears to be correct.

5 MR. ENGLAND: Mark, if you don't mind, let
6 him have that, just in case.

7 MR. JOHNSON: Sure. He might not know how
8 to use it. It's kind of quirky.

9 BY MR. ENGLAND:

10 Q. So that by making that calculation,
11 dividing 1,000 minutes by .65. You come up with a total
12 1,538 minutes exchanged between T-Mobile and Petitioner in
13 this hypothetical. T-Mobile is therefore responsible for
14 paying for 1,000 minutes at the agreed-to or whatever rate
15 arbitrated rate, and Petitioner is required to pay for the
16 538 minutes that it supposedly sent to T-Mobile, right?

17 A. Yes.

18 Q. Okay. Now, instead of issuing two bills,
19 Petitioner billing T-Mobile for 1,000 minutes and T-Mobile
20 billing petitioner for 538 minutes, Petitioners would take
21 the total mobile-to-land traffic of 1,000 minutes, net
22 that against the 538 minutes that it sent to T-Mobile to
23 come up with a net bill, again, if my calculation is
24 correct, of 562 minutes?

25 A. Yeah, I think that's right.

1 Q. So in that case, in a net billing
2 arrangement, Petitioner would issue one bill to T-Mobile
3 for 562 minutes at the agreed-to rate. We'll say for
4 purposes of my example it's 3.5 cents per minute.

5 A. Well, I'd prefer not to use your example,
6 but okay.

7 Q. Listen, I gave you your traffic factor,
8 give me my rate per minute, if you will. Can you at least
9 assume that for me, please?

10 A. Yes, I'll assume it.

11 Q. And if, again, my calculation is correct,
12 the net bill to T-Mobile would be 19.67, or the product of
13 562 times dollar sign 3.5 cents.

14 A. 19.67.

15 Q. Uh-huh. Thank you, sir. Now, if I were to
16 divide that \$19.67 bill that Petitioner has sent to
17 T-Mobile by the 1,000 minutes that T-Mobile actually sent
18 to Petitioner, would you agree with me that the effective
19 rate that T-Mobile is paying for the traffic it sends to
20 Petitioner under an agreement where the rate is 3.5 cents
21 but the traffic ratio is 65/35 is really one dollar --
22 excuse me -- 1.97 cents per minute?

23 A. I struggle with that being an effective
24 rate. It's just a result of the net of the bills.

25 Q. Okay. So would you or would you not agree

1 with me that the use of a traffic factor and net billing,
2 if you will, has the effect of discounting the total rate
3 that may have been agreed to?

4 A. Again, I think the rate is the rate.
5 You're simply offsetting two bills to save expenses.

6 Q. At page -- or excuse me. I'm going to
7 switch gears on you, talk about call blocking. At
8 page 19, line 1, I believe of your direct testimony -- are
9 you there?

10 A. Yes.

11 Q. You say call blocking is an extreme action
12 that impacts the other carriers' customers. Do you see
13 that?

14 A. Yes.

15 Q. Are you aware of the fact that some of the
16 Petitioners a little over a year ago implemented call
17 blocking against T-Mobile for its failure to pay for
18 traffic, pursuant to Petitioners' wireless termination
19 tariffs?

20 A. I heard that in the hearing this week, yes.

21 Q. At least block that traffic from coming
22 over Southwestern Bell facilities, correct?

23 A. Yes, I heard that this week.

24 Q. Are you also aware of the fact that
25 T-Mobile was able to route that mobile-to-land traffic

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1 over interexchange carriers so that there was no
2 disruption in the calling from T-Mobile customers to
3 Petitioner customers?

4 A. I don't specifically know how they were
5 rerouted. I'm sure they wanted to minimize any impact to
6 customers.

7 MR. ENGLAND: Your Honor, may I have an
8 exhibit marked, please?

9 JUDGE JONES: Yes, you may.

10 (EXHIBIT NO. 18 WAS MARKED FOR
11 IDENTIFICATION BY THE REPORTER.)

12 BY MR. ENGLAND:

13 Q. Mr. Pruitt, do you have what's been marked
14 as Exhibit 18 in front of you?

15 A. Yes, I do.

16 Q. And you see that that is an excerpt from
17 the Post-Dispatch newspaper from St. Louis on
18 December 15th, 2004?

19 A. It appears to be.

20 Q. And looking at the second paragraph of that
21 article, do you see where it says, T-Mobile USA, based in
22 Bellville, Washington, said it would route the calls
23 through long distance companies to avert potential
24 disruption?

25 A. I see that paragraph.

1 Q. Okay. Do you have any reason to believe
2 that that didn't occur?

3 A. No.

4 Q. Would you agree with me that the
5 Petitioners' blocking of T-Mobile's traffic, insofar as it
6 came over SBC's facilities, did not have an impact on
7 T-Mobile's customers' ability to call Petitioner customers
8 and it was, therefore, not an extreme action?

9 A. No, I don't agree with that.

10 Q. Okay. Would you agree with me that the
11 only inconvenience here was to T-Mobile because they had
12 to find other ways and perhaps more costly ways to direct
13 that traffic to Petitioners' customers?

14 A. I don't know, based on reading this, that
15 that was the only implication.

16 Q. You're not aware of any inconvenience to
17 T-Mobile's customers, are you?

18 A. I'm not aware of any, but I don't know that
19 that could be derived from just reading this article.

20 Q. Now, I believe your position in your
21 testimony is that if call blocking is to be permitted,
22 that the party seeking to block calls because the other
23 party has failed to live up to the terms of the agreement,
24 including failure to pay non-disputed amounts, the party
25 seeking to block that traffic must first request and then

1 receive approval from the Missouri Public Service
2 Commission or the FCC before they can take that action; is
3 that right?

4 A. Yes, that is correct.

5 Q. Okay. Have you reviewed the recent
6 Missouri Commission rules regarding enhanced record
7 exchange, and specifically the call-blocking provisions in
8 that rule?

9 A. I was involved in the -- in an original
10 look at those rules, but I don't know that I ever actually
11 rereviewed the final version.

12 Q. Would T-Mobile be willing to accept the
13 call blocking provisions of that rule in lieu of what
14 Petitioners has proposed or what T-Mobile has proposed for
15 purposes of call blocking?

16 A. That would be a business decision to be
17 made.

18 Q. But in other words, you can't say whether
19 or not you would accept that here today; is that right?

20 A. I think there is an issue about whether it
21 should go to the FCC or state commission, and I don't --
22 but I cannot tell you today that we would accept that
23 Missouri rule.

24 Q. Would you agree with me that when you
25 negotiated traffic termination agreements with Petitioners

1 on behalf of Sprint PCS, call blocking was not an issue?

2 A. Could you repeat --

3 MR. JOHNSON: Objection, it's irrelevant.

4 What happened with call blocking with respect to PCS has
5 nothing to do with this case.

6 JUDGE JONES: Mr. England, what does it
7 have to do with this case?

8 MR. ENGLAND: Well, I think the witness has
9 negotiated agreements on behalf of Sprint PCS that has
10 call-blocking provisions similar to what Petitioners have
11 proposed in this case. That wasn't an issue, but now he's
12 taking the position that it is an issue with respect to
13 T-Mobile. And I'd just like to, one, find out if that's
14 true and, two, find out what's changed or why the
15 different position.

16 I'm a little hamstrung because I can't ask
17 a T-Mobile employee this question. They've hired an
18 outside consultant to testify on their behalf. So I'm
19 assuming he's here speaking on behalf of T-Mobile in that
20 regard.

21 MR. JOHNSON: Your Honor, in that regard
22 there's no reason that the Petitioners couldn't have asked
23 T-Mobile that question in Data Requests. There's no
24 reason that they couldn't have got an answer at that
25 point. They knew who the witnesses were going to be.

1 They could have served a Deposition Notice to depose a
2 witness from T-Mobile. They didn't do so. This is not
3 the proper witness to obtain that information.

4 JUDGE JONES: Mr. England, any response to
5 that?

6 MR. ENGLAND: I think I'm permitted to at
7 least ask the witness the question here at the witness
8 stand. Whether I've asked it in discovery or not is
9 irrelevant, whether I'm entitled to ask him here at
10 hearing. I mean, I'd like the answer.

11 MR. JOHNSON: Your Honor, he's complaining
12 about not having a T-Mobile witness at the hearing to whom
13 he can place that question. There's no reason that he
14 could not have done that prior to the hearing.

15 JUDGE JONES: I mean, would Mr. Pruitt have
16 the answer to that question.

17 MR. JOHNSON: I don't know.

18 JUDGE JONES: I mean, if he does, then it
19 doesn't matter whether he's a T-Mobile employee or not,
20 does it.

21 MR. JOHNSON: Well, that's correct, your
22 Honor, but Mr. England was trying to get at it through
23 negotiations involving Sprint PCS. That's the pending
24 question.

25 JUDGE JONES: I tend to agree with

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1 Mr. Johnson. I think the question is irrelevant, what
2 happened with Sprint PCS.

3 MR. ENGLAND: Okay. I'll move on.

4 BY MR. ENGLAND:

5 Q. Mr. Pruitt, I want to talk to you a little
6 bit about the Citizens Transit issue. Are you familiar
7 with that?

8 A. Okay.

9 Q. If I understand it correctly, it's
10 T-Mobile's position that since that issue was not
11 specifically raised in Petitioners' petition for
12 arbitration, T-Mobile has no obligation to address that,
13 negotiate that or certainly this Commission has any
14 ability to arbitrate it; is that right.

15 MR. JOHNSON: Objection, it's a compound
16 question.

17 MR. ENGLAND: It is.

18 JUDGE JONES: Yes. I suppose you can break
19 it up.

20 MR. ENGLAND: I got going and I couldn't
21 stop myself.

22 JUDGE JONES: Objection is sustained.

23 MR. ENGLAND: I understand. Thank you.

24 BY MR. ENGLAND:

25 Q. Is it your position that T-Mobile is not

1 obligated to negotiate that -- negotiate that issue since
2 it wasn't raised in the petition?

3 A. The question is a little confusing. The
4 question is, as I understand it, whether that issue should
5 be a part of this arbitration, and I think T-Mobile's
6 position is no. Will T-Mobile -- is T-Mobile willing to
7 negotiate with Citizens outside of this process? I think
8 the answer is yes, and I think we stated that.

9 Q. Are you aware of the fact that T-Mobile was
10 made aware of that issue in correspondence directed to
11 T-Mobile's counsel, I believe in November?

12 A. I have not seen that correspondence.

13 Q. So you don't know if T-Mobile has ever
14 responded to that in informal negotiations?

15 A. I do not.

16 Q. Okay. But -- and I'm not trying to
17 misstate your position -- your position is simply because
18 it was not raised in the petition, the Commission has no
19 jurisdiction to arbitrate it; is that right?

20 A. Yes.

21 Q. Okay. If Citizens is not compensated for
22 that transit function that it performs for Alma Telephone
23 Company, should it be permitted to block this traffic
24 until it is compensated?

25 A. From a public interest perspective, I think

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1 the answer to that is always no.

2 Q. Okay. Even though T-Mobile could get that
3 traffic to Alma via long distance facilities or services,
4 right?

5 A. Yes, by probably going through a lot of
6 effort to reroute traffic.

7 Q. Let me talk with you, if I may, about
8 pre-tariff traffic or what I've called pre-tariff traffic,
9 and that has to do with traffic delivered to Petitioners
10 during the period of time roughly February of '98 to
11 February of 2001 when Petitioners implemented their
12 wireless termination tariffs. You are familiar with that
13 issue, are you not?

14 A. Yes.

15 Q. Are you aware of the fact that Petitioners
16 have always sought resolution of that issue throughout any
17 of their negotiations with T-Mobile, not just the
18 negotiations that took place after April 29th, 2005?

19 A. I understand that it's been an issue.
20 Whether it's been discussed in every negotiation, I could
21 not say.

22 Q. But it's certainly not an issue that was
23 raised for the first time in our petition for arbitration,
24 right?

25 A. I believe that's the case.

1 Q. At page 2 of your rebuttal testimony,
2 lines 17 through 20, you recite what you believe to be
3 Petitioners' position with respect to this traffic. Do
4 you see that?

5 A. Give me a second to find it here, Trip.

6 Q. Page 2, rebuttal, lines --

7 A. Okay. I'm on page 2.

8 Q. Lines 17 through 20.

9 A. I'm still not there yet.

10 Q. Okay.

11 A. I brought too much in my binder. Okay.
12 I'm there.

13 Q. Line 17 through 20?

14 A. Yep.

15 Q. And I believe I guess what I was asking is,
16 you are reciting or stating there what you believe to be
17 Petitioners' position with respect to this pre-tariff
18 traffic, and basing that belief on the arbitration
19 petition?

20 A. Yes.

21 Q. Have you read Mr. Schoonmaker's direct
22 testimony?

23 A. Yes, I have.

24 Q. You understand Petitioners' position also
25 to be that they're willing to accept compensation for this

1 traffic based on the final rates, terms and conditions
2 that come out of this arbitration?

3 A. I understand their position, but it's
4 T-Mobile's position that the traffic at issue from 1998 to
5 2001 is an improper part of this proceeding.

6 Q. So regardless of what transpires or comes
7 out of this proceeding, you're not willing -- or
8 T-Mobile's not willing to apply that to that period for
9 the traffic that was delivered during that period?

10 A. We believe that the traffic for that period
11 of time was pursuant to the FCC guidelines and it ends up
12 being bill and keep.

13 Q. Even though we know that balance of traffic
14 was not balanced, based on your own traffic studies,
15 correct?

16 A. I don't know whether the traffic was
17 balanced at that time or not.

18 Q. Isn't it more likely to believe that
19 traffic exchanged between wireline and wireless carriers
20 several or more years ago would be more heavily tilted
21 towards mobile to land than land to mobile than it is
22 today?

23 A. Generally maybe. In this specific
24 scenario, I don't know.

25 Q. In your rebuttal testimony you reference

1 the fact that two other state commissions, Oklahoma and
2 Nebraska, have rejected the very argument made by
3 Petitioners here regarding pre-tariff traffic. Do you see
4 that?

5 A. What page are you on?

6 Q. I believe it begins at page 4, lines 20 and
7 21.

8 A. Yes.

9 Q. Do you know if the wireless carriers in
10 Nebraska and Oklahoma were specifically directed by those
11 state commissions to enter into agreements with
12 third-party LECs before sending traffic to them for
13 termination, like they were in Missouri?

14 A. I do not.

15 Q. At page 7 of your rebuttal testimony,
16 lines 8 through 10, you state that the Missouri Commission
17 does not have the authority in this arbitration proceeding
18 to grant the relief Petitioners seek. Do you see that?

19 A. Yes.

20 Q. Do you believe this Commission has the
21 authority to enforce its prior orders, Mr. Pruitt?

22 A. I'm not an attorney. I don't know how that
23 relates. The only thing we were trying to say here is
24 that in an arbitration it deals with what happens in the
25 future. It deals with a prospective basis, and T-Mobile

1 certainly has been willing to pay from the date
2 negotiations were opened, which I think is April 29th.

3 Q. Obviously those negotiations have not
4 resulted in an agreement, though, have they?

5 A. Well, here we are.

6 Q. That's right. And in fact, Petitioners had
7 to file the petition for arbitration to bring this to a
8 head, correct, sir?

9 A. I believe that's the case, but as I
10 indicated, T-Mobile has paid since that time.

11 Q. On an interim basis, correct?

12 A. Yes.

13 Q. At page 6 of your rebuttal, lines 2 through
14 4 -- by the way, in this part of your rebuttal, you're
15 really talking about all of -- compensation rather for all
16 periods, whether it was before the wireless tariffs or
17 during the period the wireless tariffs were in effect,
18 correct?

19 A. I would have to look at the context of the
20 section in the preceding paragraphs.

21 Q. I believe --

22 A. I think that's right.

23 Q. I was going to say, I think on page 1,
24 lines 17 through 19, you're sort of combining all three --
25 well, all, both of these periods together for purposes of

1 your response. So with that in mind --

2 A. Well, just for clarification, Trip --

3 Q. Sure.

4 A. -- I think our response is somewhat
5 different for the various periods involved.

6 But generally from a historical
7 compensation perspective, I -- we think that, you know,
8 would be improper for a regulator to require to settle a
9 past dispute in an interconnection agreement. That's a
10 general statement.

11 Q. And if I'm mixing apples and oranges here,
12 tell me, but at page 6 of your rebuttal, lines 2 through
13 4, you state, I do not recall a single instance in which a
14 regulator has required a CMRS provider and an RLEC to
15 settle a past dispute and has specified the terms of such
16 settlement. Do you see that?

17 A. Yes.

18 Q. Would you agree with me that at least with
19 respect to the traffic terminated by T-Mobile to
20 Petitioners during the period of time their wireless
21 termination tariffs were in effect, the Commission stated
22 in a separate complaint case that Petitioners were
23 entitled to their wireless tariff rate plus any late
24 payment fees and reasonable attorney fees?

25 A. Yes, but I understand that's under appeal.

1 Q. Okay. But you understand that the
2 Commission has at least found, insofar as they have the
3 jurisdiction to make that decision, and has issued a
4 decision in that regard, that T-Mobile owes that amount,
5 right?

6 A. Yes, I think that that is the way the --
7 that particular docket went.

8 Q. Now, I think you just mentioned to me that
9 T-Mobile has taken this dispute over payment of past
10 traffic pursuant to the wireless tariff to federal court,
11 right?

12 A. Yes, I believe it went to the Eighth
13 Circuit.

14 Q. Well, it stopped at the district -- it went
15 to the Western District Court -- excuse me -- the Federal
16 District Court, Western portion of Missouri first, did it
17 not?

18 A. I'm not an attorney and I'm not sure what
19 the exact flow was, Trip.

20 Q. Okay. Are you aware that the Federal
21 District Court dismissed T-Mobile's attempted appeal and
22 ultimately characterized T-Mobile's appeal as, quote,
23 transparent litigation strategy, end quote?

24 A. I don't recall that specific language.

25 Q. Finally, you imply in your rebuttal

1 testimony, if not downright say so, page 4, lines 5
2 through 6, that Petitioners are engaging in bad faith and
3 demanding resolution of prior compensation issues; is that
4 right?

5 A. Well, I was basically stating a general
6 statement that an incumbent LEC engages in bad faith when
7 they're making unilateral demands.

8 Q. I mean, the implication there is that
9 Petitioners are engaging in bad faith by demanding
10 payments for these past periods, correct?

11 A. And the primary rationale for that is
12 they're asking for something that's not reciprocal, that's
13 not cost based.

14 Q. Well, tell me, Mr. Pruitt, did T-Mobile, in
15 your opinion, engage in bad faith when it ignored the
16 Commission's directive in 1998 to establish agreements
17 with third-party carriers such as Petitioners before
18 sending traffic to them?

19 A. I have no knowledge about what the
20 Voicestream or Aerial people at that time may have thought
21 when that came out. That's a question I can't answer.

22 Q. Did T-Mobile engage in bad faith, in your
23 opinion, when it refused to pay the wireless termination
24 tariff rates of Petitioners after the Missouri Court of
25 Appeals upheld those tariffs?

1 A. No. Again, I think that the rates and the
2 fact that it wasn't reciprocal were unlawful.

3 Q. Did T-Mobile engage in bad faith when it
4 went to federal court, not state court, in an attempt to
5 stop Petitioners from collecting wireless tariff rates
6 after this Commission had issued its decision in the
7 complaint proceeding?

8 A. I'm not an attorney. I don't know what the
9 implications of going to a federal court are.

10 Q. How about does T-Mobile engage in bad
11 faith, in your opinion, when it continues to pursue
12 appeals that have been characterized as transparent
13 litigation strategy?

14 A. Those are somebody else's words that may
15 not have fully understand what we were asking for.

16 MR. ENGLAND: Thank you, sir. I have no
17 other questions.

18 JUDGE JONES: We will have questions now
19 from Natelle Dietrich.

20 QUESTIONS BY MS. DIETRICH:

21 Q. Good afternoon, Mr. Pruitt.

22 A. Hi.

23 Q. I want to start by talking about the
24 interconnection agreement amendment that you discussed for
25 a little bit with Mr. England. And do you have a copy of

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1 that?

2 A. I do not.

3 Q. Okay. If I could just read to you the
4 language from the agreement that has been in question, it
5 says, the parties agree to compensate each other for the
6 transport and termination of ISP-bound traffic and -- do
7 you have it now?

8 A. Is this in the amendment or the agreement
9 we were just looking at?

10 Q. In the amendment.

11 MR. JOHNSON: Oh, the amendment. I'm
12 sorry. I gave you the wrong one.

13 BY MS. DIETRICH:

14 Q. If you look at page 2 of the amendment.

15 A. Okay. I'm there.

16 Q. And Section 2.2.2.

17 A. Okay. I see it.

18 Q. Do you see the reference to and
19 Section 251(b) (5) traffic on a minute of use basis at
20 .0007 per minute of use?

21 A. Yes, I see that.

22 Q. In that reference, what is
23 Section 251(b) (5) traffic?

24 A. That's traffic that is subject to
25 reciprocal compensation pursuant to the Act and the rule.

1 Q. And is that all the wireless traffic
2 between SBC and T-Mobile?

3 A. No. There could be some interMTA traffic
4 subject to access charges.

5 Q. So it would be all intraMTA traffic, is
6 what that is referencing?

7 A. Yeah, based on 51.701(b)2, all intraMTA is
8 subject to reciprocal compensation.

9 Q. Does T-Mobile have direct interconnection
10 with SBC?

11 A. Yes. They have an interconnection
12 generally between the mobile switching centers or MSCs and
13 the SBC tandems.

14 Q. Does T-Mobile receive terminating
15 compensation from any IXC?

16 A. Not to my knowledge.

17 Q. So as far as you know, there would be no
18 circumstances where T-Mobile would be receiving
19 compensation twice, once from the Petitioner and once from
20 the IXC, if it's determined that the Petitioners have to
21 pay T-Mobile for wireline-to-wireless traffic?

22 A. That is correct.

23 Q. Okay. Now I'd like to switch to your
24 discussion with Mr. England about the 80 percent
25 interstate and 20 percent intrastate interMTA factor. I

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1 think you said the reason you chose those factors was
2 because you didn't have any information, so instead of
3 doing 100 percent/0 percent, you came up with 80/20; is
4 that correct?

5 A. Yes.

6 Q. Okay. In your direct testimony,
7 Attachment 1, can you explain to me what traffic that
8 exhibit is representing?

9 A. I don't have the exhibit. Do you have it.

10 MR. JOHNSON: The exhibit?

11 THE WITNESS: Okay. I have my
12 Attachment 1.

13 BY MS. DIETRICH:

14 Q. Okay. What is that demonstrating, what
15 type of traffic is this?

16 A. This is traffic measured -- and
17 again, it depends on which column you look at --
18 T-Mobile-to-carrier minutes of use to or
19 carrier-to-T-Mobile minutes of use.

20 And there is a distinction, as you can see,
21 in the columns between calls by month and minutes of use
22 by month. What this represents is minutes -- if you look
23 at the T-Mobile-to-carrier minutes of use, that represents
24 mobile-to-land traffic originated on T-Mobile's switch and
25 terminating to these rural LECs. The carrier-to-T-Mobile

1 minutes of use just represents the LEC-originated traffic
2 that was sent to T-Mobile.

3 Q. And is this interMTA/intraMTA,
4 interstate/intrastate, I mean, can you tell by this?

5 A. The interstate/intrastate issue is really
6 associated with just that percentage of traffic that is
7 interMTA, of the total minutes are interMTA. The question
8 is which access charge jurisdiction do you use? Do you
9 use the federal access tariff or do you use the state
10 access tariff for that interMTA traffic? And that's the
11 argument here.

12 Q. What I'm trying to figure out is what
13 traffic is represented on this spreadsheet.

14 A. All this -- this spreadsheet is designed to
15 portray is the balance of traffic factor. This is the
16 75/25 factor that -- that's in my testimony that I
17 suggested be adjusted to 65/35 to account for traffic that
18 wasn't captured in this report.

19 Q. So this is all traffic, no matter whether
20 it's inter or intraMTA?

21 A. That's a tricky question, in that this was
22 designed to be intraMTA. However, some of the traffic in
23 this study was interMTA, but that's fairly common and
24 that's why we try to use factors to determine percentage
25 of traffic that is interMTA.

1 Q. So by looking at this, you can't tell
2 what's inter and what's intra?

3 A. No.

4 MS. DIETRICH: Okay. Thank you.

5 JUDGE JONES: Mr. Voight?

6 QUESTIONS BY MR. VOIGHT:

7 Q. Hi, Billy.

8 A. Hi, Bill. How you doing?

9 Q. It's a contested case proceeding, but I
10 always appreciate your testimony and your expertise. I
11 wanted to follow up with Natelle's question about the --
12 what has been marked as Exhibit 6. And that's the
13 amendment to the interconnection agreement between
14 T-Mobile and SBC. As I understood your answer, the 7/100
15 of a cent per minute rate applies to all intraMTA traffic;
16 is that correct?

17 A. That is correct.

18 Q. Is it your testimony that none of
19 T-Mobile's traffic that is exchanged with SBC within
20 Missouri's MCA calling scope, none of that is subject to
21 bill and keep?

22 And before you --

23 A. I'm not sure I understand the question.

24 Q. Well, what sort of an arrangement existed
25 prior to the Act, interconnection agreements between

1 wireless and SBC within the MCA?

2 A. Prior to the Telecommunications Act?

3 Q. Yes.

4 A. I'm not that familiar with what the
5 arrangements may have been prior to the Act.

6 Q. Okay. Well, it would be my understanding
7 that that was subject to the Missouri 1992 MCA case, in
8 which all traffic, including wireless traffic in the
9 mandatory areas is subject to bill and keep. And I'm -- I
10 guess I'm a little bit curious to now find out that that's
11 no longer the case.

12 A. I apologize, Bill. I don't know anything
13 about that.

14 Q. Okay. Does T-Mobile and SBC exchange
15 Internet traffic?

16 A. I'm not familiar with any situations where
17 T-Mobile customers use Internet.

18 Q. Well, given that this amendment, so much of
19 it appears to involve the Internet, I'm just curious as to
20 the -- frankly, the usefulness of this amendment to the
21 interconnection agreement. For example, when you look at
22 the bottom of the first page, the very last sentence, it
23 says, notwithstanding anything contrary in this amendment,
24 the growth caps in Section 2.3, the new market
25 restrictions in Section 2.4 and the rebuttable presumption

1 in 2.6 apply only to LECs and ILECs.

2 When you look at the rest of the amendment,
3 virtually all of page 2, then, is not applicable to your
4 client because it talks about the rebuttable presumptions
5 and other things that affect only ILECs and LECs?

6 A. That would not be my interpretation of what
7 the ISP order required. The ISP order, which established
8 the interim rates and the .0007 rate cap were put in place
9 to deal with the fact that LECs were arguing that a large
10 amount of traffic was ISP traffic and they shouldn't have
11 to pay reciprocal compensation for it. So the FCC in that
12 order basically developed a transition rate, which is the
13 .0007, and told LECs such as SBC, if you want to offer
14 that rate, if you want to be able to utilize that rate
15 with ISPs, you need to also -- and I'm going to use my
16 words here -- do the right thing and offer that same rate
17 to other carriers that you are exchanging traffic with on
18 a 251(b) (5) basis.

19 Q. Well, I'm not an attorney either, but my
20 lay reading of this is that the rebuttable presumptions
21 and the other items, the bulk of which constitute page 2,
22 don't apply to the agreement.

23 A. And, you know, from my perspective, this is
24 simply an amendment to an interconnection agreement which
25 had established reciprocal compensation rates that had a

1 2A rate, recovered the situation where tandems and
2 transport and interoffices were included, and they had a
3 2B rate, which is just primarily the end office rate. And
4 it was just simply, this replaces all of those reciprocal
5 compensation rates. This is the rate that you use.

6 Q. Okay. So just one last question.

7 It's your testimony, then, that all of the
8 intraMTA traffic exchanged between T-Mobile and SBC is
9 subject to this amendment in Missouri and that that rate
10 would be 7/100 of a penny?

11 A. Yes.

12 Q. I wanted to ask you -- I wanted to ask you
13 about your rebuttal testimony, page 27. Forgive me, but
14 I'm still a little bit confused about the net billing
15 approach.

16 A. Okay.

17 Q. I'm struggling a little bit with where the
18 disagreement with your clients and Petitioners lie, and I
19 guess I'll start on page 27, lines 9 through 14 of your
20 rebuttal testimony, and I'll read where you testified that
21 the proposed language for determining the starting point
22 states that total minutes of use will be calculated based
23 on total intraMTA minutes of use -- and this is the key
24 part, identified -- identified by the CTUSR reports, plus
25 records of intraMTA calls handed off to IXCs.

1 And this is my first question, or -- and
2 this is in italics -- other mutually acceptable
3 calculation. Can you give me an example, if you have one,
4 what another mutually acceptable calculation would be?

5 A. All that means is the parties could sit
6 down, negotiate, look at maps, kind of do other things to
7 determine and come to an agreement on what the percentages
8 are. There's probably any number of ways that you could
9 come up with a calculation to end up with a final number.

10 Q. Well, forgive me, Billy, but if the parties
11 haven't been able to do that up to this point, why should
12 the Commission approve something that contemplates you may
13 do that in an arbitration proceeding where it's being
14 disputed that says, well, you may do it in the future? I
15 mean, what would the Commission be accomplishing if they
16 approved that?

17 A. This really deals with a situation where
18 you're going beyond the information that you already have,
19 and we believe that if all of the minutes are there, all
20 of the IXC minutes and all of those minutes are there and
21 you go through the net calculation, we're going to be
22 okay. That's where you start.

23 If after the fact you need to adjust it and
24 you want to do something else with it, I think the parties
25 should be able to do that. We're not trying to limit it

1 just to CTUSR reports and CDRs. There could be something
2 other that you could use to make that kind of assessment.

3 Q. Where, in your view, does the dispute lie?
4 Is it because the Petitioners do not want to count traffic
5 delivered -- and I'm talking mobile-to-land traffic
6 delivered through an IXC? This is where I'm confused,
7 where the dispute actually lies.

8 A. I believe the issue is more related to IXC
9 traffic delivered on a land-to-mobile basis, they don't
10 want that included in the calculation.

11 Q. Okay. Thanks. I believe that helps
12 clarify that. Down on line 19 of page 27, there's a
13 sentence that reads, accordingly, different records may
14 need to be used to capture land to mobile than mobile to
15 land. Can you tell me what records -- and I'm not sure if
16 I should ask it -- are currently being used where this
17 system may be in place today or what records would be --
18 your client would advocate being used?

19 And let's start maybe from mobile to land.
20 What records would be used for that?

21 A. Generally the records that would be used
22 for that would be records either recorded at the
23 terminating LEC's switch or from reports they might obtain
24 from an intermediary provider.

25 Q. A transiting carrier?

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1 A. Yes.

2 Q. So at the originating tandem possibly?

3 A. Yes.

4 Q. And for mobile-to-land calls, to your
5 knowledge, are the Petitioners comfortable with recording
6 those and using the records that are captured at the
7 originating tandem?

8 A. I haven't had that conversation with them.
9 I doubt it. I mean, I don't know if the small LECs have
10 that ability today.

11 Q. Well, you mean the ability to receive a
12 record from a transiting carrier?

13 A. The ability to actually record at that --
14 at their switch and have all the information required at
15 their switch.

16 Q. Well, that would be a terminating
17 recording?

18 A. Right.

19 Q. And I thought that your testimony was that
20 your preference would be if it occurred at the originating
21 tandem where your interconnection with Bell exists.

22 A. I don't know that T-Mobile has a preference
23 with regard to what records are used to determine the
24 mobile-to-land piece. I think we would be comfortable
25 with using records provided, you know, by the tandem

1 provider and, you know, depending on our comfort level,
2 what the capability of the terminating local exchange
3 carrier, you know, we could possibly get comfortable with
4 that, too.

5 Q. Under a net billing approach that may be in
6 existence today in either the Missouri jurisdiction or any
7 jurisdiction, what methods's being used?

8 A. Both methods are being used, but some
9 barriers that have net billing arrangements that have the
10 ability to do the recordings at their switch, those are
11 used. In some jurisdictions, they use the transiting
12 carrier's records.

13 Q. Okay. And on land to mobile, what would
14 be -- what type of records would -- do you have a
15 recommendation as to what type records to capture through
16 that?

17 A. Certainly for all --

18 THE REPORTER: We need to stop for a
19 second.

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

21 BY MR. VOIGHT:

22 Q. So my question was, from land to mobile,
23 does your client, does T-Mobile have a preference on where
24 the records are created to use the net billing process?

25 A. Yes. T-Mobile would prefer small LECs,

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1 because of the small volumes of traffic, would prefer to
2 use a net billing scenario rather than using any
3 recordings at their own switch. By definition, the net
4 billing scenario starts with mobile-to-land minutes and
5 it's a mathematical calculation to get the land-to-mobile
6 minutes. So I'm not sure I understand your question, but
7 that's how the process works.

8 Q. Okay. Well, your testimony says on line 19
9 of page 27, accordingly, different records may need to be
10 used to capture land to mobile than mobile to land. And
11 my question is, for land to mobile, what records are
12 captured?

13 A. Right. The question becomes, for that
14 universe of traffic that is unidentified, what do you do
15 to capture that traffic? Could you go -- and I'm not an
16 engineer, so I'm going to say this, and hopefully the
17 engineers won't laugh at me. But could you use something
18 that maybe -- that's maybe in an SS7 record to give you
19 more information? Is there some other source or some
20 other way to identify the traffic that's associated with
21 this land to mobile or interexchange carrier traffic? And
22 then maybe you could make an adjustment to the formula to
23 account for that unidentified traffic.

24 Q. Okay. So under T-Mobile's approach for net
25 billing, then, is the only record that would need to be

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1 created is that -- is for mobile -- first of all,
2 mobile-to-land traffic, and at the originating tandem
3 that's really the only record that would need to be
4 created?

5 A. I believe so, yes.

6 Q. And so then you would -- that would
7 capture, obviously, the mobile-to-land calls, whether
8 delivered over the -- through the Bell, the transiting
9 carrier or through an IXC, I suppose?

10 A. That's correct.

11 Q. Okay. So you capture those calls and you
12 determine how many minutes, I suppose, there are, and then
13 you apply a formula that would tell you the flow of
14 traffic in the reverse?

15 A. Yes.

16 Q. And that would be the process that T-Mobile
17 would advocate?

18 A. Yes.

19 Q. And again, the part of that -- what part is
20 it then that -- where does the disagreement lie, then?
21 It's solely because on the reverse, the land to mobile,
22 the Petitioners don't want to count calls that traverse
23 through an IXC?

24 A. That is one of the issues, yes.

25 Q. And in terms of net billing, is that the

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1 only issue?

2 A. Well --

3 Q. Other than the price, the rate?

4 A. Well, the balance of traffic factor

5 certainly is an issue because we believe that IXC traffic

6 should be included, certainly for the interMTA traffic,

7 the interstate versus intrastate is an issue, and

8 certainly rate, obviously, is a big issue in this

9 proceeding.

10 Q. Okay. And on page 28 of your rebuttal
11 testimony around -- beginning at line 6, it says, although
12 the amount of intraMTA traffic T-Mobile hands off to IXCs
13 for delivery to the Petitioners is de minimis, T-Mobile
14 objects to the Petitioners' assumption that they are
15 entitled to charge twice for any traffic. Can you explain
16 that, that sentence to me?

17 A. Sure. When T-Mobile hands off traffic to
18 an interexchange carrier, that interexchange carrier is
19 going to carry that traffic to -- and we're going to
20 assume here -- a terminating LEC. That terminating LEC is
21 going to bill that interexchange carrier terminating
22 access pursuant to its access tariffs.

23 The question is, does T-Mobile have a
24 responsibility to pay terminating reciprocal compensation
25 to the LEC? The answer is yes. However, in today's

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1 environment, that would mean that the rural LEC was
2 getting paid twice for terminating that traffic.

3 Q. Well, where in Mr. Schoonmaker's testimony
4 does he say anything -- and your rebuttal is page 57 of
5 Mr. Schoonmaker's direct. Where does he make any
6 statement to lead you to conclude that Petitioners might
7 be -- their position would permit them to collect twice?
8 I'm not sure what you're rebutting here, I guess is what
9 I'm saying.

10 A. The argument being made -- my understanding
11 of the argument being made by Petitioners was related to
12 this whole concept of double billing and -- and if, in
13 fact -- as I just acknowledged, T-Mobile believes they
14 have a reciprocal compensation obligation to the LEC. But
15 they are already receiving terminating access, so that
16 just doesn't seem fair.

17 The question that occurs on the other side
18 is, you know, was T-Mobile getting compensated by the IXC
19 for the termination of the traffic. The answer is no.
20 But in their scenario, they're billing originating access
21 to the IXC for that traffic, and then you overlay that
22 with, does that have anything to do with the reciprocal
23 compensation obligation between the LEC and T-Mobile? And
24 our position is the answer is no.

25 Q. Okay. I wanted to ask you quickly on

1 page 16 of your rebuttal testimony on line 25 -- and
2 there's a paragraph that's set aside there apparently from
3 another decision from some other jurisdiction, but it
4 says, for example, to the extent that Yuma/Flagstaff T1 is
5 situated entirely within an MTA. My question is, in that
6 example that you're citing there, whatever Commission it
7 was that was writing this, wherever it comes from --

8 A. This is an FCC quote.

9 Q. It's an FCC quote?

10 Did that involve a direct connection or
11 indirect connection? Was it a transiting call? Was it an
12 IXC-type call? What are you referring to there?

13 A. I don't know specifically. My assumption
14 is that with this T1 involved, that it's probably some
15 form of a direct connection.

16 Q. That was my assumption, too, and I was
17 wondering the relevance of that to the indirect
18 conversations we're having in this arbitration case.

19 A. I really just think it's the matter of,
20 does the originating carrier have the responsibility to
21 pay the costs associated with the traffic it originates?
22 This order says here that, yes, the LEC does have the
23 responsibility to pay for its originating traffic.
24 T-Mobile would argue that for land-to-mobile traffic,
25 regardless of whether it's outside the local exchange

1 carrier's boundary or not, that the LEC has the
2 responsibility to pay the costs associated with delivering
3 that traffic to a point where T-Mobile can get the
4 traffic.

5 Q. Understood.

6 A. Okay.

7 Q. On page 22, line 27 of your rebuttal
8 testimony, there's a reference there, it says,
9 typically -- I'll begin on line 25. It says, typically a
10 wireless carrier will enter into a wholesale services
11 arrangement with an IXC or other service provider. And
12 we've heard about that today, and my question is the next
13 part, to transport its long distance traffic, that being
14 the wireless carrier's long distance traffic.

15 A. Could you give me the page number?

16 Q. It's page 22, line 27 of your rebuttal.

17 A. Okay. I'm there.

18 Q. My question is, as to the transport of
19 T-Mobile's long distance traffic, how do you mean long
20 distance? I mean, your end users don't pay long distance,
21 do they? I'm not sure what you mean.

22 A. No. That was probably a poor use of
23 language on my part, because I'm actually quoting my Alma
24 testimony there, but this truly means any time that
25 T-Mobile needs to get from one -- and I'll just, you know,

1 make up an example here. If T-Mobile needs to get a call
2 from Missouri to California, the T-Mobile customer will
3 originate the call in Missouri, they'll hand it off to an
4 IXC, the IXC will carry it to the -- to California and
5 will just terminate it. I'm assuming this is a
6 LEC-terminating call. They'll terminate it to the LEC.
7 The LEC will bill that IXC terminating access.

8 Q. Okay. This might possibly be my last
9 question, Billy. On page 26 of your rebuttal testimony --

10 A. All I can say is thanks, Bill.

11 Q. I imagine there's a lot of folks that would
12 like to get out of here today.

13 26 of your rebuttal testimony, Billy, on
14 line 21 --

15 A. I'm there.

16 Q. -- there's a sentence that begins, when the
17 call detail records contain insufficient information to
18 identify the operating carrier number for a land-to-mobile
19 call. And this line of Q&A is about traffic studies.

20 This -- that sentence refers to a situation where the,
21 what, the landline carrier is recording some records?

22 A. I guess that's one potential scenario, but
23 I think generally it was more related to traffic handed
24 off to IXCs that terminate to us, where information has

25 been struck by the IXC, just using one example. There

1 could also be situations where maybe the LEC isn't SS7
2 capable and somehow the information is transmitted or
3 there's some other technical glitch, but --

4 Q. Okay. Well, the first -- on line 20, it
5 says, T-Mobile analyzed the NPA/NXXs contained in the call
6 detail records. Whose call detail records?

7 A. In this case, it was T-Mobile's.

8 Q. T-Mobile's own. Okay. I think that
9 answers that question. And I think that concludes all of
10 my questions. Thank you, Billy, for your answers.

11 A. You're welcome.

12 JUDGE JONES: Ms. Dietrich has a follow-up
13 question for you.

14 FURTHER QUESTIONS BY MS. DIETRICH:

15 Q. I wanted to ask you about your discussion
16 on the IXC traffic with Mr. Voight.

17 A. Okay.

18 Q. If I'm understanding what you're saying,
19 when a T-Mobile customer calls one of the Petitioner's
20 customers and it's carried by an IXC, you're saying that
21 T-Mobile does not have to pay -- there's an obligation to
22 pay reciprocal compensation, but you don't have to
23 actually pay anything because the Petitioners are
24 receiving access. Is that what you said?

25 A. I'm not sure if that's exactly how I said

1 it. We do not believe that it's appropriate for the
2 terminating LEC to double recover for terminating that
3 call, and today they are getting compensated by the IXC
4 through their terminating access. We do acknowledge, like
5 I said, that we do have a reciprocal compensation
6 obligation, but since we're already paying our IXC the
7 access to pay to the terminating LEC, there just doesn't
8 seem to be a balancing there.

9 Q. Okay. Then in reverse, if a Petitioner
10 customer is calling the wireless customer, if I'm
11 understanding your position, T-Mobile's position, the
12 Petitioners should pay you reciprocal compensation because
13 you're not receiving compensation from the IXCs; is that
14 correct?

15 A. That's one of the reasons, yes.

16 Q. Can you explain to me why it would be the
17 Petitioners' responsibility to pay you if the IXCs are not
18 paying, as opposed to somehow going after the IXCs? Why
19 should Petitioners be penalized if you're not being paid?

20 A. I respectfully would say I'm not sure
21 they're being penalized. The rules state that this
22 reciprocal compensation obligation applies to traffic
23 that's originated on the network of the carrier. So
24 regardless of whether it's carried by a transit provider,
25 an IXC or some other way of delivering to the terminating

1 end, it's the rules that are very specific that talk about
2 when the reciprocal compensation obligation applies,
3 51.701(b)(2) has no exception. If it's intraMTA, recip
4 comp applies.

5 Q. And the same rules apply to the wireless
6 carriers?

7 A. Yes.

8 MS. DIETRICH: Okay. Thank you.

9 JUDGE JONES: Okay. We'll have redirect
10 from Respondents.

11 MR. ENGLAND: Your Honor, excuse me just a
12 second. Apparently I neglected to offer another exhibit.
13 It seems to be contagious with me. I would offer Exhibit
14 No. 18, please.

15 JUDGE JONES: Any objection.

16 MR. JOHNSON: Yeah, I'll say. Exhibit 18
17 is full of hearsay. Newspaper articles are not self
18 authenticating. This is -- if you get beyond the first
19 two paragraphs, this is the complaint case. This has
20 nothing to do with this case. We have quotes from
21 counsel, we have quotes from the president and vice
22 president of one of the Petitioners.

23 MR. ENGLAND: The only reason for offering
24 it is for the statement made by T-Mobile, which I
25 believe.

1 MR. JOHNSON: It has nothing to do with the
2 reason for it being offered. It has to do with the
3 admissibility of the document itself.

4 MR. ENGLAND: Well, I understood the
5 objection to also be addressed towards relevancy.

6 JUDGE JONES: Let me ask you, does this
7 have to do with past compensation issues?

8 MR. ENGLAND: Well, it does, but the
9 purpose for which it was being offered -- is being offered
10 is the fact that this witness claims that call blocking is
11 an extreme measure and leaves the impression that
12 customers of T-Mobile will not be able to get their calls
13 complete to the Petitioners if they engage in call
14 blocking.

15 What this article shows, based on the
16 statement of the T-Mobile representative, is that they
17 have other alternatives for terminating that call and that
18 there was no call disruption as a result of the call
19 blocking that occurred at that point in time. If you just
20 want to admit it for that one statement attributable to
21 the T-Mobile Petitioner, that's fine. I wasn't offering
22 it for the truth or -- of the other statements attributed
23 to other people.

24 MR. JOHNSON: Well, the problem is it
25 infects the record. It makes it look as if this issue of

1 past compensation is relevant.

2 JUDGE JONES: Well, I can certainly
3 overrule the objection on hearsay, but as far as the
4 relevance is concerned, if this has to do with past
5 compensation, I don't want -- I don't even want to have to
6 look at it.

7 MR. ENGLAND: I'm not offering it for that
8 purpose, your Honor. If you determine in the context of
9 those past compensation issues that it's not relevant,
10 you'll simply ignore this -- this article to the extent it
11 even addresses that. As I said, the sole purpose is to
12 show that call blocking is not the extreme or drastic
13 measure that this witness would have you believe.

14 JUDGE JONES: Sounds like he's just simply
15 attacking the witness's position, showing an inconsistency
16 in the witness's position.

17 MR. JOHNSON: Well, as it goes to the issue
18 of blocking, that's correct. The concern again, as I said
19 I have, is that this is not the only body before whom in
20 this case is going to be argued, and you can't unring the
21 bell. If the Commission reviews this document in its
22 entirety, as it will be -- as it will be obligated to,
23 regardless of the limited admissibility of it, this will
24 become a past compensation case.

25 JUDGE JONES: Are you saying that the

1 Commission is unable to discern what it should be looking
2 at and what it shouldn't be looking at.

3 MR. JOHNSON: What I would like to see is
4 if you're inclined to admit it for the purpose of
5 controverting Mr. Pruitt's testimony on the call-blocking
6 issue, that after the second paragraph, the rest of the
7 document be blacked out.

8 MR. ENGLAND: I don't have a problem with
9 that.

10 JUDGE JONES: That's what we'll do.

11 MR. JOHNSON: But I just want to make sure
12 I'm not -- given that, I'm not removing my objection to
13 its admission.

14 JUDGE JONES: I understand. In that case,
15 the first paragraphs of the article are admitted. The
16 remaining six aren't.

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

19 JUDGE JONES: You may proceed, Mr. Johnson.

20 MR. JOHNSON: Thank you, your Honor.

21 REDIRECT EXAMINATION BY MR. JOHNSON:

22 Q. Mr. Pruitt, on cross-examination and also
23 in questions from advisory staff, you were asked about
24 compensation -- you were asked questions concerning
25 compensation which wireless carriers would pay to the

1 Petitioners for completion of mobile-to-land traffic. Let
2 me ask you a few questions about that.

3 First, with respect to mobile-to-land
4 intraMTA calls carried by an interexchange carrier, do you
5 acknowledge the wireless carriers' obligation to pay
6 reciprocal compensation to the local exchange carrier?

7 A. Yes, I do.

8 Q. And on such calls, does T-Mobile make
9 payments to the interexchange carrier, including an access
10 charge component?

11 A. Yes, it does.

12 Q. So is T-Mobile effectively making two
13 payments, an access -- access charges to the interexchange
14 carrier and reciprocal compensation to the local exchange
15 carrier?

16 A. Yeah.

17 Q. Now, let me ask you -- let me move to
18 another issue, and on cross-examination, Mr. England asked
19 you about a portion of Exhibit 17. That's the 2000 --
20 that's the interexchange -- pardon me -- interconnection
21 agreement approved by the Commission between Voicestream
22 SBC in 2001. Do you have that with you?

23 A. I have that.

24 Q. Now, he was asking you questions concerning
25 text on page 43 of Exhibit 17. Let me refer you to page

1 42, the preceding page.

2 A. Okay.

3 Q. Does page 42 -- what does page 42 consist
4 of?

5 A. It appears to -- it appears to be a
6 signature page.

7 Q. Do dates appear on that?

8 A. They do.

9 Q. And what are those dates?

10 A. It was apparently executed by Voicestream
11 January 5th of 2000, and it looks like it was executed by
12 Southwestern Bell on January the 22nd of 2000.

13 Q. So six years ago?

14 A. Yes.

15 Q. Let's go back to page 43. And on
16 cross-examination, Mr. England asked you questions
17 concerning Section 4.0, the shared facility factor. Do
18 you see that?

19 A. Yes.

20 Q. And he -- is it correct that in
21 cross-examining -- in cross-examination, Mr. England
22 essentially got you to agree that you were talking about
23 an 80/20 traffic balance between -- well, it would be
24 Southwestern Bell and Voicestream?

25 A. I think the discussion that I had with

1 Mr. England said that this could be a negotiated factor
2 that's used to determine which portion of a facility cost
3 is borne by the parties.

4 Q. Based on the balance of traffic?

5 A. Yes.

6 Q. Do you have more recent information
7 concerning the exchange of traffic between SBC and
8 T-Mobile?

9 A. I have seen some recent information, yes.

10 Q. How recent is that information?

11 A. I think it's current.

12 Q. And can you tell us, tell the RLJ and
13 advisory staff what you remember that traffic balance to
14 be at this point?

15 A. I don't know that I remember the specific
16 number. I believe that for Southwestern Bell it was in
17 the range of 48/52.

18 Q. And do you remember which way -- 52 percent
19 which way, 48 percent the other, do you remember which?

20 A. I believe it was 48 percent mobile to land,
21 but I would have to look at -- look at the numbers.

22 Q. Now, let me ask you a couple of questions
23 about Attachment 1 to your direct testimony.

24 A. Okay.

25 Q. Was that -- and that's the chart that has

1 the calls and minutes of use for I believe it's three
2 months?

3 A. Yes.

4 Q. What three months are covered by that
5 table?

6 A. July '05, August '05 and September '05.

7 Q. Was that designed to indicate the amount
8 of intraMTA traffic flowing back and forth between
9 T-Mobile and the Petitioners?

10 A. Yes.

11 Q. Did T-Mobile -- and I believe in your
12 direct testimony on page 17, you indicate that T-Mobile --
13 that you base that attachment on traffic studies which
14 T-Mobile performed involving its traffic with each of the
15 Petitioners?

16 A. Yes.

17 MR. JOHNSON: Your Honor, that's all I
18 have. Thank you very much. Thank you, Mr. Pruitt.

19 JUDGE JONES: Thank you, Mr. Pruitt. You
20 may step down.

21 THE WITNESS: Okay. Thank you.

22 (WITNESS EXCUSED.)

23 JUDGE JONES: We'll take a ten-minute break
24 here and continue with, I presume, Respondents' last
25 witness.

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1 MR. WALTERS: Yes, sir.

2 (A BREAK WAS TAKEN.)

3 (EXHIBIT NOS. 19, 19P AND 20 WERE MARKED
4 FOR IDENTIFICATION BY THE REPORTER.)

5 JUDGE JONES: We're back on the record with
6 Case No. TO-2006-0147. At this time Respondents are ready
7 to tender their third witness.

8 MR. WALTERS: Do we need to swear him in?

9 (Witness sworn.)

10 JUDGE JONES: You may be seated.

11 ERIC G. PUE testified as follows:

12 DIRECT EXAMINATION BY MR. WALTERS:

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

15 A. It's Eric G. Pue.

16 Q. Spell your last name, please.

17 A. P-U-E.

18 Q. Mr. Pue, where do you live?

19 A. I live in Duvall, Washington.

20 Q. By whom are you employed?

21 A. Cingular Wireless.

22 Q. Are you the same Eric Pue who caused to be
23 filed in this case direct testimony which the reporter has
24 marked as Exhibits 19 and 19P, 19P being the proprietary
25 version, and did you also cause to be filed rebuttal

1 testimony, which the reporter has marked as Exhibit 20?

2 There is no proprietary version of Exhibit 20.

3 A. Yes.

4 Q. Mr. Pue, have you ever been a witness
5 before?

6 A. No, I have not.

7 Q. Are you a little nervous?

8 A. Little bit.

9 Q. If I --

10 MR. ENGLAND: Objection, no fair.

11 MR. WALTERS: Well, I'm nervous.

12 BY MR. WALTERS:

13 Q. If I were to ask you the same questions
14 that are in your testimony today, both in your rebuttal
15 and your direct testimony, would you give the same
16 answers?

17 A. Yes, I would.

18 Q. And do you have any corrections to your
19 testimony?

20 A. No, I do not.

21 MR. WALTERS: With that, your Honor, I
22 would move for the admission of Exhibits 19, 19P and 20.

23 JUDGE JONES: Any objection?

24 MR. ENGLAND: No objection.

25 JUDGE JONES: Exhibits 19, 19P and 20 are

1 admitted into the record.

2 (EXHIBIT NOS. 19, 19P AND 20 WERE RECEIVED
3 INTO EVIDENCE.)

4 MR. WALTERS: And I would tender the
5 witness for cross-examination.

6 JUDGE JONES: Petitioners, you may question
7 the witness.

8 MR. ENGLAND: Thank you.

9 CROSS-EXAMINATION BY MR. ENGLAND:

10 Q. Good afternoon, Mr. Pue.

11 A. Thank you. You, too.

12 Q. Some background questions. You probably
13 will anticipate these, having heard them being asked of
14 other witnesses. You are not a lawyer, are you, Mr. Pue?

15 A. No, I'm not.

16 Q. To the extent you quote from any FCC rules
17 or state commission or court decisions in your testimony
18 and then draw conclusions or opinions from those quotes,
19 you were doing so only as a layperson, not as a legal
20 expert; is that right?

21 A. Yes, that's correct.

22 Q. If I read your testimony correctly, it
23 appears that you have been employed solely in the wireless
24 industry since your graduation from college?

25 A. Yes, that's correct.

1 Q. Has it always been with Cingular or has
2 that been with more than one wireless carrier?

3 A. I was formerly employed with Mackaw
4 Communications, and they were acquired by or -- acquired
5 by AT&T, name changed to AT&T Wireless, and as you're
6 aware of the acquisition of Cingular.

7 Q. The fact that you're here today is a
8 testament to something, Mr. Pue.

9 A. Been through quite a few.

10 Q. Perseverance at least.

11 Is it fair to say that you have no work
12 experience working for a landline telephone company such
13 as Petitioners?

14 A. Yes, that's fair to say.

15 Q. At page 7 of your direct testimony -- are
16 you there, sir?

17 A. Yes.

18 Q. Lines 11 -- excuse me -- 9 through 11, you
19 state that you believe the HAI 5.0A model produces costs
20 far in excess of reality and base that opinion on the fact
21 that neither Peace Valley nor any other independent
22 company would be willing to accept a rate lower than its
23 actual cost. Do you see that?

24 A. Yes.

25 Q. And do you understand that Peace Valley has

1 entered into other traffic termination agreements with
2 other wireless carriers at the 3.5 cent rate?

3 A. I assume they have.

4 Q. And if they have, would you -- do you also
5 understand that Peace Valley has an obligation under the
6 Telecommunications Act to make that rate available to
7 other carriers under the most favored nation provisions of
8 the Act and the FCC rules?

9 A. Yes.

10 Q. Page 11 of that same testimony, I believe,
11 again lines 9 through 11, you testify that a negotiated
12 agreement is the net byproduct of many variables and
13 factors, and a party will often agree to a rate based upon
14 another party's willingness to concede another point or
15 the time sensitivity of the transaction, correct?

16 A. Correct. That's what it says.

17 Q. In Peace Valley's situation, is it not fair
18 to assume that Peace Valley is willing to accept a rate
19 less than its cost if it is able to obtain concessions on
20 other issues, such as the payment of reciprocal
21 compensation on IXC-carried traffic, for example?

22 A. Many times in negotiations companies do do
23 that. They do sacrifice other stipulants to obtain an
24 agreement, so on and so forth.

25 Q. So there are legitimate reasons for Peace

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1 Valley to be willing to accept a rate less than what their
2 costs might otherwise indicate, correct?

3 A. It could be. And I guess at the same time,
4 it's my understanding that -- or my opinion, I guess, that
5 a company would not be wise to accept a rate lower than
6 its actual costs.

7 Q. But yet you acknowledge that there may be
8 valid reasons for doing so, correct?

9 A. There may be if it's offsetting, I guess
10 you could say.

11 Q. In your rebuttal testimony, again page 9 --

12 A. Okay.

13 Q. I'm sorry. Did I tell you your rebuttal
14 testimony?

15 A. Yes.

16 Q. Okay. I'm sorry.

17 A. Yes.

18 Q. Then I'm the only guy not in your rebuttal
19 testimony. At lines 6 and 7 you sort of echo the same
20 comments as in your direct testimony and stated it's
21 counterintuitive to believe that any company would
22 willingly accept less than its cost to provide a service.
23 Do you see that?

24 A. Yes, I do.

25 Q. Do you understand in the regulated

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1 environment that telephone companies are often receiving
2 less for a service than their costs might otherwise
3 indicate?

4 A. I can't necessarily speak to that.

5 Q. That's fair enough. Back to your statement
6 there on line 6 and 7, would you also agree with me that
7 it is counterintuitive for any rational wireless carrier
8 to agree to pay a rate that would cause it to operate at
9 substantial loss?

10 A. I would say it's not in any company's best
11 choice to, I guess, accept a rate that would allow it to
12 operate at a loss.

13 Q. Yet that is what Cingular has done in
14 effect by entering into negotiated agreements with
15 Fidelity Telephone Company, Alma Telephone Company,
16 Northeast Missouri Rural Telephone Company, Chariton
17 Valley Telephone Company and Mid-Missouri Telephone
18 Company, all of which contain a rate of 3.5 cents a
19 minute, right?

20 A. Yes, we have entered into those agreements.
21 I would say that in my testimony I stated that if Cingular
22 Wireless agreed to pay 3.5 cents to all wireline carriers,
23 it would operate at a significant loss. I think the
24 choice was made at that time to enter into those
25 agreements, perhaps not knowing the financial burden that

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1 it may -- may produce.

2 Q. Until the FCC declared the state wireless
3 tariffs would no longer be appropriate after April 29th,
4 2005, it's my understanding that Cingular was paying
5 Petitioners' wireless tariff rates in between 5 and
6 7.5 cents a minute, according to those tariffs. Is that
7 your understanding?

8 A. Yes, they were paying and abiding by the
9 Order that was issued.

10 Q. Cingular could have taken advantage of
11 existing agreements with Petitioners that were filed with
12 and approved by the Commission that had rates at 3.5 cents
13 and substantially less than those tariff rates, could it
14 not?

15 A. It could have opted into those agreements,
16 you are correct.

17 MR. ENGLAND: Judge, I'd like to have a --
18 well, I'd like for the Commission to take official notice
19 of certain things, and what it is are the approved
20 interconnection agreements between wireless carriers and
21 small rural LECs in Missouri. And what we've done is
22 summarized them on a sheet that gives you the parties to
23 the agreement, the Commission case number, and the rate in
24 that agreement. And whether you want to take official
25 notice of it or make it an exhibit and --

1 JUDGE JONES: Probably better to make it an
2 exhibit.

3 (EXHIBIT NO. 21 WAS MARKED FOR
4 IDENTIFICATION BY THE REPORTER.)
5 BY MR. ENGLAND:

6 Q. Mr. Pue, do you have Exhibit 21 in front of
7 you?

8 A. Yes, I do.

9 Q. What I've attempted to do there is
10 summarize all of the interconnection agreements between
11 all LECs in Missouri and various wireless carriers that
12 have been filed with and approved by this Commission. Do
13 you see that, sir?

14 A. Yes, I do.

15 Q. Would you agree with me that the -- if I
16 have correctly summarized this, and the Commission records
17 will tell me if I have or I haven't, but the intraMTA rate
18 displayed in the second column in from the right would
19 indicate that the vast majority of these agreements have
20 been negotiated at 3.5 cents, correct?

21 A. It appears so, except for a few.

22 Q. And it appears that a number of carriers
23 besides Cingular have agreed to those rates, such as
24 Sprint PCS, ALLTEL Wireless, T-Mobile, U.S. Cellular,
25 correct?

1 A. According to your chart, that would be
2 correct.

3 Q. And would you assume that all of those
4 carriers have made a rational business decision in
5 entering into those negotiations not to agree to a rate
6 that would put them in a substantial loss position?

7 MR. WALTERS: Object to the question, calls
8 for speculation from the witness, who has no knowledge of
9 other carriers' business.

10 JUDGE JONES: Objection sustained.

11 MR. ENGLAND: Well, the witness was allowed
12 to testify as to Peace Valley's motivations for agreeing
13 or proposing a rate that was less than its cost. I think
14 it would only be fair for me to find out if he had any
15 idea why these wireless carriers would agree to a rate
16 that they believe was far in excess of those costs.

17 JUDGE JONES: Peace Valley's a Petitioner
18 in this matter, right?

19 MR. ENGLAND: Correct. But I don't believe
20 this witness has any more crystal ball ability to know
21 what Peace Valley's thinking or speculating than any of
22 these wireless carriers.

23 JUDGE JONES: Mr. Walters, do you agree
24 with that?

25 MR. WALTERS: No, I do not agree with that.

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1 I was willing to let my witness answer a question
2 regarding Peace Valley. The question was propounded by
3 counsel. I'm not willing to let my witness speculate
4 about other carriers whom he has no knowledge of and are
5 not parties to this case, so I object.

6 JUDGE JONES: I still sustain the
7 objection.

8 MR. ENGLAND: Fair enough. Thank you.

9 BY MR. ENGLAND:

10 Q. Mr. Pue, should the Commission set rates in
11 this proceeding on the ILEC's forward-looking costs or on
12 the wireless company's ability to make a profit?

13 A. They should set them based on
14 forward-looking costs according to the Act.

15 MR. ENGLAND: Your Honor, may I have an
16 exhibit marked? I believe this would be 22.

17 (EXHIBIT NO. 22 WAS MARKED FOR
18 IDENTIFICATION BY THE REPORTER.)

19 JUDGE JONES: You may proceed.

20 MR. ENGLAND: Thank you.

21 BY MR. ENGLAND:

22 Q. Mr. Pue, let me direct your attention to
23 what has been marked for purposes of identification as
24 Exhibit 22, which is an article from the New York Times
25 dated January 24th, 2006, headline, Cingular profit up on

1 subscriber growth. Do you see that, sir?

2 A. Yes, I do.

3 Q. Have you had a chance to review that?

4 A. I've just reviewed -- just glanced at it
5 since you've handed it to me.

6 Q. Are you aware of Cingular's -- were you
7 made aware of this internally as an employee of Cingular?

8 A. I have not seen this as of yet. I notice
9 that it just came out on the 24th, and I haven't actually
10 seen a release.

11 Q. Do you have any reason to doubt its
12 accuracy or validity?

13 A. I have no reason to doubt it.

14 Q. Okay. Would you agree with me that
15 Cingular's payment of wireless tariff rates or negotiated
16 agreement rates here in Missouri do not appear to have
17 significantly impacted Cingular's ability to make a
18 profit?

19 A. I think it has the ability to impact
20 Cingular's ability to make a profit when exchanging
21 traffic with the Missouri ICOS at 3.5 cents a minute.

22 Q. But at least up to this point in time, it
23 has not. In fact, it appears that Cingular's been able to
24 actually turn a profit in the recent past?

25 A. Overall, it appears so.

1 Q. Sure. Thank you, sir. At the bottom of
2 page 11 and top of page 12 --

3 A. In my --

4 Q. I'm getting there.

5 A. Okay.

6 Q. I'm hesitant. Of your direct testimony.

7 A. All right.

8 Q. You, I believe, compare Petitioners'
9 proposed 3.5 cent rate with the NECA interstate access
10 rate. Do you see that?

11 A. Yes, I do.

12 Q. What is NECA, sir?

13 A. It's my understanding that NECA is a
14 benchmark for access rates, contains access rates for
15 several ILECs.

16 Q. Do you know how NECA sets access rates for
17 Petitioners in this case?

18 A. I can't say that I do, other than usually
19 the small rural or small independent companies are
20 associated with a particular band.

21 Q. Is it a uniform rate or is it a
22 company-specific rate?

23 A. It's my understanding that it's typically a
24 uniform, depending on the band.

25 Q. Do you know if the NECA rate is cost based

1 or not?

2 A. It's my understanding that since these are
3 access rates and carry embedded costs, that they don't
4 fall under the cost-based rates that the FCC requires.

5 Q. My question was broader than that. It
6 wasn't limited to forward-looking costs. Do you know if
7 these rates are based on any costs of the Commissioners --
8 excuse me -- of the Petitioners?

9 A. I can't say that I know that for sure.

10 Q. Is it your understanding that all
11 Petitioners concur in the NECA tariff?

12 A. I can't say for certain whether they all do
13 or not.

14 Q. To the extent one or more Petitioners files
15 their own interstate access tariff with the FCC and those
16 interstate access rates are based on that particular
17 Petitioner's costs, do you know if they would be the same
18 or more than or less than the NECA rate?

19 A. Can you repeat it one more time so I
20 understand?

21 MR. ENGLAND: I'm going to have to have the
22 court reporter read it back.

23 (THE REQUESTED TESTIMONY WAS READ BY THE
24 REPORTER.)

25 THE WITNESS: I don't know if I can say for

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1 certain.

2 BY MR. ENGLAND:

3 Q. Apparently you made no effort to determine
4 if any of the individual Petitioners filed their own
5 tariffs with the FCC and compare those rates with the
6 proposed 3.5 cent rate, correct?

7 A. What I did in this case is I actually
8 looked on the Internet and actually looked at the NECA
9 bands themselves.

10 Q. I don't think that was my question, sir.

11 A. Okay.

12 Q. I said to the extent -- at least I'll try
13 to recall. To the extent that one or more Petitioners
14 have filed their own access rates with the FCC, you did
15 not make any effort to compare those rates with the
16 proposed 3.5 cent rate, did you, sir?

17 A. I did not look at the Petitioners' access
18 rates or filed tariff rates.

19 Q. You didn't look at Petitioners' existing
20 intrastate traffic-sensitive access rates for purposes of
21 your comparison either, did you, sir? Or I'm sorry, maybe
22 you did.

23 A. No, I did not.

24 Q. And why not, if you thought it was
25 important to compare their rates with interstate access

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1 rates, why didn't you -- or excuse me -- their proposed
2 rate with interstate access rates, why not compare that
3 proposed rate with their intrastate rates?

4 A. I guess I just used interstate access rates
5 as a bar for this particular -- as a -- I guess a
6 benchmark in this particular subject.

7 Q. Would you agree with me that those
8 interstate rates are significantly less than the
9 intrastate access rates of Petitioners?

10 A. I don't have knowledge of what the
11 interstate access rates are, but typically that's the
12 case.

13 Q. In your direct testimony, page 15, line 25,
14 are you there, sir?

15 A. Yes. Yes.

16 Q. You state neither the Act nor FCC
17 regulations allow a blanket rate applicable to all
18 carriers. Do you see that?

19 A. Yes, I do.

20 Q. And what I'm focusing on is the term
21 blanket rate. Can you give me a quote from either the Act
22 or the FCC regulations that prohibit a blanket rate such
23 as that proposed by the Petitioners in this case?

24 A. I don't know if I can give you a quote from
25 memory, but it's my understanding that each company's

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1 rates should be based on their forward-looking costs, and
2 if that's the case, then I would assume that each company
3 would have different rates.

4 Q. Let me ask you a hypothetical. If the
5 Petitioner -- well, first of all, if the Commission
6 determines that the Petitioners' forward-looking economic
7 costs are, say, 8 cents on average, and the Commission --
8 excuse me -- and the Petitioners have proposed a blanket
9 rate of less than that, wouldn't that be permitted under
10 the Act?

11 A. Can you repeat it one more time? I'm
12 sorry.

13 Q. I'll try. I'm getting off script here. To
14 the extent the Commission finds that the appropriate
15 forward-looking cost of Petitioners on average is 8 cents
16 a minute, there's nothing in the Act that would prohibit
17 them -- excuse me -- Petitioners from proposing and
18 obtaining a uniform or blanket rate of 3.5 cents in that
19 case, is there?

20 A. Well, the Act requires that the rates are
21 cost based.

22 Q. Which is a determination, now that we're in
23 arbitration, the Commission has to make, right?

24 A. Yes, using the FCC guidance, that's
25 correct.

1 Q. So my question assumes that the Commission
2 has made a determination that the costs -- for whatever
3 reason, forward-looking cost is 8 cents, and the
4 Petitioners' blanket rate is 3.5 cents. That certainly
5 qualifies or is acceptable under the FCC Act, is it not?

6 MR. WALTERS: Your Honor, I'd like to
7 interpose an objection, if I could. The question is
8 presupposing a fact that this witness has not testified
9 to. The question presupposes that the Commission has
10 established a blanket cost of 8 cents, and he's saying
11 they can't do that. So I think it's presupposing a fact
12 that he hasn't admitted to, so for that reason I object.

13 If he wants to ask him whether the
14 Commission has established a rate for every Petitioner
15 that's over 3.5 and then go down to 3.5, I would be
16 agreeable to that question.

17 JUDGE JONES: And your objection is what
18 again?

19 MR. WALTERS: My objection is the question
20 is presupposing a fact that's not in evidence, namely that
21 the Commission can set a rate for all Petitioners of
22 8 cents. This witness has not agreed that can be done.

23 JUDGE JONES: Are you having problems with
24 the factual side or the legal side of it?

25 MR. WALTERS: I'm having a problem with the

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1 assumption that the Commission may establish a blanket
2 rate of 8 cents and then Petitioners may ask to have the
3 rate set only at 3.5 cents.

4 JUDGE JONES: Well, it doesn't sound like a
5 fact, it sounds like an assumption.

6 MR. WALTERS: But it's an assumption this
7 witness has not made, and the question presupposes he's
8 agreed to that. That's the basis of my objection.

9 JUDGE JONES: That's what all assumptions
10 are.

11 MR. ENGLAND: I'm sorry. It's a
12 hypothetical question. I'm not trying to get him to agree
13 our costs are 8 cents. I'm just saying assuming the
14 Commission finds that they are.

15 MR. WALTERS: And that's what I'm objecting
16 to.

17 MR. ENGLAND: Well, there is evidence in
18 the record that our costs are at 8 percent -- sorry --
19 8 cents. Excuse me. So if you think that that's based on
20 evidence not in the record, I would respectfully disagree.

21 JUDGE JONES: You don't want him to ask
22 hypothetical questions?

23 MR. WALTERS: I have no problem with
24 hypothetical questions at all, but I would point out that
25 the cost studies submitted by Mr. Schoonmaker don't show a

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1 cost of 8 cents. They vary anywhere from about 3 cents to
2 as high as 50 cents for Peace Valley. That's what's being
3 assumed in that question that's inappropriate.

4 JUDGE JONES: What if the question was,
5 what if the Commission assumes that that the cost is \$1.40
6 per minute? I mean, what difference does it make? It's
7 just assumption that he's basing the question on.

8 MR. WALTERS: Rather than prolong this,
9 I'll let him ask the question, withdraw my objection.

10 JUDGE JONES: Okay.

11 BY MR. ENGLAND:

12 Q. Do you remember the question?

13 A. You should probably say it again.

14 Q. I'll probably say it a third time a little
15 differently than I did the first two. Assuming for
16 purposes of my question the Commission establishes a
17 forward-looking cost of 8 percent -- or 8 cents for the
18 Petitioners, is it your opinion that they cannot approve a
19 blanket rate then of 3.5 cents a minute?

20 A. I guess I can't really say what they could
21 approve or not, but it's my understanding, again, that the
22 rates need to be based on forward-looking costs.

23 Q. Then you can't really say whether the
24 Commission can adopt a blanket rate, can you, sir?

25 A. I guess I can't.

1 Q. At page 10 of your direct testimony,
2 lines 1 through 2, you indicate Cingular is paying a
3 reciprocal compensation rate of 7/100 of a cent per minute
4 of use to SBC for transport and termination of Cingular's
5 traffic?

6 A. Yes, that's correct.

7 Q. As I understand, that rate's taken from the
8 2004 amendment to Cingular's existing interconnection
9 agreement with SBC that was marked as Exhibit 5 yesterday?

10 A. Yes, that's correct.

11 MR. ENGLAND: Your Honor, at this time may
12 I do a couple of housekeeping things before I mark another
13 exhibit?

14 JUDGE JONES: Yes.

15 MR. ENGLAND: The first would be to offer
16 Exhibit 21 or ask that the Commission take official notice
17 of the approved interconnection agreements and
18 specifically the facts, parties, the rate, the case number
19 and the date approved.

20 JUDGE JONES: Any objection to Exhibit 21?

21 MR. WALTERS: Your Honor, I don't
22 necessarily object, but my understanding of the rules of
23 evidence are, for a summary like this, someone needs to
24 under oath verify that this is accurate. I'm not doubting
25 that it's not accurate, but I'd like somebody to say that

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1 this is an accurate summary.

2 JUDGE JONES: There is a problem with
3 foundation, you know.

4 MR. ENGLAND: Well, my alternative is to
5 simply take official notice of all of the agreements that
6 are identified in that exhibit.

7 JUDGE JONES: That we can do.

8 MR. ENGLAND: And then secondly, I would
9 offer Exhibit 22, which is the New York Times article.

10 JUDGE JONES: Any objection?

11 MR. WALTERS: No objection to 22.

12 JUDGE JONES: Exhibit 22 is admitted.

13 (EXHIBIT NO. 22 WAS RECEIVED INTO
14 EVIDENCE.)

15 MR. WALTERS: Your Honor, it is my
16 understanding that 21 is not admitted.

17 JUDGE JONES: It's not.

18 MR. ENGLAND: Your Honor, if I may, I'd
19 like to have the original interconnection agreement
20 between Cingular and Southwestern Bell marked as an
21 exhibit.

22 (EXHIBIT NO. 23 WAS MARKED FOR
23 IDENTIFICATION BY THE REPORTER.)

24 BY MR. ENGLAND:

25 Q. Mr. Pue, would you take a look at the

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1 document that's been marked for purposes of identification
2 as Exhibit 23 and verify for me, if you would, that this
3 is the original, if you will, interconnection agreement
4 between Cingular and SBC that's been filed with and
5 approved by this Commission?

6 A. Yes, this is one of the interconnection
7 agreements that Cingular Wireless has on file with the
8 Commission.

9 Q. And it is the one that is amended by the
10 2004 amendment?

11 A. Yes. There are two interconnection
12 agreements, one with former AT&T Wireless properties that
13 is still in effect as well.

14 Q. Okay. If I can turn your attention to
15 page 49, and that -- 49 is the handwritten numbers that I
16 believe the Commission gives these agreements.

17 A. Okay. I'm there.

18 Q. And I believe it's Section 1.2.4 that
19 indicates a rate for transiting traffic. Would you look
20 at that and tell me if I've got it right, please?

21 A. Yes, that section describes transiting
22 traffic relationship.

23 Q. And if I've got a decimal point correct,
24 that's 3/10 of a cents per minute for traffic transited by
25 SBC to the Petitioners' exchanges on behalf of Cingular?

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1 A. Yes, until this is -- until the rates have
2 been revised.

3 Q. And to your knowledge, have they been
4 revised?

5 A. Yes, they have.

6 Q. Transiting?

7 A. I can't say for certain if the transiting
8 rate has been revised. I do know that the 2A and 2B and
9 Type 1 rates have been revised.

10 Q. I've looked at your Exhibit 5, and I
11 couldn't find any reference to a new transiting rate, but
12 if I've missed it, please point that out. Can we leave it
13 this way: Unless your amendment in 2004 that's evidenced
14 by Exhibit No. 5 addresses a new transiting rate, we can
15 assume for purposes of my question that the current
16 transiting rate is the same as in this agreement of 3/10
17 of a cent a minute?

18 A. Actually, the rates may have been revised
19 by a cost proceeding prior to the 2004 amendment for the
20 interconnection agreement.

21 Q. What would that cost proceeding have been?

22 A. I don't have specifics of what it may have
23 been. It's my understanding that the 2A and 2B rates,
24 since this 1999 agreement, have been actually revised in
25 between the time period of this agreement and the 2004

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1 amendment.

2 Q. If that's the case, that would have been
3 filed with and approved by the Commission in some fashion
4 or form?

5 A. I believe so, yes.

6 Q. Well, let's, for purposes of my questioning
7 then, just stick with the 3/10 of a cent rate for
8 transiting. As I understand, that is what Bell would
9 charge you to simply transit a call from Cingular to
10 Petitioners' exchanges, correct?

11 A. Yes, that's correct.

12 Q. The rate you pay Bell to transport and
13 terminate a call to one of their customers is currently
14 the 7/100 of a cent that is in the 2004 amendment, right?

15 A. Yes, that's correct.

16 Q. And that also applies to ISP-bound traffic
17 exchanged between the parties, 7/100 of a cent?

18 A. I don't have the amendment in front of me,
19 but that's the -- the assumption is that it applies to ISP
20 bound and 251(b)(5) traffic.

21 Q. Is your understanding of the FCC
22 requirements the same as Mr. Pruitt's regarding ISP
23 traffic, the rate for ISP traffic and the fact that once
24 you've established that, you have to offer it to other
25 competitive carriers? I'm sort of summarizing what I

1 thought I heard from Mr. Pruitt.

2 A. Yes, if that summarization is, if
3 Southwestern Bell were to offer this rate to one carrier,
4 they would have to offer it to other carriers as well.

5 Q. If they have to offer it, for example, to a
6 competitive local exchange carrier, CLEC or not have to
7 offer it, but they --

8 A. They do offer it.

9 Q. -- establish that rate with the CLEC, then
10 they have to offer it to you as a wireless carrier as
11 well, right?

12 A. That's my understanding.

13 Q. Okay. So there's -- and maybe I'm reading
14 more into this than is necessary. That 7/100 of a cent
15 has nothing to do with Southwestern Bell's costs, but
16 really is based more on most-favored-nation-type
17 requirements?

18 A. I don't know what Southwestern Bell's costs
19 are. It would be hard for me to relate to that, I think.

20 Q. So you don't know if that 7/100 of a cent
21 is at, above or below what their forward-looking costs may
22 be?

23 A. Yes, that's correct.

24 Q. It also appears from this agreement at
25 page 53, again those handwritten, Section 6, right there

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1 in the middle of the page --

2 A. Yes.

3 Q. -- that the traffic factor at least at the
4 time this agreement was entered into was 80/20 mobile to
5 land/land to mobile. Do you see that?

6 A. I do.

7 Q. And would you agree with my
8 characterization that it looks like an 80 to 20
9 mobile-to-land/land-to-mobile factor?

10 A. It does look like that is the presumed
11 traffic split to allocate appropriate nonrecurring
12 recurring facility charges, yes, according to that
13 section.

14 Q. Now, that ratio was not changed in the 2004
15 amendment, was it, sir?

16 A. I don't believe it was.

17 Q. Has it been changed in some other documents
18 or agreement or amendment, to your knowledge?

19 A. I don't know the answer to that off the top
20 of my head. I'm not -- I'm not sure.

21 Q. And finally, with respect to this
22 agreement, I've got a couple of questions about provisions
23 for area-wide calling plan, which is defined on page 7,
24 again if you use the handwritten numbers, of the
25 agreement.

00522

1 A. Okay. I'm there.

2 Q. As I understand, this is a billing option
3 available to the CMRS provider whereby the CMRS provider
4 compensates Southwestern Bell for land-to-mobile traffic
5 in lieu of toll charges that would normally be billed to
6 SWBT, Southwestern Bell's end user. Do you see that?

7 A. Yes, I do see that it's a billing option
8 available to CMRS providers.

9 Q. So to put some specific facts on that,
10 using an example, if a Southwestern Bell customer located
11 in Cape Girardeau down here in the southeast part of the
12 state calls a Cingular customer in St. Louis with a
13 St. Louis number, that would ordinarily be a toll call,
14 wouldn't it, sir?

15 A. I can't speak to what the toll -- the
16 landline toll area is. I'm not familiar with it.

17 Q. Assume for purposes of my question that it
18 would be a toll call, if you would.

19 A. Okay.

20 Q. So I can understand how this area-wide
21 calling plan works.

22 A. Okay.

23 Q. If the wireless carrier wants that -- if
24 Cingular wants that St. Louis customer of theirs to be
25 able to be called on a toll-free basis by Bell's Cape

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1 Girardeau customer, they can pay Bell to do that, as I
2 understand that, or I think they refer to that as reverse
3 toll billing. Is that your understanding of the area-wide
4 calling plan?

5 A. I've heard the term reverse toll billing
6 used before. Yes, in that scenario, I think you described
7 it correctly.

8 Q. Do you know if you take advantage of that
9 in Missouri?

10 A. I don't believe we do today with
11 Southwestern Bell.

12 Q. I'm going to switch gears on you, Mr. Pue.

13 A. Sure.

14 MR. ENGLAND: But before I do, I would
15 offer Exhibit 23, please.

16 JUDGE JONES: Any objection?

17 MR. WALTERS: No objections.

18 JUDGE JONES: Exhibit 23 is admitted into
19 the record.

20 (EXHIBIT NO. 23 WAS RECEIVED INTO
21 EVIDENCE.)

22 BY MR. ENGLAND:

23 Q. I want to ask you some questions about the
24 minimum bill issue.

25 A. Okay.

1 Q. As I understand it, Cingular proposes that
2 Petitioners not issue any bills for traffic volumes that
3 are less than 5,000 minutes per month; is that correct?

4 A. Yes, that's correct.

5 Q. In other words, if a Petitioner is
6 terminating wireless traffic from Cingular that only
7 amounts to 4,000 minutes a month or 48,000 minutes a year,
8 under your proposal that Petitioner would not be able to
9 send a bill for that traffic nor receive any compensation
10 for that traffic, correct?

11 A. Well, I believe that the provision provides
12 for the total number of minutes of use exchanged to be
13 5,000 minutes of use or under, is how it reads, in my
14 recollection. And what -- that would encompass both the
15 mobile-to-land and land-to-mobile traffic combined to
16 reach 5,000 minutes of use.

17 Q. Okay.

18 A. I believe that's how the proposed language
19 reads.

20 Q. Well, then, let's take my example and
21 assume that the total amount of traffic exchanged between
22 Petitioner and Southwestern Bell -- excuse me -- Cingular
23 is 4,000 minutes a month or 48,000 minutes a year. Is it
24 Cingular's proposal that no bill would be issued in that
25 regard?

00525

1 A. Yes. And my testimony, I laid out a
2 scenario where the total minutes of use were at
3 5,000 minutes of use exchanged, and you even -- and you
4 had a 70/30 traffic ratio that we've talked about in great
5 detail today in discussions.

6 Q. I'd prefer if we talked 80/20 or 85/15, but
7 I understand.

8 A. In my example, I talked about 70/30, and if
9 you apply the 3.5 cent rate we apply, we're not saying
10 that's the correct rate, but that's the example I used.
11 The actual net bill would be around \$70, I believe is how
12 the math came out.

13 Q. And I understand your proposal essentially
14 is based on the notion that sometimes it costs more to
15 issue a bill than the bill is worth, right?

16 A. That's correct. Typically the
17 administrative costs of issuing, collecting, whatever. I
18 mean, there could be many administrative costs that a
19 company could have.

20 Q. Now, as I understand, Cingular and the
21 Petitioners have agreed to some language on net billing
22 that would allow the Petitioners at their option to issue
23 a net bill rather than have the parties issue separate
24 bills, correct?

25 A. I believe that is correct.

1 Q. What I want you to do, then, is assume for
2 purposes of my question that Petitioners are issuing a net
3 bill. Your concerns then about the cost of billing versus
4 the amount of the bill would have no impact on Cingular
5 because they wouldn't be doing any bill issuing, if you
6 will, right, under a net bill arrangement?

7 A. There would be costs associated with
8 actually receiving that bill and our auditing teams paying
9 the bill and applying payments and so forth that the
10 network expense teams do.

11 Q. So even if Petitioners take on the
12 responsibility of issuing a net bill, that still doesn't
13 address your concerns for this de minimis provision?

14 A. They would take on the responsibility for
15 issuing the bill and collecting the bill and Cingular
16 would obviously have to pay the bill. So there's
17 definitely some costs associated with both sides, I think.

18 Q. Let me be more blunt.

19 A. Okay.

20 Q. If we agree to issue a net bill so that you
21 don't have to issue a bill, would you drop your request
22 for this 5,000 minute de minimis provision?

23 A. I think we still feel that the 5,000 de
24 minimis exemption is appropriate. We've had it in place
25 with a large group of ILECs in the state of Minnesota, and

1 it's seemed to work quite well.

2 Q. You don't have it, of course, with any of
3 your existing agreements with the Missouri small LECs, do
4 you, sir, Fidelity, Alma, Chariton Valley?

5 A. I don't believe so. I don't believe that
6 provision is in there.

7 Q. Let me ask you this, Mr. Pue: Does
8 Cingular allow its end user customers to use up to
9 5,000 minutes of wireless service a month without having
10 to pay for it?

11 A. I can't answer that. I'm not sure what our
12 actual marketing plans are these days. I'm probably more
13 out of touch than most people are.

14 Q. You cannot tell me one way or the other
15 whether every minute a Cingular end user customer uses is
16 accounted for in your billing system through the rate plan
17 that this customer subscribes to, whether that's flat rate
18 or usage based?

19 A. Typically the rate plans are associated
20 with either a bucket of minutes or perhaps a per minute of
21 use rate, depending on the situation.

22 Q. And you don't give your customers up to
23 5,000 minutes truly free, do you, sir?

24 A. I would assume we don't, but I can't speak
25 to our rate plans.

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1 Q. Let's talk a little bit about traffic
2 ratios.

3 A. Okay.

4 Q. And would you agree with me, like
5 Mr. Pruitt did, that this only becomes applicable or this
6 is only applicable to intraMTA traffic exchanged between
7 the parties?

8 A. I would say yes. Typically the traffic
9 ratio agreed to among the parties is applicable to --

10 Q. Intra?

11 A. Intra, yes. That's what I meant.

12 Q. So for purpose of net billing and applying
13 the traffic ratio, would you agree with me to the extent
14 there's any interMTA traffic, that you have to take that
15 out of the equation before you begin your net billing
16 process or calculation?

17 A. Typically, that's the way it works in
18 agreements. There are --

19 Q. Thank you, sir.

20 A. -- occasions where it may -- may be blended
21 in there somehow. It depends on negotiations.

22 Q. At page 16, lines 20 through 22 of your
23 direct testimony --

24 A. 20 through 22?

25 Q. I believe so.

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1 A. Okay.

2 Q. Let me get there to make sure. Yes, direct
3 page 16, line -- beginning on line 20. Are you there?

4 A. Yes, I am.

5 Q. Okay. You state, currently Cingular does
6 not have the systemwide capability to measure traffic that
7 it receives from ICOs. As I understand, ICOs is
8 independent telephone company?

9 A. Yes.

10 Q. And then you go on to say, this is not
11 unusual in the wireless industry. Other wireless carriers
12 also lack that capability. Do you see that?

13 A. Yes, I do.

14 Q. As I understand it, despite Cingular's
15 inability to measure traffic it receives from ICOs, it has
16 nevertheless captured that information for purposes of
17 comparing traffic that Cingular sends to the Petitioners
18 with traffic that the Petitioners send to Cingular, and I
19 believe you summarize that in your confidential Schedule B
20 attached to your direct testimony?

21 A. The numbers that were gathered in that --
22 in the schedule that you're referring to that has the
23 percentages, traffic ratio percentages, was gathered by a
24 third-party vendor that Cingular does business with.

25 MR. WALTERS: Well, what I want to point

00530

1 out is, we did label that exhibit as proprietary. If
2 you're going to discuss the percentages, you might want to
3 go --

4 MR. ENGLAND: I wasn't going to discuss
5 them on a company-specific basis, but I was going to
6 discuss it on an average basis, and I would assume that --
7 would that be public?

8 MR. WALTERS: I think it's okay.

9 BY MR. ENGLAND:

10 Q. Oh, the -- what I'm getting at here first
11 is that the traffic studies that produce these results on
12 your confidential schedule are not created in the ordinary
13 course of business by either Cingular or its third-party
14 vendor; is that right? I think I called it special
15 extraction or special study when I had these questions of
16 Mr. Pruitt.

17 A. I would say that's correct. We -- yes.

18 Q. The fact that you've indicated that a
19 third-party vendor prepared these traffic studies would
20 lead me to believe -- correct if I'm wrong -- that you
21 were not personally involved in the preparation of these
22 studies; is that right?

23 A. I was involved to the extent that I
24 collaborated on the information that we wanted in the
25 study. I had to -- I had to assist with, I guess,

00531

1 directing the third-party vendor how to perform the study.

2 Q. Okay. And if it's not proprietary, can you
3 tell me who actually perform or prepared the traffic
4 studies?

5 A. It's CDR Live. They are a company that we
6 work with.

7 Q. Can you tell me or describe for me how they
8 captured or recorded traffic? And let's start with
9 mobile-to-land intraMTA traffic.

10 A. What we had them do was we took the
11 appropriate Petitioner's NPA/NXXs associated within a
12 particular MTA, and we took the appropriate Cingular
13 NPA/NXXs in a particular MTA and measured the traffic that
14 was exchanged between the two parties, regardless of
15 intermediary carrier.

16 Q. Okay. You've given me quite a bit of
17 information there.

18 A. Okay.

19 Q. I'm going to break it down if I can.

20 A. Okay.

21 Q. So for purposes of mobile to land, where
22 did you capture that information? We heard from
23 Mr. Pruitt that they did it at their switch.

24 A. Yes. CDR Live receives switch feeds from
25 the Cingular Wireless network. They have access to our

00532

1 switch feeds, and that's where they compiled the data.

2 Q. So, using my example of Mark Twain Rural
3 Telephone Company, you would look at the NPA/NXXs that are
4 assigned to their various exchanges, correct?

5 A. Yes, we looked at all the Mark Twain
6 NPA/NXXs.

7 Q. And then you would tell your switch or your
8 switch vendor would tell the switch to capture all of the
9 traffic for a particular period, say a month, that you
10 sent to those NPA/NXXs, correct?

11 A. Yes, in particular, in the Mark Twain
12 instance, we took -- given that they add NPA/NXXs and
13 different MTAs, we associated -- for example, I don't know
14 what the numbers are, but if you take one of the MTAs we
15 took, if it's 32, we took the Mark Twain NPA/NXX
16 associated with that MTA and compared it to the Cingular
17 wireless NPA/NXXs associated in that MTA.

18 Q. Thank you. That was going to get to my
19 other side of the equation. So in order to try to capture
20 intraMTA traffic only, you also had to limit your universe
21 of mobile calls to calls coming from Cingular customers
22 with NPA/NXXs in that same MTA; is that right?

23 A. I believe so, yes. That sounds right.

24 Q. Now, let's reverse the call flow.

25 A. Okay.

00533

1 Q. And how did you measure the traffic coming
2 back to you from the Petitioner?

3 A. Relatively in the same manner. We took the
4 NPA/NXXs for both companies as they relate in the MTAs and
5 compared those, regardless of intermediary carrier, and
6 used the information. I mean, it was basically
7 constructed the same way.

8 Q. And you say regardless of the intermediary.
9 So if Cingular was sending an intraMTA call to Mark Twain
10 during the period of this study, it doesn't matter whether
11 they used Southwestern Bell's transit facilities to get it
12 there or they contracted with an IXC to get it there, you
13 were attempting to pick up all of that traffic; is that
14 right?

15 A. Yes, that's correct.

16 Q. And conversely, when you were looking at
17 traffic coming from Mark Twain coming to your switch,
18 again, with the MTA construction, you were looking for
19 traffic coming to you both via Bell's facilities, if there
20 was any, and IXC facilities, right?

21 A. That's correct, regardless of the
22 intermediary carrier.

23 Q. In response to some Data Requests, Mr. Pue,
24 you also -- or Cingular provided summary minutes of use
25 which I believe substantiate the individual percentages

00534

1 shown on your Schedule B; am I correct?

2 A. That sounds correct, yes.

3 Q. And we have taken those minutes and
4 attempted to do an average for all of the companies you
5 studied, and I believe that information was put in our
6 testimony, and the bottom line was, I believe, your
7 average traffic factor shown by your studies is roughly or
8 rounds to 79 percent mobile to land and 21 percent land to
9 mobile, correct?

10 A. I don't believe I've added them up, but
11 I'll take it that your math, if you averaged them out,
12 came to that.

13 Q. Well, you're lucky it wasn't my math. But
14 does that sound in the ballpark?

15 A. It could sound in the ballpark. Yes, if
16 you averaged them out.

17 Q. It's certainly close to the 80/20 factor
18 that's in your agreement with Cingular, is it -- or not
19 with Cingular -- Southwestern Bell?

20 A. It's close to the agreement we had in the
21 1999 agreement, yes.

22 Q. Is it Cingular's preference, though, to use
23 individual percentages for its traffic factor for each
24 company, or is it willing to use an average, as we've just
25 talked about?

00535

1 A. We preferred to use each individual
2 percentage.

3 Q. Now, after you've performed your traffic
4 study, come up with these numbers, is it fair to say that
5 you haven't proposed to arbitrarily change that factor to
6 say 69 percent mobile to land and 31 percent land to
7 mobile for purposes of your proposed traffic factors?

8 A. I don't think we would choose to
9 arbitrarily change it. It would need to be based on a
10 traffic study.

11 Q. For purposes of this case, you're willing
12 to live by what your traffic studies show, correct?

13 A. Yes, that's correct.

14 Q. Okay. And as I understand, I don't know
15 that it's an issue -- it's certainly an identified issue,
16 but you want to also have the ability to modify that
17 traffic factor in the future if you believe it changes
18 materially, right?

19 A. I believe both parties have the
20 opportunity.

21 Q. You certainly want that opportunity?

22 A. Yes, we would want it to be as accurate as
23 possible.

24 Q. I think we discussed billing, so I'm going
25 to move on to interMTA traffic very briefly. It's my

00536

1 understanding that Cingular and Petitioners have agreed to
2 interMTA factors, correct?

3 A. Correct.

4 Q. And it's also my understanding that
5 Cingular and Petitioners agreed on the split of interMTA
6 traffic, basically 80 percent intrastate and 20 percent
7 interstate, correct?

8 A. That's correct.

9 Q. Let me switch gears one more time. Dialing
10 parity.

11 A. Okay.

12 Q. First I want to talk about EAS calls, and
13 then we'll get to the other dialing parity issue, if you
14 will. With respect to EAS calls, Mr. Pue, I understand
15 that Petitioners and Cingular have an issue with respect
16 to Petitioners' obligation to provide local calling for
17 calls from their exchanges to a Cingular NPA/NXX rate
18 centered within an EAS calling scope of that Petitioner,
19 correct?

20 A. That sounds like it's correct.

21 Q. Okay. I'm going to try to narrow this on
22 what I think the issue is.

23 A. Okay.

24 Q. You understand that Petitioners are willing
25 to provide local dialing to their end user customers for

00537

1 calls those customers make to an EAS exchange where
2 Cingular has an NPA/NXX rate centered, if you will, and
3 where Cingular is locally interconnected or has a point of
4 presence in that EAS point or exchange. That's our
5 position. You understand that, right?

6 A. Yes.

7 Q. And if I understand your position now,
8 Cingular agrees that it needs to have an NPA/NXX rate
9 centered in the exchange with which Petitioner has EAS,
10 but it does necessarily need to have a local
11 interconnection in that EAS exchange or point; is that
12 right?

13 A. I would say that's correct.

14 Q. So the argument here is over whether or not
15 you need to be locally interconnected or have some point
16 of interface or point of presence in the EAS exchanges or
17 exchange with which we have EAS calling?

18 A. I think that's -- that's the main issue.

19 Q. Let me take as an example the Kingdom
20 Telephone Company's EAS route from Tebbetts, Missouri to
21 Jefferson City, Missouri. And I'll bet you're not
22 familiar with Tebbetts, Missouri, are you, Mr. Pue?

23 A. Not at all, no.

24 Q. I hope you're familiar with Jefferson City.

25 A. Yes.

00538

1 Q. Okay. Tebbetts -- may I take this over?

2 Just so you can get a picture of this in your mind,

3 Tebbetts, Missouri is here (indicating), just north, if

4 you will, and east of Jefferson City.

5 A. Okay.

6 Q. Okay. So that's going to be my example.

7 Now, for purpose of my example, let's assume that Cingular

8 has an NPA/NXX rate centered in Jefferson City.

9 A. Okay.

10 Q. But that Cingular's interconnection in the

11 Jefferson City LATA is in Columbia, Missouri, which is up

12 here (indicating), north and west of Jefferson City.

13 A. Okay.

14 Q. In other words, you don't have a point of

15 presence in Jefferson City, but you have a customer who

16 lives in Jefferson City and wants a Jefferson City

17 telephone number. Okay?

18 A. Okay.

19 Q. If I understand your position correctly,

20 you want Kingdom Telephone Company to offer local calling

21 to that Cingular customer in Jefferson City, but in order

22 to complete that call, Kingdom is going to have to find a

23 way to get it to Columbia to your facility so that you can

24 terminate it, right?

25 A. I believe so.

00539

1 Q. How do you -- how do you expect Kingdom to
2 do that, sir?

3 A. I would expect them to route the call to
4 the existing LEC as a POP in their exchange, and that LEC
5 would transport the call to Cingular's switch -- and I
6 forget where you said. I think it was the Columbia.

7 Q. So you would expect that Kingdom would
8 transport the call to Jefferson City, which is served by
9 Sprint ILEC, hand the call off to Sprint ILEC and expect
10 Sprint ILEC to transfer it up in Columbia, where it could
11 be dropped off to Cingular, right?

12 A. I believe so, if that -- that POP that
13 you're saying in Jefferson City is within Kingdom's
14 exchange.

15 Q. Well, regardless of how that call gets from
16 Jefferson City to Columbia, whether it's carried by the
17 ILEC, carried by an IXC or some other carrier, would you
18 imagine, then, that Kingdom is going to have to pay them
19 something to get that call from Jefferson City to
20 Columbia?

21 A. I would imagine they would have to pay the
22 same transit fee as they would to route that call, yes. I
23 think you're correct. They would have to pay them
24 something.

25 Q. In other words, Kingdom's going to incur

00540

1 some sort of cost to get that call from Jefferson City,
2 which is the EAS point, to Columbia where you're located
3 in my example?

4 A. Yes.

5 Q. Okay.

6 A. Yes.

7 Q. Now if it's a landline-to-landline call in
8 that EAS arrangement, Tebbetts and Jeff City, once Kingdom
9 delivers that call to Jefferson City, Sprint delivers to
10 the landline customer and Kingdom's responsibility for
11 hauling that call is done, correct?

12 A. I wouldn't know the relationship between
13 Kingdom and Sprint in that situation.

14 Q. Well, assume for purposes of my argument
15 that you are asking Kingdom to do something different and
16 in addition to what it normally does in delivering
17 landline EAS calls to Jefferson City. Can you understand
18 that or assume that, please?

19 A. I'm not sure that they'd have to do -- I
20 understand, yes, it would be somewhat different, I think.

21 Q. And it would be more costly, would it not?

22 A. I don't believe it would be more costly.

23 Q. Well, they're going to have to contract
24 with somebody to get that call from Jeff City up to
25 Columbia, whereas under a landline arrangement, once they

00541

1 get it to Jeff City, they're done.

2 A. I understand what you're saying. I'm just
3 not sure it would be more costly to Kingdom in this case.

4 Q. Let me ask you this way: Are you asking
5 Kingdom to do more to get that call to you than it does
6 today to get that call to a Jeff City landline customer --
7 Jefferson City? Excuse me.

8 A. I don't believe so. I would believe that
9 they would be able to hand the call off, whether they hand
10 it off to an IXC to get to Columbia or the tandem or
11 wherever they're sending it, or whether they hand it off
12 to the local POP or the exchange with Jefferson City. I
13 just don't believe it would be more costly.

14 Q. Well, if in completing an EAS call from
15 Tebbetts to Jefferson City, landline to landline, Kingdom
16 delivers that call to Jefferson City and does nothing
17 further, isn't that less than what you're asking them to
18 do if you have your facilities in Columbia to complete a
19 landline to wireless call?

20 A. I can't say for certain what their costs
21 would be, but --

22 Q. Well, let's move on, sir. Let's talk about
23 other dialing parity issue, if you will. If I understand
24 this issue correctly, Cingular wants Petitioners to allow
25 their customers to dial Cingular customers on a local dial

00542

1 basis where Cingular has obtained numbers related to the
2 local calling scope or the exchange of the Petitioner,
3 correct?

4 A. That's correct.

5 Q. And let's again refer to the map, the MTIA
6 map. If Cingular obtains an NPA/NXX rate centered in
7 New Florence, Missouri, you want customers of New Florence
8 Telephone Company to be able to dial Cingular customers
9 who have that local number on a seven-digit-dialed basis,
10 correct?

11 A. On a local -- local dial basis.

12 Q. If New Florence customers can call other
13 New Florence landline customers on a seven-digit-dialed
14 basis, you want them to be able to call Cingular customers
15 on a seven-digit-dialed basis, as long as you've got a
16 NPA/NXX rate centered in New Florence, Missouri?

17 A. Correct.

18 Q. By the way, when you go get numbers from
19 whoever it is that administers the numbers, even though
20 you're a wireless carrier, you typically don't have
21 exchanges like landline companies do, you nevertheless get
22 those numbers associated with either VNH coordinates or a
23 landline exchange, correct?

24 A. Yes, they're associated with a rate center.

25 Q. And those rate centers are usually

00543

1 identified by VNH coordinates, correct?

2 A. I don't know for sure how they're
3 identified. I know they're identified within the LERG.

4 Q. And how tough is it to get an NPA/NXX or
5 1,000 block of numbers, for that matter?

6 A. I can't say for certain how tough it is.
7 Our number administration does that.

8 Q. Do you want me to bring the map a little
9 closer so you can see where New Florence is?

10 A. No. I can see it. That's fine.

11 Q. New Florence is approximately 100 miles
12 west of St. Louis in the St. Louis LATA. So you went to
13 the number administrator and he gave you a number -- he or
14 she gave you a number locally rated to New Florence,
15 Missouri, but you still have your facilities in St. Louis,
16 you don't have any facilities in New Florence, right, at
17 least not today?

18 A. By facilities, are you just referring to a
19 switch or --

20 Q. Either local interconnection or some sort
21 of leased capacity that would allow New Florence to hand
22 that call off to you within New Florence, Missouri.

23 A. That's correct. I would say that's
24 correct.

25 Q. We're kind of getting to the same issue

00544

1 with EAS calling.

2 A. Right.

3 Q. You want us to deliver a call -- excuse me.
4 You want us to treat a call as local that we're actually
5 going to have to deliver to you in St. Louis in order to
6 complete it, right?

7 A. That's correct. The FCC regs give the
8 ability to -- for dialing parity whether it's indirect or
9 direct connection.

10 Q. I understand dialing parity, sir, but I
11 don't believe the FCC has told us we have to transport
12 that call across the LATA to complete it. Would you agree
13 with me that this issue has been dubbed, if you will,
14 virtual NXX throughout the industry?

15 A. I am familiar that it is an issue.

16 Q. And it has been specifically brought to the
17 FCC's attention in a petition for declaratory ruling by
18 Sprint PCS, has it not?

19 A. I'm somewhat familiar with that, not
20 completely.

21 Q. And to date, the FCC has issued no decision
22 on that, correct?

23 A. I can't say for sure if they have or not.

24 Q. Well, let's take the New Florence example,
25 and what you want New Florence to do is to treat that call

00545

1 as local, as long as you've got a number rated to
2 New Florence, Missouri, and to haul it to St. Louis so you
3 can complete the call to your customer, right?

4 MR. WALTERS: Objection, your Honor. He
5 has not testified at any time that Cingular wants
6 New Florence to haul it to St. Louis. That's what causing
7 the problem, but he's not testified to that, and I object
8 to the characterization of that. We're not asking
9 New Florence to pay for it, and he's not said that.

10 JUDGE JONES: I think New Florence was used
11 as an example. Has the witness testified on virtual NXX?

12 MR. WALTERS: Yes, sir, but the point --
13 I'll make it as briefly as I can, because I know it's late
14 in the day. The implication of the question is that this
15 witness is saying New Florence has to pay to get it to
16 St. Louis. He has not said that, and that is not
17 Cingular's position. That -- he's implying that it's
18 Cingular's position, but the witness hasn't said that.
19 That's what I'm objecting to.

20 JUDGE JONES: You mean in his direct
21 testimony?

22 MR. WALTERS: Yes, sir.

23 MR. ENGLAND: Judge -- and I can back up.
24 Maybe I've got the cart before the horse. I can ask a
25 different question.

00546

1 JUDGE JONES: Okay.

2 BY MR. ENGLAND:

3 Q. Mr. Pue, how is New Florence going to get
4 that call from New Florence, Missouri to Cingular's
5 facilities in St. Louis?

6 A. I suspect they could route the traffic over
7 their existing trunk groups or routes that they have with
8 SBC or the local exchange carrier.

9 Q. You believe --

10 A. It has a POP that they connect with
11 currently today.

12 Q. Well, let's take the IXC example. How do
13 we deliver a local call to an IXC for termination in a
14 remote location?

15 A. I can't say how. I don't know how
16 New Florence delivers in a remote location.

17 Q. Well, the remote location is St. Louis.

18 A. Okay.

19 Q. You want us to treat this call as a local
20 dialed called, seven-digit-dialed call, and you want us to
21 somehow get it to St. Louis.

22 A. Uh-huh.

23 Q. And you've suggested we can do that, get it
24 to your facilities in St. Louis, and you've suggested we
25 can do that by using an IXC, correct?

00547

1 A. No.

2 Q. Okay.

3 A. Not using an IXC.

4 Q. Okay. All right. Sorry. How do I do
5 that -- or excuse me -- how does New Florence do that?

6 A. I'm not sure on New Florence's current
7 interconnections, but I'm assuming they get the traffic to
8 SBC over trunk groups that they have in place with them
9 today.

10 Q. And do you think SBC's going to allow them
11 to transit that call for free?

12 A. I wouldn't presume they would be able to do
13 it for free.

14 Q. So you acknowledge or believe it's
15 reasonable to assume that New Florence is going to have to
16 incur additional expense to some degree or another to get
17 that locally dialed call to St. Louis, where it can be
18 dropped off on your network, Cingular's network -- excuse
19 me.

20 A. I would agree that they would incur some
21 sort of transit charge to get that traffic to St. Louis.

22 Q. If New Florence is required to transport
23 the call to St. Louis and if, as we've just been
24 discussing, it incurs additional cost to do so, would you
25 agree with me that New Florence is entitled to

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1 compensation from its customers in order to recover those
2 additional costs?

3 A. I don't necessarily think the costs
4 associated with that traffic -- it's kind of a business
5 retail relationship. I don't necessarily think they need
6 to recoup it from their customers.

7 Q. They've got to get it somewhere, don't
8 they, or they won't be in business for very long?

9 A. I don't know if I agree with that or not.
10 I guess I don't know their business aspects.

11 Q. Well, if this is a legitimate -- an
12 additional legitimate cost of doing business, isn't it
13 reasonable to assume that they ought to be able to
14 recover -- New Florence, that is -- recover those costs
15 from their customers?

16 A. I would assume they recover those costs
17 today in monthly charges from their customers.

18 Q. But these are new additional charges that
19 they don't incur in providing service to their customers
20 today.

21 A. I don't know how they charge their
22 customers today or how they recoup from us, so it's hard
23 for me to speak to it.

24 Q. Would you be opposed to New Florence
25 putting an additive or a usage-based charge on that call

1 to the customer who makes the call, the New Florence
2 customer, in order to recover their additional costs of
3 transporting that call to St. Louis?

4 A. I can't tell New Florence how to -- I don't
5 work for New Florence.

6 Q. I'm just asking if you would object as
7 Cingular if we -- if we either are surcharged or added an
8 additional usage-based charge for that call, that
9 otherwise local-appearing call?

10 MR. WALTERS: Objection, your Honor. This
11 is way outside the scope of either the direct or rebuttal.
12 I've let it go on a long time. He simply cannot respond
13 for Cingular on what New Florence can do, I think he said.

14 MR. ENGLAND: Your Honor, I think the
15 Commission needs to understand the repercussion and impact
16 of what this witness is proposing, and if he hasn't
17 thought it out, I think I'm entitled to find that out.

18 JUDGE JONES: But you're asking him if he
19 would object to New Florence charging their customers.
20 Why would he care?

21 MR. ENGLAND: Because he wants that call
22 dialed on a local basis, and I don't think he wants us to
23 charge the customer for it.

24 JUDGE JONES: Your customer, New Florence's
25 customer. Why would he care if New Florence's customer is

00550

1 charged? That's not his customer.

2 MR. ENGLAND: The whole point of this
3 exercise is they want toll-free calling from the New
4 Florence customer Cingular customer when, in fact, it
5 requires a transport call to St. Louis to complete it.

6 JUDGE JONES: I understand what you're
7 saying. If they have a virtual NXX, it's going to be --
8 appear to be a local call, but it's not.

9 MR. ENGLAND: Right.

10 JUDGE JONES: New Florence will absorb the
11 cost, pass it on to someone, the customer more than likely
12 being that someone. Now, I don't know how many questions
13 you have to ask to make that point, but --

14 MR. ENGLAND: Well, I was carrying it one
15 step further to see if he had an objection to New Florence
16 charging the customer who places the call an additive to
17 recover those costs.

18 JUDGE JONES: And his answer was he doesn't
19 work for New Florence, he doesn't care what they do.

20 MR. ENGLAND: Asked and answered, then.

21 Thank you, Judge.

22 BY MR. ENGLAND:

23 Q. Tell me, Mr. Pue, by establishing an
24 NPA/NXX in New Florence, Missouri but keeping its
25 interconnection in St. Louis, Missouri, how has Cingular

00551

1 made any investment in rural Missouri?

2 A. I'm not sure that I understand the
3 question. Can you just ask it one more time?

4 Q. Well, I'll try.

5 A. Okay.

6 Q. If New Florence is required to treat that
7 call as local, transport it to St. Louis for delivery to
8 you, you maintain your existing interconnection in
9 St. Louis, there's no additional investment that you've
10 made in rural Missouri to facilitate that call, is there?

11 A. I think we're promoting competition within
12 that area.

13 Q. That's my next point, sir, but answer my
14 first question. You've made no additional investments in
15 New Florence or in the community between New Florence and
16 St. Louis to facilitate that call, have you?

17 A. Well, we'd have to have some sort of
18 private line or facilities for cell sites in that area, so
19 we would.

20 Q. But for transporting that call from
21 New Florence to St. Louis, so the call can be completed,
22 you haven't made any additional investment under your
23 proposal?

24 MR. WALTERS: Question's been asked and
25 answered. He said the wireless has invested in cell

1 towers. I think that's the answer to the question. I
2 don't think he needs to ask it over and over and over
3 again.

4 JUDGE JONES: Actually, the witness said
5 that investments in cell towers could be made. I don't
6 think he answered the question whether or not there have
7 been investments. That's something that he's got to know.

8 MR. WALTERS: I wouldn't object to that
9 question at all, if counsel wants to ask that question.

10 JUDGE JONES: Well, is that the question
11 you're asking, Mr. England?

12 MR. ENGLAND: I'm tempted to say yes, but
13 I --

14 JUDGE JONES: If not, don't say yes.

15 MR. ENGLAND: Well, let me try it from a
16 different way.

17 BY MR. ENGLAND:

18 Q. Whether you place cell towers in
19 New Florence, Missouri or not has nothing to do with
20 New Florence being required to transport that
21 landline-originated call to St. Louis. The cell tower
22 simply facilitates calls to and from your mobile customer,
23 not the landline customer, correct?

24 A. The cell sites, we would transport the
25 calls back to our St. Louis mobile switching center.

00553

1 Q. But that cell site does not facilitate the
2 carriage of a landline originated call to your customer?

3 A. That's correct.

4 Q. Thank you. Would you agree with me that by
5 simply obtaining a telephone number that is rated to
6 New Florence, Missouri, Cingular is able to compete with
7 New Florence Telephone Company for local customers without
8 making any investments in the New Florence area, under
9 your proposal?

10 A. I think we are making investments there by
11 establishing our cell sites and our transport back to our
12 switch.

13 Q. Let me wrap up on the indirect versus
14 direct connection issue. As I understand it, Cingular
15 wants to include generic language in the traffic
16 termination agreement that will allow it to directly
17 connect with any of the Petitioners when it chooses to do
18 so. Is that right?

19 A. It's standard language that we've used with
20 several small independent companies and other ILECs as
21 well.

22 Q. I understand, but not in Missouri, correct,
23 sir?

24 A. I don't believe we've used that language
25 with any other small independent telephone carriers, no.

1 Q. Would you agree with me to date Cingular
2 has made no specific requests to any of the Petitioners
3 for a direct interconnection?

4 A. I would say that's correct, we have not
5 issued a DFR for direct connection.

6 Q. Does Cingular have any plans in the near
7 future to directly interconnect with any of the
8 Petitioners?

9 A. If the traffic would justify a direct
10 connection, then we would submit -- we would request for a
11 direct connection.

12 Q. Right. But you're not aware of any traffic
13 volumes reaching that critical mass where you have plans
14 to request direct connection with any of the Petitioners,
15 correct?

16 A. I haven't looked at any of the traffic
17 volumes to see if they justify. I'm not -- I would rely
18 on our engineers and work with them collaboratively and
19 see if that was an option.

20 Q. You propose to address this direct
21 interconnection with, I believe, four relatively short
22 paragraphs; is that right?

23 A. Again, that's standard language that we've
24 used in some states that we've negotiated. It's -- it can
25 be even less than that, to that extent.

1 Q. Yet when you sought and obtained
2 interconnection from Southwestern Bell, it took an
3 agreement of at least 70 or so pages, correct?

4 A. That agreement is -- is quite long. It is
5 70 pages long, but I think typically that was negotiated,
6 if I recall, probably from a proposed agreement from
7 Southwestern Bell.

8 Q. Is it your position that Petitioners must
9 directly interconnect with Cingular pursuant to 251(a) of
10 the Telecommunications Act?

11 A. I'm having problems I guess recalling
12 251(a) in my head.

13 Q. I can give you a copy. I think I can give
14 you a copy. And let me try to be a little more precise
15 with my question. Is it your position, sir, that you're
16 entitled to direct interconnection for the exchange of
17 local traffic with Petitioners pursuant to 251(a)?

18 A. Yes, I believe so. That's correct.

19 Q. Now, you understand Petitioners do have an
20 automatic rural exemption pursuant to 251(f), which is on
21 the last page of that three-page document I gave you? You
22 are aware of that, are you not?

23 A. Yes, I am.

24 Q. And would you agree with me generally that
25 that exemption exempts them from the obligations of

1 251(c), subsection 2 of which talks about direct
2 interconnection, correct?

3 A. It's our position that the Petitioners have
4 filed this arbitration, and by doing so, we believe that
5 all provisions of the Act should apply and not just a
6 pick-and-choose-type scenario.

7 Q. Well, I appreciate your position, but I
8 want to explore what I understand to be your opinion, and
9 that is that you can directly interconnect for the
10 exchange of local traffic pursuant to 251(a), and
11 apparently not pursuant to 251(c)(2).

12 A. Okay.

13 Q. Here's my point. If Petitioners are exempt
14 from the requirement to directly interconnect under
15 251(c)(2) but must interconnect directly for the exchange
16 of local traffic under 251(a)(1), isn't the rural
17 exemption meaningless with respect to direct
18 interconnection?

19 MR. WALTERS: Judge, I'm going to object to
20 this line of questioning, too. We started off by Mr. Pue
21 being asked whether he was a lawyer and giving legal
22 opinions, and he said he wasn't.

23 JUDGE JONES: Objection sustained.

24 MR. WALTERS: Thank you very much.

25 MR. ENGLAND: No further questions, your

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1 Honor.

2 JUDGE JONES: Mr. Voight, do you have
3 questions?

4 MR. VOIGHT: Very quickly, Judge. Thank
5 you.

6 QUESTIONS BY MR. VOIGHT:

7 Q. Good afternoon, Mr. Pue.

8 A. Good afternoon.

9 Q. May I call you Eric?

10 A. Yes.

11 Q. My name's Bill. You're a senior contract
12 manager for Cingular and you work out of Redmond,
13 Washington?

14 A. Yes.

15 Q. Well, thank you for coming to Missouri.
16 Good luck for the Seahawks.

17 A. That's right.

18 Q. I wanted to ask you as the senior contract
19 manager, is the type of contract that's been marked as
20 Exhibit 5 and also Exhibit 23, that being the Cingular SBC
21 interconnection agreement and the recent August 2004
22 modification to that agreement, is that something that you
23 would typically manage, these type of contracts?

24 A. I would say that's correct.

25 Q. Okay.

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1 A. Typically we do.

2 Q. And then on your testimony, and I'm talking
3 on your direct testimony, page 10, lines 1 and 2, you talk
4 about reciprocal compensation rates of approximately
5 7/100 of a cent per minute. Do you see that?

6 A. Yes, I do.

7 Q. And if you've been in the hearing room, you
8 know there's been some discussion about that. I think
9 originally it was stated that that compensation rate was
10 somewhere around a penny or so a minute, but your
11 testimony's indicating that that's not the case; is that
12 right? In other words, your testimony's saying that all
13 intraMTA traffic is exchanged at this .0007 cents per
14 minute?

15 A. That's correct.

16 Q. I wanted to ask you on page 55, that's the
17 handwritten page 55 of Exhibit 23, that being the large
18 interconnection agreement, page 55.

19 A. 55. Okay.

20 Q. And down at the bottom, if you're there,
21 you see where it says, Kansas City property and St. Louis
22 property?

23 A. Yes, I do.

24 Q. And you see under Kansas City property and
25 it's number 1, 3 and 4 are property in the state of

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1 Kansas; however, No. 2 is property in the state of
2 Missouri. And it indicates that there's a mobile
3 switching center on 63rd Street in Kansas City, Missouri.
4 Do you see that?

5 A. Yes, I do.

6 Q. And then under St. Louis, you see No. 1
7 where there's mobile switching center on Woods Mill Road
8 in Ballwin, Missouri, and also a mobile switching center
9 on Duncan Avenue in St. Louis, No. 2 under St. Louis,
10 Nos. 1 and 2?

11 A. Yes, I do see what.

12 Q. Can you tell me if those three, No. 2 under
13 Kansas City and 1 and 2 under St. Louis, is that the only
14 Cingular mobile switching offices in Missouri?

15 A. I can't say as of right now. I don't have
16 an accurate, since this was done back in 1999.

17 Q. Have you ever been to any of these three
18 locations in Missouri?

19 A. I have not.

20 Q. If I were to represent to you that all
21 three of those locations were within what we call the
22 mandatory metropolitan calling area of St. Louis and
23 Kansas City, do you know anything about that?

24 A. I've heard of it. That's about as far as
25 just in discussions that we've had in this hearing.

1 Q. Are you aware of any orders by this
2 Commission where traffic exchanged within those mandatory
3 areas is subject to bill and keep, including wireless
4 traffic?

5 A. I'm not aware of that.

6 Q. Can you tell me on Exhibit 5, which is the
7 modification between Cingular and SBC -- and I've asked
8 the other witnesses this question. At the top of page 2
9 on Exhibit 5, where it talks about Section 251(b)(5)
10 traffic --

11 A. I don't have a copy of that in front of me.

12 MR. VOIGHT: Could counsel -- could your
13 counsel provide him with a copy of that? And this is my
14 last question.

15 MR. WALTERS: Section 2.2.2?

16 MR. VOIGHT: Yes, sir.

17 THE WITNESS: Yes, I see that.

18 BY MR. VOIGHT:

19 Q. Okay. Can you tell me -- my reading of
20 this is that, sure enough, Section 251(b)(5) traffic is
21 subject to reciprocal compensation. However, no where in
22 this document do I read conclusively that the traffic
23 exchanged between Cingular and SBC is subject to
24 251(b)(5). In other words, that traffic is not defined in
25 this agreement.

1 Am I wrong about that? Is there somewhere
2 that tells me conclusively that the traffic is -- is
3 currently being exchanged is subject to 251(b)(5)?

4 A. I don't see that, but it's my understanding
5 that all traffic that we exchange with SBC to date is
6 exchanged at that rate per minute of use.

7 Q. And one final question. Does Cingular
8 Wireless exchange any traffic with SBC that is
9 characterized as ISP-bound traffic?

10 A. To my understanding, no, they do not.

11 MR. VOIGHT: Thank you, Eric. That's all I
12 have.

13 JUDGE JONES: Mr. Walter Cecil has joined
14 us, who's on the advisory staff. He says he has some
15 questions for this witness.

16 QUESTIONS BY MR. CECIL:

17 Q. Good afternoon, Mr. Pue.

18 A. Good afternoon.

19 Q. I just have a couple of questions. If
20 Cingular were to receive a telephone enumerated in some
21 rural exchange and the rural landline customer called that
22 number, how would that call be terminated? Would the
23 local company have to provide some kind of transport back
24 to your wireless switching center?

25 A. I can't say for certain how they would get

1 it. It's my understanding they would hand it off to their
2 existing interconnection trunks that they have, let's say
3 for instance, with Southwestern Bell today.

4 Q. I guess technically I'm not too concerned
5 about it. Would it be their responsibility to terminate
6 that call and provide for transportation?

7 A. I believe it would be their responsibility
8 to hand it off at that point, and then I think the
9 transport would be the responsibility of -- from the meet
10 point with Southwestern Bell going that way.

11 Q. So it would be their responsibility to the
12 meet point, and then from the meet point it would be
13 someone else's responsibility?

14 A. I believe that's accurate.

15 Q. Okay.

16 A. As I understand it.

17 Q. Assuming that the local company recognizes
18 that they're doing some extra work that they weren't doing
19 before, allow them to charge some kind of a wireless
20 charge that they apply only when a wireless number is then
21 dialed, would Cingular find that objectionable?

22 A. I think we would find it objectionable.

23 Q. Why is that?

24 A. Just I guess we would expect that traffic
25 originated from the Petitioners would be subject to the

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1 same costs and -- costs and charges as associated with
2 traffic destined for another carrier, and by that sense, I
3 guess I don't -- I wouldn't understand the need for the
4 excessive charge.

5 Q. I don't know if the charge would be
6 excessive.

7 A. Or the additional charge.

8 Q. But the transport to my understanding, or
9 at least arranging for the transport to any distance,
10 would be extra work from the circumstances prior to
11 Cingular's receiving those locally rated numbers. Please
12 go ahead.

13 A. I don't know if it would be -- to me it
14 would just be a matter of rerouting the traffic. My
15 understanding today they would hand that traffic off to an
16 IXC that would be -- rather than doing that, they would
17 just hand it off to the local exchange carrier that they
18 have that arrangement with to transport that traffic back
19 to our IXC.

20 Q. So if they hand it off to an IXC, then
21 would that make it a long distance call where access were
22 due or how would the IXC then be compensated, if it were
23 not?

24 A. I think in the scenario you described, the
25 IXC would get originating access from the local telephone

1 company, as I understand.

2 MR. CECIL: Okay. Thank you.

3 JUDGE JONES: Okay. Mr. Walters, I don't
4 know if you want to do any redirect now or do you want to
5 wait 'til tomorrow? Depends on what you have.

6 MR. WALTERS: I personally would prefer to
7 do it now, see if we can finish.

8 JUDGE JONES: That's fine. Go right ahead.

9 MR. WALTERS: Can I use the white board
10 behind the witness?

11 JUDGE JONES: If you can figure out how to
12 make it work, you're more than welcome.

13 MR. WALTERS: Mr. Pue, your Honor, members
14 of the panel who remain, I'm going to the best I can try
15 to describe the scenario that Mr. England was talking
16 about, because all we've done is focus on traffic going
17 one way. I'd just like everybody to understand we've got
18 a two-way deal here.

19 REDIRECT EXAMINATION BY MR. WALTERS:

20 Q. Now, let's assume that we've got this
21 wireline customer here in the middle of the state, okay,
22 and we've got a wireless customer who's also in the middle
23 of the state, say just across the street. Okay. Now,
24 what we were talking about was a wireline-to-wireless call
25 that has to go all the way to St. Louis and then come

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1 back, correct?

2 A. Correct.

3 Q. And the questions directed to you were, is
4 the landline telephone company responsible for getting the
5 call to St. Louis? You remember that line of questioning?

6 A. Yes.

7 Q. All right. Now, setting aside that issue,
8 let's talk about a call in the other direction, because I
9 assume there are going to be wireless-to-wireline calls
10 also in that scenario; is that correct?

11 A. That's correct.

12 Q. All right. In a wireless-to-wireline
13 scenario, who pays to get the call from our cell tower
14 back to St. Louis?

15 A. The wireless carrier.

16 Q. That would be Cingular; is that correct?

17 A. That would be Cingular.

18 Q. All right. Now, we've heard discussions
19 about traffic ratios today of 80/20?

20 A. Correct.

21 Q. Let's assume that we've got an 80/20
22 traffic ratio here. Who's going to pay for 80 percent of
23 the haulage to St. Louis?

24 A. Essentially we are, Cingular is.

25 Q. So of the total cost to haul the traffic to

1 St. Louis, Cingular pays 80 percent; is that correct?

2 A. That would be correct.

3 Q. All right. And the landline carrier pays
4 20 percent; is that correct?

5 A. That's correct.

6 Q. All right. Would you please take a look at
7 Exhibit No. 22. This was the New York Times article dated
8 January 24th.

9 A. Yes.

10 Q. Hot off the press?

11 A. Yes.

12 Q. And you were asked some questions about
13 whether Cingular's able to earn a profit, correct?

14 A. Correct.

15 Q. Would you look at the second paragraph and
16 read the entire paragraph out loud?

17 A. The LATA-based company said Tuesday it
18 earned \$204 million in the three months ending
19 December 1st, compared to a loss of \$495 million in the
20 same period a year ago.

21 Q. Thank you. Now, would you go down three
22 more paragraphs, beginning with the phrase, Cingular held
23 on to the No. 1 spot. Would you read that first sentence?

24 A. Yes. Cingular held on to the No. 1 spot in
25 subscribers.

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1 Q. Read the second sentence please.

2 A. But figures released Tuesday by Verizon
3 Wireless show the No. 2 provider is fast gaining on
4 Cingular.

5 Q. Okay. Now, would you go down three more
6 paragraphs, to the paragraph beginning, average monthly
7 revenue?

8 A. Average monthly revenue per use declined
9 1.3 percent in the fourth quarter, to \$48.86, compared to
10 \$49.51 in the same period a year ago.

11 Q. Would you please read the next paragraph?

12 A. Operating expenses in the fourth quarter
13 totaled \$8.3 billion.

14 Q. Mr. Pue, is Cingular Wireless in
15 competition with T-Mobile?

16 A. Yes, they are.

17 Q. Are they in competition with Sprint PCS?

18 A. Yes.

19 Q. Does Cingular have a guaranteed franchise
20 or is it in competition with all other wireless carriers?

21 A. It's in competition with all other wireless
22 carriers.

23 Q. Is the goal of Cingular Wireless to
24 minimize expenses to the extent allowed by the law?

25 A. Yes, it is.

1 MR. WALTERS: Your Honor, I have no further
2 questions.

3 JUDGE JONES: Thank you. Thank you. The
4 witness may step down.

5 (Witness excused.)

6 JUDGE JONES: I take it there are no more
7 witnesses. I also assume you-all don't need to make
8 closing arguments.

9 MR. WALTERS: I would waive.

10 JUDGE JONES: In that case, then, we should
11 talk about the expedited transcript and the briefing
12 schedule.

13 MR. JOHNSON: May I raise one point? With
14 your indulgence, we'd like to leave the record open
15 because if the Petitioners produce the evidence pursuant
16 to Data Requests that would allow Mr. Conwell to determine
17 appropriate costs for the other seven Petitioners, we
18 would like to be able to put those calculations into the
19 record.

20 JUDGE JONES: That's fine. We can leave
21 the record for those submissions as exhibits.

22 Mr. England, did you want to add something?

23 MR. ENGLAND: No. We had reached that --
24 excuse me -- we had reached that understanding earlier.
25 It was further my understanding that Mr. Conwell would

1 apply the same methodology to those seven companies that
2 he didn't have sufficient information for to arrive at the
3 result that he's used for the other 20 or so.

4 MR. JOHNSON: That's correct.

5 JUDGE JONES: Okay. Now, the Briefs are
6 due February 8th. That's 13 days from now. How much time
7 do you-all need to file Briefs?

8 MR. WALTERS: Are you asking if we might
9 like more time than February 8th?

10 JUDGE JONES: No. I'm asking how much of
11 the 13 days do you need to file the Briefs by that time.

12 MR. ENGLAND: Quite honestly, we -- let me
13 speak for myself. I believe we need all of it, and that's
14 why we set that date or suggested that date when we did.

15 JUDGE JONES: Well, will your -- will your
16 Briefs in any way hinge on what's in this transcript?

17 MR. ENGLAND: Certainly.

18 JUDGE JONES: That means you need the
19 transcript today?

20 MR. ENGLAND: I don't think I want to put
21 that kind of burden on the court reporter.

22 JUDGE JONES: That's why I asked the
23 question.

24 MR. JOHNSON: I spoke with the court
25 reporter yesterday morning and she said we could probably

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1 get it on Monday.

2 JUDGE JONES: Monday.

3 MR. JOHNSON: And I think that -- that
4 would be satisfactory to T-Mobile.

5 JUDGE JONES: In that case, then we'll
6 expedite the transcript for Monday. Is there anything
7 else you-all need to discuss?

8 (No response.)

9 JUDGE JONES: With that, then, we're off
10 the record.

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RESPONDENT'S EVIDENCE:

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